

**CITY OF HAYWARD PLANNING COMMISSION
SITE PLAN REVIEW APPLICATION NO. 201901039
ALLOWING DEVELOPMENT OF AN APPROXIMATELY 116,844
SQUARE FOOT INDUSTRIAL BUILDING, ISSUANCE OF A HISTORICAL RESOURCE
DEMOLITION PERMIT AND CERTIFICATION OF AN ENVIRONMENTAL IMPACT REPORT
WITH STATEMENT OF OVERRIDING CONSIDERATIONS
FOR U-HAUL AT 4150 PT EDEN WAY, HAYWARD**

SITE PLAN REVIEW

Pursuant to Hayward Municipal Code (HMC) Section 10-1.3025, the Planning Commission may approve or conditionally approve an application for Site Plan Review when all of the following findings are made:

A. 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 demolition of an extant structure associated with the historic Oliver Salt Brothers manufacturing and processing plant in order to develop a new, approximately 116,844 square foot industrial building to house the U-Haul regional corporate offices, including U-Haul pods, trucks, and related packing and shipping materials. The proposed development would include site landscaping, an employee amenity area, and related site improvements. The proposed development would also require realignment of the Bay Trail to run along the western edge of the site between the proposed development and San Francisco Bay. The proposed development would require removal of a designated historic structure; however, the structure is dilapidated, defaced with graffiti, and has been the cause of numerous community appearance complaints over the past several years. Redevelopment of the site with a well-designed, glass fronted building with variety of building planes, textures and sculptural elements would signal increased investment in the industrial area and in the City at a gateway entrance to Hayward along Route 92.

The proposed project, which is surrounded by other industrial developments and baylands, is compatible with those surrounding land uses in that it proposes realignment of the Bay Trail, installation of substantial landscaping and employee amenities along the project frontage, and inclusion of artistic building elements reflecting the surrounding wildlife and grasses. The development would remain compatible with the adjacent bay lands during operations with a condition of approval to ensure that building and site lighting is minimized and contained to the site.

B. The development takes into consideration physical and environmental constraints.

The proposed development takes into consideration physical and environmental constraints in that the development pad is located on a small portion of the site thus minimizing potential impacts on adjacent wetlands and ecologically

sensitive areas. Further, the proposed development includes realignment of the Bay Trail to maximize visual and physical connection between trail users and the Bay and surrounding natural landscapes. The proposed development would impact 6.8-acres on the eastern portion of the site; however, the 32-acre western portion of the site, which is primarily composed of abandoned salt evaporation ponds, would be preserved in perpetuity via recordation of a deed restriction or other appropriate legal mechanism, ensuring that the salt ponds are permanently preserved as open space in perpetuity.

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 Cultural Resources. Specifically, the proposed project would result in significant and unavoidable impacts related to removal of a structure listed on the California Register for Historic Resources and deemed eligible for listing on the National Register of Historic Resources. Proposed Mitigation Measures CUL-1a and CUL-1b would require archival documentation of the structures be kept at the Hayward Historic Society and City of Hayward, and installation of an interpretive display at the site to commemorate the history of the Oliver Brothers Salt Company would minimize project impacts but would not reduce the significance of demolition of the structures to a level of less than significant. Thus, this impact was deemed significant and unavoidable and requires adoption of a Statement of Overriding Consideration for the project.

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

The project site is in an area designated as Industrial Technology and Innovation Corridor (IC) in the *Hayward 2040 General Plan*. The Corridor is expected to grow as an economic and employment center and evolve to achieve a healthy balance of traditional manufacturing, warehousing, and logistics as well as newer information- and technology-based uses. Allowable uses include professional offices, corporate campuses, research and development, warehousing and logistics, manufacturing, and biotechnology. The proposed development would meet the following *Hayward 2040 General Plan* goals and policies in that it would expand the economic and employment base in Hayward (Land Use Goal 6); enhance the visual character of the site with the removal of a dilapidated structure at the gateway entrance to the City (Land Use Policy-6.6); and employ building and site design strategies and employee amenities to create a more attractive development (Land Use Policy-6.7 and 6.8).

Further, the proposed project is consistent with the intent and purpose of the IP (Industrial Park) District, where regional offices and warehouses are permitted uses; and is consistent with all applicable IP District regulations including setbacks, FAR, parking, minimum landscaping and employee amenities as detailed in the accompanying staff report.

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

The proposed development will operate in a manner that is consistent with surrounding industrial development in that it will house U-Haul corporate offices and provide storage of U-Haul pods, trucks and related equipment. Conditions of approval requiring that building and site lighting be minimized and contained to the site and requiring the 32-acre western component of the project site be preserved and maintained in perpetuity via recordation of a deed restriction will ensure compatibility with the adjacent bay lands and natural setting.

HISTORICAL RESOURCE DEMOLITION PERMIT

Pursuant to HMC Section 10-11.070, no person shall demolish, remove, or relocate a historic resource without first obtaining an historic resources demolition permit by the Planning Commission. The Planning Commission has reviewed the application proposal and the related environmental analysis and hereby issues the historical demolition permit subject to the related Site Plan Review and CEQA findings contained herein.

CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS.

I. Introduction

The City of Hayward (City) prepared a Final Environmental Impact Report (EIR) for the proposed 4150 Point Eden Way Industrial Development Project (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 the construction of a new industrial building, preservation of an open space/wetland preserve, and land swap and realignment of a segment of the San Francisco Bay Trail.

The Findings and Statement of Overriding Considerations (Findings) set forth below are presented for adoption by the Planning Commission, 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 Planning Commission regarding the project's environmental impacts, mitigation measures, alternatives to the project, and the overriding considerations, which in this Commission's view, justify approval of the proposed project, despite significant and unavoidable environmental effects.

II. General Findings and Overview

A. Relationship to the City of Hayward General Plan

The project site consists of western and eastern components. The western component of the project site is designated *Baylands* in the Hayward General

Plan, and most of the eastern component of the project site is designated *Industrial Technology and Innovation Corridor* in the Hayward General Plan. The westernmost corner of the eastern component of the project site is designated *Baylands* in the Hayward General Plan. The General Plan notes that within the *Industrial Technology and Innovation Corridor* land use designation, typical building types include warehouses, office buildings, research and development facilities, manufacturing plants, business parks, and corporate campus buildings. The General Plan notes that the *Baylands* land use designation generally applies to the open space resources located along the Hayward shoreline, and activities are expected to include continued restoration of saltwater and freshwater marshes and upland habitat. The proposed warehouse with office space is consistent with the described building types for the *Industrial Technology and Innovation Corridor* land use designation for the eastern component of the project site. The proposed wetland preserve on the western component on the project site is consistent with the activities specified for the *Baylands* land use designation.

The western component of the project site is zoned Floodplain District, while the eastern component is zoned Industrial Park District. The purpose of the Floodplain District is to protect persons and property from the hazards of development in areas subject to tidal or flood water inundation. The purpose of the Industrial Park District is to provide areas for high technology, research and development, and industrial activities in an industrial park or campus-like atmosphere. Warehousing and distribution uses are allowed, provided buildings and site development are designed with an office appearance from right-of-way. The proposed warehouse building on the eastern component of the project site would have an office that faces the rights-of-way of all adjacent or nearly adjacent roadways, including Point Eden Way and State Route 92. The wetland preserve on the western component of the project site would effectively protect or prevent development from flood inundation because establishment of the preserve would preclude development. Therefore, the proposed project would be consistent with the Industrial Park and Floodplain District zoning districts applicable to the project site.

B. Procedural Background

The City started the environmental review process following submittal of the development application on February 25, 2019. The City prepared an Initial Study to evaluate potential impacts of the proposed project. Following preparation of the Initial Study, the City determined the potential for the proposed project to result in potentially significant impacts. The City prepared a Notice of Preparation (NOP) on November 10, 2020, stating that an EIR for the project would be prepared, and provided notice for a Scoping Meeting, which was held on December 10, 2020 (via Zoom). This NOP, along with the accompanying Initial Study 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 and at the Scoping Meeting were considered during preparation of the Draft Environmental Impact Report (Draft EIR). On April 9, 2021, the Notice of Availability (NOA) for the Draft EIR and the Draft EIR was published for public review and comment and filed with the California Office of Planning and Research under State Clearinghouse No. 2020110180. The review period for the Draft EIR ended on May 24, 2021.

The City prepared written responses to the comments received during the comment period and included these responses in a separate volume entitled 4150 Point Eden Way Industrial Development Project 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 June 25, 2021.

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 Planning Commission 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 project. By these Findings, the Commission ratifies, adopts, and incorporates the analysis, explanations, findings, responses to comments, and conclusions of the Final EIR. The Planning Commission 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 project, shall continue in full force and effect unless amended or modified by the City.

E. Summary of Environmental Findings

The Planning Commission 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

Indirect and Direct. As discussed in the Final EIR in Section 4.2, *Cultural Resources*, significant project-related impacts were found related to the demolition of existing features on the project site that contribute to the significance of historical resource.

Cumulative. As discussion in the Final EIR in Section 4.2, *Cultural Resources*, significant cumulative impacts were found related to the demolition of existing features on the project site that contribute to the significance of historical resource.

2. Potentially Significant Impacts that can be Avoided or Reduced to a Less Than Significant Level Through Implementation of Mitigation Measures

Indirect and Direct. As discussed in the Initial Study, project-related impacts in the areas of geology and soils and tribal cultural resources could be mitigated to level of less than significant with mitigation. As discussed in the Final EIR in Section 4.1, *Biological Resources*, Section 4.2, *Cultural Resources*, Section 4.3, *Hazards and Hazardous Materials*, and Section 4.4, *Transportation*, project-related impacts in the areas of biological resources, cultural resources, hazards and hazardous materials, and transportation could be mitigated to level of less than significant with mitigation.

Cumulative. To the extent impacts in the foregoing environmental topical areas have the capability of cumulating, the Initial Study and Final EIR Section 4.1 through Section 4.4, 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

Indirect and Direct. As discussed in the Initial Study and in the Final EIR in Section 1, *Introduction*, 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; Energy, Geology and Soils; Greenhouse Gas Emissions; Hazards and Hazardous Materials; Hydrology and Water Quality; Land Use and Planning; Mineral Resources; Noise; Population and Housing; Public Services; Recreation; Transportation, Utilities and Service Systems; and, Wildfire.

Cumulative. As discussed in the Initial Study and Final EIR Sections 4.1 through 4.4 (incorporated herein by this reference), cumulative impacts in the areas of Aesthetics; Agricultural and Forest Resources; Biological Resources; Energy; Geology and Soils; Greenhouse Gas Emissions; Hazards and Hazardous Materials; Hydrology and Water Quality; Land Use and Planning; Mineral Resources; Noise; Population and Housing; Public Services;

Recreation; Transportation; Utilities and Service Systems; and, Wildfire were found less than significant.

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

A. Cultural Resources

1. Demolition of the Oliver Brothers Salt Company processing plant and filling of portions of the associated salt evaporation ponds on the eastern component of the project site would adversely impact features that contribute to the significance of a historical resource. Impacts would be significant and unavoidable. (EIR Impact CUL-1)

- a) **Potential Impact.** Construction of the proposed project would require demolition of the Oliver Brothers Salt Company processing plant and filling of portions of the associated salt evaporation ponds on the eastern component of the project site. The Oliver Brothers Salt Company has been determined eligible for listing in the NRHP and is listed in the CRHR; therefore, the property qualifies as a historical resource as defined by CEQA. Due to proposed demolition and construction activities that would impact contributing features within the eastern component, the proposed project would cause the material impairment of the resource, meaning it would alter in an adverse manner those physical characteristics that convey its historical significance and that justify its inclusion in the NRHP and CRHR. Filling the salt ponds and demolishing the building on the eastern component of the site would also alter the historic landscape, as would constructing a new industrial building.
- b) **Mitigation Measures.** Project mitigation measures CUL-1a and CUL-1b, as set forth in Final EIR Section 4.2, *Cultural Resources*, are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program. After implementation of mitigation measures CUL-1a and CUL-1b, the impact will still be considered significant and unavoidable.
- c) **Findings.** Based on the Final EIR and the entire record before this Planning Commission, the Commission finds that:
 - (1) **Mitigation is Feasible.** Mitigation measures CUL-1a and CUL-1b are determined to be the only feasible measures the City can impose to reduce the proposed development's impacts to historic resources. Mitigation measures CUL-1a and CUL-1b require archival documentation of the Oliver Salt Brothers Salt Company plant structure prior to demolition and construction of an interpretative display to commemorate the history of the Oliver Salt Brothers Salt Company plant structure. Other measures were considered but rejected because they were deemed infeasible or ineffective, including

retaining the Oliver Salt Brothers Salt Company plant structure while also permitting the proposed development on the site. However, given the size of the project site, required design and size of the proposed development, and location of the Oliver Salt Brothers Salt Company plant structure within the site, avoidance of the structure while also constructing the proposed development is infeasible. Accordingly, avoidance of the existing Oliver Salt Brothers Salt Company plant structure is infeasible.

(2) **Remaining Impacts.** Development of the eastern component of the project site would permanently remove the Oliver Salt Brothers Salt Company plant and fill associated salt evaporation ponds. Because avoidance of the Oliver Salt Brothers Salt Company plant structure is not feasible, there are no mitigation measures that would meet the objectives of the project while retaining the historic resources. While mitigation measures CUL-1a and CUL-1b are feasible and would be implemented, impacts would remain significant and unavoidable because demolition of the Oliver Salt Brothers Salt Company plant structure is unavoidable.

(3) **Overriding Considerations.** The environmental, economic, social, and other benefits of the project override remaining significant adverse impacts of the project resulting in the demolition or loss of a historic resource, as more fully stated in the Statement of Overriding Considerations in Section VIII, below.

2. **Cumulative impacts on loss of historic resources in the City of Hayward.**

- a) **Potential Impact.** Construction of the proposed project would require demolition of the Oliver Brothers Salt Company processing plant and filling of portions of the associated salt evaporation ponds on the eastern component of the project site. The Oliver Brothers Salt Company has been determined eligible for listing in the NRHP and is listed in the CRHR; the property, therefore, qualifies as a historical resource as defined by CEQA. The proposed project would not impact other historic resources that may occur elsewhere, off-site, within Hayward. However, because the proposed project would result in direct significant impacts to historic resources on the project site, there would be fewer historic resources remaining in the City of Hayward.
- b) **Mitigation Measures.** Project mitigation measures CUL-1a and CUL-1b, as set forth in Final EIR Section 4.2, *Cultural Resources*, are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program. After implementation of mitigation measures CUL-1a and CUL-1b, the impact will still be considered significant and unavoidable.

- c) **Findings.** Based on the Final EIR and the entire record before this Planning Commission, the Commission finds that:
- (1) **Mitigation is Feasible.** Mitigation measures CUL-1a and CUL-1b are determined to be the only feasible measures the City can impose to reduce the proposed development's impacts to historic resources. 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 eastern component of the project site would permanently remove the Oliver Salt Brothers Salt Company plant and fill associated salt evaporation ponds. Because avoidance of the Oliver Salt Brothers Salt Company plant structure is not feasible, there are no mitigation measures that would meet the objectives of the project while retaining the historic resources. While mitigation measures CUL-1a and CUL-1b are feasible and would be implemented, impacts would remain significant and unavoidable because demolition of the Oliver Salt Brothers Salt Company plant structure is unavoidable.
 - (3) **Overriding Considerations.** The environmental, economic, social, and other benefits of the project override remaining significant adverse impacts of the project resulting in the demolition or loss of a historic resource, 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. **The proposed project would have a substantial adverse effect on species identified as a candidate, sensitive, or special status, such as salt marsh harvest mouse, burrowing owl and other birds, and bats. Impacts would be less than significant with mitigation incorporated. (EIR Impact BIO-1)**
 - a) **Potential Impact.** The proposed project would remove habitat suitable for special-status wildlife species and could directly impact these species if present within the suitable habitat during construction. Additionally, removal of vegetation cover during construction could impact nesting migratory bird species or their nests. Light and noise generated from both project construction and operation could indirectly affect wildlife species in adjacent areas. See Final EIR pages 4.1-15 through 4.1-19, incorporated herein by this reference.
 - b) **Mitigation Measures.** Project mitigation measures BIO-1a through BIO-1h are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.

- c) **Findings.** Based on the Final EIR and the entire record before this Planning Commission, the Commission finds that:
- (1) **Effects of Mitigation.** The impacts related to special-status species and nesting migratory birds, including their habitats, will be mitigated to a less than significant level by requiring surveys to be conducted by a qualified biologist prior to construction, installing fencing to exclude wildlife from active construction areas, implementing wildlife training for construction personnel, and excluding public access from surrounding habitat.
 - (2) **Remaining Impacts.** Remaining impacts related to special-status species, nesting migratory birds, and their habitat would not be significant.
2. **The proposed project would require impacts to seasonal wetlands and salt marsh on the eastern component of the project site, which are considered sensitive natural communities. Impacts would be less than significant with mitigation. (EIR Impact BIO-2)**
- a) **Potential Impact.** Project construction activities on the eastern component of the project site would result in the fill of 0.28 acre of seasonal wetlands and 0.69 acre of salt marsh and associated unvegetated waters in the remnant salt ponds on the eastern component project site. See Final EIR page 4.1-22, incorporated herein by this reference.
 - b) **Mitigation Measures.** Project mitigation measures BIO-1h and BIO-3 are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.
 - c) **Findings.** Based on the Final EIR and the entire record before this Planning Commission, this Commission finds that:
 - (1) **Effects of Mitigation.** The impacts related to sensitive natural communities will be mitigated to a less than significant level by requiring fencing to exclude public access from surrounding habitat and providing wetland mitigation credits.
 - (2) **Remaining Impacts.** Remaining impacts related to sensitive natural communities would not be significant.
3. **The proposed project would require the permanent fill of approximately 0.28 acre of seasonal wetlands and 0.69 acre of salt marsh and associated unvegetated waters in remnant salt ponds on the eastern component of the project site. Impacts would be less than significant with mitigation. (EIR Impact BIO-3)**
- a) **Potential Impact.** Project construction activities on the eastern component of the project site would result in the fill of 0.28 acre of seasonal wetlands and 0.69 acre of salt marsh and associated

unvegetated waters in the remnant salt ponds on the eastern component project site. See Final EIR page 4.1-23, incorporated herein by this reference.

- b) **Mitigation Measures.** Project mitigation measure BIO-3 is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.
- c) **Findings.** Based on the Final EIR and the entire record before this Planning Commission, the Commission finds that:
 - (1) **Effects of Mitigation.** The impacts related to wetlands will be mitigated to a less than significant level by requiring wetland mitigation credits.
 - (2) **Remaining Impacts.** Remaining impacts related to wetlands would not be significant.

B. Cultural Resources

1. Construction of the proposed project would involve ground-disturbing activities that have the potential to unearth or adversely impact previously unidentified archaeological resources within the eastern component of the project site. Impacts would be less than significant with mitigation incorporated. (EIR Impact CUL-2)

- a) **Potential Impact.** Construction of the proposed project, including the proposed industrial building, surface parking, utilities and landscaping, and relocated segment of the San Francisco Bay Trail, would involve excavation and ground disturbance on the site's eastern component. Ground-disturbing activities would have the potential to unearth previously unidentified archaeological resources. See Final EIR pages 4.2-10 through 4.2-11, incorporated herein by this reference.
- b) **Mitigation Measures.** Project mitigation measure CUL-2 is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.
- c) **Findings.** Based on the Final EIR and the entire record before this Planning Commission, the Commission finds that:
 - (1) **Effects of Mitigation.** The impacts related to archaeological resources will be mitigated to a less than significant level by requiring construction activities to halt near archaeological finds until further evaluated and protected, as applicable, by a qualified archaeologist.
 - (2) **Remaining Impacts.** Remaining impacts related to archaeological resources would not be significant.

C. Geology and Soils

1. Project construction would be susceptible to failure resulting from soil liquefaction and soil instability. Impacts would be less than significant with mitigation incorporated. (Initial Study Impact)

- a) **Potential Impact.** The project site is within a liquefaction zone that could result in foundation damage to the proposed industrial building during a seismic-related ground failure. Additionally, graded slopes could be susceptible to collapse during seismic events if improperly constructed or compacted. Soils on site could become unstable from the overlying weight of the proposed industrial building and surface parking lot. Collapse or failure of soils could result in substantial risk of loss, injury, or death. See Initial Study page 49, incorporated herein by this reference.
- b) **Mitigation Measures.** Project mitigation measure GEO-1 is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.
- c) **Findings.** Based on the Final EIR and the entire record before this Planning Commission, the Commission finds that:
 - (1) **Effects of Mitigation.** The impacts related to soil liquefaction and instability will be mitigated to a less than significant level by requiring incorporation of measures from a Geotechnical Engineering Report into the project design and construction.
 - (2) **Remaining Impacts.** Remaining impacts related to soil liquefaction and instability would not be significant.

D. Hazards and Hazardous Materials

1. The project has the potential to create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment due to potential hazardous materials that may be present in the existing on-site structures. This impact would be potentially significant but mitigable. (EIR Impact HAZ-1)

- a) **Potential Impact.** Demolition of the Oliver Brothers Salt Company plant would have the potential to release lead and asbestos containing materials, potentially exposing construction workers. See Final EIR pages 4.3-10 through 4.3-11, incorporated herein by this reference.
- b) **Mitigation Measures.** Project mitigation measure HAZ-1 is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.
- c) **Findings.** Based on the Final EIR and the entire record before this Planning Commission, this Commission finds that:
 - (1) **Effects of Mitigation.** The impacts related to lead and asbestos containing materials will be mitigated to a less than significant level by requiring materials inspections and possible sampling to determine if

lead or asbestos are present, and if so, safe removal, remediation, and disposal in accordance with all federal, state, and local regulations.

(2) **Remaining Impacts.** Remaining impacts related to lead and asbestos exposure would not be significant.

2. The project would involve development on a site that is included on a list of hazardous material sites compiled pursuant to Government Code Section 65962.5, and due to the potential to encounter residual soil and groundwater contamination on the eastern component of the project site, impacts would be potentially significant but mitigable. (EIR Impact HAZ-2)

- a) **Potential Impact.** Project construction activities involving excavation to approximately 5 feet below ground surface, such as construction of the proposed building foundation or buried utility connections, could disturb soils or groundwater from previous contamination incidents and expose construction workers. Project construction would generate dust. If soils from the contamination areas on-site are stockpiled on site and become airborne dust, either from wind erosion or construction equipment, off-site receptors could be exposed, as well as project construction workers. The proposed building foundation could create a potential pathway for migration of contaminated groundwater plume to aquifers at depths of up to 20 feet below ground surface. During operation of the proposed project, building occupants could be exposed to hazardous vapors from underlying contamination. Likewise, stormwater runoff collected in on-site bioretention areas could cause mobilization of contamination through leaching. See Final EIR pages 4.3-11 through 4.3-16, incorporated herein by this reference.
- b) **Mitigation Measures.** Project mitigation measures HAZ-2a and HAZ-2b and HAZ-2c are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.
- c) **Findings.** Based on the Final EIR and the entire record before this Planning Commission, this Commission finds that:
- (1) **Effects of Mitigation.** The impacts related to soil and groundwater contamination will be mitigated to a less than significant level by requiring implementation of the previously approved Risk Management Plan for the project site, consulting with the City on the location and/or design of on-site bioretention areas, and designing the foundation in such a way that it is demonstrated the proposed building would not create a preferential pathway for contamination.
- (2) **Remaining Impacts.** Remaining impacts related to soil and groundwater contamination would not be significant.

E. Transportation

- 1. The proposed project would generate 18.23 vehicle miles traveled (VMT) per employee, which exceeds the VMT threshold of the existing regional**

average of 18.15 by 0.5 percent. Impacts would be potentially significant, but mitigable. (EIR Impact TR-1)

- a) **Potential Impact.** The proposed project would generate 18.23 VMT per employee, which would exceed the existing regional average VMT per employee, which is 18.15. See Final EIR page 4.4-5 through 4.4-7, incorporated herein by this reference.
- b) **Mitigation Measures.** Project mitigation measure TR-1 is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.
- c) **Findings.** Based on the Final EIR and the entire record before this Planning Commission, this Commission finds that:
 - (1) **Effects of Mitigation.** The impacts related to VMT will be mitigated to a less than significant level by requiring implementation of either a voluntary employer commute program or employer carpool program.
 - (2) **Remaining Impacts.** Remaining impacts related to VMT would not be significant.

F. Tribal Cultural Resources

1. Construction of the proposed project would require excavation and grading, which could damage or destroy tribal cultural resources, if present. (Initial Study Impact)

- a) **Potential Impact.** Subsurface excavation and grading required for the project would have the potential to uncover and either damage or destroy unknown or unidentified tribal cultural resources, if present. See Initial Study page 104, incorporated herein by this reference.
- b) **Mitigation Measures.** Project mitigation measure TCR-1 is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.
- c) **Findings.** Based on the Final EIR and the entire record before this Planning Commission, the Commission finds that:
 - (1) **Effects of Mitigation.** The impacts related to tribal cultural resources will be mitigated to a less than significant level by requiring construction work to halt around discovery of a potential tribal cultural resource, and development of a mitigation plan if the resource is determined to be a tribal cultural resource.
 - (2) **Remaining Impacts.** Remaining impacts related to tribal cultural resources would not be 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 Final EIR and the entire record before this Planning Commission, the project would generate further employment growth. However, employment growth would consist of approximately 20 to 25 long-term employees, which would not generate substantial growth in Hayward.
- b) **Explanation.** As identified on Final EIR page 5-1, incorporated herein by this reference, the proposed project would generate short-term construction jobs, that given their short-term duration, would be filled by the local Bay Area workforce. Operation of the project would generate 20 to 25 new long-term jobs, which would not be considered substantial unplanned growth in Hayward.

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 Final EIR and the entire record before the Planning Commission, 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. However, the proposed building would be constructed pursuant to CalGreen and the City's Reach Code, both of which require energy efficiency.
- b) **Explanation.** As identified on Final EIR pages 5-2 and 5-3, incorporated herein by this reference, the proposed 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. Additional vehicle trips associated with the proposed project would incrementally increase local traffic and regional air pollutant and GHG emissions. The project would be required to comply with standards set forth in California Building Code (CBC) Title 24, which would minimize the wasteful, inefficient, or unnecessary consumption of energy resources during operation. CALGreen (as codified in CCR Title 24, Part 11) requires implementation of energy-efficient light fixtures and building materials into the design of new construction projects. Furthermore, the 2019 Building Energy Efficiency Standards (CBC Title 24, Part 6) requires newly constructed buildings to meet energy performance standards set by the CEC. The City also has a Reach Code that requires efficiency beyond CalGreen, which would be applicable to the proposed project.
- c) **Issues Raised on Appeal.** There are no appeals to certification of the Final 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). Apart from 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 Alternatives

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 Final EIR identified the following objectives for the proposed project:

- Develop an industrial building to house U-Haul corporate headquarters and warehouse.
- Locate the building at the western edge of Hayward in proximity to a regional highway and other industrial, warehousing and logistics uses to avoid land use conflicts.
- Create new employment and economic growth opportunities by redeveloping a vacant and underutilized property.
- Establish a wetland preserve adjacent to the San Francisco Bay.
- Remove a dilapidated and unsafe structure from a currently underutilized property at the gateway to the City.

VII. Alternatives Analysis in Final EIR

A. Alternatives Considered but Rejected. Alternatives considered but rejected from further consideration include three separate off-site alternatives.

a) **Findings.** Three separate off-site alternatives were considered but rejected from further consideration. The three alternative sites include an approximately one-acre property at 4327 Breakwater Avenue; an approximately 3.9-acre property at 3590 Enterprise Avenue; and an approximately 34.6-acre property on Arden Road. The alternative sites on Breakwater Avenue and Enterprise Avenue were rejected from further consideration because the properties were substantially less than the approximately 6.8 acres necessary to accommodate the proposed project. The alternative site on Arden Road was eliminated because it contains large areas of freshwater ponds which reduce the contiguous area of developable land to less than the approximately 6.8 acres required to accommodate the proposed project.

b) **Explanation.** While each of the three off-site alternatives would eliminate significant impacts to the historic resource of the Oliver Brother Salt Company processing plant, none of the three alternative sites have enough developable land to accommodate the proposed project. Because the three alternative sites are not large enough to accommodate the proposed project, each alternative would fail to meet the project objective of developing an industrial building to house U-Haul corporate headquarters and warehouse. Additionally, the three alternative sites would also fail to meet project objectives to create new employment and economic growth, establish a wetland preserve adjacent to the San Francisco Bay, and removal of a dilapidated and unsafe structure from a currently underutilized property at the gateway to the City.

B. Alternatives Analyzed in the Final 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 Alternative.** The No Project Alternative assumes that the industrial building, surface parking, driveway, landscaping, and other project components associated with the proposed industrial building are not constructed. Additionally, the San Francisco Bay Trail would remain in its current location and would not be realigned. Likewise, a wetland preserve would not be established on the western component of the project site. The western component of the project site would not be preserved in perpetuity via recordation of a deed restriction or other appropriate legal mechanism; therefore, the salt ponds and other areas of the western

component of the site could be utilized for flood plain and agricultural uses such as chemical extraction from bay water, crop and tree farming, dredging, farming or ranching and limited sales of materials grown on site. The project site would remain in its current unused state, and the existing structures associated with the former Oliver Brothers Salt Company operation would not be demolished.

- a) **Findings.** The No Project Alternative is rejected as a feasible alternative because it would not achieve the project objectives as listed on page 6-1 of the Final EIR.
 - b) **Explanation.** The No Project Alternative would avoid the significant and unavoidable impacts of the project because no construction would occur on the project site and demolition of the Oliver Brothers Salt Company plant would not be required. Because no construction would occur on the project site, other significant but mitigable impacts of the project would be avoided under this alternative, such as impacts to special-status species, wetlands, and contaminated soils and groundwater. Additionally, because the proposed building would not be constructed under this alternative, significant but mitigable impacts associated with VMT would also be avoided. While the No Project Alternative would avoid the potentially significant impacts of the proposed project, it would meet none of the project objectives.
- 2) **Enterprise Avenue Alternate Site Alternative.** Under the Enterprise Avenue Alternate Site Alternative, the proposed industrial building would be constructed on an approximately 10.8-acre property located at 3636 Enterprise Avenue in Hayward. The property is identified as APN 439-0099-036-02, and is zoned as General Industrial (IG). The property is mostly vacant with the exception of several radio communication towers scattered across the property. A small structure is located at the base of one tower and is associated with the tower operations. Vegetation is present across nearly the entire property, and based on aerial photography, consists primarily of low grasses, weeds, and shrubs.

The Enterprise Avenue Alternate Site Alternative assumes that the industrial building and associated surface parking lot would be approximately the same size and design as the proposed project, only located on the Enterprise Avenue property instead of the project site. However, because the Enterprise Avenue property is an upland area, this alternative would not include establishing a wetland preserve on-site or off-site. Likewise, this alternative assumes the existing structures and ponds associated with the former Oliver Brothers Salt Works operation on the project site would remain unchanged from current conditions, because this alternative would involve no activities or development at the project

site. Finally, this alternative would not result in redevelopment of and reinvestment in a site that serves as a gateway to the City.

The San Francisco Bay Trail is not adjacent the Enterprise Avenue property. Therefore, this alternative would not involve relocation of the trail or coordination with the East Bay Regional Parks District. However, this alternative would include relocating the existing radio communication towers and associated building that currently exist on the Enterprise Avenue property.

- a) **Findings.** The Enterprise Avenue Alternate Site Alternative is rejected as a feasible alternative because it would not achieve most of the project objectives, as listed on page 6-1 of the Final EIR. Additionally, the project applicant does not own the Enterprise Avenue site and has no control over development decisions or investments on the Enterprise Avenue property.
- b) **Explanation.** The Enterprise Avenue Alternate Site Alternative would avoid the significant and unavoidable impacts of the project because no construction would occur on the project site and demolition of the Oliver Brothers Salt Company plant would not be required. However, the Enterprise Avenue Alternate Site Alternative would not avoid some of the potentially significant but mitigable impacts of the proposed project. For example, the Enterprise Avenue Site contains open grassland and communication towers which could be used by migratory nesting birds, which would be impact by construction on the site. Similarly, construction on the Enterprise Avenue Site would require excavation and there would be potential to impact buried but previously unknown cultural resources. Additionally, the Enterprise Avenue Alternate Site Alternative would result in increased VMT impacts compared to the proposed project.

While the Enterprise Avenue Alternate Site Alternative would avoid the potentially significant and unavoidable impacts of the proposed project, it would fail to meet most of the project objectives, such as establishing a wetland preserve or removing a dilapidated structure from the gateway to the City. Additionally, the project applicant does not own the Enterprise Avenue site and has no control over development decisions or investments on the Enterprise Avenue property.

- 3) **Reduced Project Alternative.** The Reduced Project Alternative assumes that, like the proposed project, the industrial building, surface parking, driveway, landscaping, and other project components associated with the proposed industrial building would be constructed on the eastern component of the project site. Additionally, the San Francisco Bay Trail would be realigned to encompass the eastern component of the site, like

the proposed project. Likewise, a wetland preserve would be established on the western component of the project site, consistent with the proposed project. However, the industrial building and surface parking lot would be reduced in size by approximately 50 percent and shifted south within the eastern component of the project site in order to avoid demolition of the former Oliver Brothers Salt Company plant in the northeast part of the site. The existing building would be left in place.

- a) **Findings.** The Reduced Project Alternative is rejected as a feasible alternative because it would not achieve some of the project objectives, as listed on page 6-1 of the Final EIR. The Reduced Project Alternative would also result in more wetland impacts compared to the proposed project, including wetlands that are contributing elements to the historic landscape in the form of salt evaporation ponds. The Reduced Project Alternative would also be economically infeasible because the warehouse size would be reduced making its construction and operation less functional.
- b) **Explanation.** The Reduced Project Alternative would avoid the significant and unavoidable impacts of the project because no construction would occur on the project site and demolition of the Oliver Brothers Salt Company plant would not be required. However, the Reduced Project Alternative would not avoid some of the potentially significant but mitigable impacts of the proposed project. For example, the Reduced Project Alternative would require vegetation removal, which could impact special-status species migratory nesting birds. Because the Reduced Project Alternative would shift the building further south on the eastern component of the project site, more disturbance to wetlands would be required compared with the proposed project. Finally, the dilapidated structures would remain in place at the gateway entrance to the City.

ENVIRONMENTALLY SUPERIOR ALTERNATIVE

The environmentally superior alternative is discussed on pages 6-11 and 6-12 of the Final 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 EIR analysis, the Enterprise Avenue Alternate Site Alternative is the environmentally superior alternative.

However, while the Enterprise Avenue Alternate Site Alternative would reduce impacts in the categories of biological resources, cultural resources, and hazards and hazardous materials, it would result in greater impacts regarding transportation. The Enterprise Avenue Alternate Site Alternative, however, would not meet all the objectives of the proposed project, such as establishing a wetland preserve or removing a dilapidated structure from the gateway to the City.

VIII. Statement of Overriding Considerations Related to the 4150 Point Eden Way Industrial Development Project Findings

The City is the lead agency under CEQA, responsible for the preparation, review and certification of the Final EIR for the 4150 Point Eden Way Industrial 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 the mitigation measures or alternatives identified in the EIR infeasible 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 project.

Analysis in the Final EIR for the 4150 Point Eden Way Industrial Development Project has concluded that the proposed development will result in historic resource impacts that cannot be mitigated to a less than significant level. These

impacts are set forth in Findings IIIA, 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 Goals and Policies Set Forth in the City's General Plan and Economic Development Strategic Plan

The project implements the construction and development of 4150 Point Eden Way, which will allow for new industrial warehouse and office activities, consistent with General Plan Goals and Policies as detailed in 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 gateway and opportunity development sites in the Industrial area. The project site has been underutilized since the Oliver Brothers Salt Company vacated the site decades ago, and is a source of blight, trespassing and safety issues. It has been challenging to develop the site with the industrial uses envisioned in the General Plan and the Economic Development Strategic Plan (EDSP) due to economic downturn around 2008 and the fact that a developer must work through sensitive biological issues and hazardous contamination from prior uses on-site. The proposed development would involve construction of a new, modern, and aesthetically pleasing warehouse with office space, consistent with the General Plan and EDSP.

B. Employment Opportunities and Economic Development

The proposed project would directly provide temporary construction jobs and approximately 20 to 25 permanent employment opportunities, according to the project applicant. Further, the proposed project would be consistent with the General Plan and would be within the employment and population projections in the 2040 General Plan EIR. The project would provide the regional headquarters office for a national company, furthering the economic development goals of the City. Finally, redevelopment of the site at a gateway entrance to the City would signal investment in the industrial sector and the City as a whole.

C. Preservation of Wetlands Adjacent to the San Francisco Bay

The proposed project would establish an approximately 32-acre preserve on the western component of the project site. The preserve would be preserved in perpetuity via recordation of a deed restriction or other appropriate legal mechanism, ensuring that the salt ponds are permanently preserved as open space in perpetuity. Because the area would be preserved in perpetuity, habitat for special-status species that occur within the preserve area, such salt harvest mouse and salt marsh wandering shrew, would also be preserved.

D. Conclusion

Based on the objectives identified for the project, review of the project, review of the EIR, and consideration of public and agency comments, the Planning Commission 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 Planning Commission has determined that any environmental detriment caused by the proposed 4150 Point Eden Way Industrial Development 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.