



**DATE:** October 29, 2019

**TO:** Mayor and City Council

**FROM:** Development Services Director

**SUBJECT:** Proposal to Subdivide Two Existing Parcels into 17 Parcels to Allow the Construction of 12 Detached Single-Family Residences and Five Accessory Dwelling Units (ADU) with Common Open Space Areas and Related Site Improvements at 28571 & 29591 Harvey Avenue (APNs 464-0060-005-02 & 464-0060-006-00) Requiring a Vesting Tentative Tract Map, Planned Development (PD) Rezone, Site Plan Review, and Mitigated Negative Declaration with Mitigation Monitoring and Reporting Program (MMRP). Application No. 201706649; Nuvera Homes (Applicant), Ngai Ming Wang (Owner)

## **RECOMMENDATION**

That the City Council introduces an Ordinance (Attachment II) approving the Planned Development (PD) Rezone and adopts a Resolution (Attachment III) approving Vesting Tentative Tract Map No. 8442 and Site Plan Review Application No. 201706649, and adopts the Mitigated Negative Declaration (MND) with a Mitigation Monitoring and Reporting Program (MMRP), based on the analysis set forth in this report and the attached Findings and subject to the Conditions of Approval (Attachment III).

## **SUMMARY**

The applicant is requesting approval of Vesting Tentative Tract Map No. 8442, PD Rezone and Site Plan Review Application No. 201706649, and the adoption of a Mitigated Negative Declaration (MND) with a Mitigation and Monitoring Reporting Program (MMRP) to subdivide two existing parcels totaling 1.83 acres into 17 parcels to allow the construction of 12 single-family residences with common open space areas, bio-retention ponds, and a private street at 28571/28591 Harvey Avenue. Five of the single-family residences would have attached Accessory Dwelling Units (ADU). The project site is zoned RS (Single-Family Residential) District and designated as LDR (Low Density Residential) in the *Hayward 2040 General Plan*.

As proposed, the project requires: a Planned Development rezoning to provide flexibility in the site layout and allow for exceptions to certain development standards related to lot size, lot coverage, and setbacks; requires a Vesting Tentative Tract Map and Site Plan Review; and is subject to environmental review.

## BACKGROUND

The proposed project would involve a subdivision of the 1.83-acre site into 12 lots to develop 12 single-family residential units and a private street and court that would have access from Harvey Avenue. Five of the detached single-family units would include attached Accessory Dwelling Units (ADU). The proposed project would include both private open space (i.e. rear yard areas) for each residence and approximately 2,790 sq. ft. of group open space area. The proposed project would involve a Vesting Tentative Tract Map and a zone change for both parcels from RS (Single-Family Residential) to PD (Planned Development) to allow for smaller minimum lot sizes, reduced setbacks, and increased lot coverage than the RS zoning district allows. The existing building on the site will be demolished for the project.

## DISCUSSION

*Existing Conditions.* The 1.83-acre project site consists of two parcels, each containing a single-family dwelling, which will be demolished. There are 14 trees protected by the City's Tree Preservation Ordinance on site and 10 protected trees that are off-site but have canopies encroaching onto the site. The site, located in the Harder-Tennyson neighborhood is bordered by single-family residential development to the north, south and west. To the east is a church and more single-family dwellings.

*Project Overview.* The project requires a rezoning and subdivision of two existing parcels into 17 parcels to allow the construction of 12 single-family residences with a common open space area and a private street that provides vehicular access from Harvey Avenue. Twelve of the parcels will be for the single-family residences and the others are for the common open space, the private street and three for the bioretention areas. Five of the parcels will also contain an attached Accessory Dwelling Unit (ADU). A zone change from the existing RS District to a new PD District is required to allow for exceptions to the development standards for single-family homes related to lot size, lot coverage, and setbacks. More detail regarding the requested exceptions is provided later in this report in Table 1. The proposed lots range in size between 2,971 and 6,747 square feet. The project will include frontage and site improvements including on-site water and sewer utilities, a new private street, new landscaping, and reconstruction and repair of existing road and sidewalks along Harvey Avenue.



Elevation – Cottage

*Building Architecture.* The development includes two floor plans. One floor plan will feature 2,255 sq. ft. of living space with 4 bedrooms and 3 baths. The other floor plan includes an Accessory Dwelling Unit. The main house will be 2,530 sq. ft. with 5 bedrooms and 4 baths

with option for a bedroom for the main house or the Accessory Dwelling Unit. The Accessory Dwelling Unit will be 866 sq. ft. with one bedroom and one bath. Each floor plan has a one-bedroom suite on the first floor. Each floor plan has the option of two exterior architectural styles, Cottage and French.

Six color and material schemes will be used to add an additional layer of detail to the homes and the selection of color and materials of the homes will be harmonious with each other. The proposed building color consist of warm shades of off white to earthy browns and grays with contrasting trim and door colors. Architectural details include stone veneer, detailed garage doors, front porches, exterior shutters, and sill treatments.

Overall, the homes are attractively designed and compatible with the existing character of the neighborhood. The building facades are articulated to provide visual interest from all sides of the homes, especially the front elevations. The front elevations incorporate recesses and projections through windows with sill treatments and shutters, front entry porches, stone veneer, and breaks in the building mass.

*Parking and Circulation.* Each home will contain a two-car garage and a driveway that could accommodate two additional vehicles and each ADU will have an uncovered parking space. A 27-foot wide private street (Drive Aisle A) is proposed to provide vehicular access to the site from Harvey Avenue. The street widens to 31 feet to accommodate on-street parking and tapers down to 22 feet. The private street, which will be maintained by the HOA, provides six street parking spaces for guests and ends in a hammerhead configuration to provide adequate turnaround space for fire apparatus. The project includes the replacement of the sidewalk on the project frontage along Harvey Road. The project also includes a 5-foot-wide sidewalk on one side of the private street to provide direct pedestrian access to Harvey Avenue.

*Landscaping and Open Space.* The project proposes to plant 31 new trees throughout the project site and a varied palette of shrubs and groundcover in the common open space area and front yards of the homes. The common open space area will be 2,790 square feet in size and located in the rear of the site at the end of the private street. The common open space area will be improved with landscaping and provide an outdoor seating area. Each home will also have a private yard ranging from 515 sq. ft to 2,063 sq. ft. All proposed landscaping and irrigation will meet the City's landscape water efficiency standards. Additionally, the project will treat storm water run-off on-site with three new bioretention treatment areas. The bioretention treatment areas will enhance the entry into the development as well as serve as a focal point at the end of the drive aisle.

*Tree Removals.* The project requires the removal of 14 trees that are protected by the City's Tree Preservation Ordinance. The City's Tree Preservation Ordinance requires mitigation equal in value to the total appraised value of all protected trees to be removed through replacement trees or alternative forms of mitigation acceptable to the City Landscape Architect. The project proposes mitigation in the form of 23 larger replacement trees. The City Landscape Architect will review the final landscape plan to confirm that the proposed mitigation cost matches or exceeds the appraised value of the removed trees prior to the issuance of a building permit.

Planned Development Amenities. As noted earlier, the project requires a PD Rezone to provide flexibility in the site layout and allow for exceptions to certain development standards related to lot size, lot coverage, and setbacks. Any requested exceptions to development regulations or policies must be adequately offset or compensated for by providing amenities not otherwise required or exceeding required development standards. As such, the project proposes the following amenities:

- Rooftop solar panels on each home;
- A bedroom suite on the first floor of all homes to allow for aging in place;
- Five of the single-family homes will include an Accessory Dwelling Unit for multi-generational housing;
- 2,790 square feet of common open space area, which is typically not provided or required for detached single-family home developments; and
- Accent Permeable pavers will be provided at the entry to the development.

Homeowners Association: As part of the standard conditions of approval, the project is required to form a new Homeowners' Association (HOA) with required Covenants, Conditions, and Restrictions (CC&Rs) to ensure the future homeowners will be responsible for maintaining all the project components, including the private street, street lights, utilities, and other privately owned common areas and facilities on the site, including the bio-retention areas, landscaped areas, preservation and replacement of trees, and decorative paving. The CC&Rs will also contain a standard condition that if the HOA fails to maintain the common areas, private streets, lights and utilities, the City of Hayward will have the right to enter the subdivision and perform the necessary work to maintain these areas and special assessment and/or lien the properties for their proportionate share of the costs as described in Attachment III.

Utilities and Street Improvements. The existing utilities that serve the project site, including sanitary sewer, water, and storm drain systems, have sufficient capacity to adequately serve the proposed development. On-site sewer and water utilities will be installed within the new public utility easement within the project site and connect to the existing utilities on Harvey Avenue. As previously discussed, the project will be served by a new private street. While the existing roadway is sufficient to accommodate the additional traffic generated from the project, frontage improvements will be required, including the reconstruction and repair of the existing road and sidewalks along Harvey Avenue to meet the City's street standards.

Hayward 2040 General Plan. The project site is designated as Low Density Residential<sup>1</sup> in the *Hayward 2040 General Plan*, which allows for a residential density range of 4.3-8.7 dwelling units per net acre. Properties with the LDR land use designation are typically characterized by suburban areas located throughout the Hayward Planning Area. Typical building types include single-family homes, second units, and ancillary structures. The project is consistent with the *Hayward 2040 General Plan* in that it is a single-family residential development with a density of approximately 8.7 dwelling units per net acre, which is within the allowable density range. The project is also consistent with applicable General Plan policies in that it will

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<sup>1</sup> Hayward General Plan: [https://www.hayward-ca.gov/sites/default/files/documents/HayGPU\\_Part%203.1\\_LU-Element\\_Approved\\_2014-07-01.pdf](https://www.hayward-ca.gov/sites/default/files/documents/HayGPU_Part%203.1_LU-Element_Approved_2014-07-01.pdf)

increase the housing inventory for the City of Hayward, is located close to services and amenities, and is considered an in-fill development that will result in a more complete neighborhood. The project’s consistency with the *Hayward 2040 General Plan* and its specific goals and policies is discussed in greater detail in the project findings (Attachment II).

**Zoning Ordinance.** The project site is currently zoned RS, Single-Family Residential District. The project proposes to rezone both parcels to a PD District<sup>2</sup> to allow for exceptions to the lot size, lot coverage, and setback requirements that are required in the RS District. As proposed, the project is proposing modified development standards related to lot size, lot width, lot coverage, and building setbacks for the front, side, and rear yards. The subject parcels are narrow and deep, which limits the number of dwelling units the project site can accommodate under the typical single-family residential development standards. As such, these modified standards are necessary to allow the project to provide more dwelling units and still comply with the maximum allowable density in the *Hayward 2040 General Plan*. PD Districts are also subject to the development standards of the zoning district most similar to the proposed use, which is the RS (Single-Family Residential) District in this case. The project will meet the applicable development standards of the RS District related to building height and off-street parking as shown below.

<b>Development Standard</b>	<b>HMC Requirement</b>	<b>Proposed Project</b>
Min. Lot Size	5,000 sq. ft. (interior)/ 5,915 sq. ft. (Corner)	2,971- 5,802 sq. ft. <sup>1</sup> / 6,747 sq. ft. <sup>1</sup>
Min. Average Lot Width	50 ft. (interior) / 60 ft. (corner)	55 ft-87 ft <sup>1</sup> (interior) 90 ft. <sup>1</sup> (corner)
Min. Average Lot Depth	80 ft.	51 ft-94 ft. <sup>1</sup>
Max. Lot Coverage	40%	26%-51% <sup>1</sup>
Min. Front Yard Setback	20 ft.	8 ft. <sup>1</sup>
Min. Side Yard Setback	5 ft. or 10% of lot width (10 ft. max.)	4 ft. <sup>1</sup>
Min. Side Street Yard Setback	10 ft.	5 ft. <sup>1</sup>
Min. Rear Yard Setback	20 ft.	5 ft. <sup>1</sup>
Max. Building Height	30 ft.	28 ft. 7 in.
Min. Off-Street Parking Req.	24 enclosed spaces	24 enclosed spaces and 5 uncovered spaces

1. The PD Rezone is required to allow for an exception to this development standard.

Pursuant to Section 10-1.2505 of the HMC, the purpose of the PD District is to facilitate development of land in an innovative fashion to allow for flexibility in site design and encourage development that is sensitive to environmental and site-specific considerations. Any requested exceptions to development regulations or policies must be adequately offset or compensated for by providing amenities not otherwise required or exceeding required development standards. Per Section 10-1.2535 of the HMC, the City Council must make the following PD Rezone findings for the project:

<sup>2</sup> Planned Development District:  
[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART1ZOOR\\_S10-1.2500PLDEDIPD](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.2500PLDEDIPD)

- The development is in substantial harmony with the surrounding area and conforms to the General Plan and applicable City policies;
- Streets and utilities, existing or proposed, are adequate to serve the development;
- In the case of a residential development, that the development creates a residential environment of sustained desirability and stability, that sites proposed for public facilities, such as playgrounds and parks, are adequate to serve the anticipated population and are acceptable to the public authorities having jurisdiction thereon, and the development will have no substantial adverse effect upon surrounding development; and
- Any latitude or exception(s) to development regulations or policies is adequately offset or compensated for by providing functional facilities or amenities not otherwise required or exceeding other required development standards.

*Vesting Tentative Map.* The project proposes to create a total of 17 new parcels, including 12 single-family parcels, one parcel for the private road and four common parcels containing open space or bioretention areas. Pursuant to Section 10-3.010<sup>3</sup> of the Hayward Municipal Code (HMC), the purpose of the Subdivision Ordinance is to ensure that all proposed subdivisions are consistent with the procedures, policies, and programs of the *Hayward 2040 General Plan*, underlying zoning district, and Subdivision Map Act. Per Section 10-3.150 of the HMC, the following Vesting Tentative Tract Map findings are required for the project:

- The proposed subdivision is not in conflict with the General Plan and applicable specific plans and neighborhood plans;
- The proposed subdivision meets the requirements of the City Zoning Ordinance; and
- No approval of variances or other exceptions are required for the approval of the subdivision.

If approved, the applicant may submit a Final Map and improvement plans to the City for review. The City Engineer must determine that the Final Map and improvement plans are in substantial compliance with the approved Vesting Tentative Tract Map prior to approving the Map. Prior to approval of the Map, the developer shall enter into a Subdivision Agreement and post bonds with the City, at which time the map can be recorded with the Alameda County Recorder's Office and the applicant can commence construction activities. In accordance with HMC Section 10-3.246, approval of this Vesting Tentative Tract Map shall expire 36 months after the effective date of approval subject to statutory and discretionary extensions as allowed by the HMC and Subdivision Map Act. A copy of the Vesting Tentative Tract Map is included within the Project Plans (Attachment VII).

*Site Plan Review.* Pursuant to Section 10-1.3005<sup>4</sup> of the HMC, the purpose of the Site Plan Review is to foster development that complies with the intent of City development policies and regulations and is operated in a manner determined to be acceptable and compatible with

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<sup>3</sup> Subdivision Ordinance:

[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART3SUOR\\_S10-3.010PU](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART3SUOR_S10-3.010PU)

<sup>4</sup> Site Plan Review:

[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART1ZOOR\\_S10-1.3000SIPLRE](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.3000SIPLRE)

surrounding development. Per Section 10-1.3025 of the HMC, the following Site Plan Review findings are required for the project:

- The development is compatible with on-site and surrounding structures and uses and is an attractive addition to the City;
- The development takes into consideration physical and environmental constraints;
- The development complies with the intent of City development policies and regulations; and
- The development will be operated in a manner determined to be acceptable and compatible with surrounding development.

Staff has provided a more detailed analysis for the required Vesting Tentative Map, PD Rezone, and Site Plan Review findings in Attachment II.

*Affordable Housing Ordinance.* The project is subject to the City's Affordable Housing Ordinance<sup>5</sup> (AHO), which allows residential development projects to pay an affordable housing in-lieu fee instead of providing affordable units on site. The in-lieu fee for single-family residential projects for Fiscal Year 2020 is \$18.33 per square foot of habitable space if paid prior to issuance of a building permit or \$20.16 per square foot of habitable space if paid prior to approval of final inspection, or issuance of a certificate of occupancy. The applicant has decided to pay the affordable housing in-lieu fee in addition to providing ADUs on-site.

*Environmental Review.* Pursuant to CEQA Guidelines Section 15220, an Initial Study was prepared by Rincon Consultants on behalf of the City of Hayward (Lead Agency) for this project with the finding that a Mitigated Negative Declaration (MND) was appropriate because all potential impacts could be mitigated to a level of less than significant with the implementation of mitigation measures. The Initial Study found that the project would result in potential impacts to Biological Resources, Cultural Resources, Geology and Soils, Noise and Tribal Cultural Resources. With mitigation, any potential impacts would be reduced to a level of less than significant.

A Notice of Intent (NOI) to adopt the MND with Mitigation and Monitoring Reporting Plan (MMRP) was filed with the Alameda County Clerk on July 18, 2019. The NOI and MND were posted at City Hall and delivered to the Weekes library, and copies of the NOI were sent to interested parties and property owners within 300 feet of the project site on July 18, 2019. The public comment period for the MND expired on August 9, 2018 and the City received one comment from the Department of Toxic Substances Control recommending the collection and analysis of soil samples for CAM metals and asbestos and requesting information on a 55-gallon drum present on the site.

These comments have been addressed and incorporated into the MND Response to Comments Memorandum through minor modifications to the recommended mitigation measures. The modifications do not change the impact analysis or the level of mitigation required to reduce possible impacts to a level of less than significant. The Initial Study and

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<sup>5</sup> Affordable Housing Ordinance:  
[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART17AFHOOR](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART17AFHOOR)

MMRP have been updated to reflect these modifications. A copy of the MND, MMRP, and MND Response to Comments Memorandum are attached to this report for the Commission's review and consideration (Attachments IV, V, VI). The MND, MMRP, and MND Response to Comments Memorandum should be considered together as part of the complete CEQA document.

*Planning Commission Review.* On September 12, 2019 the Planning Commission held a public hearing and voted 6:0 with one commissioner absent to recommend approval of the project to the City Council. Although the Planning Commission expressed support for the project, the Commission had concerns that the project was not providing affordable units onsite. The minutes of the Planning Commission meeting are included as Attachment IX.

## **ECONOMIC IMPACT**

The proposed project would result in the development of a currently underutilized lot in an existing residential neighborhood. The proposed development would not require the expansion of public utilities or services and is not expected to have a negative impact on the City regarding public utilities or public services. Furthermore, the project would result in new residents moving into Hayward, which should generate demand for goods and services, thereby providing stimulus for new or existing jobs in the City's economy.

## **FISCAL IMPACT**

According to the City of Hayward Fiscal Impact Model (2018) prepared by Applied Development Economics, Inc., the project would generate an estimated \$45,233 in annual revenue from property and utility user taxes and approximately \$46,227 in annual costs related to City services, resulting in a net negative impact of approximately \$944 per year. Additionally, the project would generate an estimated \$945,536 in one-time revenue prior to occupation through the payment of various development impact fees such as park dedication fees, affordable housing impact fees, school impact fees, and utility fees (Attachment X).

## **STRATEGIC INITIATIVES**

The project supports the Complete Communities strategic initiative. The purpose of the Complete Communities initiative is to create and support services and amenities that provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all. This agenda item advances the following goals and objectives:

- Goal 1: Improve quality of life for residents, business owners, and community members in all Hayward neighborhoods.
  - Objective 4: Create resilient and sustainable neighborhoods.
  
- Goal 2: Provide a mix of housing stock for all Hayward residents and community members, including the expansion of affordable housing opportunities and resources.



Objective 2: Facilitate the development of diverse housing types that serve the needs of all populations.

This project also supports the Complete Streets strategic initiative. The purpose of the Complete Streets Strategic Initiative is to build streets that are safe, comfortable, and convenient for travel for everyone, regardless of age or ability, including motorists, pedestrians, bicyclists, and public transportation riders. This agenda item advances the following goal and objective:

Goal 1: Prioritize safety for all modes of travel.

Objective 3: Ensure that roadway construction and retrofit programs and projects include complete streets elements.

The project, as proposed, will create new housing opportunities that provide a mix of housing in the City and will require the construction of a new private street that will be designed to accommodate vehicles and pedestrians.

## **SUSTAINABILITY FEATURES**

As mentioned earlier, the project will provide rooftop solar panels on each home. The project is also required to meet CALGreen and 2016 California Energy Code standards for energy efficiency and will meet the City's requirements with respect to water efficient landscaping. Additionally, the project will comply with the City standards for recycling of waste during construction and operation and will comply with the Municipal Regional Stormwater requirements for storm water runoff prevention and treatment.

## **PUBLIC CONTACT**

*Public Outreach.* Following receipt of application, staff conducted the following public outreach:

- On December 1, 2017, a Notice of Receipt of Application was sent to all property owners and interested stakeholders within 300 feet of the subject property. The City received one public comment opposing the development of the property (Attachment VII).
- On July 18, 2019, a Notice of Intent (NOI) to adopt a Mitigated Negative Declaration (MND) was posted at City Hall, the Alameda County Clerk's Office, and delivered to the Hayward library. Copies of the NOI were also sent to interested parties and property owners within 300 feet of the project site and published in the newspaper. Following the posting of the NOI, the City received one comment from the Department of Toxic Substances Control inquiring about an uncovered 55-gallon drum on site.
- On August 26, 2019, a Notice of Public Hearing for the Planning Commission meeting held on September 12, 2019 was posted at City hall, sent to all property owners and interested stakeholders within 300 feet of the subject property, and published in the Daily Review newspaper.

- On October 18, 2019, a Notice of Public Hearing for the City Council meeting to be held on October 29 was posted in City Hall, sent to all property owners and interested stakeholders within 300 feet of the subject property, and published in the Daily Review newspaper. To date, staff has not received any additional comments from the public regarding the project.

## **NEXT STEPS**

Following City Council approval, the Ordinance approving the Planned Development Rezone will return to the City Council for a second reading, after which the applicant may proceed with submitting a Precise Development Plan, Final Tract Map, and improvement plans to the City for review. The City Engineer must find that the Final Map and site improvement plans are in substantial compliance with the approved Vesting Tentative Tract Map and recommend to the City Council for approval and recordation with the Alameda County Recorder's Office. Once the Precise Plan, Final Map, and improvement plans are approved by the City, the applicant may then proceed with obtaining building permits.

*Prepared by:* Carl Emura, Associate Planner

*Recommended by:* Laura Simpson, AICP, Director of Development Services

Approved by:



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Kelly McAdoo, City Manager