



## **SUBJECT**

Proposed Mixed-Use Project Consisting of Nine (9) Live/Work Lofts Fronting Mission Boulevard and 46 Townhome Units Totaling 55 Units, Requiring Approval of Vesting Tentative Map 8556, Major Site Plan Review, and Density Bonus (Application 202005195) Located at 27177 and 27283 Mission Boulevard (Assessor Parcel Nos. 452-0056-007 and 452-0056-008). TTLC Moreau-Pestana-Acton LLC/3 M Properties LLC, and James and Nadine Pestana (Applicant/Owners).

## **RECOMMENDATION**

That the Planning Commission approve the Vesting Tentative Tract Map, Major Site Plan Review, and Density Bonus Application for the project located at 27177 and 27283 Mission Boulevard based on the analysis set forth in this report, per the required Findings (Attachment II), and subject to the Conditions of Approval (Attachment III).

## **SUMMARY**

The proposed mixed-use project includes the construction of eight, four-story townhome buildings and two, three-story live/work buildings, providing a total of 55 new residential units with related site improvements on an existing 2.47-acre site. The nine live/work units, located in buildings fronting Mission Boulevard, would provide 1,800 to 2,700 square feet of combined residential and commercial space, and a mix of one and two car garages. The project is subject to Major Site Plan Review due to the total lot size over 2-acres and includes a Vesting Tentative Tract Map to allow for-sale units. The applicant is also proposing that six (6) townhome units would be available to moderate-income households and in exchange for exceeding the affordable housing requirements, the applicant is requesting two waivers per the State's Density Bonus law: 1) to reduce the Civic Space Size Requirement to 20 feet; and 2) to reduce the required landscaping setback from 5-feet to zero to allow the construction of an access drive.

The project site is currently zoned Mission Boulevard - Corridor Neighborhood (MB-CN) in the Mission Boulevard Code and contains a Sustainable Mixed-Use (SMU) land use designation in the *Hayward 2040 General Plan*.

## **BACKGROUND**

On July 1, 2020, the applicant submitted a Preliminary Application pursuant to Senate Bill (SB) 330. The SB 330 preliminary application process is intended to encourage development of housing projects by vesting codes, policies, and fees for the project at the time a completed application is submitted to the City. Within 180 days of submitting a complete preliminary

application, the applicant must submit a formal land use entitlement application to take advantage of the vesting rights offered by SB 330. The applicant updated their plans in accordance with the SB 330 status letter dated July 29, 2020, and submitted Major Site Plan Review, Density Bonus and Vesting Tentative Map Application No. 202005195 on December 11, 2020, within the 180-day window to submit a formal application.

*Public Outreach.* On December 18, 2020, a Notice of Application Receipt was sent to 103 addresses, including all property owners, businesses, and residents within a 300-foot radius of the project site, as well as interested parties, including the Mission-Garin Neighborhood Task Force, the South Hayward Parish, and the South Hayward Neighborhood. Following this mailing, several neighbors reached out to the Planning Division to review the plans but did not express concerns or comments about the proposed development.

On July 9, 2021, a Notice of Public Hearing for this Planning Commission public hearing was circulated to the same mailing list of all property owners, businesses, residents and interested stakeholders within a 300-foot radius of the project site as well as published within *The Daily Review* newspaper as a Legal Ad. Following the publication of the legal ad, the applicant submitted a request to continue this item in order to apply for the Density Bonus concession and provide additional time to review the draft Conditions of Approval. On July 22, 2021, the Planning Commission voted unanimously to continue this item to a future meeting date.

On August 20, 2021, a revised Notice of Public Hearing for this Planning Commission public hearing was circulated to the same mailing list of all property owners, businesses, residents and interested stakeholders within a 300-foot radius of the project site as well as published within *The Daily Review* newspaper as a Legal Ad. As of the writing of this report, staff has received no responses to either of the postcard notices or the legal ad published for this project nor any public comments.

## **PROJECT DESCRIPTION**

*Existing Site Conditions.* The project is located on a 2.47-acre site situated approximately 400-feet north of Jefferson Street on Mission Boulevard. The site is approximately 374 feet deep and spans approximately 279 lineal feet along Mission Boulevard. The topography of the property is relatively flat and currently contains four commercial structures as well as two residential structures, as well as two small storage structures, which will be demolished as part of the proposed development. At the present time, Alamo Auto Rental is still operating in the commercial building at the rear of the property, and the remaining structures are vacant.

Surrounding land uses include a mix of residential, commercial and community serving uses along Mission Boulevard. Bowman Elementary School is located directly behind the project site, Moreau Catholic High School is directly across Mission Boulevard, and Cal State East Bay is one and half miles to the east via Harder Road. The area is currently serviced by the AC Transit Line 99, with bus stops located within 500 feet of the project site that provide direct service to both Hayward BART Stations, Downtown Hayward, and other East Bay destinations along the Mission Boulevard corridor.

*Proposed Project.* The proposed project includes the demolition of all existing structures on site to allow for the construction of eight four-story townhome buildings and two three-story live/work buildings providing a total of 55 new homes. The townhomes would offer three-bedroom units varying in size from 1,700 to 2,050 square feet with two-car garages in either a side-by-side or tandem configuration. The live/work units would provide 1,800 to 2,700 square feet of combined residential and commercial space; five of the units would have two-car garages and four units would have one-car garages. Each of the units include some form of private open space in the form of porches, decks and terraces. In addition to residential parking within garages, the proposed development includes a total of 14 bicycle parking spaces to promote active transportation, and will provide seven on-site guest parking spaces, as well as nine parking spaces along the Mission Boulevard frontage.

The building architecture takes a contemporary approach, incorporating varied roof lines and wall planes, projecting canopies, and a mix of vertical siding, stucco and veneer elements to avoid blank, monotonous facades. The site also features landscaping in setbacks and through group open space. Group open space is provided between townhome buildings, and civic open space is provided in the form of a pedestrian trail that runs along the length of the site with potential connections to adjacent properties if and when those adjacent sites are redeveloped. A copy of the project plans, landscaping plans and building elevations are included as Attachment IV.

*Landscaping and Tree Removals.* The applicant submitted an Arborist Report dated March 5, 2020, prepared by HortScience/Bartlett Consulting, which evaluated 64 trees on-site, including 5 street trees along the Mission Boulevard frontage. The City of Hayward Municipal Code protects all trees eight (8) inches and larger in diameter, native trees four (4) inches or larger, and street trees of any size. Based on this definition, 52 trees are protected.

As shown in the landscape plans (Attachment IV), the project proposes to preserve ten (10) existing trees in place, relocate two (2) Coast Live Oaks, and remove the remaining forty (40) trees. The total appraised value of the trees to be removed is \$121,300 and the total mitigation value of the replacement trees is \$121,775 through the planting of 166 new trees and additional hardscape. The City's Landscape Architect reviewed the project plans and proposed mitigation measures and has approved the conceptual landscape plan, with conditions. In addition, the standard conditions of approval require that applicant submit a landscape and irrigation improvement plan prior to the submittal of the building permit to ensure compliance with the City's Bay-Friendly Water Efficient Landscape Ordinance.

*Sustainability Features.* The project will be required to be designed to meet all applicable California Building Code, the City's REACH Code and CALGreen Standards, which require a minimal level of energy efficiency, conservation, material recycling, and air quality, for new construction. In addition, the landscaping areas and irrigation system will be compliant with the Bay Area-Friendly Water Efficient Landscape Ordinance, which requires the use of drought tolerant planting with water-efficient irrigation systems. In addition, the project will include Level 2 EV-ready charging stations in the parking garages. Furthermore, the applicant will comply with ordinances related to construction debris and recycling to divert waste from landfills.

## POLICY CONTEXT AND CODE COMPLIANCE

Hayward 2040 General Plan. The project site is designated Sustainable Mixed Use (SMU)<sup>1</sup> in the *Hayward 2040 General Plan*, which allows for a residential density range of 4.3 to 100 dwelling units per net acre, and up to a maximum floor area ratio (FAR) of 2.0. The net acreage on the site is derived by excluding public and private roadways and the civic open space trail resulting in a net developable area of approximately 1.7 acres, and a net density of approximately 32 units per acre, which is within the allowable density range for the SMU land use designation. Further, the FAR of the development (14,139 square feet) does not exceed the maximum cap of 87,120 square feet of floor area.

The SMU land use designation generally applies to properties that are adjacent to regional transit and are planned as walkable urban neighborhoods. Typical building types would vary based on the zoning of the property, but would generally include single-family homes, duplexes, triplexes, fourplexes, second units, townhomes, live-work units, multi-story apartment and condominium buildings, commercial buildings, and mixed-use buildings that contain commercial uses on the ground floor and residential units or office space on upper floors. SMU areas are expected to change substantially in the future, as properties are planned to be developed or redeveloped at relatively high densities and intensities to create walkable and mixed-use neighborhoods and multi-modal corridors.

The project is also consistent with numerous goals and policies of the General Plan in that the development would increase the housing stock within the City, provide on-site affordable housing, and take advantage of easy access to both Hayward BART stations and Downtown Hayward via bus lines along Mission Boulevard. The project consistency with the *Hayward 2040 General Plan* goals and policies are discussed in greater detail in Attachment II.

Zoning Ordinance. The project site is located within the MB-CN zoning district, which allows for a residential density range of 17.5 to 35 dwelling units per net acre. The MB-CN district envisions a mixed-use neighborhood environment with moderate-intensity, medium-scale residential and non-residential uses that are compatible with surrounding neighborhoods, along a multi-modal corridor and within short walking, biking, or bus distance of neighborhood retail and service uses, including transit stops.

Per the Mission Boulevard Code<sup>2</sup>, sites of two or more acres or with more than 600 feet of street frontage require Major Site Plan Review. 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 that the overall site, building, landscaping, circulation and architectural design of the buildings will make a positive contribution to the neighborhood and City. Per the Zoning Ordinance, the Planning Commission may approve or conditionally approve an application when all the following findings are made:

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<sup>1</sup> Hayward 2040 General Plan: <https://www.hayward2040generalplan.com/land-use/mixed>

<sup>2</sup> Mission Boulevard Code:

[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART24MIBOC0](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART24MIBOC0)

- 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.

As currently proposed, the project meets all the City's development standards as shown in Table 1, with the exception of the requested waivers, which are discussed in more detail below.

**Table 1: Zoning Compliance**

Standard	HMC Requirement	Proposed	Consistent?
<i>Density</i>	17.5 - 35 du/ac	32 du/ac	Yes
<i>Lot Width</i>	18 feet minimum	279 feet	Yes
<i>Lot Coverage</i>	80% maximum	36%	Yes
<i>Building Height</i>	4 stories/57 feet maximum	4 stories/43.5 feet	Yes
<i>Parking - Vehicle</i> <i>Bicycle</i>	None required.	55 parking spaces 14 bicycle parking spaces	Yes
<i>Setbacks - Front</i> <i>Side</i> <i>Rear</i>	6 feet minimum/24 feet maximum 0 feet minimum 3 feet minimum	7' 6' and 10' 17'	Yes
<i>Landscaping</i>	15% minimum	28%	Yes
<i>Open Space (Total)</i> <i>Private Open Space</i>	150 s.f./unit (8,250 s.f. total) 50 s.f./half of units (1,375 s.f. total)	20,646 s.f. 7,382 s.f.	Yes

***SB330 and Housing Crisis Act.*** In 2019, the State of California adopted new legislation (SB330) that is intended to address the State's housing crisis. SB330 strengthens the Housing Accountability Act (Govt. Code Section 65589.5), which states that a housing development project that complies with the objective standards of the General Plan and Zoning Ordinance must be approved by the City, unless the City is able to make written findings based on the preponderance of the evidence in the record that either: (1) the City has already met its Regional Housing Needs Assessment (RHNA) requirement; (2) there is an impact to the public health and safety and this impact cannot be mitigated; (3) the property is agricultural land; (4) approval of the project would violate State or Federal law and this violation cannot be mitigated; or (5) the project is inconsistent with the zoning and land use designation and not identified in the General Plan Housing Element RHNA inventory. "Objective" means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.

*Housing Element, RHNA & Affordable Housing.* Local jurisdictions report progress annually on meeting their RHNA goals, which are included in the City’s Housing Element. Table 2, (below) demonstrates progress made toward meeting Hayward’s RHNA goals for the period between 2015-2023 as of the last reporting year, which is shown in the column titled “Reported 2020.” The State allows jurisdictions to “report” the units when building permits are issued to construct the units. The “Approved” and “Pending Approval” columns provide an estimate of potential compliance by counting both entitled projects and projects going through the entitlement process.

**Table 2: 2023 RHNA Goal Progress in the City of Hayward**

Income Category*	Unit Goal	Reported 2020		Approved		Pending Approval		Estimated Compliance		Estimated Deficiency	
		Units	% of Goal	Units	% of Goal	Units	% of Goal	Units	% of Goal	Units	% of Goal
<i>Very low</i>	851	65	8%	205	24%	87	10%	357	42%	495	58%
<i>Low</i>	480	153	32%	71	15%	126	26%	350	73%	130	27%
<i>Moderate</i>	608	72	12%	55	9%	44	7%	171	28%	437	72%

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

The proposed project is subject to the requirements set forth in HMC Chapter 10, Article 17, Affordable Housing Ordinance (AHO).<sup>3</sup> An applicant may satisfy the requirements of the AHO by paying an affordable housing in lieu fee, providing on- or off-site affordable units, or proposing an alternative plan. Pursuant to HMC Section 10-17.210, ownership projects shall deed restrict no less than 10 percent of total units on-site for Moderate Income Households. Further, the affordable units shall be integrated within the proposed residential development, shall be of similar or the same quality and provide access to the same amenities as the market rates units pursuant to HMC Section 10-17.220.

As detailed in the project’s Affordable Housing Plan (Attachment V), the applicant proposes to meet the standard requirement for on-site affordable by providing six (6) for-sale condominium units as affordable to *Moderate-Income Households* (earning up to 120 percent of the Area Median Income). Under the standard requirements, the applicant would have been required to provide 5.5 affordable units. The applicant would have the option to either pay the affordable housing in-lieu fee for the fractional unit or provide an additional affordable unit for moderate income households. The applicant is opting to round up to six units instead of paying the affordable housing in-lieu fee for the fractional unit. The affordable units would be “Townhome Unit One” with three bedrooms and two-and-one-half bathrooms; this unit contains 1,761 square feet with a two-car attached garage.

*Density Bonus Ordinance.* The applicant is requesting a Density Bonus of two Reductions of Development Standards from the Mission Boulevard Corridor Form Based Code pursuant to Section 65915 of the Government Code<sup>6</sup> and the City’s Density Bonus Ordinance (DBO). A density bonus is a zoning tool granted by State law that allows for an increase in density with concessions and/or incentives to development standards when affordable housing units are

<sup>3</sup> HMC Chapter 10, Article 17, Affordable Housing Ordinance:

[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART17AFH00R](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART17AFH00R)

included on-site. According to the submitted Affordable Housing Plan (Attachment V), the applicant is proposing that six (6) of the townhome units would be available to moderate-income households.

In exchange for restricting six (6) dwelling units as affordable, the project is entitled to one concession of an identified development standard, as well as additional waivers of standards that would impact the feasibility of the project. Pursuant to State law, the City shall grant the concessions or incentives proposed by the developer unless it finds that the proposed concession or incentive does not result in identifiable and actual cost reductions, would cause a public health or safety problem, would cause an environmental problem, would harm historical property, or would be contrary to law. Accordingly, the applicant has requested the following waivers:

1. *Civic Space Size Requirement.* Per the Mission Boulevard Code, civic spaces are required to provide a minimum width of 25 feet. Although the project proposes to meet the total open space requirement (in square feet), the applicant is requesting a reduction to 20 feet due to site constraints for a portion of the proposed Greenway space.
2. *Landscaping Setback.* The applicant is requesting a waiver of the City's 5-foot landscaping setback requirement along the 100-foot stretch of the northwestern portion of "Street A" on the project site to construct a driveway. The applicant indicates that compliance with this setback requirement along this portion of Street A would have the effect of physically precluding the construction of the project at the densities permitted as it would require the applicant to eliminate units in Buildings 6 and 7 as there is not sufficient space to move Buildings 6 and 7 south.

Staff has reviewed the requested density bonus waivers and believes the Commission can approve the request as these waivers will result in identifiable and actual cost reductions, would not cause a public health or safety problem, would not cause an environmental problem, would not harm historical property, and would not be contrary to law.

*Vesting Tentative Tract Map.* As part of their project application, the applicant is requesting a Vesting Tentative Tract Map to allow the sales of townhome units. Property ownership within the condominium areas of the project will require participation in an incorporated Homeowner's Association (HOA) and adherence to the Conditions, Covenants & Restrictions (CC&Rs) recorded with the subdivision. The CC&R's will also contain standard conditions related to maintenance responsibilities for property owners and the HOA for the common areas, private driveway, lights, and utilities, etc.

Conditions of Approval typically attached to a Vesting Tentative Tract Map include improvement plans and subdivision agreements entered into with the Applicant or Developer. The purpose of a Vesting Tentative Tract Map is to establish the right to proceed with the proposed project in substantial compliance with the ordinances, policies, and standards in effect on the date the vesting tentative map is deemed complete.

The existing utilities in the project vicinity, including sanitary sewer, water and storm drain systems, have sufficient capacity to adequately serve the proposed development. The



project also is required to construct and maintain bio-treatment and stormwater collection systems subject to clean water measures. In addition to the site and frontage improvements, the applicant will be required to pay the required school fees, any utility fees, and parkland in-lieu fees, which are currently estimated to be approximately \$857,945. A copy of the Vesting Tentative Tract Map is included with the project plans (Attachment IV).

## STAFF ANALYSIS

Staff believes that the Planning Commission can make the required findings to approve the Vesting Tentative Tract Map and Major Site Plan Review and Density Bonus application and the proposed Affordable Housing Plan, as conditioned.

As noted above, the proposed project complies with most of the development standards of the Mission Boulevard Code and the project meets many of the goals and policies of the *Hayward 2040 General Plan*. Staff believes the project is attractively designed and increases neighborhood density, which is consistent with the vision for the high density and mixed-use, walkable neighborhoods located along the Mission Boulevard corridor.

While an all-residential project is a permitted use in the MB-CN zone, the COVID-19 pandemic has highlighted the value of being able to work from home. Live/work units would be a highly sought-after alternative to traveling to a conventional office workspace. Additionally, the live/work option emphasizes sustainable mixed-uses by providing an opportunity to encourage entrepreneurship and contribute to the City's economic development and green initiatives by keeping residents and their employment in town and reducing vehicle miles traveled.

The site is located half a block away from AC Transit bus stops that provide regular service to both Hayward BART stations, Downtown Hayward, and several other East Bay destinations. In addition, the site is less than one mile to the South Hayward BART Station. Combined with bicycle parking on site, this provides opportunities to commute via public transit versus single-occupancy automobiles. In addition, technological advancements that allow for ridesharing, carsharing, carpooling and autonomous vehicles reduce the need to own a personal vehicle as a primary form of transportation. Despite these advances and supporting alternative forms of transportation to the single occupancy vehicle, the development does provide on-site parking for both residents and guests/customers.

As indicated previously, the project site is located within the Mission Boulevard Code area, which stretches the majority of the Mission Boulevard, except for the Downtown Specific Plan area. Within this Code area, numerous new developments<sup>4</sup> for housing, mixed-use, and commercial development have been approved (e.g., SoHay, Campways, Mission Seniors, Mission Village) that would transform the image and scale of the Mission Boulevard corridor within the next few years. As designed, the project is compatible with the developing scale of Mission Boulevard. As properties continue to develop along the subject section of Mission Boulevard, the project would remain compatible in size and intensity with future development to support the shift from a suburban pattern to a more urban, compact form.

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<sup>4</sup> Major Development Activity, City of Hayward: <https://www.hayward-ca.gov/business/for-developers/development-activity>



## ENVIRONMENTAL REVIEW

This project is categorically exempt from environmental review in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15332, In-Fill Development Projects, in that the proposed project would involve demolition of four commercial buildings, two single-family homes and two accessory structures to allow for the construction of a new four-story project on a 2.43-acre infill site. The proposed project is entirely consistent with the underlying Sustainable Mixed Use (SMU) General Plan land use designation, as well as all applicable General Plan policies. It is further consistent with the MB-CN zoning district and all relevant Municipal Code regulations. The existing site does not have value as habitat for endangered, rare or threatened species; and, construction of the project would not result in any significant impacts relating to noise, air quality or water quality. The project site is within the City limits and is adequately served by all required utilities and public services.

To evaluate any potential transportation-related impacts, LSA prepared a CEQA Transportation Analysis (CTA), which evaluates vehicle miles traveled (VMT), and a Local Transportation Analysis (LTA). Based on the results of the LTA, the proposed project would not cause any operational deficiencies or LOS impacts to the study area intersections or surrounding circulation during either peak hour of the Existing and Existing Plus Project conditions.

Based upon the VMT analysis and the City's Transportation Impact Analysis Guidelines, the proposed project must reduce its 19.58 VMT per capita by 10.6 percent to 17.51 VMT to adhere to the City's significance thresholds. To achieve this reduction, the project will incorporate VMT reduction measures, which will reduce the VMT per capita by more than 10.6 percent resulting in a less-than-significant VMT impact. To reduce the impact, the project will incorporate the following measures 1) the Applicant and the HOA will create a ridesharing program matching parents with students to provide transportation to public and private schools (SchoolPool), and 2) the Applicant and the HOA will implement marketing strategies to reduce VMT, including but not limited to new resident and quarterly information materials of alternative mode options, event promotions, and publications including posting such information on a visible bulletin board within a central/common area of the Project site (Voluntary TDM Marketing). The TDM measures were made conditions of approval for the project. With these measures in place, the project would not have a transportation related impact.

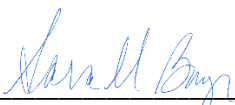
## NEXT STEPS

If the Planning Commission approves the Vesting Tentative Tract Map, Major Site Plan Review and Density Bonus Application, a 10-day appeal period would commence from the date of decision. If no appeal is filed, then the decision would be deemed final. If an appeal is filed within the 10-day time frame, then the application would be heard by the Council for final disposition.

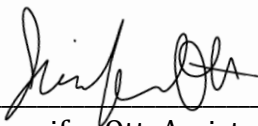
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*Approved by:*



Sara Buizer, AICP, Deputy Development Services Director



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