



DATE: September 28, 2021

TO: Mayor and City Council

FROM: Assistant City Manager/Development Services Director

SUBJECT: Parcel Group 3/La Vista Residential Appeal: Appeal of the Planning Commission's Approval of the La Vista Residential/The Primary School (Parcel Group 3) Project, which is Comprised of 176 Affordable Housing Units and an Approximately 36,000- Square- Foot School on the Southern Portion of Parcel Group 3 Located North of Tennyson Road between 16th Street and the Future La Vista Park, Assessor Parcel Nos 078C-0626-00309, 078C-0626-003-16, 078C-0626-001-07, 078C-0641-010-01, 078C-0635-013-03, 078C0640-007-06, 078C-0641-001-00, Requiring Approval of Site Plan Review, Administrative Use Permit, and Density Bonus Application 202001594. Eden Housing, Inc. (Applicant) on Behalf of the City of Hayward (Property Owner)

RECOMMENDATION

That the Council denies the appeal and adopts a resolution (Attachment II) approving the Site Plan Review, Administrative Use Permit, and Density Bonus application as approved by the Planning Commission on July 22, 2021, based on the analysis set forth in this report and subject to the findings and recommended conditions of approval in the attached resolution.

SUMMARY

As presented to the Planning Commission, the Site Plan Review, Administrative Use Permit, and Density Bonus application proposes to construct two five-story residential buildings and a two-story school building on the southern portion of Parcel Group 3, located north of Tennyson Road between 16th Street and the future La Vista Park. The development would include 176 affordable rental housing units, a public community school for up to 384 preschool and elementary students, 233 parking spaces, indoor and outdoor amenity spaces, and new site landscaping throughout. The proposed development would encompass approximately seven (7) acres of the Parcel Group 3 properties. The remaining land would be retained by the City for incorporation into the future La Vista Park.

Julia Zhang, Nancy Quintero, Joanne Lam, and residents of The Reserve development filed an appeal of the Planning Commission's approval of this project (Attachments III and IV). The appellants cited proximity of the project to the fault line, lack of awareness about the project, increased traffic congestion, insufficient parking, the inability to successfully use the Zoom app

to speak at the Planning Commission hearing, and the impacts to Tennyson Road as an evacuation route as the primary reasons for their appeal. Staff does not believe these concerns justify denial of the project and continue to recommend approval of the project. Detailed staff responses to each of the appellants' concerns are provided in the Discussion section of the staff report (Attachment I.

BACKGROUND

Appeal Procedure

Under the Hayward Municipal Code ("HMC"), appeals of Planning Commission approvals may be filed by the applicant, by any person entitled under the law to receive notice, or by any persons who may be reasonably expected to suffer a negative impact from the approval. Appeals must be in writing and must set forth the specific action appealed from, the specific grounds of the appeal, and the relief or action sought. Therefore, the City Council's review is limited to the specific grounds set forth in the appeal.

Filing a timely notice of appeal stays the decision of the Planning Commission. The decision remains stayed until the City Council renders a decision on the appeal. In the case of an appeal of a Planning Commission approval, the City Council may either: 1) deny the appeal and uphold the Planning Commission's decision, or 2) grant the appeal and reverse the Planning Commission's decision.¹

Please note, that the appeal procedure set out in the HMC was adopted prior to the State of California's adoption of the Housing Crisis Act (SB 330). The Housing Crisis Act strengthened provisions of the Housing Accountability Act, among other laws, which greatly reduced local government's ability to deny Housing Development Projects. This limitation, as discussed in more detail below, renders certain grounds of appeal infeasible.

Project Background

After abandoning the Route 238 Bypass Project in the 1970s, Caltrans began selling parcels that had previously been acquired for the planned freeway. In order to ensure that future development of the 238 parcels located in Hayward align with the City's land use policies and overall vision, the City negotiated a Purchase and Sale Agreement (PSA) with Caltrans to assume responsibility for the sale of some of these properties to private developers.

The City-controlled 238 properties are divided into ten "parcel groups." In April 2018, the City Council approved the issuance of a Request for Proposals (RFP) for the cluster of parcels located north of Tennyson Road and east of 16th Street, referred to as "Parcel Group 3." The RFP process was intended to facilitate the re-sale of the parcels through a competitive process to ensure the best price and land use for the City. Three proposals were received in response to the RFP, and in July 2018, the Council authorized the City Manager to negotiate and enter into an Exclusive Negotiating Rights Agreement (ENRA) with Eden Housing Inc. and The Pacific Companies based

¹ Compare with Council Member Call-up which allows Council to approve, conditionally approve (add conditions), or deny a project. HMC Section 10-1.2845(f)(4).

on their proposal to construct a minimum of 150 affordable housing units and a public community school on the Parcel Group 3 properties.²

Planning Commission Hearing. On Thursday, July 22, the Planning Commission approved the entitlement application for the La Vista Residential/The Primary School project by a 5-1 vote. During the public comment period, several members of the public spoke, the vast majority of whom spoke in support of the project, citing the need for affordable housing close to BART and high quality educational options in South Hayward. Some concerns about the lighting along 16th Street and the potential shading to the adjacent multifamily development were expressed during the public comment period. In their discussion, the Commissioners celebrated that the project would help address the City's need for affordable housing, its proximity to BART and the future La Vista Park, and the supportive wraparound services that would be offered by the school. Conversely, they voiced concerns about the project's proximity to the fault line, the potential lack of walkability and bikability due to the project's topography, the amount of parking provided, and the height of the project. The Meeting Minutes for the July 22 Planning Commission meeting are included as Attachment V.

Appeal of Planning Commission Decision. On Monday, August 2, Jihong (Julia) Zhang, Nancy Quintero, Joanne Lam, and residents of The Reserve community collectively appealed the Planning Commission's approval of the La Vista Residential/The Primary School project. A total of approximately 160 signatures of surrounding residents was submitted along with the appeal request. Staff has provided responses to each of the appellants' written grounds of appeal in the Discussion section below. The full appeal letters and related petition signatures are provided as Attachments III and IV.

Existing Site Conditions. Parcel Group 3 is an approximately 28.5-acre site situated north of Tennyson Road between 16th Street and the future La Vista Park. The site has a number of physical constraints that limit the developable area, including fault traces, landslide areas, and steep topography. These can be viewed on the project plans included as Attachment VI to this staff report. The majority of the site is currently open space with barns and corrals for horses. The parcel group also includes some smaller residential lots between Webster Street and Broadway Street that are currently vacant and are not intended to be developed as part of this application.

Surrounding development and land uses include existing and planned single and multifamily residential development, the future La Vista Park, and commercial and auto services uses along Mission Boulevard. The South Hayward BART station is located within a half-mile of the project site, and Caesar Chavez Middle School, Bowman Elementary School, St. Clement Catholic School, and Moreau Catholic High School are within a mile of the site.

DISCUSSION

² City Council Meeting, July 17, 2018, Staff Report for Consent Item 18-511:
<https://hayward.legistar.com/LegislationDetail.aspx?ID=3553045&GUID=FA151DA2-059B-47E5-B601-CD7F50335106&Options=&Search=>

Proposed Project. As shown in the project plans (Attachment VI), the proposed development would be clustered in the southwestern portion of the site to avoid the fault zone and landslide areas in the central and northern portions of the site. The project features two five-story residential buildings with a total of 176 rental units and a two-story 36,000 square foot school building. With the exception of two manager units, all residential units would be rented at rates affordable ranging from, Moderate- to Very Low-Income households based on Area Median Income as determined by HCD. When calculated based on the California Tax Credit Allocation Committee levels (which differ slightly from HCD's), all units would be affordable to Low-Income households (Attachment VIII). The project includes a mix of studios and one-, two-, and three-bedroom units that range in size from 416 to 986 square feet.

The proposed public community school would be operated by The Primary School. The Hayward campus would be the Primary School's second site, as they presently operate a school in East Palo Alto.³ In addition to the proposed elementary school building, a space for preschool aged students would be housed in the first floor of one of the residential buildings. The Primary School would serve a maximum of 384 students in grades pre-kindergarten to fifth grade. As stated in the School Program Overview (Attachment VII), The Primary School aims to support the whole family by offering access to a range of services, including medical, mental health, dental, and social service care and a parent wellness program that provides counseling and coaching on parenting, financial security, and educational attainment. The Hayward campus would actively target recruitment toward low-income families who would most benefit from the organization's approach and supports, including direct outreach to the future families that would be housed in the adjacent residential buildings.

As designed, primary access to the school portion of the site would be via an access road connecting to Tennyson Road while access to the residential parking areas would be from two driveway entries off 16th Street. The access road from Tennyson and on-site traffic circle would provide space for school drop off queuing. The project would include a total of 233 vehicle parking spaces, with 183 spaces dedicated to the residential units and 50 dedicated to the school.

The project site is immediately adjacent to the future La Vista Park. To ensure that residents have easy access to this high-quality recreational amenity, two trail connections are proposed, one at the northern end of the site from the edge of the parking lot, and another from the access driveway stemming off of Tennyson Road.

Policy Context and Code Compliance

Hayward 2040 General Plan. Parcel Group 3 is designated as Low Density Residential (LDR), Limited Medium Density Residential (LMDR), Limited Open Space (LOS), and Parks and Recreation (PR) in the *Hayward 2040 General Plan*.⁴ However, the proposed development is situated entirely within the area designated as Limited Medium Density Residential (LMDR), which allows for a residential density range of 8.7 to 12 dwelling units per net acre, and up to a maximum floor area ratio (FAR) of 0.5 for non-residential uses. Based on

³ The Primary School, East Palo Alto: <https://www.theprimaryschool.org/east-palo-alto>

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

the cumulative area of the site designated as LMDR (approximately 12.4 acres), a range of 107 to 148 dwelling units would fall within the permissible density range established by the General Plan, with additional units permitted per State Density Bonus law, as detailed below. The FAR of the school facilities is well below the maximum cap of approximately 270,000 square-feet of floor area.

Zoning Ordinance. Parcel Group 3 is zoned Open Space (OS), Medium Density Residential (RMB4), and Single Family Residential (RS); however, the proposed development is situated entirely within the RMB4 district.⁵ As proposed, the development complies with the development standards of this zoning district, as demonstrated in Table 1.

The project site is also within the Hayward Foothills Trail Special Design Overlay District (SD-7).⁶ The purpose of this special district is to ensure the development of a continuous bike and pedestrian trail as the 238 properties are developed. To meet the requirements of the SD-7 District, the project has provided trail connections to the elaborate trail system in the future La Vista Park.

Density Bonus. The applicant was granted a density bonus and height increase, three concessions/incentives from the Hayward Municipal Code, and a reduction in parking pursuant to Section 65915 of the Government Code.⁷ 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 included on-site. According to the submitted Affordable Housing and Density Bonus Plan (Attachment VIII), the applicant is proposing to restrict all units (other than two manager units) as affordable to Moderate-, Low-, Very Low-, and Extremely Low- Income households in accordance with State Density Bonus Law. In addition, the project is located less than one-half mile from a major transit stop. As such, the project is entitled to an unlimited increase in density. However, the applicant only requested a 19 percent density bonus for a total of 176 dwelling units.

In addition to increased density, State Law also affords density bonus projects an additional three stories or 33 feet in height to accommodate the additional units. Further, for projects located within a half mile of a major transit stop with at least 11 percent of units for Very Low-Income households or 20 percent of units for Low-Income households, a maximum of 0.5 parking spaces per unit may be required. Given the project's proximity to the South Hayward BART Station and its proposed affordability breakdown (Attachment VIII), the project meets the State's requirements for the reduced parking standard.

In exchange for restricting all dwelling units as affordable, the project is entitled to up to four concessions or incentives per State Density Bonus Law. Concessions/incentives are

⁵ Medium Density Residential (RM) Zoning District:

https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.400MEDEREDIRM

⁶ Hayward Foothills Trail Special Design Overlay District (SD-7):

https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.2600SPDEOVDISD_S10-1.2640HAFOTR

⁷ Section 65915 of Government Code (State Density Bonus Law):

http://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65915.&lawCode=GOV

defined as a reduction in site development standards or a modification of zoning code, or other regulatory incentives or concessions that result in identifiable and actual cost reductions. 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 requested the following concessions/incentives:

1. *Concession #1 – Open Space:* The proposed design involves 13,160 square feet of onsite courtyard space in between the two residential buildings. This space would be programmed for recreation and include a play structure for children. In addition, the project includes 1,800 square feet of interior amenity space in Residential Building A. Although these spaces do not meet the zoning requirement of 150 square feet per unit of open space, the project would be located directly adjacent to the future La Vista Park. The park will include over 50 acres of programmed open space, and as part of the applicant's Development Agreement with the City of Hayward, the proposed project would provide pedestrian access from the doorstep of the residential and school buildings up to the future La Vista Park and Foothill Trail.
2. *Concession #2 –Rear Yard Setback Requirements:* The RMB4 zoning district requires a 20-foot minimum rear yard setback. The project proposes a 15-foot, 2-inch setback due to limited space and site constraints as shown in the site plan.
3. *Concession #3 - City of Hayward's Reach Code Electric Vehicle Charging Requirements:* The City of Hayward's Reach Code requires that 75 percent of the project's dwelling units with one or more parking spaces be provided with at least one Level 2 EV Ready space and that the remaining 25 percent of the project's units be provided with at least one Level 2 EV Capable space.⁸ Due to the considerable cost associated with fully meeting the Reach Code's electric vehicle charging requirement (almost 10 times the cost of meeting the Building Code requirement according to the applicant's estimates) and the estimated funding gap, the project instead proposes to meet the electric vehicle charging requirements of the California Tax Credit Allocation Committee (CTCAC), which are dictated by the 2019 California Building Standards Code, requiring at least 10 percent of spaces to be at least EV Ready. For this project, the applicant is proposing to provide 5 percent EV Ready spaces and 5 percent of spaces with EV chargers installed. This is an allowable concession given the City's adopted Reach Code goes beyond what is required by State law. As detailed in the Sustainability section, the applicant is voluntarily undertaking additional sustainability measures to balance this requested reduction in the number of EV Ready/Installed spaces.

Housing Crisis Act (SB330). 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 (Government Code Section 65589.5), which states that a housing development project that complies with the objective standards of the General Plan and

⁸ Reach Code Checklist for New High-Rise Residential:
<https://www.hayward-ca.gov/documents/reach-code-checklist-new-high-rise-residential-and-new-motelhotel-buildings>

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.

SB330 applies to housing projects, including mixed use projects with at least two-thirds of square footage dedicated to residential units. The residential portion of this project makes up approximately 78 percent of the overall project square footage, which means that the provisions of SB330 apply. In addition, SB330 specifies that use of a density bonus and related incentives, concessions, or waivers does not make a project ineligible for SB330. As shown in Table 1, the project complies with the objective development standards of the General Plan and zoning district with the allowed Density Bonus provisions, incentives, concessions, and waivers permitted by State law.

Table 1: Zoning Compliance with Density Bonus

| Standard | HMC/GP Requirement | Proposed | Consistent? |
|--|---|--|------------------------------------|
| <i>Density</i> <i>With Density Bonus</i> | 12 du/ac (148 units) Unlimited | 14.2 du/ac (176 units) | Yes (<i>with Density Bonus</i>) |
| <i>Lot Coverage</i> | 40% | 18% | Yes |
| <i>Setbacks</i> <i>Front</i> <i>Side</i> <i>Rear</i> | 20' minimum 10' minimum 20' minimum | 125' minimum 48' minimum 15' minimum | Yes (<i>with Density Bonus</i>)* |
| <i>Building Height</i> <i>With Density Bonus</i> | 40' maximum 73' maximum | 63' maximum | Yes (<i>with Density Bonus</i>) |
| <i>Parking</i> <i>Residential</i> <i>With Density Bonus</i> <i>School</i> | 328 spaces 88 spaces 46 spaces | 183 spaces 50 spaces | Yes |
| <i>Open Space</i> | 150 s.f./unit (26,400 s.f.) | 14,960 s.f. | Yes (<i>with Density Bonus</i>)* |

*Requested Density Bonus Concession

Affordable Housing Ordinance. The proposed project is subject to the requirements set forth in HMC Chapter 10, Article 17, Affordable Housing Ordinance.⁹ An applicant may satisfy the requirements of the ordinance by paying an affordable housing in lieu fee or including affordable units within the proposed development. Pursuant to HMC Section 10-17.215, rental projects shall deed restrict no less than 6 percent of units on-site for Low- and Very Low-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. As specified in Attachment VIII, the applicant is meeting the AHO requirements by providing a total of four units as affordable to Very Low- and Extremely Low-Income households.

Staff Response to Appellant's Specified Grounds of Appeal. Staff responses to each of the appellants' specified grounds are summarized in the bulleted list below. The full appeal letters and related petition signatures are provided in Attachments III and IV.

- **Proximity of the proposed project to the fault line and concern that sufficient seismic hazard analysis has not been completed by qualified geologists/technical experts**

Staff Response: A Fault Hazard Evaluation for the site was prepared in April 2020 by ENGEO, an engineering consulting firm with technical expertise in the fields of geotechnical engineering and geology. The evaluation was prepared by a Certified Engineering Geologist and in accordance with the provisions of the Alquist-Priolo Earthquake Fault Zoning Act, which prohibits residential construction within fault zones unless a comprehensive geologic investigation shows that the fault does not pose a hazard to the proposed structures. The evaluation recommended a 50-foot setback from all active fault traces, which effectively concentrated the development potential into the southwestern corner of the site as currently proposed.

ENGEO prepared a Geotechnical Evaluation in June of 2021 to further characterize the site and concluded that the site is suitable for the proposed development, provided the geotechnical recommendations of the report are incorporated into the project. Based on the report's analysis, a number of slope stability measures are to be implemented, most notably including the construction of a pair of buried reinforced keyways immediately upslope of the proposed project that would serve to stabilize the hillside in a ground shaking event. These measures along with adherence to the State's building code standards would help ensure the safety of the proposed structures and future occupants in the event of a future earthquake.

Moreover, this project complies with all objective criteria relating to its proximity to the fault traces. Without a violation of an objective standard, and with the availability of the above mitigation measures, denial of the project would go against the requirements of the Housing Accountability Act. Both the Fault Hazard Evaluation and Geotechnical Evaluation are included as Attachment IX.

⁹ HMC Chapter 10, Article 17, Affordable Housing Ordinance:
https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART17AFHOOOR

- **Many nearby residents were not aware of the project**

Staff Response: Staff provided notice of the project that exceeded the requirements of the Hayward Municipal Code. Pursuant to the HMC, the failure of any or all of the addressees to receive the notice given does not invalidate the proceedings, provided that such defect or failure has not occurred in bad faith. As detailed in the Public Contact section below, a total of three postcard mailers have been sent out about this project to date. The first was sent to all property owners, residents, and businesses within a 300-foot radius of the Parcel Group 3 properties, as is required Section 10-1.2820 of the Hayward Municipal Code.¹⁰ The next two notices were sent out to a wider 500-foot radius of properties (which more than doubled the mailing list from approximately 550 addresses to approximately 1,125) to reach a broader extent of the neighborhood. In addition, notices were sent out to the Mission-Garin Neighborhood Task Force, the South Hayward Parish, and those who requested to be added to the interested parties mailing list.

The applicant held two virtual community meetings via Zoom, one on September 30, 2020 and a second on September 13, 2021. Both community meetings were publicized by the applicant using an interested parties email list as well as the 500-foot radius mailing list provided by the City. Mailers for the second community meeting were also sent to all addresses included in the appellants' petitions. Additionally, the item was included on the Planning Commission's Agenda and published pursuant to the Brown Act.

- **Potential traffic congestion**

Staff Response: A Local Transportation Analysis (Attachment XI) was completed by Kittleson and Associates. The results of this analysis included several recommendations to address potential traffic impacts to the surrounding area as a result of the project. These recommendations have been incorporated as conditions of project approval. This includes: the requirement that the applicant submit a Transportation Demand Management Plan for approval prior to building permit issuance to encourage carpooling, rideshare, and other modes and facilitate carpool matching for staff and students; the installation of an inbound left turn lane to the project site from Tennyson Road to reduce potential back up during school pick-up and drop-off times; and the installation of new high visibility crosswalks in multiple locations.

Secondly, the vehicular entrances for the residential and school portions of the project are separated, with the school traffic entering and exiting the site via Tennyson Road and the residential traffic via two driveways on 16th Street. This separation would help reduce the impact of school pick-up and drop-off traffic on the existing residential neighborhood around 16th Street.

¹⁰ HMC Sec. 10-1.2820, Notice: https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.2800ADEN_S10-1.2820NO

Again, this project complies with all objective criteria relating to traffic management. Without a violation of an objective standard, and with the availability of the above mitigation measures, denial of the project would go against the requirements of the Housing Accountability Act.

- **Amount of parking provided**

Staff Response: Per Chapter 10, Article 2 of the Hayward Municipal Code, the proposed residential use would typically be required to provide a total of 328 parking spaces. However, State Density Bonus law specifies that for affordable housing projects located within a half mile of a major transit stop with at least 20 percent of units for Low-Income households, a maximum of 0.5 parking spaces per unit may be required by the local jurisdiction. Given the project's proximity to the South Hayward BART Station and the proposed affordability breakdown (Attachment VIII), the project meets the requirements for the reduced parking standard. As a result, the project is only required to provide a total of 88 parking spaces for the residential use, per State Density Bonus Law. The proposed project far exceeds this requirement by providing a total of 183 residential parking spaces.

The Municipal Code would further require an additional 46 parking spaces for the proposed school use. The project meets and slightly exceeds this requirement by providing a total of 50 parking spaces for the school use. As conditioned, a detailed School Pick Up and Drop Off Plan prepared by a transportation consultant must be approved by the Public Works Department prior to building permit issuance. Additional conditions require blockades and consistent messaging to families to reduce the likelihood of school queuing on 16th Street.

Similarly, this project complies with all objective parking criteria. Without a violation of an objective standard, and with the availability of the above mitigation measures, denial of the project would go against the requirements of the Housing Accountability Act.

- **Problems with using the Zoom app to speak during the Planning Commission hearing**

Staff Response: Staff regrets that any member of the public experienced difficulty in using the Zoom app to speak during the public comment period of the July 22 Planning Commission hearing. While staff has been made aware that the Planning Commission was unable to hear from one of the appellants, Ms. Zhang, during the item's public comment period due to technological issues, Ms. Zhang had provided comments to staff in advance of the hearing, which were reflected along with other neighborhood concerns in the Planning Commission staff report.

The City Council hearing on this appeal item will be held in a hybrid virtual and in person meeting, giving members of the public the option of participating via Zoom or in person in Council Chambers. It is staff's hope that this alleviates some of the technical challenges

and frustrations that some community members may experience by providing an in person option.

- **Impacts to Tennyson Road as an evacuation route**

Staff Response: The Fire Department reviewed and approved the proposed application with conditions, finding that it meets Fire Code requirements regarding means of egress. Specifically, both the proposed project and The Reserve development at the eastern terminus of Tennyson (one of the appellant groups), each have two means of egress, with Tennyson Road only constituting one of them. This offers residents of both the proposed project and The Reserve development two evacuation options in event of an emergency. Secondly, the Local Transportation Analysis completed for the project found that the project would create no traffic operational deficiencies on Tennyson Road per City, State, or Industry-Standard Guidelines. As a result, the City does not anticipate any significant impacts to the use of Tennyson Road as an evacuation route in event of an emergency.

Accordingly, this project complies with all objective ingress/egress criteria. Without a violation of an objective standard, denial of the project on this ground would go against the requirements of the Housing Accountability Act.

Additional Staff Analysis. Staff believes that the City Council can uphold the Planning Commission's approval of the Site Plan Review, Administrative Use Permit, and Density Bonus application based on the analysis provided herein. The proposed project complies with the applicable objective development standards and meets the intent of the RMB4 zoning district as well as the goals and policies of the Hayward 2040 General Plan.

The proposed development includes a 100 percent affordable housing project with a range of unit sizes at different affordability levels, which would provide Hayward's lower income households with desperately needed housing units. In addition, the proposed school would provide Hayward families with a high-quality preschool and elementary school choice that offers ample supportive services to students and their families. The school operator would target low-income South Hayward families, including families in the adjacent housing on-site to ensure that this valuable educational opportunity serves the community's families who could most benefit from it. Further, the project is consistent with the City Council's approved terms for the Parcel Group 3 Exclusive Negotiating Rights Agreement, which specify that the development include a minimum of 150 residential mixed-income multifamily affordable units and a public community school.

The South Hayward BART station is within walking and biking distance, allowing for convenient commuting to and from the site. Additionally, as conditioned, new crosswalk infrastructure and traffic calming measures would help promote walking and biking and reduce the impacts of additional vehicular traffic on the surrounding neighborhood. The project also provides connections to the trail system of La Vista Park, as required by the Special Design Overlay District (SD-7) and a stairway down to Tennyson Road to improve the pedestrian connection to the Mission Boulevard corridor and nearby BART station.

As designed, the project is compatible with the surrounding neighborhood as the proposed multifamily housing is clustered at the southern end of the site, adjacent to existing multifamily housing. The remainder of the parcel group, including the central and northern portions that are adjacent to the lower density single family homes along 16th and Webster Streets would be developed as part of the future La Vista Park, maintaining an open space appearance, which was voiced as important by the neighborhood. Additionally, the positioning of the school closest to Tennyson Road reduces the visual bulk and massing of the project from Tennyson Road and Mission Boulevard. As shown in the project renderings included in Attachment VI, while the development would be clearly visible from the future La Vista Park, it would not block the park's stunning views of the city and Bay.

ENVIRONMENTAL REVIEW

In 2014, the City certified the EIR for the *Hayward 2040 General Plan*.¹¹ The General Plan represents the community's view of its future and expresses the community's conservation and development goals through the year 2040. An Addendum to the General Plan EIR (Attachment X) was prepared pursuant to Section 15164 of the CEQA guidelines which states, "The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred."

The proposed modifications to the General Plan EIR described in the attached Addendum would not require major revisions to the General Plan EIR due to new or substantially increased significant environmental effects. The analysis contained in the Environmental Checklist confirms that the modified project is within the scope of the General Plan EIR and would have no new or more severe significant effects and no new mitigation measures are required. Therefore, no subsequent or supplemental EIR or further CEQA review is required.

ECONOMIC IMPACT

The proposed development would have a positive economic benefit in that it would result in development of a currently vacant site with new residential units and a public community school that would beautify the site and increase surrounding property values. The proposed development is expected to attract up to 176 new households whose expenditures would increase retail sales in the city. Development of the project is also expected to generate temporary construction jobs and up to 58 permanent jobs associated with the school and property management.

FISCAL IMPACT

The project site will be subject to a Disposition and Development Agreement between the City and the applicant for the sale and disposition of the former Caltrans-owned properties. Upon transfer of the property from the City to the developer, the assessed value of the property would

¹¹ Hayward 2040 General Plan EIR: <https://www.hayward-ca.gov/your-government/documents/planning-documents>

immediately increase resulting in ongoing property tax revenue for the City. According to projections provided by the developer, the construction valuation of the project is estimated at \$72,900,000.

The project would generate annual revenue from taxes including: property, real property transfer, business license, and emergency facilities among others, while requiring annual costs related to City services including but not limited to Fire, Police, Library, and Maintenance Services. Communities sometimes attempt to quantify positive or negative fiscal impacts to help decide if a particular development project should move forward. While an important planning tool for city resource allocation, this data does not account for other elements or community benefits the project may provide that address Council priorities and policies. These benefits, such as increasing housing supply to help stabilize housing costs, promoting equity and housing opportunities, and adding new consumers that can support city businesses and help attract new ones, offer possible offsets for negative fiscal impacts.

STRATEGIC ROADMAP

The proposed project, as conditioned, supports the City's Complete Communities Strategic Initiative. The purpose of the Complete Communities Initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all. This item supports the following Complete Community goal and objectives:

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.d: Increase the supply of affordable, safe and resilient housing in Hayward.

SUSTAINABILITY FEATURES

As part of the proposed project, the applicant has committed to incorporating several sustainable features that meet or exceed all of the requirements of the California Building Code and City's REACH Code with the exception of the REACH Code requirement for EV charging infrastructure as outlined below, due to a requested Density Bonus concession (see Table 2). Specifically, the project proposes the following:

1. All Electric Building. As proposed, both the affordable housing and the school buildings would be constructed to be all-electric in full compliance with the Reach Code.
2. Solar Panels. The applicant proposes to exceed the building and REACH code requirements by installing solar panels on the affordable housing buildings.
3. EV Charging Stations. The applicant proposes to include 5 percent EV Ready spaces and 5 percent of parking spaces with EV chargers installed for the affordable housing component, which exceeds Building Code requirements. The project would fully comply with the REACH Code EV parking requirements for the school.

Table 2: Sustainability and Code Compliance

| | Building Code | REACH Code | Compliant? |
|-----------------------------|------------------------------|-------------------|-------------------|
| All Electric | | | |
| School | Exceeds | Meets | Yes |
| Affordable Housing | Exceeds | Meets | Yes |
| Solar Panels | | | |
| School | Meets (Solar Ready) | Not Required | Yes |
| Affordable Housing | Exceeds (Solar Installation) | Not Required | Yes |
| EV Charging Stations | | | |
| School | Exceeds | Meets | Yes |
| Affordable Housing | Exceeds | No* | Yes (with DB)* |

*Requested Density Bonus Concession Detailed Below

By adding solar panels, the project would exceed California Building Code standards, which only require that 15 percent of the total roof area be made solar-ready, or able to accommodate future installation of solar panels. The installation of solar panels is voluntary and not required by either the California Building Code or the City's REACH Code.

Although the proposed school would meet the REACH Code requirements for the installation of EV charging infrastructure, the affordable housing component is requesting a concession to reduce the REACH Code requirement for EV charging infrastructure to 10 percent. Staff notes that despite the reduction in the number of EV Ready or Capable spaces, the applicant is proposing to include 5 percent EV Ready spaces and 5 percent of spaces with EV chargers installed, which still exceeds the California Building Code requirement.

In addition to the sustainable features identified to the buildings on site, the project is also subject to the Bay-Friendly Water Efficient Landscape Ordinance and includes permeable paving at various parking locations, including the emergency vehicle access road to allow on-site absorption of rainwater.

Staff believes that the voluntary inclusion of solar panels, EV charging infrastructure in excess of the Building Code, and meeting or exceeding all other REACH Code requirements, including all-electric buildings, advance the City's overall sustainability objectives and help reduce carbon emissions.

PUBLIC CONTACT

On May 20, 2020, a Notice of Application Receipt was sent to approximately 550 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 and South Hayward Parish. In response to this notice, staff received seven emails and calls from members of the public. Primary concerns expressed included the impact to parking on 16th Street, increased traffic and congestion, the loss of open space views along 16th Street, concern about proximity to fault lines, the dislike of the architecture, and general concerns about the

amount of housing development in the area and whether the neighborhood needs an additional school.

On September 30, 2020, a virtual neighborhood meeting was hosted by the project applicants via Zoom. Flyers advertising the meeting were sent or delivered to a list of over 1,100 property owners, businesses, residents, and interested stakeholders within a 500-foot radius of the project site. In addition, each of the members of the public who responded to the original Notice of Receipt were invited to the meeting via individual emails from the applicant. Approximately ten community members attended the virtual meeting. Comments made were similar to the concerns voiced in response to the Notice of Receipt, including concerns about parking, traffic, and the loss of open space. In addition, there was a concern expressed about construction related impacts related to dust and noise.

On June 9, 2021, a Notice of Public Hearing for the Planning Commission public hearing was circulated to a mailing list of over 1,100 property owners, businesses, residents, and interested stakeholders within an increased 500-foot radius of the project site as well as published within The Daily Review newspaper as a Legal Ad. Staff received approximately ten emails in response to the notice and ad. Concerns were expressed about high density residential housing being built in such close proximity to an earthquake fault, the amount of onsite parking, the future maintenance of the property, increased traffic in the neighborhood, construction impacts, and the potential difficulty in walking and biking to BART from the site for those with mobility issues. There were also comments in support of the project, many citing the need for additional affordable housing units in Hayward.

The applicant held a second virtual community meeting on September 13, 2021. The primary comments expressed at this meeting included concern about the quality of the geotechnical analysis completed for the project, the impact of traffic and parking on 16th Street, and the potential impact to Tennyson Road as an evacuation route. The applicant, City staff, and consultants provided information in response to these concerns about the technical analyses completed, State law regarding affordable housing projects, the selection of the applicant through a Request for Proposals (RFP) process, and the review process for the entitlement application.

On September 17, a Notice of Public Hearing for this City Council public hearing was circulated to a mailing list of over 1,100 property owners, businesses, residents and interested stakeholders within a 500-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 additional comments in response to this notice.

NEXT STEPS

The City Council's determination on the appeal will be deemed final. If the Planning Commission's approval is upheld and the project would be immediately entitled. The sale of Parcel Group 3 would then be subject to a Disposition and Development Agreement (DDA) between the City and the applicant for the sale and disposition of the former Caltrans-owned

properties. The DDA is in the process of being finalized and is anticipated to be brought before the City Council in October 2021.

Prepared by: Elizabeth Blanton, AICP, Senior Planner

Recommended by: Sara Buizer, AICP, Deputy Development Services Director
Jennifer Ott, Assistant City Manager and Development Services Director

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

Kelly McAdoo, City Manager