



CITY OF MARTINEZ

CITY COUNCIL AGENDA September 9, 2009

TO: Mayor and City Council

FROM: Corey Simon, Senior Planner
Terry Blount, AICP, Planning Manager
Karen Majors, Assistant City Manager,
Community & Economic Development

SUBJECT: Public hearing on an Appeal of Planning Commission decision to approve Use Permit, State Mandated Density Bonus, Concessions and Waiver of Development Standards and Design Review for Construction of a 49 Multiple Dwelling Unit Project for Seniors (55 years of age or older), with Rents Restricted to Affordable Levels, with Density and Height above that Normally Permitted and Reduced Front Yard Setback at 310 Berrellesa Street.

DATE: September 3, 2009

RECOMMENDATION:

Adopt draft resolution and conditions of approval denying the appeal and upholding Planning Commission decision by approving requested Use Permit, Granting of Density Bonus, Concessions and Waiver of Development Standards pursuant to State Law, and Design Review Approval.

BACKGROUND and INTRODUCTION:

On August 11, 2009, the Planning Commission adopted a resolution approving and granting a Use Permit, State mandated density bonus for affordable housing, incentives/concessions and Design Review for the construction of a 49 unit affordable apartment project for seniors, to be located at 310 Berrellesa Street ("Berrellesa Palms"). The resolution was based on a 6-1 vote to approve the project. The 1.03 acre site is currently used as an industrial storage yard, and the proposed project would remove the existing small office and storage buildings and construct a new two- and three- story apartment building. (*Planning Commission Minutes and Resolution area provided as Attachment #6 and Planning Commission staff report as Attachment #7.*)

The project is within the boundaries of the 2006 Downtown Specific Plan (DSP) and while not the first new residential project approved by the City within the Specific Plan area, it would be the first project to be approved within the Specific Plan's Downtown Shoreline District. The Downtown Shoreline District is a unique sub-area of the Downtown Specific Plan, encompassing the currently industrial northwest corner of the Downtown. The key policies of the Downtown Shoreline District are "centered on relocating industry and creating new development that is in

keeping with the traditional Downtown character” (DSP Section 2.2.1) by “permitting a sufficient intensity of development to provide an economic incentive for industrial uses to relocate” (DSP Section 9.1).

A key point to understanding the project’s context is that the site adjoins an existing mixed density neighborhood to the south and west, across Richardson and Buckley Streets. This neighborhood is in a different sub-district of the Downtown Specific Plan (Downtown Neighborhood District) than the subject site (Downtown Shoreline District). The subject site and the adjoining industrial properties to the north and east, across Berrellesa and Foster Streets are not subject to the same development standards as projects within the adjoining Downtown Neighborhood District. As envisioned by the Specific Plan, the Downtown Shoreline District, as opposed to the Downtown Neighborhood District, allows greater variety in density, as well as mass and height.

Multi-family Residential Structures are permitted uses in the Downtown Shoreline District, so amendments to the zoning map or zoning text are not required to permit this project. Pursuant to the regulations applicable to the Downtown Shoreline District, approval of a Use Permit is required for the following:

- a) To allow project density above the normally permitted maximum density of 17 units per acre, up to a maximum of 35 units per acre. (Note, the applicant has concurrently requested a State mandated 35% Density Bonus for projects that offer 100% affordable units, which would bring the total number of possible units from 35 up to 49); and
- b) To allow a maximum building height of 36’/three stories, where the normally permitted maximum building height is 30’/two stories. Pursuant to the regulations applicable to the Downtown Shoreline District, the maximum permitted building height for projects approved at a density of 35 units per acre is 40’/three stories; and
- c) To allow a minimum front yard setback of 10’, where the normally required minimum is 20’.

In addition to the Use Permit approvals listed above, the project also requires:

- a) Design Review approval, as is required for all Multi-family Residential Structures throughout the City; and
- b) State mandated 35% Density Bonus for Affordable Housing projects described above, State mandated concessions/incentives to requirements for useable open space, maximum site coverage and a subdivision map, that would otherwise be required by the regulations applicable to the Downtown Shoreline District.

As further background, the City Council should recall that in 2006 when the Specific Plan was adopted, it also certified the Final Environmental Impact Report for the Downtown Specific Plan, which contains mitigation measures to reduce any possible environmental impact resulting from new development anticipated by the Plan to less than significant levels, as is required by the California Environmental Quality Act (CEQA). Those mitigation measures are included as conditions of approval for this project. Furthermore, the Planning Commission found that based

on several criteria found in CEQA regulations, including but not limited to applicability of 2006 Downtown Specific Plan Final Environmental Impact Report and its mitigation measures, the project is Exempt from further study under CEQA.

The approved project was appealed on August 21, 2009 by Kristen Henderson, Beth Eiselman, Tim Platt and Harlan Strickland, primarily claiming the project is inconsistent with the adopted policies of the 2006 Downtown Specific Plan, and as such, does not qualify for an exemption from CEQA. This is the second such appeal of the Planning Commission's approval of a Use Permit to allow added density for a residential project within the Specific Plan area. In May 2007, the City Council unanimously denied a similar appeal, and upheld the Planning Commission's granting of a Use Permit to allow a duplex to be replaced with a three-unit complex (one duplex and one single family unit) at 227 Main Street. While that project is within a neighboring sub-area of the Downtown Specific Plan (227 Main street is in the Downtown Neighborhood District, the subject site is within the adjacent Downtown Shoreline District), the appeals are similar in that central to the appellants' arguments is their contention that the Specific Plan Policies and Guidelines universally preclude the construction of new structures with higher densities than those of its immediate neighbors. In the following discussions, staff has organized and summarized the appeal grounds set forth by the appellant and outlined how the project is consistent with the Specific Plan and other applicable City polices and code requirements.

DISCUSSION PART 1 – APPEAL

APPEAL ISSUE #1 – CONSISTENCY WITH GENERAL PLAN

Allegation of the appeal:

Project is inconsistent with General Plan

Finding to deny appeal on claim project is “Not Consistent with General Plan”:

The project, as currently proposed, is consistent with the General Plan, and the policies applicable for the construction of Multi-family residential projects in the Central Martinez Area.

Facts in Support of Finding

The City's objectives of preserving its existing character, while fostering the introduction of new residential development that is in keeping with that character, is well established in the General Plan as per the following goals and policies:

- 21.341 - Land Use Element, Residential Uses, High Density Residential Areas: **High density residential development...shall be permitted in limited areas. The primary purpose is provision for apartment types of housing accommodations to serve the needs of single persons, families with preschool children and childless households.** The project appropriately provides housing opportunities to senior citizens, who are typically childless and are often single person households.

The site is located within an area also governed by the Central Martinez Specific Area Plan.

This policy area is larger than the more contemporary Downtown Specific Plan, but all areas of the Downtown Specific Plan are within the Central Martinez Specific Area policy plan area. Among the Central Martinez Specific Area Plan goals and policies are:

- 30.26 - Central Martinez Specific Area Plan Goal: **Achieve a visually pleasing community in which structures and surroundings are related in a harmonious and functional pattern while eliminating unattractive elements and arresting deterioration.** The replacement of the present industrial use with the proposed residential use, as envisioned by the Downtown Specific Plan will create a more functional residential community to patronize the downtown commercial areas, will remove what many would view as an unattractive industrial storage yard use.
- 30.522 - Central Martinez Specific Area Plan, Housing: **Areas which encircle the central business district now underutilized or in light industrial and commercial use, may be converted to residential use of appropriately density and structure type. This should increase the housing supply and should eliminate the threat of visual and structural blight to adjacent residential neighborhoods.** In implementation of this General Plan policy, the subject and adjoining industrial properties were designated for residential uses in 2006 with the adoption of the Downtown Specific Plan. The subject development, to be built at the higher densities and with the traditional design elements consistent with the Specific Plan, will replace an underutilized industrial storage yard. The accessory structures on this site are in poor condition, and given that the site's industrial use is nonconforming, improvements to these structures are unlikely, thus the removal and replacement with a new conforming residential structure will remove a potential source of visual blight.
- 30.524 - Central Martinez Specific Area Plan, Housing: **New construction of multi-family housing should be encouraged to meet present demand and to "reconstruct" blighted areas, where such construction will not threaten the character of existing neighborhoods. Infill development of vacant and underutilized parcels at a higher density should be encouraged, if development reinforces architectural styles, a higher quality development, and encourages the consolidation of smaller parcels (sic).** As the site is adjacent to, rather in the adjacent older downtown neighborhood, this proposed infill development encompasses the higher development standards pursuant to the Downtown Specific Plan. It includes contextually appropriate neo-traditional architectural massing and building finishes and provides higher density housing without threatening the adjacent neighborhood.

The City's 2001-2007 Housing Element of the General Plan also contains the following relevant goal:

- Housing Element, Goal #1, Adequate Supply of Housing: **Achieve an adequate supply of safe, decent housing for all economic segments of the community. Promote throughout the City a mix of housing types responsive to household size, income, age and accessibility needs (this site has been identified as an opportunity site for affordable housing in the City's current Housing Element).** The development will serve a range of very low to moderate income senior citizens, a population that the Housing Element has identified as having inadequate affordable housing opportunities.

APPEAL ISSUE #2 – CONSISTENCY WITH DOWNTOWN SPECIFIC PLAN

Allegation of the appeal:

As stated above in the introduction, the core of the appellants' argument is that the project is not consistent with the Downtown Specific Plan, particularly in regards to the Plan's requirement that any new development in the new Downtown Shoreline District be "in keeping with the traditional Downtown character."

In the appellants' view, the project is not compatible with the older residential neighborhood to the south and west, as it is not "matching" this neighborhood in regards to density, mass and height. The appellants' allegations can generally be summarized as follows:

- *The project is "too big" to be compatible with the neighborhood, because it is larger than the neighboring structures across the street. The appellants further argue that the size of the individual dwelling units themselves should have been discussed, as a reduction in unit size could reduce overall mass. (Allegation relates to general findings of consistency with the Specific Plan, and specifically with the findings for Use Permit approval to allow density greater than 17 units per acre in the Downtown Shoreline District, and 10' minimum front yard setback).*
- *The project is not "superior" in relation to the specific eight criteria, prescribed by the Downtown Shoreline Regulations, for approval of density above 17 units per acre up to the 35 units per acre requested.*

Finding to deny appeal on claim project is "Not Consistent with Downtown Specific Plan:"

The project, as currently proposed, is consistent with the Downtown Specific Plan, and the standards prescribed by the Specific Plan and applicable Zoning Code regulations for the granting of a Use Permit to allow development of up to 35 dwelling units per acre, and a maximum 36' building height. There is no regulation in Martinez limiting aggregate floor area, and no reduction in aggregate floor area is needed to make the findings for project approval. In addition, the average 600 sq. ft. proposed size of the one-bedroom units is required by the project's lender(s) and appears to be an industry norm, well in keeping with comparable market rate and affordable senior apartment projects. Reducing the unit size would result in a loss of funding which would render the project financially infeasible (see discussion regarding State Mandate Density Bonus of State Housing Law below).

Facts in Support of Finding

The Downtown Specific Plan sets forth several distinct policies, programs, standards and guidelines applicable to the project which can generally be categorized as follows:

- The first and broadest level addresses the land use goals and policies established for the Downtown in the Specific Plan, and the Downtown Shoreline District in particular.
- The second level is in regards to basic land use, density and development requirements of

the Downtown Shoreline District, and the findings needed for Use Permit approval to allow development above the basic project density and building height permitted within the district.

- The third level involves the application of the Specific Plan’s Design Guidelines, both those that exclusively apply to the Downtown Shoreline District (Chapter 9 of the Specific Plan) and those applicable to all residential projects within the Specific Plan area (Chapter 10). In applying these guidelines to a particular project, it should be noted that the Specific Plan provides the decision-making body with a degree of flexibility in applying such guidelines.

Downtown Specific Plan Constancy Findings Group #1: Goals and Policies

The following provides a discussion of the goals and policies applicable to the Downtown area and the Downtown Shoreline District in particular:

LAND USE (2.2.1)

Goal LU-1: To provide land use opportunities for Downtown Martinez to serve as a cultural, arts and entertainment center *offering a wide range of opportunities for residential lifestyles*, work environments, shopping, entertainment, culture and the arts.

Policy LU-1-1: **Maintain the integrity of each Downtown area** (there is a goal stated for each of the five districts) **as follows:**

- **Downtown Shoreline: The developed area, currently in industrial use, is between the railroad tracks and the Downtown Core and Neighborhood Districts. *This land use strategy is centered on relocating industry and creating new development that is in keeping with the traditional Downtown character.***

Section 9.1 of the Downtown Shoreline District chapter states: *The intent of the Downtown Shoreline area is to provide for a variety of residential uses in an environment that is transitioning from industrial to residential uses. This area serves as a transition area between the urbanized portion of the Downtown and the open space of the Martinez Regional Shoreline to the north. The standards and guidelines for this area are intended to protect and enhance the environmentally sensitive areas of the Shoreline, and contribute to the economic revitalization of Downtown, by permitting a sufficient intensity of development to provide an economic incentive for industrial uses to relocate.*

STAFF ANALYSIS: The relatively higher density and larger building mass of the proposed project, when compared to its immediate neighbors, is consistent with the Specific Plan’s goals of providing new housing opportunities through the economic incentive created by permitting sufficiently high residential density, to make the relocation of the former industrial use financially viable to both the seller and developer. The new development continues the Downtown’s traditional character, by offering housing in the overall area within buildings of varied residential densities. In this case the RCD project will provide high density

apartments alongside single-family, duplex and small multi-family buildings. The Downtown's traditional visual character is maintained with the use of neo-traditional architectural elements echoing those found throughout the neighborhood, and well articulated massing that creates the appearance of several small multi-family buildings, rather than one large building. This project creates an image more similar to that of the adjacent older residential neighborhoods.

Policy LU-1-4: Provide incentives for infill development throughout Downtown, with an emphasis on the opportunity sites identified in the Plan.

STAFF ANALYSIS: The subject property was identified as Opportunity Site 4 in the 2003 Economic Revitalization Concept developed for the Specific Plan. The Downtown Shoreline District regulations allow the highest possible residential density (outside the Downtown Core District) to encourage the conversion of this industrial property to residential use.

Policy LU-1-5: Encourage the establishment of a vibrant mix of uses that will serve the needs of both residents and visitors and will help create a vibrant daytime, nighttime and weekend environment.

STAFF ANALYSIS: The subject project will introduce new residents to a currently unpopulated industrial site. The new senior citizens residents, and the anticipated visits from family members, will add to the potential for economic activity beyond the mid-day, workday hours.

Policy LU-1-9: Encourage construction of residential development within walking distance of the City's Intermodal Station (Amtrak) to encourage use of rail passenger service.

STAFF ANALYSIS: The subject residential project is within two blocks of the Station. The path is level and crosswalk improvements are proposed to further encourage pedestrian travel from the project to the Station.

HOUSING (2.2.3)

Goal H-1: To help Downtown Martinez succeed as an active daytime, evening and weekend downtown, encourage transit and pedestrian oriented housing in areas in addition to the traditional residential neighborhoods, to include the Downtown Core and areas currently in industrial use.

Policy H-1-1: Provide a variety of housing options affordable to varied income groups, including single-family houses, townhouses, live-work loft space, condominiums and apartments, and mixed-use buildings with a residential component.

STAFF ANALYSIS: The subject residential project adds variety to the Downtown Housing stock by providing 48 new units, in a secure multi-family building with interior access to unit, which is a opportunities for low income

seniors that are not currently available Downtown, in that most all of the affordable downtown housing opportunities are of older, smaller units, with less secure individual exterior entries.

Policy H-1-5: Encourage and promote new transit and pedestrian oriented residential projects, new secondary residential units, and the use of upstairs spaces in existing buildings in the Downtown Core for housing to increase housing options and help bring daytime, evening and weekend activity to the Downtown.

STAFF ANALYSIS: The proposal adds 49 units within three blocks of the Intermodal Transit Station, and within walking distance to the commercial areas of the Downtown Core District of the Downtown Specific Plan area, thus increasing housing options and helping bring daytime, evening and weekend activity to the Downtown.

ECONOMIC DEVELOPMENT (2.2.4)

Goal ED-1: Strengthen Downtown as a local and regional destination for specialty shopping, dining, nightlife, employment, culture and the arts.

Policy ED-1-5: Target key infill residential opportunities including small lot and row homes, townhouses, apartments and condominiums and live/work loft space.

STAFF ANALYSIS: The subject property was identified as Opportunity Site 4 in the 2003 Economic Revitalization Concept developed for the Specific Plan. The Downtown Shoreline District regulations allow the highest possible residential density (outside the Downtown Core District) to encourage the conversion of this industrial property to residential use.

URBAN DESIGN (2.2.5)

Goal UD-1: Strengthen the identity and character of Downtown using the existing historic and architectural urban character of the community, while allowing for new structures that are architecturally compatible with, and complementary to, the existing architectural and historic fabric.

Policy UD-1-1: Through design review, ensure that new development enhances the character of the Downtown Districts by requiring design qualities and elements that contribute to an active pedestrian environment, where appropriate, and ensuring that architectural elements are compatible and in scale with the existing historic structures in the Downtown.

STAFF ANALYSIS: The Victorian/Neoclassical architectural vocabulary for the proposed project is the same as that used on many of the nearby structures in the adjoining neighborhood. The proposed design utilizes predominantly wood detailing and horizontal siding, with bay windows and deep indentations in the

building's southern façade, bringing the building's sense of scale closer to that of the older, smaller multi-family buildings of the adjoining neighborhood. The pedestrian scale arbors and main entry porch also help to keep the visual scale of the building comparable to that of the older structures.

Downtown Specific Plan Consistency Findings Group #2: Development Standards and Use Permit Required

A. Downtown Shoreline District Purpose Statement

It should be recalled that the purpose of the Downtown Shoreline District is:

The intent of the Downtown Shoreline area is to provide for a variety of residential uses in an environment that is transitioning from industrial to residential uses. This area serves as a transition area between the urbanized portion of the Downtown and the open space of the Martinez Regional Shoreline to the north. The standards and guidelines for this area are intended to protect and enhance the environmentally sensitive areas of the Shoreline, and contribute to the economic revitalization of Downtown, by permitting a sufficient intensity of development to provide an economic incentive for industrial uses to relocate. The proposed project is consistent with the Downtown Specific Plan. The relatively higher density and larger building mass of the proposal, when compared to its immediate neighbors, is consistent with the Specific Plan's goals of providing new housing opportunities through the economic incentive created by permitting sufficiently high residential density, to make the relocation of the former industrial use financially viable to both the seller and developer. The new development continues the Downtown's traditional character, by offering housing within buildings of varied residential densities, which in this case will provide high density apartments alongside single-family, duplex and small multi-family buildings. The Downtown's traditional visual character is maintained with the use of neo-traditional architectural elements echoing those found throughout the neighborhood, and the well articulated massing that creates the appearance of several small multi-family buildings, rather than one large building. This project creates an image more similar to that of the adjacent older residential neighborhoods.

B. Downtown Shoreline District - Applicable Zoning and Use Permits

The above policy for the Downtown Shoreline District of the Downtown Specific Plan is implemented through multiple regulations: 1) The Downtown Specific Plan itself, and 2) The Downtown Shoreline Zoning District (MMC Chapter 22.23) which by reference incorporates the development standards of the Downtown Overlay District (MMC Chapter 22.13). Downtown Specific Plan Section 9.2 permits uses in the Downtown Shoreline District pursuant to the regulations found in MMC Section 22.23.020; Downtown Shoreline Zoning District, which lists Multi-Family Residential Structures as a permitted use.

The following table provides a broad overview of how the above Zoning Code regulations apply to the proposed development of this parcel with respect to density, height, minimum yard setbacks and other development standards. Where the requirement

for a Conditional Use Permit is indicated, the standards for review and approval are drawn from both the Specific Plan and the Zoning Code, and are described and evaluated more fully in the discussions immediately following the table. It should be noted that whenever a Conditional Use Permit is required, review pursuant to the standards of MMC Section 22.40.070 (Action on Use Permit by Planning Commission) is required in addition to the applicable standards of the Downtown Shoreline Zoning District and/or Downtown Overlay Zoning District.

Downtown Shoreline District Requirements

CRITERIA	MINIMUM REQUIRED OR (MAXIMUM ALLOWED)	PROPOSED	CONFORMITY
Project Density	17 units/acre <i>(35 units/acre with Use Permit approval)</i>	49 units/acre	Conditional Use Permit required; density bonus requested pursuant to State affordable housing regulations
Building Height	two stories/30' <i>(three stories/40' with Use Permit approval, pursuant to above)</i>	three stories/36'	Conditional Use Permit approval, pursuant to above, required
Front Yards*	20' <i>(10' with Use Permit approval)</i>	10'	Conditional Use Permit required
Side Yards	10'	10'	[in conformance]
Parking	.35 spaces/unit	.67 spaces/unit	
Site Coverage	45%	49%	Concessions requested pursuant to State affordable housing regulations
Usable Open Space	450 sq. ft./dwelling unit	226 sq. ft./dwelling unit	

*per MMC 22.04.340, a lot with dual frontage is seen as having two front yards

C. Use Permit Standards to Allow Proposed Density

Pursuant to Downtown Specific Plan Section 9.5.4 and MMC Section 22.23.050.C, the basic allowable project density permitted within the Downtown Shoreline District is up to 17 units per acre (2,500 sq. ft. of site area per unit). With approval of a Use Permit pursuant to Section 9.5.4 and MMC Section 22.23.050.C, the Planning Commission may approve a higher density, up to 35 units per acre (1,250 sq. ft. of site area per unit).

In order to approve a Use Permit to allow development at or near the upper end of the density range (e.g. 35 units/acre), the Downtown Specific Plan states that the Planning Commission must find that the proposal is superior in terms of all or most all of the eight criteria listed below. Following each criterion is staff's discussion regarding the

proposal's compliance:

- 1) **Assembling all or most of the contiguous parcels into one project, and designing the project as a new neighborhood.** Not applicable; there are no parcels contiguous to the subject parcel, which is surrounded by public streets.
- 2) **Design and appearance.** While there are currently no projects within the Downtown Shoreline District to use as comparisons in judging whether a project is "superior," the concept of allowing added density above a prescribed basic allowable density and subject to Use Permit approval, is well established within the larger Downtown Martinez context.

Since 1996, such increases in project density have been allowed within the Downtown Overlay Zoning District, subject to Use Permit approval. The Downtown Overlay District, which is immediately adjacent to the west and south of the subject property, also encompasses all of the adjacent Downtown Neighborhood Sub-District of the Specific Plan. Within this neighborhood, immediately to the north of the subject property, both the recently completed three-unit complex at 231 Main Street (Aiello) and eight-unit complex at 500-528 Berrellesa Street (Villa del Sol) are examples of what have previously been found to be superior projects that received approval to exceed the basic allowable densities applicable to their subject R-Residential Zoning District. Attributes that these two existing projects, and the current proposal share, which make them superior additions to their context include:

- a) Extensive landscaping adjacent to streets. Those parts of the Downtown's residential neighborhoods closest to commercial areas often lack front yard landscaping and street trees. Especially in regards to the Villa del Sol project, the economic advantage of higher densities has allowed for the significant public benefit of added trees and landscaping. The subject proposal, with street frontages on all four sides, is proposing extensive landscaping, with trees and shrubs planted in informal patterns to echo the planting patterns of the nearby residential neighborhood. This residential landscaping will create a streetscape far superior to that of the existing industrial streetscape.
- b) Unified architectural vocabularies that are rooted in local styles. Unlike older multi-family construction from the 1960's and 1970's which did not utilize historic architectural vocabularies, the architectural styles used by the projects noted above, as well as the subject proposal (Craftsman/ Bungalow for 231 Main Street; Spanish Revival for Villa del Sol; and Late Victorian/Neoclassical for the proposed Berrellesa Palms project) are examples of how new buildings, often built with densities that are higher than neighboring structures, can be a superior fit to the area's broader historical architectural context.
- c) High level of detailing, building articulation and materials. On all three projects, the inclusion of such superior features as decorative pavers in place of asphalt or concrete and building elevations with well articulated bay window type details exemplify a high degree of design and appearance. Some distinct features of the proposed Berrellesa Palms proposal include extensive porch, terrace and arbor details along the street, providing both a superior appearance from the street as

well as a relatively high amount of recreational open space for the new residents of the proposed project.

- 3) **Minimizing impacts on adjacent public lands.** Not applicable; there are no public lands adjacent to the subject parcel.
- 4) **Providing onsite amenities for the future residents.** Unlike most of the existing multi-family buildings in the Downtown area where little or no common open space areas are provided, the subject project will provide a relatively generous central garden/terrace area. In addition, smaller common balcony/terrace areas are proposed. And as fitting an apartment complex designed for seniors, generous interior common recreation and reading rooms are proposed. Each of these facilities together provides superior onsite amenities for future residents.
- 5) **Preserving or creating view corridors from public streets such as Talbart, Buckley, Marina Vista, Carquinez Scenic Drive, Castro and Berrellesa.** Existing views toward the Straight, enjoyed when looking down public street corridors (including Richardson Street), will not be adversely impacted. While some side views across the subject property will naturally be affected by any construction on the largely vacant lot, the relocation of some date palm trees may open up some new views.
- 6) **Utilizing green building practices to the maximum extent possible.** The developer has committed to meeting the industry standards, established by the [U.S. Green Building Council](#) (USGBC), for certification pursuant to the Leadership in Energy and Environmental Design (LEED) for Homes Green Building Rating System. The features to be provided include, but are not limited to: diversion of 75% of demolition waste, exceeding energy performance standards of State Title 24 by over 15%, use of Energy Star refrigerators and dishwashers in all units, use of double glazed low E windows, rain water harvesting for irrigation of drought tolerant landscaping, solar hot water and photovoltaics to offset common area energy usage and interior finishes and materials to improve indoor air quality, such as recycled content carpets, formaldehyde free materials and low or no VOC paints.
- 7) **Providing a variety of housing types, including detached single-family residential, where feasible, as a transition in areas near existing single family neighborhoods.** As the subject property adjoins a neighborhood of mixed residential densities to the south and west, consisting of a mixture of single-family, duplex and multi-family buildings, and due to the development objective of providing affordable housing for seniors, single-family home construction is not feasible, and is not necessary to provide the desired transition to the existing eclectic residential neighborhood. But in looking at the entire Downtown Area, the proposed development adds to the variety of housing types available, as there are few comparable high density senior housing opportunities in the downtown.
- 8) **Providing a new public street system that improves access to the Regional Shoreline and Alhambra Creek, potentially by extending Alhambra Avenue along the creek, and vacating Berrellesa.** Not applicable; the site is not contiguous to either the Regional Shoreline or Alhambra Creek.

SUMMARY: Of the five criteria that are applicable to this project on the subject parcel (#2, #4, #5, #6 and #7), the proposal is superior in all. In the most critical criteria of design and appearance, view corridor preservation, provision of on-site amenities and use of green building practices, the project is consistent with the standards for Use Permit approval to allow density of up to 35 units/acre (1,250 sq. ft. of site area per unit), with a maximum height of three stories and approximately 36'.

D. Use Permit approval and Permitted Height

Pursuant to Downtown Specific Plan Section 9.5.3 and MMC Section 22.23.050.B: Maximum Height for Downtown Shoreline Zoning District, the maximum permitted building height for projects approved at a density of 35 unit per acre is 40', or three stories. Should the Use Permit for the requested density be granted, no additional action will be necessary to allow the requested maximum building height of 36'/three stories.

E. Use Permit Standards per Zoning Code Chapter 13: Downtown Overlay District

In addition to the standards for Use Permit approval discussed above, The Downtown Overlay District regulations provide additional requirements relating to the granting of a Use Permit to adjust the zoning standards of the Downtown Overlay District, which pursuant to the Downtown Shoreline District regulations, are applied to property within the Downtown Shoreline Zoning District.

Pursuant to MMC Section 22.13.030.C, a 10' front yard setback may be permitted upon a finding by the Planning Commission as set forth below:

- **The proposed front yard setback of 10' is consistent with, and not detrimental to, the existing development in the neighborhood.** The 10' setbacks proposed for both front yards of this dual frontage lot is equal or greater than most of the front yard and street-side side yard setbacks of the surrounding properties, and thus is consistent with the existing pattern of development in the neighborhood. Furthermore, the same 10' setback is permitted for the two street-side side yards on the property.

In addition, MMC 22.13.030.F requires that in order to grant a Use Permit pursuant to the regulations of the Downtown Overlay District, the following additional two findings must be met.

- 1) **That the residential development will complement and be compatible with the existing residential community and reflect the historic ambiance of the Downtown residential district.** The Late Victorian/Neoclassical architectural vocabulary, defined by the extensive use of bay windows, horizontal hardboard siding and extensive wood accent wall and roof parapet detailing, has been designed to be consistent, compatible, and complementary with the existing residential community and the historic ambiance of the Downtown area.
- 2) **That the architecture, landscaping and site plan of the residential development will result in a significantly better environment than otherwise would have occurred under the existing zone (sic) district requirements.** The proposal is

consistent with the criteria for granting approval of the maximum density within the Downtown Shoreline District, due to its superior design, appearance and historically based architectural detailing and extensive landscaping that exceeds that found in the neighborhood. The allowance of 10' front yard setbacks is an appropriate adjustment to facilitate the development of a project that will create a significantly better environment than otherwise would occur were the normally required 20' setback imposed, precluding the proposed development.

SUMMARY: The required Findings for all three standards for Use Permit approval pursuant to Zoning Code Chapter 13: Downtown Overlay District, can be made.

F. Use Permit Standards per Zoning Code Chapter 40: Use Permits

In order to approve the proposed project as submitted, a Use Permit is required to allow the proposed project density at the requested 35 units per acre, height over 30'/two stories and requested 10' front yard setback. In addition to the Use Permit standards described above, said Use Permit is subject to the provisions of the Martinez Municipal Code as generally applied to all Use Permit requests.

Pursuant to MMC Section 22.40.070, an application for a use permit may be granted based on the following findings.

- 1) **The proposed location of the conditional use is in accord with the objectives of this title, and the purposes of the district in which the site is located.** The stated purpose of the Downtown Shoreline District is to provide for a variety of new residential uses, which are to replace the existing industrial uses that currently separate the older Downtown neighborhood from the Martinez Regional Shoreline Park to the north. The purpose of the District is "...to contribute to the economic revitalization of Downtown, by permitting a sufficient intensity of development to provide the economic incentive for industrial uses to relocate," and as noted in Zoning Ordinance Section 22.23.010 (Purpose), to be replaced with residential development that "respects and complements the existing primarily single-family neighborhood immediately to the south."

This project is consistent with the criteria for granting approval of the maximum density within the Downtown Shoreline District, in that the project is superior in design and appearance, view corridor preservation, provision of on-site amenities and use of green building practices. It is also complementary to the historic architectural styles, varied massing and informal landscape vocabulary of the adjacent neighborhood. Articulation of the proposed building creates the appearance of multiple buildings, echoing the mixture of single- and multi-family buildings of the adjacent neighborhood. Therefore, the Use Permit to allow the proposed density, height and 10' front yard setback is consistent with the objectives of Title 22 and the purposes of the Downtown Shoreline District.

- 2) **The proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.** The conversion of this industrial use to a multi-family development

to be built with the conditionally permitted maximum density of the Downtown Shoreline District, and 36' building height, will have no detrimental impact on the current industrial neighbors to the north and east. Furthermore, the building has been designed to avoid materially injurious impacts to the residential neighbors to the south and west. The greatest building mass is located along the north and east sides, adjacent to the current industrial properties and away from the residential properties, where the building's scale is more comparable to that of a single-family neighborhood. The site topography, rising to the greatest elevation at the southwest corner, also helps reduce the apparent height above existing grade. At the corner of Richardson and Buckley Streets, on the opposite corner from the existing single-family homes, the proposal will appear as a two-story building with a 20' building height, comparable to that of the single-family homes within the immediate area and below the threshold for which a Use Permit to allow construction over 30' in height. Additional benefits to the health, safety and welfare to the community will be the removal the visual clutter and a poorly maintained industrial use and structures, remediation of the contaminated ground water from past industrial uses, and the reduction of truck traffic by converting from industrial to residential uses, with total vehicular traffic remaining well below what was envisioned for the Downtown Shoreline District as planned for in the Specific Plan EIR.

- 3) **The proposed conditional use will comply with each of the applicable provisions of Title 22 of the Martinez Municipal Code.** With the exception of the incentives/concessions mandated by Government Code Section 65915: *Incentives For Lower Income Housing Development* (see below), the proposal complies with all other applicable provisions of Title 22, including requirements for off-street parking and the development standards, as adjusted with the subject Use Permit approval, of the Downtown Shoreline District.

Section 65915 requires the City to allow the following as requested by the applicant:

- a) 35% density bonus, permitting 49 rather than 35 units/acre;
- b) two concessions pursuant to 65915(d)(2)(B) to the standards of the Downtown Shoreline District:
 - i) permitting site coverage of 49%, in excess of the 45% maximum normally permitted, and
 - ii) allowing the total of usable open space to equal 226 sq. ft. per unit, as opposed to the 400 sq. ft. per unit normally required; and
- c) a waiver of development standards pursuant to 65915(e) to allow the project to be built as rental housing, instead of condominiums.

SUMMARY: The required Findings for all three standards for Use Permit approval pursuant to Zoning Code Chapter 40: Use Permits can be made.

Downtown Specific Plan Consistency Findings Group #3: Development Standards and Design Guidelines, and Design Review Approval

Specific Plan's Design Guidelines for Downtown Shoreline District

The following discussion and analysis addresses the consistency of the proposed project with the provisions of the Downtown Specific Plan Shoreline District Design Standards and Guidelines.

A. Character Defining Statements for Downtown Shoreline District

The character defining statement (Section 9.6.1) for the Downtown Shoreline District states (applicable text emphasized in *italics*):

The character of the Downtown Shoreline area is defined by its proximity to Downtown residential neighborhoods to the south and the Martinez Regional Shoreline to the north. *This is primarily a district for residential uses, including semi- and/or fully-attached single-family homes, live-work uses, and small multifamily structures.* New development should be planned to create views of the Shoreline from Downtown where possible. Large industrial uses are encouraged to relocate out of the District, but smaller, self-contained service commercial uses may coexist with existing and new residential uses.

As a newly evolving residential area, the Downtown Shoreline District has little residential vocabulary and design context to draw from. As such, the Guidelines recommend that inspiration be drawn from the adjoining Downtown Neighborhood District. Section 9.6.3(a-b) of the Downtown Shoreline District Specific Design Guidelines states that:

New Buildings (in the Downtown Shoreline District) should have a traditional residential style, *reminiscent of existing residences in the adjacent Downtown Neighborhood District.* A consistent architectural style should be used for a building....several styles predominate in the Downtown Neighborhood District....and should provide inspiration to help maintain Martinez' unique character.

STAFF ANALYSIS: As the Downtown Shoreline is a neighborhood yet to have its own residential character, the *traditional residential styles, reminiscent of the existing residences in the adjoining Downtown Neighborhood District* (adjoining the site to the south and west) was set up to be the guide. It is within this wider context of mixed densities and historic styles that the proposal is consistent. The project appropriately uses neoclassical design elements from the late Victorian/Edwardian era from the turn of the last century. Much of the window, parapet and cornice details are from what in the greater Bay Area may be called neoclassical themes from the early 1900's. Elements of these complementary design vocabularies are common throughout the Downtown Neighborhood District.

B. Applicability of Specific Design Guidelines

Following the Defining Character discussion above, Chapter 9: Downtown Shoreline District and Chapter 10: General Design Standards and Guidelines, offer additional guidance. It should be recalled that the Specific Plan Design Guidelines were written to aide project designers and decision-makers in developing projects that comply with the broad goals, policies and character defining statements of the Specific Plan. In addition, the following provision under Chapter 3; Downtown Land Use Areas states:

3.3.3. Interpretation - The design guidelines are general and may be interpreted by the Design Review Committee for specific projects with some flexibility, consistent with the purpose of the district. Variations may be considered for projects with special design characteristics during the City's design review process to encourage the highest

level of design quality while at the same time providing the flexibility necessary to encourage creativity on the part of project designers.

While a complete Guidelines Compliance Matrix has been prepared (Attachment D), the most relevant topics, with staff comments, are discussed below:

9.6.3 Architecture

Style:

- a) New buildings should have a traditional residential style, reminiscent of existing residences in the adjacent Downtown Neighborhood District.
- b) A consistent architectural style should be used for a building and the elements that relate to it, such as trellises, carports, roof forms, windows and detailing. While specific architectural styles are not dictated, several styles predominate in the Downtown Neighborhood District and the other residential parts of Downtown Martinez and should provide inspiration to help maintain Martinez' unique character. Styles need not be replicated literally, but should be clearly reflected in a proposed project.
- c) For buildings with more than six residential units, or projects with more than two residential buildings, design shall be varied, not uniform or monotonous.

STAFF ANALYSIS: The entire complex uses neoclassical design elements from the late Victorian/Edwardian era from the turn of the last century. Much of the window, parapet and cornice details are from what in the greater Bay Area may be called neoclassical themes from the early 1900's. Elements of these complementary design vocabularies are common throughout the Downtown Neighborhood District. With the use of period bay window details, and more significant recesses in the façade mid-block at Buckley Street, the visual variety necessary for consistency with the Guidelines is achieved.

Scale:

- a) New buildings should respect the overall massing scale of the neighborhood.
- b) Long blank walls should be avoided.

STAFF ANALYSIS: One of the greatest challenges of the proposal is meeting the functional demands of a blocked-sized senior apartment building, while respecting the established massing pattern of the neighborhood, where buildings are typically on 50' x 100' or 100' by 100' (quarter block) lots. As stated above, changes in façade plane (Buckley Street elevation), as well as significant break changes in the roof, and detailing for the lobby and common area (Berrellesa Street elevation,) appropriately echo the massing of how smaller lots would have developed individually. The proposal is generally consistent with the Guidelines for Scale, in that no long wall planes exist because significant indentations and/or bay window projection in all façade planes that would otherwise be longer than 50' s have been incorporated into the design.

Roof Design:

The typical roof in this area should be of a pitched design reflective of nearby residences.

STAFF ANALYSIS: While pitched roofs are typically a good tool to reduce visual massing and achieve compatibility within an older residential context, the specific circumstances of the parcel have instead lead the applicant to propose a flat roof as a means of fitting into the existing context. In applying the flexibility prescribed by the Specific Plan in provision 3.3.3., the variation of a flat roof with a parapet, as opposed to pitched roof, appears warranted for the following reasons:

- i) A flat roof with parapet allows for a lower overall building height (approximately 35') as opposed to 38'-40' with a pitched roof. In previous public meetings and at the Planning Commission study session, the applicant was given specific direction to reduce building height to the greatest extent possible while preserving the integrity of the project's affordable housing objective.
- ii) This particular setting contains adjacent and nearby structures (e.g. the existing multi-family structure at the southwest corner of Berrellesa and Buckley Streets) that have flat roofs.

APPEAL ISSUE #3 – CLAIM THAT HISTORIC RESOURCES MAY BE IMPACTED BY PROJECT

Allegation of the appeal:

One of the appellants claims that there are undocumented "Historic Resources" on the site and in the immediate vicinity, and that if these alleged resources were documented the project could have negative impact on them. Pursuant to the appellant's claim, these impacts would have impacted the Planning Commission's ability to: a) approve the project, and b) approve the use of the CEQA exemption.

Finding to deny appeal on claim project will negatively impact Historic Resources:

There is no credible, substantial evidence to suggest that there are any Historic Resources on the site or in the immediate vicinity that could possibly be negatively impacted by the project.

Facts in Support of Finding

For the purpose of the applicable Federal and State environmental laws, a "Historic Resource" generally means a building or site of such architectural or cultural significance, that it is either on a Federal, State or local register of such resources, or can be documented that such building or site is eligible for inclusion on such registers. In addition to the permits being requested of the City, the developer has concurrently requested funding approval pursuant to the Federal Community Block Development Grant – or CBDG - process, which for the City of Martinez, is administered through the Contra Costa County Community Development Department. As the responsible agency under National Environmental Policy Act (NEPA), the County required that

the developer conduct an historic review of the property and its immediate surroundings. That study, completed by Carey and Co. in February 2009, fulfilled the documentation requirement under NEPA that no Historic Resources would be impacted by the proposed project and is provided as Attachment #3.

One of the appellants, Kristen Henderson, prepared the attachment to her appeal alleging shortcomings she perceives with the February 25, 2009 Carey and Co Report. Ms. Henderson's opinion is that of a layperson. She contends that additional background and other information should have been included in the Cary and Co. report. While it is her opinion that had the information in her appeal been considered by Carey and Co., "Historic Resources" would have been identified. The Carey and Co report, as further described below, has adequately shown that the proposed project will not negatively impact any Historic Resource, even if any were to be identified in the vicinity.

Carey and Co. was retained to determine if this project would impact historic resources, should any historic resources be identified. Given the two- and three- story height of the proposed project, the radius of neighboring properties that would have the potential for negative impact is largely restricted to properties immediately adjacent to the site. The report analyzed the historic potential of all structures on the subject site and those structures immediately opposite and diagonally across the subject block. Carey and Co. concluded that "none of the structures appears to be eligible for listing on the national Register of Historic Places (NRHP) or the California Register of Historic Places (CRHR)."

The Carey and Co. report also considered the potential for impacts beyond the immediately adjacent structures. Again, it should be recalled that the two- and three- story height of the proposed project limits the range of impact, as the proposed structure is not significantly taller than the buildings within the neighborhood. The report determined that "it is not anticipated that the project would effect properties beyond" those immediate structures, as the project will not be readily visible from beyond those properties. Were there to be Historic Resource(s) on blocks beyond the range of those studied by Carey and Co., there is no possibility for any significant impact. Any potential resource would be too far away from the site. The report concluded that no historic district appears to be located in or intersect the study area, and therefore the project will have no negative impact on any Historic Resource.

It should be noted that the 2004 Specific Plan EIR, which did envision the possibility of the subject site being developed with a multi-family housing of somewhat comparable size, found no Historic Resources in the immediate vicinity, and no mitigation measures were imposed at that time to address any potential significant impacts to such Historic Resources.

APPEAL ISSUE #4 – COMPLIANCE WITH GENERAL DESIGN REVIEW REGULATIONS

In addition to the requirements for Use Permit approval, and consistency with the Specific Plan's Design Guidelines, the Project must also be found to be in compliance with the 12 criteria that apply to all projects seeking Design Review approval. Two of the 12 criteria have been raised as part of the appeal:

Allegation of the appeal; tree preservation:

The appeal alleges that Design Review approval to allow removal of the existing trees from the project site is in violation of City regulations (Design Review Criteria #9), which requires that the project's type and location of planting shall be designed "*with respect to the preservation of specimen and landmark trees, water conservation as set forth in Chapter 22.35.*"

Finding to deny appeal on claim project will inappropriately allow removal of trees:

Permission to remove trees, and the requirement for replacement trees, is integral to the Design Review process, and permitted pursuant to City Regulations.

Facts in Support of Finding

A tree report has been prepared by the applicant provided as Attachment #4, which was used for the development of the proposed landscape plan. As a developed, industrial parcel, all 24 of the trees on site (with 6.5" diameter trunk or larger) are defined by the City as protected trees, regardless of species. As per City policy, approval for removal of protected trees can be granted as part of a project's Design Review approval, which includes the approval of a new landscape plan. Only the 14 Canary Island Date Palms and five Coast Redwoods are noteworthy due to their height, but none are highly suitable for preservation, in that:

- a) The Martinez Municipal Code currently does not have a definition for what a "specimen" or "landmark" tree is, and since these terms often relate to a tree's size, "size" by itself can not be the sole criteria to mandate preservation. MMC Chapter 8.12; *Trees on Private Property – Preservation, Protection and Removal* does however place the greatest emphasis on the possible preservation of "all oak trees and indigenous trees." Permits are required to remove such indigenous trees regardless of property use or status of project review – as opposed to exotic species, such as palms – where permission to remove such trees is only required until such time a residential project is approved for the site; and
- b) While the Redwoods are an indigenous species, none of the subject trees have been rated as highly suitable for preservation pursuant to the Tree Report, given their close proximity to the public right-of-way and being rated "average" in condition.

The grading that will be necessary for the required frontage improvements and proposed construction necessitates the removal (or possible relocation) of all but three of the existing trees. The retention of three of the Canary Island Date Palms is proposed for at their present location at Richardson Street. Other Date Palms are proposed for relocation within the site, pursuant to the proposed landscape plan. In light of the proposed retention/relocation of the Date Palms, and extensive replacement plantings of shade and accent trees being proposed, the proposed tree removal, preservation and conceptual planting plan is appropriate. A Condition of Approval will require the developer to return to the Design Review Committee prior to issuance of building permits, for review and approval of a final landscape plan, which will include review of possible tree and/or shrub species that can replace the Coast Redwoods with similar evergreen plantings that are more suitable to the somewhat constrained area available for replacement plantings.

Allegation of the appeal; view preservation:

The appeal alleges that Design Review approval of a 36' tall building, which will block some views toward the Carquinez Straight from private property on the opposite side of Buckley Street (a separate issue from views "from public streets," which is regulated by the Downtown Specific Plan) is in violation of City regulations (Design Review Criteria #12 which requires that views from nearby properties shall be substantially preserved "where this can be done without severe or undue restrictions on the use of the site, balancing the property rights of the applicant and the affected property owner(s)."

Finding to deny appeal on claim project will inappropriately allows removal of trees:

Approval of the maximum building height, proposed at 36' is integral to the Design Review process, and permitted pursuant to City Regulations.

Facts in Support of Finding

As the subject property has been virtually vacant for decades, some residents on Buckley Street have enjoyed partial views toward the Carquinez Straight across the subject property. It appears that any development of the property, even at the basic allowable two-story/30' height limit, would block much of the views currently enjoyed by the property owners on this street. Given that any possible design change to preserve these views would place a greater restriction on the use of the property than would be applicable even under the basic allowable building envelope, the possible imposition of such design changes can be seen as a severe or undue restriction on the use of the site. However, It should be noted that the views of the Straight from nearby properties further to the south and west will be preserved, as the these residences are at elevations that will be able to see over the proposed building.

APPEAL ISSUE #5 – APPLICABILITY OF STATE MANDATED DENSITY BONUS AND AFFORDABLE HOUSING PROJECTS.

Allegation of the appeal:

The Density Bonus has been incorrectly applied, as the allowable density limitations of the Downtown Specific Plan have not been correctly applied; and that the waiving of the Downtown Shoreline District's requirement for a subdivision map exceeds the parameters for the granting of such Incentives, Concessions and Waiver of Development Standards pursuant to State law.

Finding to deny appeal on claim State Density Bonus Law has been incorrectly applied:

The granting of requested Density Bonus, Concessions and Incentive has been made consistent with State law.

Facts in Support of Finding

California Government Code Sections 65915-65918 require that all cities and counties grant, when requested, a density bonus, concession, incentive and/or development standard waiver for projects that will limit the rents charged for a percentage of the units making them affordable to moderate, low or very low income households. The term "affordable" is generally defined as

being no more than 30% of the household's income, with the categories of moderate, low and very low income being defined as percentages of the County's median income. Low income is defined as being no more than 80% of median income. Since all 48 rental units (there will be one manager's unit) will be affordable to low income households, the maximum possible density bonus of 35% is being requested. Note that the maximum 35% bonus is allowed for projects that restrict as little as 20% of the units to rents that will be affordable to low income households.

Likewise, the granting of concessions and incentives is also based on the percentage of income restricted units. The maximum of three possible concessions and incentives is mandated for projects where at least 30% of the units are affordable to low income households. Since 100% of the project will be affordable to low income residents, the maximum number of concessions and incentives is permitted.

Pursuant to this State regulation, the applicant has requested the following:

- Density Bonus. The applicant has requested that a 35% density bonus be applied to the maximum density of 35 units/acre, which is permitted, with Use Permit approval, in the subject DS - Downtown Shoreline District. With the application of the requested density bonus, a maximum of 49 units per acre is possible.
- Concessions and Incentives. In addition to the density bonus described above, these regulations allow for the granting of up to three concessions and/or incentives. A concession or incentive is defined as "a reduction in site development standards or a modification of zoning code requirements or architectural design requirements.... including but not limited to, a reduction in square footage requirements... that would otherwise be required that result in identifiable, financially sufficient and actual cost reductions."

The applicant has requested two concessions:

1. Permitting site coverage of 49% as opposed to the maximum 45% normally allowed.
2. Reducing the per unit requirement for useable open space from a minimum of 400 sq. ft. per unit to 226 sq. ft. per unit.

The applicant is also requesting a "waiver of development standards" pursuant to Government Code Section 65915(e), to relieve the requirement for a subdivision map to create condominiums, as otherwise required for multi-family projects within the Downtown Shoreline District.

It is important to note that Section 65915(d)(1) states:

...the city shall grant the concession or incentive unless the city makes a written finding based upon substantial evidence that, of the concession or incentive will have a specific adverse impact, as defined in paragraph (2) of subsection (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

As used in Section 65589.5(d)(2), the term *specific adverse impact* is defined as:

...a significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, policies or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

Given that a finding of *specific adverse impact* cannot be made and that no evidence of such an impact has been submitted, the requested concessions and incentive are required by State law and have been granted appropriately.

APPEAL ISSUE #6 – APPLICABILITY OF CEQA EXEMPTION TO PROJECT

Allegation of the appeal:

Believing the project is not consistent with General Plan, Specific Plan and Zoning Regulations, and that there are Historic Resources that could be negatively impacted by the project, the appellants claim that the Exemptions for the requirements of additional environmental analysis (Exempt by Statutes for Housing Projects; California Public Recourses Code Sections 21159.21, 21159.23 and 21159.24, and CEQA Guidelines Sections 15192, 15194, 15195 and 15182, and Categorical Exemption Class 32; 15332; In-Fill Development Projects) do not apply, and that additional review, in the form of a new Initial Study or EIR should be required.

Finding to deny appeal on claim that Exemptions do not apply to project:

Given that the project is consistent with the General Plan, Specific Plan, Zoning Regulations, and that there are no Historic Resources that could be negatively impacted by the project, as documented above, the exemptions are appropriate and no additional environmental studies are required.

Facts in Support of Finding

As part of the Downtown Specific Plan adoption process, an Environmental Impact Report (EIR) was prepared, with the City Council certifying the Final EIR in July 2006. The EIR and the adopted mitigation measures addressed the environmental issues that have been raised at the study session and Design Review Committee meetings, such as mitigation of noise from passing trains and remediation of potentially contaminated soils from the current industrial uses.

California Public Recourses Code Sections 21159.21, 21159.23 and 21159.24, and CEQA Guidelines Sections 15192, 15194 and 15195 generally exempt residential projects for which: a) such a Community Level Environmental Review has been completed and certified, from further CEQA analysis, and b) are defined as being both affordable and in-fill projects by the subject regulation. Staff finds that the project meets the criteria in Section 21159.21: Exemption for Qualified Housing Projects and the companion Guideline Section 15192: Threshold Requirements for Exemption. Furthermore, staff finds the specific exemption for affordable housing (Sections 21159.23/15194), and for infill housing (Sections 21159.24/15195) apply. Furthermore, staff finds that there are no special circumstances present, pursuant to these Sections, which would otherwise make CEQA applicable. Given the applicability of these

exemptions, no additional CEQA studies are required, and that compliance with the existing Mitigation Measures of the Specific Plan EIR completes the CEQA process for this project.

For additional background, the applicable sections from the California Public Recourses Code that outline the criteria for such exemptions are provided as Attachment H, and the Downtown Specific Plan EIR's Mitigation and Monitoring Program is provided as Attachment I. It should be noted that the project also qualifies for a Categorical Exemption as in-fill development, as specified within the CEQA Guidelines below:

15332. IN-FILL DEVELOPMENT PROJECTS: Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

- 1) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- 2) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- 3) The project site has no value as habitat for endangered, rare or threatened species.
- 4) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- 5) The site can be adequately served by all required utilities and public services.

APPEAL ISSUE #7 – ADDITIONAL ENVIRONMENTAL REVIEW CONCERNS

In addition to the issues raised above regarding the appropriate level of CEQA review, the appellants have raised other environmental issues that they subjectively believe exist.

- A. Claim that additional hazards to new residents from flooding, railroad noise and traffic now exist, that didn't exist in 2006, and therefore additional environmental review is now required: RESPONSE: These preexisting conditions for the residential development of this currently industrial property issues were all addressed in the 2006 DSP-FEIR. There is an absence of evidence s regarding any significant change in the level of noise generated by the Railroad, the risk from flooding, or level of traffic impacts from the appellants. With no substantial changes to the pre-existing circumstances, the proposed project requires no modification beyond those mitigations already required by the 2006 DSP-FIER to reduce impact to new residents to less than significant levels, and therefore no additional environmental review is required.
- B. Claim that the proposal to for a building height of three stories/36', which is higher that the two story.30' limit allowed in the Downtown Shoreline District (without use-permit approval) constitutes an new circumstance that was not studied under the 2006 DSP-FEIR, and therefore the exemptions do not apply and additional environmental review is now required: RESPONSE: The ability for the Planning Commission to approve buildings of up to three stories/40' tall is integral to the Downtown Specific Plan and the Final EIR approved for the Specific Plan. No additional environmental review is required, and the exemptions from CEQA are appropriate as proposed.

- C. Claim that project will contribute to “cumulative impacts” which have not been analyzed in the 2006 DSP-FEIR, and therefore the exemptions do not apply and additional environmental review is now required: RESPONSE: The 2006 DSP-FEIR addressed the potential impact of the entire Downtown Shoreline District converting from Industrial to Residential Use. Within that context, the proposed increase in density being requested for this particular project is insignificant and is in addition – not discretionary pursuant to State law. Each project is individually reviewed based upon its own merits, and the findings needed for approval allow the Planning Commission to exercise its discretion in reviewing projects for compatibility, context, appropriateness of design, and other criteria contained in the findings. There are currently no reasonably anticipated future projects proposed in the Downtown Specific Plan at the density of this project or otherwise. Therefore there is no “cumulative impact” unique to this project.

DISCUSSION PART II – DEVELOPMENT APPROVAL

DEVELOPMENT ISSUE #1 – CITY COUNCIL APPROVAL OF USE PERMIT, DESIGN REVIEW AND STATE MANDATED DENSITY BONUS, CONCESSIONS AND WAIVER OF DEVELOPMENT STANDARDS

As a de novo appeal, Council Members should note that in addition to taking on the appeal itself, the Council will also have to take action on the individual entitlements that the Planning Commission granted. The draft resolution and conditions of approval would ratify the Planning Commission’s action without any changes.

DEVELOPMENT ISSUE #2 –STATE IMPOSED LIMITATIONS ON CONDITIONS CITIES CAN IMPOSE IN AFFORDABLE HOUSING PROJECTS

Government Code section 65589.5 (Known as the “Housing Accountability Act of 2007”) places limitations on the type of conditions cities can place on Affordable Housing projects, such as the subject proposal. Specifically restricted is cities’ ability to “impose restrictions including design changes, a reduction of allowable density... that have a substantial adverse effect on the vitality of the housing development.” The applicable Sections are provided below:

- 65589.5(i) *If any city, county, or city and county denies approval or imposes restrictions, including design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record*

65589.5(d) *A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon substantial evidence in the record, as to one of the following:*

- (1) *The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.*
- (2) *The development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.*

- (3) *The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.*
- (4) *The development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.*
- (5) *The development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article.*
- (A) *This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.*
- (B) *If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low and low-income categories.*

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

FISCAL IMPACT:

None.

ACTION:

Adopt draft resolution and conditions of approval denying the appeal and upholding Planning Commission decision by approving requested Use Permit, Granting of Density Bonus, Concessions and Waiver of Development Standards pursuant to State Law, and Design Review Approval.

ATTACHMENTS

1. Appeal Letters & additional information from Appellants
2. Correspondence for City Council
3. Carey Co. Historic Resource Report
4. Tree Report
5. Draft Resolution and Conditions of Approval
6. Planning Commission Minutes and Resolution
7. Planning Commission Report

APPROVED BY:



City Manager