



## **SUBJECT**

Proposed Development of a 219,656-Square-Foot Industrial Shell Building on an Approximately 10.9-Acre Site at 3636 Enterprise Avenue (Assessor Parcel Number 439-0099-036-02), Requiring Approval of Major Site Plan Review and Conditional Use Permit and a Mitigated Negative Declaration with Mitigation Monitoring and Reporting Program. George Condon on behalf of Dermody Properties (Applicant); Hainted Rock LLC & EGA Investments LLC (Property Owner).

## **RECOMMENDATION**

That the Planning Commission approves Major Site Plan Review and Conditional Use Permit Application No. 202102725, subject to the attached Findings (Attachment II) and Conditions of Approval (Attachment III); and reviews and approves the Mitigated Negative Declaration with Mitigation Monitoring and Reporting Program (Attachments V and VI, respectively), prepared pursuant to the California Environmental Quality Act.

## **SUMMARY**

The proposed project would result in the development of a new industrial shell building on an approximately 10.9-acre site. The site is primarily vacant except for four radio towers and an associated maintenance shed. The radio towers will be relocated on top of the new building in approximately the same location and reaching the same height from grade as the exiting towers, the existing maintenance shed will be demolished, and the radio equipment will be relocated inside the proposed building. The proposed project includes development of an approximately 219,656 square foot building and associated site improvements consisting of an employee patio/amenity area, site landscaping, circulation, and parking.

On June 7, 2021, the applicant submitted an application for an industrial shell building, incorporating warehousing and office uses, requiring Major Site Plan Review due to the size of the site, and a Conditional Use Permit due to the size of the proposed speculative industrial building (over 150,000 sq. ft.). The speculative building is designed for occupation by industrial uses permitted in the General Industrial (IG)<sup>1</sup> zoning district. These uses could consist of, but not be limited to, manufacturing, research and development, logistics, warehouse and distribution, and wholesale establishments. However, heavy industrial, data center, and truck terminal uses, including an Amazon Last Mile Delivery Station, are not proposed as part of this project.

In addition to the project entitlements, the Planning Commission is being asked to review and

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<sup>1</sup> Industrial Zoning District:

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approve a Mitigated Negative Declaration prepared for the project. The City received three letters regarding the project from the Bay Area Air Quality Management District (BAAQMD), California Department of Toxic Substances Control, and San Francisco Bay Conservation and Development Commission (BCDC). The comments raised in these letters along with the City's response are included as Attachment VII. As further discussed below in this staff report, all potential impacts could be mitigated to a less than significant level with the implementation of mitigation measures that have been made conditions of approval of the project.

## **BACKGROUND**

The project site is currently occupied by four radio towers and an associated mechanical shed for radio transmissions that are operated by Salem Broadcasting Company. These radio towers and shed were permitted for construction in circa 1969. They are generally unmanned with Salem staff conducting maintenance activities as needed.

Public Outreach. On June 11, 2021, an initial Notice of Application Receipt for the project application was sent to 51 addresses including property owners, tenants, and businesses within a 300-foot radius of the project site.

On July 29, 2022, a Notice of Intent (NOI) to Adopt a Mitigated Negative Declaration (MND) was posted at the State Clearinghouse, and the Alameda County Clerk's Office, published in *The Daily Review* and mailed to 65 property owners, residents, and businesses within 300-feet of the project site, and agencies, organizations and individuals that have requested all CEQA-related notices. In response to the NOI, the City did receive correspondence from Bay Area Air Quality Management District, the Department of Toxic Substances Control and the Bay Conservation and Development Commission prior to the close of the public comment period on August 29, 2022. Those comments, along with a detailed staff response, is included as Attachment VII.

On September 9, 2022, a Notice of this Public Hearing for the Planning Commission meeting was sent to 65 property owners, residents, and businesses within 300-feet of the project site as well as published in *The Daily Review* newspaper. To date, staff has not received any additional public comments, concerns or questions related to the proposed development, aside from comments received during the public comment period noted above.

## **PROJECT DESCRIPTION**

Project Location. The approximately 10.9-acre, nearly rectangular project site (Assessor Parcel Number 439-0099-036-02) is located on the south side of Enterprise Avenue, approximately 270 feet west of the intersection of Enterprise Avenue with Whitesell Street. The project site is approximately 0.5 mile north of State Route 92 (SR 92) and approximately 1.1 miles east of the San Francisco Bay shoreline.

Existing Conditions. The site is primarily vacant except for four radio towers and an associated mechanical shed for radio transmission. The site is relatively level with a berm located along its western border. Vegetation on site primarily consists of low grasses with rows of shrubs located along the site's western and southern perimeters. The site contains buried ground wires that radiate outward from each radio tower and buried electric utility lines connect each radio tower to the main power. A

majority of the site is located in the 100-year flood plain or Flood Zone AE<sup>2</sup> according to maps developed by Federal Emergency Management Agency (FEMA). The most upland portions of the project site outside of the 100-year flood plain are to the northeast and northwest corners of the project site.

The site is bounded by Enterprise Avenue to the north, a vacant parcel to the east, a railroad-track spur and a creek to the south, and a commercial/industrial development to the west containing an auto body supply store and a moving logistics company. The creek on the south side of the project site is channelized with earth berms and flows to the marshland along the San Francisco Bay located further to the west and the northwest. The Hayward wastewater treatment facility is directly north of the parcel on the opposite side of Enterprise Avenue.

Proposed Project. The project proposes the construction of an approximately 219,656-square-foot industrial shell building and related site and frontage improvements. The four existing radio towers are proposed to be relocated to the top of the new structure in the same approximate locations and reaching the same height as the existing poles. The existing shed housing the radio equipment would be demolished, and all of the equipment would be relocated inside the new structure.

The project site would be graded, which would raise the ground elevation such that much of the site, except portions of the site to the eastern and southern sides, is at an elevation above 11 feet (NAVD), the 100-year flood plain elevation reported by FEMA (FEMA 2009). The floor of the proposed building itself would be at an elevation of 15 feet (NAVD).

The proposed building would be located at a setback of 81'-10" from the northern property line along Enterprise Avenue, 194'-10" from the eastern, 47'-4" from the southern and 100'-2" from the western property boundary with the short end of the building oriented along Enterprise Avenue to the north of the project site.

Approximately 15% of the site would be landscaped. Landscaping would primarily be located along the perimeter of the site, at the employee amenity areas and in the stormwater detention basins on the site. The project proposes a 2,042-square-foot employee amenity area adjacent to the building on the southwest side and will consist of a patio with seating, integral concrete paving, and landscaping. The employee amenity area would also be accessible from the interior of the building. A copy of the project plans and landscaping plans are included as Attachment IV.

Building Architecture. The building architecture would employ a number of design strategies to break up the building mass and articulate frontages with detailing. The building would feature a custom designed metal screen at the front entrance to the building along with vertical elements along the façades to break up the mass of the building.

Additionally, paint color and score lines would lend complexity to the building frontages. The building would reach a total height of 46 feet with approximately five-foot-tall parapets to screen rooftop equipment. Renderings of the proposed architecture are included in the project plans (Attachment IV).

Parking and Circulation. The project proposes 151 car parking spaces, and eight bicycle parking spaces. Additionally, the project would provide 27 truck parking spaces. Car parking

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<sup>2</sup> Flood Zone AE is a FEMA special flood hazard area with a 1 percent chance of being inundated by a flood event any given year.

spaces would be located at the front and the western side of the site. Bicycle racks are proposed near the main entrance to the building. Parking for trucks is proposed along the eastern boundary of the project site. Truck loading areas would be to the eastern side of the buildings, shielded from view from Enterprise Avenue with landscaping proposed along the front of the project site.

The project site would be accessed via two, two-way driveways from Enterprise Avenue. The eastern entrance would measure approximately 42 feet in width and the western entrance would measure approximately 30 feet in width, providing access for varying sizes of vehicles and trucks with circulation occurring around the proposed building. Pedestrian walkways would also be provided around the building and to the proposed sidewalk at the site's frontage along Enterprise Avenue.

**Sustainability Plan.** The proposed development would follow the City's Reach Code for new commercial buildings<sup>3</sup>. The project would be all electric with designated future solar areas on the rooftops for tenants to install solar panels. Electrical light fixtures would be LED lighting. Further, the building would be designed with skylights and vertical windows to minimize reliance on electricity for interior lighting, concrete construction with high thermal mass to reduce interior temperature swings, and cool roof to reduce demand for air conditioning. All finishes would meet volatile organic compounds (VOC) limits. Water conservation elements would include installation of water efficient landscaping and low flow plumbing fixtures. Building occupant waste would be sorted into recycling and composting with trash receptacles at the employee amenity area and trash enclosure both containing organic as well as recycling bins. Additionally, the project would provide seven electric vehicle (EV) charging stations.

## **POLICY CONTEXT AND CODE COMPLIANCE**

**Hayward 2040 General Plan.** The project site is in an area designated as Industrial Technology and Innovation Corridor (IC) in the *Hayward 2040 General Plan*<sup>4</sup>. The Corridor is expected to grow as an economic and employment center and evolve to achieve a healthy balance of 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 *Hayward 2040 General Plan* goals and policies related to expanding the economic and employment base in Hayward (Land Use Goal 6), enhancing the visual character of the site, employing building and site design strategies and including employee amenities (Land Use Policies-6.6, 6.7 and 6.8).

**Zoning Ordinance.** The proposed development is located in the IG (General Industrial) sub-district<sup>5</sup> where industrial speculative buildings over 150,000 square feet in size are subject to Conditional Use Permit approval. Pursuant to HMC Section 10-1.1605(B), industrially zoned sites over 10 acres in size are subject to Major Site Plan Review approval. The proposed

<sup>3</sup> City of Hayward Reach Code Initiative: <https://www.hayward-ca.gov/reach-code>

<sup>4</sup> Hayward 2040 General Plan: <https://www.hayward2040generalplan.com/>

<sup>5</sup> Hayward Municipal Code Section 10-1.1600, Industrial Districts.  
[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART1ZOOR\\_S10-1.1600INDI](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.1600INDI)

industrial building and site design meets the IG District standards for new development as shown in Table 1 below:

<b>Table 1. Proposed Development Consistency with IG District Standards</b>			
	<b>IG District Standard</b>	<b>Proposed</b>	<b>Consistent</b>
<b>Minimum Lot Size</b>	20,000 sq. ft.	473,104 sq. ft.	Yes
<b>Minimum Lot Frontage &amp; Average Lot Width</b>	70 feet	622.5 feet	Yes
<b>Maximum Floor Area Ratio</b>	0.8	0.46	Yes
<b>Maximum Height</b>	75 feet	46 feet	Yes
<b>Minimum Yards</b>			
<b>Front</b>	20 feet	26.83 feet to parking (north)	Yes
<b>Sides</b>	0 feet	194.83 to building (east)	Yes
		100.17 feet to the building (west)	Yes
<b>Rear</b>	0 feet	47.33 feet to building (south)	Yes
<b>Minimum Landscaping</b>	5%	15.4%	Yes
<b>Parking</b>	149 parking spaces	151 parking spaces	Yes
<b>Minimum Employee Amenity Area</b>	300 sq. ft.	2,024 sq. ft.	Yes
<b>Minimum Open Space Area</b>	10% of the site area or 47,310 sq. ft.	55,637 sq. ft.	Yes

In addition to meeting the development standards outlined in Table 1, the proposed development meets the Hayward Industrial District Design Guidelines<sup>6</sup> and the Supplemental Standards detailed in HMC Section 10-1.1606 in that:

- The proposed crosswalks from the pedestrian walkway in front of the building to the sidewalk along Enterprise Avenue enhance area connectivity.
- The proposed custom design metal screen that marks the front entrance to the building is a unique design element that complements building design.
- The proposed bicycle racks near the front entrance would be clearly visible and enhance safety and security and the truck loading docks and parking are located to the side of the building.
- The development is designed with a primary building entrance that is oriented toward the street and the building entrance includes substantial glazing and sculptural design elements clearly distinguishable from the street.
- The building mass is broken up with vertical elements, roof line variation and façade treatment with color and score lines.
- There are internal pedestrian walkways that run from the right-of-way, around the buildings and to the employee amenity area that is accessible from the interior of the building.
- Trash enclosures are designed with walls, roofs and are shielded from the right of way with landscaping.

As previously mentioned, the proposed project requires Major Site Plan Review due to the size of the project site. Major site plan review ensures that new and redeveloped large-scale development will achieve General Plan and other City goals, policies and regulations; that circulation components will interconnect with the overall street, bicycle, and pedestrian network of the district; that the development will incorporate sustainability elements; and

<sup>6</sup> Hayward Industrial District Design Guidelines.

[https://www.hayward-ca.gov/sites/default/files/Hayward%20Industrial%20District%20Design%20Guidelines\\_Adopted.pdf](https://www.hayward-ca.gov/sites/default/files/Hayward%20Industrial%20District%20Design%20Guidelines_Adopted.pdf)

that the overall site, building, landscaping, circulation and architectural design of the buildings will make a positive contribution to the neighborhood and City.

Per Section 10-1.3075<sup>7</sup>, the Planning Commission may approve or conditionally approve an application when all of the following findings are made:

- a. The proposed development is consistent with the General Plan, Zoning Ordinance, Design Guidelines, and any other applicable plan or program; and
- b. The proposed development is consistent with the purpose, intent, and standards of the applicable zoning district and General Plan or Specific Plan designation and applicable design guidelines; and
- c. The subject site is physically suitable for the type and intensity of the land use and development being proposed; and
- d. The proposed development will be compatible with the planned land use character of the surrounding area and make a positive impact to the site and surrounding area; and
- e. The proposed development will not have a substantial adverse effect on surrounding development and land uses.

In addition to Major Site Plan Review, the project requires a Conditional Use Permit due to the size of the industrial building. Per Section 10-1.3225, the Planning Commission or other approving authority may approve or conditionally approve an application when all of the following findings are made:

- a. The proposed use is desirable for the public convenience or welfare;
- b. The proposed use will not impair the character and integrity of the zoning district and surrounding area;
- c. The proposed use will not be detrimental to the public health, safety, or general welfare; and
- d. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

Staff has included more detail and analysis on the required findings for each entitlement in Attachment II.

Hayward Shoreline Adaptation Master Plan & Flood Plain Management Ordinance. On February 16, 2021, the City Council adopted Resolution No. 21-024 approving the Hayward Regional Shoreline Adaptation Master Plan<sup>8</sup>. The Master Plan provides background and existing conditions along the Hayward shoreline, assesses sea level rise and flood risk impacts and provides adaptation strategies and design strategies for the Hayward shoreline.

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<sup>7</sup> Major Site Plan Review:

[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART1Z00R\\_S10-1.3075MASIPLRE](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1Z00R_S10-1.3075MASIPLRE)

<sup>8</sup> Hayward Regional Shoreline Adaptation Master Plan.

[https://www.hayward-ca.gov/sites/default/files/210510\\_Hayward%20Shoreline%20Adapatation%20Master%20Plan\\_Document\\_Pages.pdf](https://www.hayward-ca.gov/sites/default/files/210510_Hayward%20Shoreline%20Adapatation%20Master%20Plan_Document_Pages.pdf)

According to the Inundation Map prepared for the Master Plan, with two feet of sea level rise the project site is expected to be partially inundated, with the western half of the site and its southeastern corner flooded. A 100-year storm surge in combination with two feet of sea level rise is expected to inundate the entire site at its existing elevation.

In order to address the above stated factors, the proposed grading would raise the ground elevation over a majority of the site to be above the 100-year flood plain elevation of 11 feet (NAVD88). As such the proposed building would meet all flood protection requirements and be constructed with a finish floor elevation of 15 feet (NAVD88), which is four feet above the current 100-year flood plain elevation and would provide protection for up to four feet of sea level rise for the building. Overall, the site would be sufficiently elevated to be reasonably operational with up to two feet of sea level rise although the southern access road and portions of the loading dock on the eastern side of the building may be subject to periodic inundation during king tide events with approximately one foot of sea level rise.

## **STAFF ANALYSIS**

Staff has reviewed the project application and believes that the Planning Commission can make the required Findings to approve the Major Site Plan Review and Conditional Use Permit and related environmental analysis for the proposed project (Attachment II), subject to the proposed conditions of approval.

As detailed in the sections above, the proposed development is consistent with the General Plan land use designation and related policies, the Zoning Ordinance, and all applicable Design Guidelines. The approximately 10.9-acre site is suitable for the scale and intensity of the proposed development and meets all applicable standards. The proposed architecture includes strategies to break up the building mass and increase façade articulation such as variation in roof line, vertical elements, horizontal and vertical score lines, color planes, glazing and custom designed metal screen at the main entrance. Vehicular and pedestrian circulation would occur around the building where the interior of the site would be connected to the street through cross walks from pedestrian walkways at the front of the building to the proposed sidewalk along Enterprise Avenue at the front of the site.

The project also proposes an employee patio and ample landscaping around the perimeter of the site and will be designed to create a development that is compatible with and complementary to other new large scale industrial developments approved in the general vicinity. The proposed development would also result in development of a currently underutilized site and integration of the existing transmission towers onto the building in a manner that would not exacerbate existing conditions. Thus, the proposed development would not be detrimental in its impact on surrounding development.

The project site is subject to inundation from a 100-year flood event and potential sea level rise. However, the project proposes raising a majority of the site and consequently the proposed building above the 100-year flood elevation of 11 feet (NAVD) for constructability. Overall, the significant investment related to the development of the subject site will have a positive impact in the immediately surrounding area and the industrial districts as a whole. Warehouses and distribution facilities over 150,000 square feet are subject to approval of a Conditional Use Permit. The proposed use is desirable for the public convenience and

welfare in that warehouses and distribution facilities are necessary to provide consumers with goods and services in a convenient and timely manner.

As described above, the proposed buildings would not be detrimental to the character and integrity of the IG District or the surrounding area. However, in that the proposed building is speculative and tenant(s) have not been identified, proposed Condition No. 5 would limit the potential uses that could locate within the building to those permitted in the IG District as detailed in the Hayward Municipal Code. Any uses allowed in the IG District that would require an Administrative Use Permit or Conditional Use Permit would be subject to a separate review process and would be conditioned to minimize or eliminate potential nuisances. As agreed by the applicant, staff has added a condition of approval (COA No. 5), which prohibits the establishment of a Truck Terminal and/or Last Mile Distribution Center at the subject site. Further, staff has added a condition of approval (COA No. 6) that would require that all uses on the site be subject to the limitations of Outdoor Storage and Performance Standards provided in the Industrial District regulations to minimize nuisances associated with future uses. As conditioned, staff believes that the Planning Commission can make the findings to approve the proposed project and related environmental analysis.

## **ENVIRONMENTAL REVIEW**

An Initial Study evaluating the potential environmental impacts of this project was prepared in accordance with the California Environmental Quality Act (CEQA). The Initial Study found that the proposed project would result in potential impacts in the areas of Air Quality, Biological Resources, Cultural Resources, Geology & Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Transportation/Traffic and Tribal Cultural Resources, and contains mitigation measures to reduce the identified impacts to a level of less than significant.

A Notice of Intent to Adopt a Mitigated Negative Declaration (NOI) was filed with the State Clearing House, and the Alameda County Clerk on July 29, 2022. The NOI and the Initial Study were posted at the Permit Center and the City Clerk's Office at City Hall; delivered to both Hayward libraries; and posted on the City's website. Copies of the NOI were sent to interested parties and property owners within 300 feet of the project site on July 29, 2022. The public comment period for the proposed Mitigated Negative Declaration and Initial Study ran from July 29, 2022, to August 29, 2022, and as described in Public Outreach section of this report, the City did receive correspondence from the Bay Area Air Quality Management District (BAAQMD), the Department of Toxic Substances Control (DTSC), and the Bay Conservation and Development Commission (BCDC).

Staff has reviewed the comments and responded to those comments in Attachment VII. The comments received from BAAQMD and DTSC recommend measures and practices to further reduce impacts that have been mitigated to a less than significant level through mitigation measures incorporated in the project's Initial Study/Mitigated Negative Declaration (IS/MND) and the comment received from BCDC was advisory in nature and tied to impacts to the shoreline. Based on staff review of the comments received, staff believes that the proposed mitigation measures listed in the IS-MND are sufficient to mitigate any impacts to a less than significant level and as such, no revisions to the IS-MND are necessary. The IS/MND reviewed the project as proposed and contains full analysis about project impacts which can be mitigated to a level of less than significant. A copy of the IS/MND and



Mitigation Monitoring and Reporting Plan (MMRP) are attached to this report (Attachments V and VI, respectively), and the mitigation measures have been included as conditions of approval for the project. Since publication of the Draft IS/MND, staff has made an administrative revision in Mitigation Measure BIO-6 to further clarify the timing for compliance with the subject mitigation measure and removed a typographical error in the MMRP to ensure consistency with the published Public Draft IS/MND. The Commission will consider and adopt findings related to the approval of the environmental analysis prepared for the project.

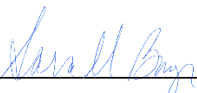
## **NEXT STEPS**

If the Planning Commission approves the Major Site Plan Review and Conditional Use Permit and approves the environmental analysis prepared for the project, then a 10-day appeal period will commence from the date of decision. If no appeal is filed, then the decision will be deemed final. If an appeal is filed within the 10-day time frame, then the application will be heard by the City Council for the final disposition.

Prepared by:           Ranu Aggarwal, AICP, Consulting Planner

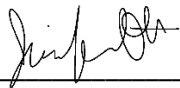
Recommended by:   Jeremy Lochirco, Planning Manager

Approved by:



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Sara Buizer, AICP  
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Jennifer Ott  
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