

RESOLUTION NO. -09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARTINEZ, DENYING AN APPEAL FOR THE PLANNING COMMISSION'S APPROVAL, AND GRANTING A USE PERMIT AND STATE MANDATED DENSITY BONUS, INCENTIVES/CONCESSIONS AND DESIGN REVIEW APPROVAL TO ALLOW CONSTRUCTION OF A NEW SENIOR APARTMENT BUILDING ("BERRELLESA PALMS"/RCD, DEVELOPER) WITH DENSITY AND HEIGHT ABOVE NORMALLY PERMITTED, AND FRONT YARD SETBACK LESS THAN THE NORMALLY REQUIRED, AT 310 BERRELLESA STREET (APN: 372-091-002)

WHEREAS, RCD, Resources for Community Development ("Applicant") has made application to the City of Martinez ("City") for a Use Permit and Design Review approval for the construction a new 49 unit affordable senior apartment building; "Berrellesa Palms" ("Project") (310 Berrellesa Street; 372-091-002); and

WHEREAS, the base zoning applicable to the property is DS - Downtown Shoreline Zoning District, which allows multi-family as a permitted use; and

WHEREAS, the proposed Use Permit would allow the project to exceed the base density of 17 unit per acre and 2 story/30' height limit normally permitted. In addition, the proposed Use Permit would permit a front yard setback less than the 20' normally required in the DS - Downtown Shoreline Zoning District; and

WHEREAS, the DS - Downtown Shoreline Zoning District allows for a density of up to 35 units per acre subject to Use Permit approval; and

WHEREAS, the development standards prescribed by the DS - Downtown Shoreline District allow a maximum building height of three stories/40' for projects approved at 35 units per acre, and allow for a 10' minimum front yard setback, subject to Use Permit approval; and

WHEREAS, the Applicant has requested a 35% density bonus for affordable housing, pursuant to California Government Code Sections 65915-65918, to allow 49 units per acre where a maximum of 35 units would normally be permitted, and related concessions/incentives to requirements for useable open space, maximum site coverage and subdivision map; and

WHEREAS, Design Review approval is required for all multi-family residential development within the City; and

WHEREAS, the Planning Commission held a duly noticed public hearing on July 28, 2009, in regards to the said actions and has considered public testimony and all other substantial evidence in the record; and

WHEREAS, on August 11, 2009, the Planning Commission adopted Resolution 09-06, granting a Use Permit and State Mandated Density Bonus, Incentives/Concessions and Design Review approval to allow construction of a new senior apartment building ("Berrellesa Palms"/RCD, Developer) with density and height above normally permitted, and front yard setback less than the normally required, at 310 Berrellesa Street; and

WHEREAS, on August 21, 2009, the City of Martinez did receive two appeals, one by Beth Eiselman and the other jointly filed by Kristin Henderson, Tim Platt and Harland Strickland, appealing the Planning Commissions actions to: (1) find the proposed project exempt from CEQA; (2) approve Use Permit; (3) grant State Mandated Density Bonus, Incentives/Concessions and (4) approve Design Review for the construction of a new 49 unit affordable senior apartment building ("Berrellesa Palms"); and

WHEREAS, notices of the hearings on said Appeals were sent to all neighboring property owners, the appellants and all parties having requested notice and were published in a newspaper of general circulation in the City in accordance with law; and

WHEREAS, on September 9, 2009, the City Council of the City or Martinez did hold a public hearing on said Appeals and did consider all oral and written evidence submitted to the City regarding same; and

WHEREAS, on September 9, 2009, the City Council of the City or Martinez did adopt Resolution No. -09 , denying an appeal and (1) finding the proposed project exempt from CEQA; (2) approving Use Permit; (3) granting State Mandated Density Bonus, Incentives/Concessions and (4) approving Design Review for the construction of a new 49 unit affordable senior apartment building ("Berrellesa Palms"); and

WHEREAS, the Record of Proceedings ("Record") upon which the Planning Commission bases its decision regarding the Project includes, but is not limited to: (1) the Downtown Specific Plan Final EIR and the appendices and technical reports cited on and/or relied upon in preparing the Final EIR, (2) the Mitigation Monitoring and Reporting Program, (3) all staff reports, City files and records and other documents prepared for and/or submitted to the Planning Commission, the City Council

and the City relating to the Final EIR and/or the Project, (4) the evidence, facts, findings and other determinations set forth in this resolution, (5) the City of Martinez General Plan, The 2006 Downtown Specific Plan and related EIR and the Martinez Municipal Code, (6) all applications, designs, plans, studies, data and correspondence submitted by the Applicant in connection with the Final EIR and/or the Project, (7) all documentary and oral evidence received at public hearings or submitted to the City during the comment periods relating to the Final EIR and the Project, (8) all other matters of common knowledge to the City Council including, but not limited to, City, state and federal laws, policies, rules regulations, reports, records and projections related to development within the City and its surrounding areas; and

WHEREAS, the Custodian of Records in the City Clerk of the City of Martinez; and

NOW, THEREFORE, BE IT RESOLVED that the City Council, based on its independent judgment, does hereby find and resolve as follows:

Section 1. Denial of the Appeals

- A. The City Council has reviewed and considered the information contained in the record, including but not limited to, all staff reports, all oral and written testimony presented at, or prior to, the hearing on the Project and all other matters deemed relevant prior to adopting this resolution.
- B. The City Council does, based thereon, hereby deny said Appeals and hereby adopts the findings set forth in **Exhibit A**, attached hereto and incorporated herein by reference.

Section 2. Project exempt from CEQA

- A. The City Council has reviewed and considered the information contained in the record, including but not limited to, all staff reports, all oral and written testimony presented at, or prior to, the hearing on the Project and all other matters deemed relevant prior to adopting this resolution.
- B. The City Council does, based thereon hereby find that the Project is exempt from the requirements of CEQA, including but not limited to, California Public Recourses Code Sections 2159,21, 21159,23 and 21159.24 and CEQA Guidelines Sections 15192, 15194, 15195, 15182 and 15332, as set forth in **Exhibit B**, attached hereto and incorporated herein by reference.

Section 3. Consistency with General Plan

- A. The City Council has reviewed and considered the information contained in the Record, including but not limited to, all staff reports, all oral and written testimony presented at, or prior to, the hearing on the Project and all other matters deemed relevant prior to adopting this resolution.
- B. The City Council, based thereon hereby finds that the Project is consistent with the General Plan and adopts the findings set forth in **Exhibit C**, attached hereto and incorporated herein by reference.

Section 4. Consistency with Downtown Specific Plan

- A. The City Council has reviewed and considered the information contained in the Record, including but not limited to, all staff reports, all oral and written testimony presented at, or prior to, the hearing on the Project and all other matters deemed relevant prior to adopting this resolution.
- B. The City Council does, based thereon hereby find that the Project is consistent with the Downtown Specific Plan and adopts the findings set forth in **Exhibit D**, attached hereto and incorporated herein by reference.

Section 5. Approval of Conditional Use Permit and Findings

- A. The Use Permit standards prescribed by Downtown Specific Plan Chapter 9 - Downtown Shoreline District and MMC Chapter 23 - Downtown Shoreline District require that in order to approve a density at or near the upper end of the density range, the Planning Commission would need to find that the proposal is superior in terms of all or most all of the eight criteria listed below. Based on the analysis in the staff report and the record as a whole, the Planning Commission does hereby find that the project is superior, in the following:
 - 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, (Craftsman/ Bungalow for 231 Main Street; Spanish Revival for Villa del Sol) 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. The subject project provides a Late Victorian/Neoclassical vocabulary which is seen throughout Downtown Martinez, which is far superior to other multi-family projects in Martinez.

- 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 superior 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 within 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 also being 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.** The project has been designed to preserve existing views toward the Straight, enjoyed when looking down public street corridors (including down Richardson Street). 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 additional new views. Thus the proposed project is superior to standard multi-family construction in terms of view preservation. As an existing block sized parcel, there is no opportunity to create new view corridors through the site.
- 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. Thus the project's green building practices are far superior to standard construction.

- 7) **Providing a variety of housing types, including detached single-family residential, where feasible, as a transition in areas near existing single family neighborhoods.** 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. The proposed project provides multi-family affordable housing for seniors, which provide the desired transition to the existing eclectic residential neighborhood. 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. Thus the project is superior in terms for contributing to the provision of a variety of housing types.
- 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.

- B. In addition to the special standards for Use Permit approval made above in Section 3, the Downtown Overlay District, MMC Chapter 22.13, provides 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 Zoning 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 the Planning Commission's finding below. Based on the analysis in the staff report and the record as a whole, the Planning Commission does hereby find:

1. **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 Planning Commission must make the following findings, which, based on the analysis in the staff report and the record as a whole, the Planning Commission does hereby find:

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, will be consistent, compatible, and complementary with the existing residential community and the historic ambiance of the Downtown area, in that these are the same materials, details and design vocabulary found in the majority of the older residential structures of the adjoining established neighborhood.
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.** As the proposal is consistent with the criteria for granting approval of the maximum density within the Downtown Shoreline District, in that the proposal is superior in design and appearance, with superior historically based architectural detailing and far more extensive landscaping than is currently found in the area, the additional density, height and allowance of 10' front yard setbacks are appropriate adjustments to facilitate the development of a project that will create a significantly better environment than otherwise would occur (see Section A above).

C. In addition to the special Use Permit findings made above in Section 3.A. for granting the requested increase in density and height, and made above in Section 3.B, Use Permit approval 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, the Planning Commission must make the following findings, which, based on the analysis in the staff report and the record as a whole, the Planning Commission does hereby find:

- 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 proposal is consistent with the criteria for granting approval of the maximum density within the Downtown Shoreline District, in that the proposal 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 its 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 would be required. 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.

D. Based on the Findings as set forth above in Sections A through C, the Planning Commission does hereby grant a Use Permit to allow the proposed maximum 36'/three story building height, where a maximum of 30'/two stories is normally permitted. 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. With the approval of the Use Permit, the requested maximum building height of 36'/three stories is thus also hereby approved.

Section 6. Granting of Density Bonus and Incentives/Concessions Pursuant to California Government Code Sections 65915-65918.

- A. The applicant has requested a 35% density bonus as well as concessions/incentives and waiver of development standards pursuant to California Government Code Section 65915, as listed below:
- a) Permitting site coverage of 49% as opposed to the maximum 45% normally allowed.
 - b) Reducing the per unit requirement for useable open space from a minimum of 400 sq. ft. per unit to 226 sq. ft. per unit.
 - c) Allowing 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 Zoning District.

Government Code Section 65915(d)(1) requires that the City shall grant the concession or incentive unless the city makes a written finding based upon substantial evidence that the requested concession or incentive: a) is not required in order to provide for affordable housing costs or targeted rents, or b) the concession or incentive would 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, or c) is contrary to State or Federal law. 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."

The Planning Commission finds that based on the Record as a whole the requested concessions/incentives are required to provide for the affordable housing costs and targeted rents based upon the 49 units necessary to make the project financially feasible. In addition, no evidence was presented to the Planning Commission which established that the

requested concessions/incentives would have a specific adverse impact upon the public health, safety or physical environment or on any real property that is listed in the California Register of Historical Resources, and no adverse impacts of the 4% increase in site coverage, or decrease in Usable Open Space were noted. In addition, the development standard exception to permit waiver of the condominium map requirement is financially necessary due to the cost and condominium requirements would not be viable as the property is to be deed restricted to be affordable rentals. Based upon the above, the Planning Commission hereby grants a 35% density bonus and the above noted concessions/incentives and waivers.

Section 7. Approval of Design Review Application and Findings

A. In order to approve the Design Review application pursuant to MMC 22.43.045, the Planning Commission must make the following findings, and based upon the analysis in the staff report and the record as a whole, the Planning Commission does hereby find that the project:

- 1) **Complies with all other applicable provisions of the Martinez Municipal Code involving the physical development of buildings, structures and property, including use restrictions.** With the exception of the incentives/concessions mandated by California Government Code Section 65915: *Incentives For Lower Income Housing Development*, the proposal complies with all other applicable provisions of Title 22, including use regulations and the development standards, as adjusted with the subject Use Permit approval, of the Downtown Shoreline District and requirement for off-street parking.
- 2) **Provides desirable surroundings for occupants as well as for neighbors. Emphasis is placed upon exterior design with regard to height, bulk, and area openings; breaks in the facade facing on a public or private street; line and pitch of the roof; and arrangement of structures on the parcel.** As required by the Downtown Specific Plan, the building's height and mass is well articulated to reduce the appearance of bulkiness, and to thus reflect the relatively lower density residential neighborhood to the south and east. Two deep recesses are provided along the Buckley Street façade, helping the block-long building appear more as a collection of three smaller buildings when viewed in perspective. Much of the Richardson frontage is adjacent to an open courtyard and an exterior parking area, thus landscaped areas, rather than building mass, are

located adjacent to this existing residential frontage. Elevations facing the current industrial areas to the north and east are well articulated with bay windows, and include an inviting entry porch along Berrellesa Street. Furthermore, the open space areas created by the provisions of recesses, courtyards and porches are to be improved as useable outdoor areas for occupants, with arbors, trellises and/or outdoor furniture.

- 3) **Has a harmonious relationship with existing and proposed neighboring developments avoiding both excessive variety and monotonous repetition, but allowing similarity of style, if warranted.** 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 to complement the nearby homes and small multi-family structures within the adjacent Downtown neighborhood. The relatively straightforward Neoclassical vocabulary is used for the majority of the building containing the living units (with such elements as square parapet roofs and simple wood detailing), while the more ornate Queen Anne Victorian vocabulary is used for the common area and lobby (with such elements as an octagonal turreted roof element and more ornate wood porch detailing), thus providing an appropriate level of variety within a unifying theme of historically relevant vocabularies.
- 4) **Uses a limited palette of exterior colors; those colors must be harmonious and architecturally compatible with their surrounding environment (sic).** The project will use similar colors to those in the surrounding areas, primarily based on medium warm earth tones, with more limited use of darker and lighter beiges as accents, which will be harmonious and architecturally compatible with the surrounding environment, which draws from a similar color pallet.
- 5) **Uses a limited number of materials on the exterior face of the building or structure. In addition, all interior surfaces normally visible from public property shall be finished.** The project uses an appropriately limited number of exterior materials, such as horizontal hardboard lap siding, window trim and accents. A variety of wood and man-made materials will be used for the compatible Late Victorian/Neoclassical architectural detailing, including that associated with the porches, arbors, trellises,

cornices and brackets. An appropriately textured masonry veneer will be used to echo a traditional foundation wall for the base of the garage at the corner of Berrellesa and Buckley Streets.

- 6) **Has exterior lighting appropriately designed with respect to convenience, safety, and effect on occupants as well as neighbors.** As per the Conditions of Approval, the developer shall return to the Design Review Committee prior to issuance of building permits to assure that the lighting features to be used are both consistent with the project's Late Victorian/Neoclassical architectural theme and that the lighting sources shall be shielded and/or downcast to avoid creating new sources of glare to existing residents.
- 7) **Effectively conceals work areas, both inside and outside of buildings, in the case of non-residential facilities.** Not applicable; the proposal is not for a non-residential facility.
- 8) **Undergrounds all utility boxes unless it can be shown that they can be effectively screened from the view of the general public.** Project conditions require that all utility boxes be underground or located in screened areas as required by the Engineering Department.
- 9) **Designs the type and location of planting with respect to the preservation of specimen and landmark trees, water conservation as set forth in Chapter 22.35, and maintenance of all planting.** A tree report has been prepared by the applicant (attached), 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 does 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 it self 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 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.

- 10) **Establishes a circulation pattern, parking layout and points of ingress and egress (both vehicular and pedestrian), designed to maximize pedestrian safety and convenience and to minimize traffic congestion resulting from the impediment of vehicular movement. When applicable, access for handicapped individuals should be considered.** As a project designed for senior citizens, many of whom will no longer be driving, pedestrian safety features are of added importance and include a pick up/drop off staging area along Berrellesa Street that is separate from the parking area, and a lighted pedestrian crosswalk at the corner of Berrellesa and Buckley Streets. Tenant parking is to be sequestered in the garage, with a separate and smaller guest parking area accessed off of Richardson Street. The separation of tenant parking, guest parking and pedestrian staging areas should maximize safety and reduce potential points of congestion.

- 11) Ensures that all signs be designed so that they are in scale with the subject development, and will not create a traffic hazard. Emphasis is placed upon the identification of the use or building rather than the advertising of same. No signage has been proposed.
- 12) Substantially preserves views from nearby properties 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) (sic). 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 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 that is prescribed by 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.

NOW, THEREFORE, BE IT RESOLVED that the City Council approves Use Permit 09-01 and Design Review R 09-12 subject to conditions of approval, incorporated herein by this reference.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at an Adjourned Regular Meeting of said Council held on the 9th day of September, 2009:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

EXHIBIT A

CITY COUNCIL RESOLUTION NO. -09
"Berrellesa Palms" - 310 Berrellesa Street

DENIAL of APPEALS filed by: Beth Eiselman and 2) Kristin Henderson, Tim Platt and Harland Strickland. The following summarizes each of the issues identified in the appeal letters, followed by the City Council's findings regarding that issue:

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 often maintain 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 are 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 than being 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.

ALLEGATION OF THE APPEAL:

The project is not consistent with the Downtown Specific Plan

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.*

FACTS IN SUPPORT: 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.

FACTS IN SUPPORT: 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.

FACTS IN SUPPORT: 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.

FACTS IN SUPPORT: 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.

FACTS IN SUPPORT: 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.

FACTS IN SUPPORT: 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.

FACTS IN SUPPORT: 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.

FACTS IN SUPPORT: 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.

(TABLE NEXT PAGE)

Downtown Shoreline District Requirements

CRITERIA	MINIMUM REQUIRED OR (<i>MAXIMUM ALLOWED</i>)	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'	<i>[in conformance]</i>
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 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.

FACTS IN SUPPORT: As the Downtown Shoreline is a neighborhood yet to have its own residential character, *the traditional residential styles, reminiscent of the existing residences 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.

FACTS IN SUPPORT: 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.

FACTS IN SUPPORT: 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.

FACTS IN SUPPORT: 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.

ALLEGATION OF THE APPEAL:

There are undocumented "Historic Resources" on the site and in the immediate vicinity, and that if these alleged resources were documented the project could be shown to negatively impact them.

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.

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 layperson opinion is 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. Furthermore, 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.

The Carey and Co. retained to determine if this project would impact historic resources, should 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 that context. The report determined that "it is not anticipated that the project would effect properties beyond" those immediate structures, as 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 just be too far away from the site. The report concluded that no historic districts appear 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.

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 (attached), 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 does 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 it self 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 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.

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.

ALLEGATION OF THE APPEAL:

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.

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.

* * *

EXHIBIT B

CITY COUNCIL RESOLUTION NO. -09
"Berrellesa Palms" - 310 Berrellesa Street

QUALIFICATIONS FOR EXEMPTION FROM REQUIREMENTS OF CEQA

Section 1. Public Resources Code Section 21159.21/CEQA
Guidelines Section 15192: Exemption for
qualified housing project

The Planning Commission finds that the proposed project meets the requirements of Public Resources Code Section 21159.21/CEQA Guidelines Section 15192 in that:

- (a) **The project is consistent with the applicable general plan, and specific plan, including mitigation measures required by the Downtown Specific Plan, as it existed on the date that the application was deemed complete and with the zoning ordinance, as it existed on the date that the application was deemed complete, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.** The Project is consistent with the requirements of the General Plan as set forth in Exhibit A, Downtown Specific Plan, DS-Downtown Shoreline Zoning District as set forth in Exhibit C and Mitigation Monitoring Program of the Final Downtown Specific Plan Environmental Impact Report as set forth in the Conditions of Approval which are attached and hereby incorporated herein by reference.
- (b) **Community-level environmental review has been adopted or certified.** The Environmental Impact Report for the Downtown Specific Plan was certified on July 24, 2006.
- (c) **The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.** As an infill site, surrounded by existing streets and urbanized uses, all utilities are in place and the project applicant has committed to pay all in-lieu and development fees.

- (d) The site of the project does not contain wetlands, does not have any value as a wildlife habitat, and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete. For the purposes of this subdivision, "wetlands" has the same meaning as in Section 328.3 of Title 33 of the Code of Federal Regulations and "wildlife habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection. The site is currently used as an industrial corporation/storage yard and is paved. The site has no wetlands or wildlife habitat.
- (e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code. The site is not on a list relating to hazardous waste as defined by Section 65962.5
- (f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.
- (1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements. Soil and groundwater of this formally industrial site shall be remediated as per the requirements of the Mitigation Monitoring Program of the Final Downtown Specific Plan Environmental Impact Report and the Bay Area Regional Water Quality Control District as

set forth in the Conditions of Approval which are attached and hereby incorporated herein by reference.

- (2) **If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements. No significant hazards from surrounding properties have been found to exist.**

- (g) **The project does not have a significant effect on historical resources pursuant to Section 21084.1. As per the Historic Resource Inventory and Evaluation Report, prepared for RCD by Carey & Co, Inc. Architecture and dated February 17, 2009, there are no structures on the site or on the opposite side of the street surrounding the block that are listed, or appear to be eligible for listing, as historical resources as defined in Section 21084.1.**

- (h) **The project site is not subject to any of the following:**
 - (1) **A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard. The site is within an urbanized area, where wildland fire hazards are not present.**

 - (2) **An unusually high risk of fire or explosion from materials stored or used on nearby properties. The neighboring industrial properties do not pose an unusually high risk of fire or explosion, as documented in the Final Downtown Specific Plan Environmental Impact Report.**

 - (3) **Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency. There will not be exposure above established safety standards, as documented in the Final Downtown Specific Plan Environmental Impact Report.**

- (4) Within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone. The site is not within a earthquake fault zone or a seismic hazard zone.
- (5) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood. Flood hazard shall be mitigated as per the requirements MMC Chapter 15.30; Floodplain Management, and as set forth in the Conditions of Approval which are attached and hereby incorporated herein by reference.
- (i) (1) The project site is not located on developed open space. The site is currently a private industrial storage facility, and is not developed open space as defined below.
- (2) For the purposes of this subdivision, "developed open space" means land that meets all of the following criteria:
- (A) Is publicly owned, or financed in whole or in part by public funds.
 - (B) Is generally open to, and available for use by, the public.
 - (C) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.
- (3) For the purposes of this subdivision, "developed open space" includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes
- (j) The project site is not located within the boundaries of a state conservancy. Not applicable.

Section 2. Public Resources Code Section 21159.23/CEQA Guidelines Section 15194: Exemption for affordable low income housing

The Planning Commission finds that the proposed project is exempt for CEQA pursuant to Public Resources Code Section 21159.23/CEQA Guidelines Section 15194 as set forth below:

(a) **CEQA does not apply to the proposed development project which consists of the construction, conversion, or use of residential housing consisting of 100 or fewer units and is 100% affordable to low-income households if both of the following criteria are met (sic):**

(1) **The developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households, as defined in Section 50079.5 of the Health and Safety Code, for a period of at least 30 years, at monthly housing costs, as determined pursuant to Section 50053 of the Health and Safety Code. The developer will enter into agreements with Contra Costa County (as the distributor of CBDG funds) and the City to assure rents stay at affordable levels to qualifying low income seniors for a period of 55 years, as set forth in the Conditions of Approval which are attached and hereby incorporated herein by reference.**

(2) **The development project meets all of the following requirements:**

(A) **The project satisfies the criteria described in Section 21159.21. (see discussion in Section 1, above)**

(B) **The project site meets one of the following conditions:**

(i) **Has been previously developed for qualified urban uses. The site has been improved as a service commercial/industrial storage facility, a qualified urban use as defined in Section 21072.**

(ii) **The parcels immediately adjacent to the site are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses and the remaining 25**

percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses, and the site has not been developed for urban uses and no parcel within the site has been created within 10 years prior to the proposed development of the site. 50% of the site is surrounded by residential uses, 25% by a public institutional use (City Corporation Yard), and the remaining 25% with service commercial/industrial uses.

- (C) The project site is not more than five acres in area. Project site is 1.03 acres.
 - (D) The project site is located within an urbanized area or within a census-defined place with a population density of at least 5,000 persons per square mile or, if the project consists of 50 or fewer units, within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons. The City of Martinez is within an Urbanized Area with a population of approximately 36,000, with a density of approximately 2850 persons per square mile.
- (b) Notwithstanding subdivision (a), if a project satisfies all of the criteria described in subdivision (a) except subparagraph (D) of paragraph (2) of that subdivision, this division does not apply to the project if the project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile. The project satisfies the criteria of subdivision (a).
- (c) Notwithstanding subdivision (b), this division applies to a project that meets the criteria of subdivision (b), if there is a reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project. Not applicable; the project satisfies the criteria of subdivision (a).
- (d) For the purposes of this section, "residential" means a use consisting of either of the following:
- (1) Residential units only.

- (2) **Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.**

The project is solely for residential uses, with no retail uses.

Section 3. Public Resources Code Section 21159.24/CEQA Guidelines Section 15195: Exemption for infill housing

The Planning Commission finds that the proposed project is exempt for CEQA pursuant to Public Resources Code Section 21159.24/CEQA Guidelines Section 15195 as set forth below:

- a) **CEQA does not apply to this project, as the following criteria are met:**

- (1) **The project is a residential project on an infill site.** The site has been improved as a service commercial/industrial storage facility, a qualified urban use as defined in Section 21072. The site is also surrounded by properties that have been developed with qualified urban uses, with 50% of the site is surrounded by residential uses, 25% by a public institutional use (City Corporation Yard), and the remaining 25% with service commercial/industrial uses.
- (2) **The project is located within an urbanized area.** Pursuant to the definition of urbanized area in Section 21071, the combined populations of the contiguous cities of Martinez, Pleasant Hill and Concord exceed a population of 100,000.
- (3) **The project satisfies the criteria of Section 21159.21** (see discussion in Section 1, above).
- (4) **Within five years of the date that the application for the project is deemed complete pursuant to Section 65943 of the Government Code, community-level environmental review was certified or adopted.** The Environmental Impact Report for the Downtown Specific Plan was certified on July 24, 2006.
- (5) **The site of the project is not more than four acres in total area.** Project site is 1.03 acres.

- (6) **The project does not contain more than 100 residential units.** The Project contains 49 residential units.
- (7) (A)(i) **At least 10 percent of the housing will be sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.** 100% of the project will be affordable to low income residents, as defined in California Government Code Sections 65915-65918.
- (ii) **The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.** The developer will enter into agreements with Contra Costa County (as the distributor of CBDG funds), and the City, to assure rents stay at affordable levels to qualifying low income seniors for a period of 55 years.
- (B)**The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).** Project complies with requirements of subparagraph (A).
- (8) **The project is within one-half mile of a major transit stop.** The site is approximately 500' away from the Martinez Intermodal Transportation facility, with Amtrak, and both regional and local bus service.
- (9) **The project does not include any single level building that exceeds 100,000 square feet.** The project consists of a three level building, with less than 100,000 sq. ft.
- (10) **The project promotes higher density infill housing.** A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density infill housing. A project with a density of at least 10 units per acre and a density greater than the

average density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise. The proposal has a density of 49 units per acre.

b) In addition, the following findings are made as the applicability of the exemption:

- (1) There is not a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances. There are no unusual factors present that would create the possibility for the individual project to have a significant effect on the environment. This is an infill project on an already developed commercial/industrial site surrounded by urban uses. Traffic will be less than the current use it is replacing. Noise will similarly be reduced.
- (2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted. The Program Environmental Impact Report for the Downtown Specific Plan was certified on July 24, 2006. There have been no substantial changes regarding the site or its surroundings since that time.
- (3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project, that was not known, and could not have been known, at the time that community-level environmental review was certified or adopted. The Program Environmental Impact Report for the Downtown Specific Plan was certified on July 24, 2006. There has not been any new information regarding the site or its surroundings since that time.

Section 4. CEQA Guidelines Section 15182; residential projects pursuant to a specific plan

The Planning Commission finds that the proposed project is exempt for CEQA pursuant to CEQA Guidelines Section 15182 as set forth below:

- a) **Exemption.** Where a public agency has prepared an EIR on a specific plan after January 1, 1980, no EIR or negative declaration need be prepared for a residential project undertaken pursuant to and in conformity to that specific plan if the project meets the requirements of this section. The Program Environmental Impact Report for the Downtown Specific Plan was certified on July 24, 2006.
- b) **Scope.** Residential projects covered by this section include but are not limited to land subdivisions, zoning changes, and residential planned unit developments. The proposal is for a senior citizens' apartment building.
- c) **Limitation.** This section is subject to the limitation that if after the adoption of the specific plan, an event described in Section 15162 should occur, this exemption shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan. The exemption provided by this section shall again be available to residential projects after the Lead Agency has filed a Notice of Determination on the specific plan as reconsidered by the subsequent EIR or supplement to the EIR. As defined in Section 15162, there have been no substantial changes to the site, neighborhood or circumstances, or new information that would warrant the preparation of additional environmental analysis.
- d) **Fees.** The Lead Agency has authority to charge fees to applicants for projects which benefit from this section. The fees shall be calculated in the aggregate to defray but not to exceed the cost of developing and adopting the specific plan including the cost of preparing the EIR. Not applicable.
- e) **Statute of Limitations.** A court action challenging the approval of a project under this section for failure to prepare a supplemental EIR shall be commenced within 30 days after the Lead Agency's decision to carry out or approve the project in accordance with the specific plan. Not applicable.

Section 5. CEQA Guidelines Section 15332: Categorical exemption for infill development projects

The Planning Commission finds that the proposed project is exempt for CEQA pursuant to CEQA Guidelines Section 15332 as set forth below:

- a) **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.** The project is consistent with the General Plan High Density Land Use Designation as set forth in Exhibit B and Downtown Specific Plan and Downtown Shoreline District as set forth in Exhibit C.
- b) **The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.** Project site is 1.03 acres, and is surrounded by properties that have been developed with qualified urban uses, with 50% of the site is surrounded by residential uses, 25% by a public institutional use (City Corporation Yard), and the remaining 25% with service commercial/industrial uses.
- c) **The project site has no value as habitat for endangered, rare or threatened species.** The site is currently used as an industrial corporation /storage yard, and is paved. The site has no wetlands or wildlife habitat.
- d) **Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.** The Program Environmental Impact Report for the Downtown Specific Plan was certified on July 24, 2006. No effects beyond those already evaluated will result. In addition, traffic noise, air water quality impacts will all be less than the current industrial use.
- e) **The site can be adequately served by all required utilities and public services.** As an infill site, surrounded by existing streets and urbanized uses, all utilities are in place.

* * *

EXHIBIT C

CITY COUNCIL RESOLUTION NO. -09 "Berrellesa Palms" - 310 Berrellesa Street

FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN

The proposed development of a new 49 unit affordable senior apartment building: "Berrellesa Palms" ("Project") is consistent with the policies of the Martinez General Plan, and the Central Martinez Specific Area Plan, a component thereof, including, but not limited to the following:

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.**

Facts in Support: The project appropriately provides housing opportunities to senior citizens, who are typically childless and often maintain single person households.

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.**

Facts in Support: 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 and will remove what many would view as an unattractive industrial storage yard use. The proposed residential use, with its neo-traditional architecture that echoes that of the adjacent downtown neighborhood, will form a harmonious and functional relationship with its existing residential neighbors.

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 appropriate density and structure type. This should increase the housing supply and should eliminate the threat of visual and structural blight to adjacent residential neighborhoods.**

Facts in Support: 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 not only increase the housing supply but 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 .**

Facts in Support: The proposed project is multifamily housing which will replace the currently non-conforming commercial/industrial use on the project site and improve this blighted area. This proposed infill development encompasses the higher development standards encouraged by the Downtown Specific Plan. It includes contextually appropriate neo-traditional architectural massing and building finishes and provides higher density housing without threatening the character of the adjacent neighborhood.

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).

Facts in Support: The development will serve very low income senior citizens, a population that the Housing Element has identified as having inadequate affordable housing opportunities. In addition, the project will add to the mix of housing in the downtown area by providing accessible multi-family housing.

* * *

EXHIBIT D

CITY COUNCIL RESOLUTION NO. -09 "Berrellesa Palms" - 310 Berrellesa Street

FINDINGS OF CONSISTENCY WITH THE DOWNTOWN SPECIFIC PLAN

The proposed development of a new 49 unit affordable senior apartment building; "Berrellesa Palms" ("Project") is consistent with the policies of the Downtown Martinez Specific Plan, including, but not limited to the following:

Section 1. 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, between the railroad tracks and the Downtown Core and Neighborhood Districts. The 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.**

Facts in Support: 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 density residential development, which makes 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 well articulated massing that creates the appearance of several small multi-family buildings, rather than one large building. This project creates an image 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.

Facts in Support: 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 and nighttime and weekend environment.

Facts in Support: 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

Facts in Support: The subject residential project is within two blocks of the Station. The path is level and project's crosswalk improvements are proposed to further

encourage pedestrian travel from the project to the Station.

Section 2. 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 that are now outside 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.

Facts in Support: 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.

Facts in Support: 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.

Section 3. 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.

Facts in Support: 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.

Section 4. 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.

Findings in Support: 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, using 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. Pedestrian scales arbors and main entry porch also help to keep the visual scale of the building comparable to that of the older structures.

Section 5. DOWNTOWN SHORELINE STANDARDS & DESIGN GUIDELINES (9.6)

9.6.1: Consistency with Downtown Shoreline Character Defining Statements:

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.

Facts in Support: The defining statement is intended to be the prism through which the City can determine the applicability and conformance of the more detailed and specific guidelines to follow. As in the above policy discussion, the introduction of a multifamily building does not conflict with the character of the existing neighborhood. As the Downtown Shoreline is a neighborhood yet to have its own residential character, the adjoining Downtown Neighborhood District (adjoining the site to the south and west) was used to draw inspiration, with the sum of that whole adjoining neighborhood, not just the opposing sides of the streets from the project site, to establish the context. It is within this wider context of mixed densities and historic styles that the proposal is consistent. It should be noted that quarter block multifamily buildings (sites of 100' x 100') are common throughout the Downtown Neighborhood District, intermingled within the single-family and duplex buildings. It is within this scale of small multi-family that the applicant has modeled the current design

9.6.2-4: Consistency with Downtown Shoreline Specific Design Guidelines

The Specific Plan Design Guidelines aide project designers and decision-makers in developing projects that comply with the broad goals, policies and character defining statements of the Specific Plan, above. 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.

The Proposal is consistent with the Downtown Shoreline District Design Standards and Guidelines, including, but not limited to, the following:

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.**

Facts in Support: 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. In addition, the proposed project draws inspiration from existing residential structures in the adjoining Downtown Neighborhood District, such as the three-level apartment building at the southwest corner of Main and Talbert Street, which like the proposed project, has horizontal siding and a neo-traditional cornice at the parapet that surrounds the flat roof. In addition, the use of period bay window details, and more significant recesses in the façade mid-block at Buckley Street, achieves the visual variety necessary for consistency with the Guidelines.

Scale:

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

Findings in Support: 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 consistent with the Guidelines for Scale, in that no long wall planes exist, because significant indentations and/or bay window projection are incorporated into all façade planes, which would otherwise appear longer had such articulations not been incorporated into the design.

Roof Design:

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

Findings in Support: 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.

Window Design, Colors and Materials and Landscaping (9.6.4)

The project is in substantial compliance with the applicable Design Standards and Guidelines - Chapter 9, as set forth in Attachment D-1.

Section 6. GENERAL DESIGN GUIDELINES(10.3)

The project is in substantial compliance with the General Design Standards and Guidelines - Chapter 10, as set forth in Attachment D-1.

Section 7. PARKING (Chapter 12)

12.2: Consistency with Off-Street Parking Requirements:

Downtown Specific Plan Section 12.2.1 compliance with Zoning Ordinance Chapter 33.36: Off-Street Parking and Loading Facilities. Section 22.36.030 states: For subsidized or assisted senior citizen housing, there shall be a minimum of .35 parking spaces per dwelling unit.

Facts in Support: The proposal exceeds the Zoning Ordinance's minimum requirement, as 33 parking spaces for the 49 units are proposed, resulting in a ratio of .67 spaces per unit.

12.4: Consistency with Bicycle Parking Requirements:

12.4.2 Residential Uses: For residential development requiring Design Review, one sheltered, secure bicycle parking space per dwelling unit should be required. Bicycle parking may be located in garages, basements, storage sheds, utility rooms, or similar areas that can be secured from unauthorized access and are sheltered from sun and rain. Additional convenience bicycle parking may be provided with exterior racks but does not count toward the sheltered bicycle parking requirement.

12.4.5 Visibility and Security: Bicycle parking should be visible to cyclists from the street and visible from at least one building entrance and the sidewalk, in order to provide

increased security. Bicycle parking areas should be at least as well lit as vehicle parking areas.

Facts in Support: As a senior citizen apartment project, the anticipated level of bicycle use is substantially less than one would expect for a general market residential project. While a guideline of providing one bicycle parking space for each unit is recommended in the Specific Plan, the applicant's proposal that one bike rack be installed in the garage for residents for approximately five bicycles, and that an outdoor rack be provided near the rear parking lot for approximately 5 bicycles (to be used by visitors and/or employees) is appropriate.

* * *

CONDITIONS OF APPROVAL [DRAFT]
AS APPROVED BY CITY COUNCIL

NOTE: Changes and additions to Standard City conditions are in **boldface type**

Project Name: “BERRELLESA PALMS” (49 unit affordable senior apartments.)

Site Location: 310 Berrellesa Street

- I. Description of Permit: These conditions apply to and constitute the approval of
 - A. Use Permit #09-01 to allow density and height above 17unit per acre, 2 story/30’height limit normally permitted in the DS – “Downtown Shoreline” zoning district, and 10’ front yard setback, permitting density at 35 units per acre (49 units per acre with State mandated density bonus) and maximum building height of 36’.
 - B. Design Review #09-12 consisting of: development plans, building elevations and sections, tree preservation/removal and landscape plan, colors and materials.

II. Exhibits

The following exhibits are incorporated as conditions of approval, except where specifically modified by these conditions:

EXHIBIT	DATE RECEIVED	PREPARED BY	PAGES
Site and Architectural plans	July 23, 2009	KTGY Architects	17
Preliminary Grading, Drainage and Stormwater Treatment plans		Luk and Associates, Civil Engineering	4
Landscape plans		Keller Mitchell & Co Landscape Architecture	2

All construction plans, including but not limited to the final map, improvement/grading plans and construction plans for the individual units shall conform to these exhibits, except as modified by these conditions. Where a plan or further information is required by these conditions, it is subject to review and approval by the Planning Division, Engineering Division and/or Building Department, or as noted.

III. Special Requirements for Development

- A. **Prior to issuance of building permit, the developer shall record a deed restriction or agreement, restricting the use of the property (as designed with 33 parking spaces) as “subsidized senior citizen**

housing,” in perpetuity, as prescribed in MMC Section 22.36.030; Parking Requirements for Residential Uses. Any possible adjustments to this restriction, which would be subject to the City’s approval, and would be predicated upon either the provision of additional parking, as such is otherwise required of all multifamily housing projects other than those exclusively for “subsidized senior citizen housing” and/or the City’s discretionary approval of a parking variance. Final wording of deed restriction or agreement, and method of recordation subject to approval of City Attorney.

- B. Prior to issuance of a building permit, the developer shall enter into an affordable housing agreement setting forth the affordable housing requirements Pursuant to State Density Bonus Law, of the project, and rental restrictions in a form acceptable to the City manager and City Attorney.**
- C. Prior to issuance of building permit, the developer shall return to the Design Review Committee (DRC), for final review and approval of detailed design features including but not limited to: exterior lighting fixtures, masonry veneers and/or alternative treatment of all exterior retaining walls, railings, decorative paving materials, final planting plan and augmentation of Richardson Street elevations with such features as added bay windows and/or trellises. Plans submitted for building permit issuance shall incorporate all requirements of this subsequent DRC review.**
- D. The developer shall use the construction practices, materials and/or 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 may 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.**
- E. Bicycle parking shall be provided, with one bike rack provided in the garage for residents, for approximately five bicycles, and that an outdoor rack be provided near the rear parking lot for approximately 5 bicycles (to be used by visitors and/or employees), or equivalent to be approved by staff.**
- F. The project developer shall comply with each of the applicable Mitigations Measures set forth in the Downtown Specific Plan Mitigation**

and Monitoring Program Approved by the City Council, July 24, 2006, and as outlined below:

1. The Project shall conform to the following performance standards that have been developed to mitigate negative impacts on adjacent uses that surround industrial areas, including noise, light and vibration. These performance standards are intended to reduce the impact of existing and on-going industrial uses on new adjacent residential uses (implements Mitigation Measure LU-1):

PERFORMANCE STANDARDS FOR NEW RESIDENTIAL DEVELOPMENT ADJACENT TO CONTINUING NON-CONFORMING INDUSTRIAL USES		
PERFORMANCE STANDARD	DISCUSSION, APPLICABILITY and CONDITION OF APPROVAL (where applicable)	CONFORMANCE
<ul style="list-style-type: none"> • Noise: potential negative impact from noise shall be mitigated, so that both interior and exterior noise standards are met. 	<p>As the subject site is within the railroad's 65 dBA and 70dBA L_{dn} noise contours, significant noise mitigation is mandated by DSP-FEIR Mitigation Measure <u>NOISE-2</u>/Project Condition of Approval III.F.4 Noise from the adjacent industrial uses do not exceed the noise associated with train operations and therefore require no additional noise mitigation to meet interior and exterior noise standards.</p>	<p>YES</p>
<ul style="list-style-type: none"> • Light and Glare: In cases where the Community Developer Director determines that residents of new development will be negatively impacted by light and glare spilling onto the proposed residential development site, such light and glare shall be blocked from entering the units' interiors, by either external screening, by such means as walls or landscaping; and/or internal screening, by such means as providing tinted windows or black out shades. 	<p>The adjacent industrial uses do not have any significant night lighting, (only security lighting is used), and this limited lighting has been determined by the Community Development Director to not exist at a level that spills onto the project site Therefore, not additional project conditions are required</p>	<p>YES</p>
<ul style="list-style-type: none"> • Vibration: New residential building shall not be located where new residents would be subject to disturbances from groundborne vibrations, such as within 100' from the railroad track centerline. For , locations beyond 100' of the railroad centerline, the Community Development Director shall require a vibration study be prepared by the applicant in any instance where it is determined by the Community Development Director that a significant source of industrial groundborne vibration equal to that of the railroad exists within 100 feet of the proposed project. Such vibration study shall propose mitigation measures to mitigate any significant impacts from groundborne vibrations which may exist. Such mitigation measures shall be incorporated into the 	<p>The Community Development Director has determined that adjacent industrial uses do not have the potential to generate groundborne vibrations equivalent to that of the railroad. Furthermore, the subject site is not immediately adjacent to any manufacturing activity, as the site is surrounded by a public street, and the adjacent industrial uses, opposite the site to the north and east, are non-manufacturing. No special mitigation is required.</p>	<p>YES</p>

<p>project conditions of approval.</p> <ul style="list-style-type: none"> • Air Quality: New residential uses adjacent to existing industrial uses shall have mechanical ventilation and/or HVAC systems capable of filtering and/or allowing use of recirculated air, so residents can effectively reduce exposure to offensive odors by allowing windows to remain closed for extended periods. 	<p>CONDITION OF APPROVAL F.1.a) The proposed project is required to provide units with mechanical fresh air ventilation as mandated by DSP-FEIR Mitigation Measure NOISE-2/Project Condition of Approval III.F.4, <u>Air filtration devices shall be added to the mandatory mechanical ventilation system.</u></p>	<p>YES</p>
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2. The developer shall implement the following mitigations measures, or equivalent as per current requirements of the BAAQMD, in order to reduce air quality impacts, from project construction activity, to a less-than-significant level (implements Mitigation Measure AIR-1):

a) The basic and enhanced control measures listed in Table IV.D-10 (from Final Environmental Impact Report and provided below) shall be implemented during construction.

Table IV.D-10: Feasible Control Measures for Controlling Emissions of PM

<p>Basic Control Measures – The following controls should be implemented at all construction sites.</p> <ul style="list-style-type: none"> • Water all active construction areas at least twice daily. • Cover all trucks hauling soil, sand, and other loose materials <i>or</i> require all trucks to maintain at least 2 feet of free-board. • Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites. • Sweep daily (preferably with water sweepers) all paved access roads, parking areas and staging areas at construction sites. • Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets. <p>Enhanced Control Measures – The following measures should be implemented at construction sites greater than 4 acres in area.</p> <ul style="list-style-type: none"> • All “Basic” control measures listed above. • Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas. • Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.). • Limit traffic speeds on unpaved roads to 15 mph. • Install sandbags or other erosion control measures to prevent silt runoff to public roadways. • Replant vegetation in disturbed areas as quickly as possible. <p>Optional Control Measures – The following control measures are strongly encouraged at construction sites that are large in area, located near sensitive receptors or which for any other reason may warrant additional emissions reductions.</p> <ul style="list-style-type: none"> • Install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site. • Install wind breaks, or plant trees/vegetative wind breaks at windward side(s) of construction areas. • Suspend excavation and grading activity when winds exceed 25 mph. • Limit the area subject to excavation, grading and other construction activity at any one time.

b) Any temporary haul roads to the soil stockpile area shall be routed away from existing neighboring land uses. Any temporary haul roads shall be surfaced with gravel and regularly watered to control dust or treated with an appropriate dust suppressant.

c) Water sprays shall be utilized to control dust when material is being added or removed from the stockpile. When the stockpile is undisturbed for more than 1 week, the storage pile shall be treated with a dust suppressant or crusting agent to eliminate wind-blown dust generation.

- d) All neighboring properties located within 500 feet of property lines shall be provided with the name and phone number of a designated construction dust control coordinator who will respond to complaints within 24 hours by suspending dust-producing activities or providing additional personnel or equipment for dust control as deemed necessary. The phone number of the BAAQMD pollution complaints contact shall also be provided. The dust control coordinator shall be on-call during construction hours. The coordinator shall keep a log of complaints received and remedial actions taken in response. This log shall be made available to City staff upon its request.
3. Prior to issuance of building permit, the Developer's contractor shall create and implement development-specific noise reduction plans, which shall be review and approved by the Chief Building Official and incorporated into the improvement agreement, plans and contract specifications. The developer's contractor shall obtain a copy of the Martinez Municipal Code, and perform construction activities in a manner such that noise levels do not exceed Martinez Municipal Code criteria. Any combination of legal, non-polluting methods to maintain or reduce noise to thresholds levels or lower may be used, as long as those methods do not result in other significant environmental impacts or create a substantial public nuisance. The plan for attenuating construction-related noises shall be implemented prior to the initiation of any work. Construction hours shall not exceed those listed in Section 8.34.030 of the City's Municipal Code, and as listed in Condition of Approval VII.A (implements Mitigation Measure NOISE-1).
4. Prior to issuance of building permit, the developer shall document to the satisfaction of the Chief Building Official, that the following interior and exterior noise standards (Mitigations approved for buildings located between 199 to 429 feet from the railroad centerline) will be met (implements Mitigation Measure NOISE-2):
- a) All exterior multi-family residential use areas shall be protected by a sound barrier with an effective height of 10 feet or an equally effective measure. This barrier, which can include but is not limited to a wall, berm, or building itself, shall be documented to provide approximately 10-11 dBA in noise reduction for ground floor receptors, when the direct line of sight to the railroad is blocked. This will reduce the exterior noise level to at or below the exterior noise standard (75 dBA – 10 dBA = 65 dBA).

- b) **Sound walls (Plexiglas with a minimum height of 6 feet) would be required for any balconies directly exposed to train noise. The project applicant must provide evidence that the sound walls would provide adequate noise mitigation and meet applicable city regulations otherwise the balconies shall not be permitted.**
 - c) **To achieve the indoor fresh-air ventilation requirements specified in Chapter 35 of the Uniform Building Code, all units will require mechanical ventilation to ensure that windows can remain closed for a prolonged period of time.**
5. **If deposits of prehistoric or historical materials are encountered during demolition, excavation or construction activities, all work within the immediate vicinity of the finds shall be halted to prevent damage to the deposit, and a professional archaeologist shall be contacted to evaluate the California Register eligibility of the finds. If the finds are not eligible, further protection is not necessary. If the finds are eligible, they would need to be avoided by adverse effects or such effects must be mitigated in accordance with the recommendations of the evaluating archaeologist. The recommendations of the archaeologist for the mitigation of adverse effects shall be followed by the project developer. Upon completion of the archaeological evaluation, a report shall be prepared documenting the methods, findings, and recommendations, as warranted, of the archaeologist. This report shall be submitted to the NWIC and the City. Project personnel should not collect or move any archaeological material, and fill soils that may be used for construction purposes should not contain archaeological materials. Prehistoric materials can include flaked-stone tools (e.g., projectile points, knives, choppers) or obsidian, chert, or quartzite tool making debris; midden (i.e., culturally darkened soil often containing heat affected rock, ash and charcoal, shellfish remains, and cultural materials); and stone milling equipment (e.g., mortars, pestles, handstones). Historical materials might include wood, stone, concrete, or adobe footings, walls and other structural remains; debris-filled wells or privies; and deposits of wood, metal, glass, ceramics, and other refuse (implements Mitigation Measure CULT-1).**
6. **If paleontological materials (fossils) are encountered during demolition, excavation or construction activities, all work within the immediate vicinity of the find shall be halted to prevent damage to the fossil materials. If avoidance of the fossils is not feasible, a qualified paleontologist shall be contacted to evaluate the find and make recommendations. If the exposed geological formation is found to contain significant paleontological resources, such resources shall be avoided by project activities. If project activities cannot avoid the paleontological resources, adverse effects to such**

resources shall, where possible, be mitigated, which may include monitoring, data recovery and analysis, a final report, and the accession of all fossil material to a paleontological repository. Upon completion of project ground-disturbing activities, a report documenting methods, findings, and recommendations of the paleontologist shall be prepared and submitted to the City.

Prior to plan-related ground disturbance that has the potential to impact UCMP fossil locality V-71131, a qualified paleontologist shall review project plans and recommend measures necessary to avoid, or reduce the level of significance of, impacts to the fossil remains. Such measures may include monitoring, data recovery and analysis, a final report, and the accession of all fossil material to a paleontological repository (implements Mitigation Measure CULT-2).

7. If human remains are encountered during demolition, excavation or construction activities, work within 50 feet of the discovery shall be redirected and the County Coroner notified immediately. At the same time, an archaeologist shall be contacted to assess the situation. If the human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. The archaeologist shall provide recommendations for the recovery of important information, as appropriate and in accordance with the recommendations of the MLD. Treatment of human remains shall comply with all applicable laws rules and regulations . Upon completion of the assessment, the archaeologist should prepare a report documenting the methods and results, as well as the recommendations regarding the treatment of the human remains and any associated cultural materials. The report should be submitted to the City and the NWIC (implements Mitigation Measure CULT-3).
8. Prior to the issuance of grading or building permit, a design-level geotechnical investigation shall be prepared and submitted to the City of Martinez Engineering and Building Departments for review and confirmation that the proposed development fully complies with the California Building Code. The report shall determine the project site's surface geotechnical conditions and address potential seismic hazards such as liquefaction and subsidence. The report shall identify building techniques appropriate to minimize seismic damage. In addition, the following requirement for the geotechnical and soils report shall be met (implements Mitigation Measure GEO-1):

- a) **Analysis presented in the geotechnical report shall conform with the California Division of Mines and Geology recommendations presented in the Guidelines for Evaluating Seismic Hazards in California.**
 - b) **All mitigation measures, design criteria, and specifications set forth in the geotechnical and soils report shall be followed.**
- 9. In areas where expansive soils are present, and in accordance with Section 1804.4 of the California Building Code, the Chief Building Official may require special provisions be made to safeguard against damage due to expansiveness, locations underlain by expansive soils and/or non-engineered fill, the designers of proposed building foundations and improvements (including sidewalks, roads, and utilities) shall consider these conditions. The design-level geotechnical investigation shall include measures to ensure potential damages related to expansive soils and non-uniformly compacted fill are minimized. Mitigation may include removal of the problematic soils and replacement, as needed, with properly conditioned and compacted fill to design and construction of improvements to withstand the forces exerted during the expected shrink-swell cycles and settlements. The project's design-level geotechnical study shall also evaluate the potential for impacts associated with corrosion. The study shall specifically address corrosion potential and include measures to address corrosive soils where damage to underground facilities may occur. Potential methods include placing utilities in sandy fill materials or appropriately treated clayey fill materials. Treatment of clayey soils could include using lime, lime-cement, or other admixtures. If it is impractical to place utilities within less corrosive materials, the utilities shall be composed of corrosion resistant material or protected with appropriate coatings. Appropriate measures identified in each geotechnical study shall be implemented during project construction (implements Mitigation Measure GEO-2).**
- 10. The developer shall prepare a SWPPP designed to reduce potential impacts to surface water quality through the construction-period of the project, for City and State agency review and approval. Prior to City approval of a grading plan, the SWPPP and drainage plan shall be submitted and determined to be adequate. It is not required that the SWPPP be submitted to the RWQCB, but must be maintained on-site and made available to RWQCB staff upon request. The SWPPP shall include (implements Mitigation Measure HYD-1a):**
- a) **Specific and detailed BMPs designed to mitigate construction-related pollutants. At minimum, BMPs shall include practices to minimize the contact of construction materials, equipment, and**

maintenance supplies (e.g., fuels, lubricants, paints, solvents, adhesives) with storm water. The SWPPP shall specify properly designed centralized storage areas that keep these materials out of the rain.

- b) **Framework for education.** An important component of the storm water quality protection effort is the knowledge of the site supervisors and workers. To educate on-site personnel and maintain awareness of the importance of storm water quality protection, site supervisors shall conduct regular tailgate meetings to discuss pollution prevention. The frequency of the meetings and required personnel attendance list shall be specified in the SWPPP.
- c) **Monitoring Program.** The SWPPP shall specify a monitoring program to be implemented by the construction site supervisor, and must include both dry and wet weather inspections. In addition, in accordance with State Water Resources Control Board Resolution No. 2001-046, monitoring may be required during the construction period for pollutants that may be present in the runoff that are “not visually detectable in runoff.” RWQCB personnel, who may make unannounced site inspections, are empowered to levy considerable fines if it is determined that the SWPPP has not been properly prepared and implemented.
- d) **Soil erosion BMPs.** BMPs designed to reduce erosion of exposed soil may include, but are not limited to: soil stabilization controls, watering for dust control, perimeter silt fences, placement of hay bales, and sediment basins. The potential for erosion is generally increased if grading is performed during the rainy season as disturbed soil can be exposed to rainfall and storm runoff. If grading must be conducted during the rainy season, the primary BMPs selected shall focus on erosion control, that is, keeping sediment on the site. End-of-pipe sediment control measures (e.g., basins and traps) shall be used only as secondary measures. If hydroseeding is selected as the primary soil stabilization method, then these areas shall be seeded by September 1 and irrigated as necessary to ensure that adequate root development has occurred prior to October 1. Entry and egress from the construction site shall be carefully controlled to minimize off-site tracking of sediment. Vehicle and equipment wash-down facilities shall be designed to be accessible and functional during both dry and wet conditions

- 11. The developer shall design into the project features operational BMPs to reduce potential impacts to surface water quality associated with operation of the project. The project shall comply with current Contra Cost County Clean Water program, in accordance with its NPDES permit, C.3 Guide, and as per Project Condition of Approval XI. The permit requires a comprehensive approach to stormwater management that implements: (a) site design measures to minimize impervious area, reduce direct connections between impervious areas and the storm drain system, and mimic natural systems; and employs (b) source control and (c) treatment control measures, that can reduce runoff and the entry of pollutants into stormwater and receiving waters. (implements Mitigation Measure HYD-1b).**
- 12. As the project is located in a low lying area (surface elevation less than 7.5 feet NGVD, or as determined by the City Engineer and Chief Building Official) flood protection shall be provided. The flood protection features shall consist of one or more of the following (implements Mitigation Measure HYD-3):**

 - a) Elevation of vulnerable structures above elevation 7.5 NGVD or applicable flood plain elevation (either by raising of surface grade by importation of fill or elevated constructed foundations);**
 - b) Floodproofing of any improvements not protected by surface elevation or flood protection structures.**
- 13. Pursuant to mitigation measures of the Final Environmental Impact Report for the Downtown Specific Plan, the applicant has undertaken a *Phase I Environmental Site Assessment* dated March, 2008, a *Phase II Environmental Site Assessment* dated April 2008, a *Supplemental Phase II Environmental Site Assessment* dated November 2008, and a *Soil and Groundwater Management Plan (SGMP)* dated March 2009. Pursuant to the *Soil and Groundwater Management Plan* dated March 2009, Developer and its contractor shall implement the soil and groundwater handling activities described therein to mitigate potential exposure of hydrocarbons and lead to construction workers and the general public. (implements Mitigation Measure HAZ-1):**

 - a) Due to the presence of residual hydrocarbons in soil and shallow groundwater, Developer shall record a deed restriction preventing the use of shallow groundwater for any purpose, particularly to prevent the installation of groundwater supply wells.**

- b) **Prior to the issuance of a building permit for any construction on the project site, the Developer shall procure written concurrence from the RWQCB (Water Board) that no further investigation or remedial action is required relating to the environmental conditions present on the project site.**

IV. Site Plan

A. Lighting

- 1. Building plans and landscaping plans shall show all exterior lighting: walkways, driveway areas, recreational areas, etc. Height and style shall be shown.
- 2. All exterior lighting shall be directed such that lights create as little off-site glare and nuisance as is feasible. All fixtures shall be glare-shielded.
- 3. Energy-saving fixtures shall be used.

V. Architectural

- A. All building materials, windows and colors and shall be substantially as shown on the materials and color exhibit dated July 23, 2009, as on file with the Planning Division, **or as subsequently modified by pending DRC's final review and approval of design details.**
- B. All exterior and roof mounted utility and meter boxes, and mechanical equipment shall be screened from off-site public view. Equipment and screening shall be shown on final construction plans and subject to staff review and approval.

VI. Trees, Landscaping, Walls and Fences

- A. **Removal of existing trees is limited to those identified for removal in the Tree Report prepared by Hort-Science and dated: March 2009, or as approved by DRC as part of the final Landscape Plan approval required in Condition III.B. All trees to be retained and/or relocated shall be protected as per the measures identified in the report.**
- B. **Final Landscape Plans to be submitted for DRC's approval as required in Condition III.B, shall incorporate a variety of evergreen and deciduous trees, to be planted in informal clusters, along the Berrellesa, Buckley, Richardson and Foster Street frontages. Subsequent to the DRC's approval, the final landscape construction plans shall:**

1. Be prepared by a licensed landscape architect, on the grading plan as a base map and shall be submitted for review and approval by the City at the same time grading and improvement plans are submitted. Final landscape construction plans must receive City approval prior to issuance of building or grading permits, whichever comes first. Plans shall:
 - a) Protect planting areas adjacent to parking areas with minimum 6" high concrete curbs or equivalent.
 - b) Be prepared in accordance with the City's adopted water conservation and landscaping ordinance (Martinez Municipal Code Chapter 22.35).
 - c) Specify trees of minimum 15 gallon size with **50% of trees adjacent to the Berrellesa, Buckley, Richardson and Foster Street frontages to be 24" box size.**
 - d) Specify shrubs of minimum 5-gallon size
 - e) Provide either lawn or a continuous ground cover with complete coverage within 3 years.
 - f) Show all non-plant features: benches, lights, arbors, mail box areas paths, etc.
 - g) Include an irrigation plan.

C. Fences

1. All fencing, retaining walls, barriers, etc., shall be installed by the developer, and shall be shown on the site and landscape plan.
2. The maximum height for all new walls, fences and/or fences on retaining walls shall be 6 feet unless as otherwise shown on approved plans. Fences off-set from retaining walls 18 inches or greater shall be considered separate structures with a maximum height of 6 feet each.

VII. Noise Control, Dust and Conditions for Construction Activity

- A. All construction activities shall conform to the City's Noise Control Ordinance, Chapter 8.34 of the Municipal Code: Construction activities including delineation and starting/warming of vehicles are limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday; and 9:00 a.m. to 5 p.m. Saturday and Sunday. **Lane closures shall be limited to 9:00 a.m. to 4:00 p.m. Monday through Friday on Berrellesa Street and Marina Vista Avenue.** The permittee shall post a sign on the site notifying all workers of these restrictions.

- B. The site shall be fenced with locked gates at 7 p.m. The gates shall remain locked until 7:00 am. Contractors shall not arrive at the site prior to the opening of the gates.
- C. Contractors shall be required to employ the quietest construction equipment available, and to muffle noise from construction equipment and to keep all mufflers in good working order in accordance with State law.
- D. Adequate dust control measures shall be employed throughout all grading and construction periods. The Contractor shall be required to regularly water areas that are exposed for extended periods to reduce wind erosion. The following controls shall be implemented at all construction sites:
 - Water all active construction areas at least twice daily.
 - Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
 - Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
 - Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
 - Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
- E. Speeds of construction equipment shall be limited to **10** miles per hour. This includes equipment traveling on local streets to and from the site.
- F. Access shall be maintained to all neighboring driveways at all times.
- G. There shall be no parking of construction equipment or construction worker's cars on residential streets at any time.
- H. Truck routes for the import or export of cut/fill material shall be identified and approved by the City Engineer prior to the issuance of any permits. Developer shall be responsible for the repair of any damage to city streets (private and public) caused by the import or export of soils materials necessary for the project.
- I. Prior to construction, contractor shall contact city inspector for a pre-construction meeting. Haul route shall be along Berrellesa and Alhambra.

VIII. Agreements, Fees and Bonds

- A. All improvement agreements required in connection with said plans shall be submitted to and approved by City and other agencies having jurisdiction prior to City approval and issuance of the Building, Encroachment, Grading or Site development permit, whichever comes first.

- B. Prior to approval of the plans and issuance of permits, applicant shall pay all applicable fees and deposits including plan check fees, inspection, drainage impact fees and Impact Mitigation Fees. Impact fees for multifamily residential units include but are not limited to: transportation facilities fees, park (in lieu of land dedication) fees, park and recreation facilities fees, cultural facilities fees, police facilities fees, as required by the Community Development Director. The final amount for the above fees shall be in accordance with the fee schedule in effect of time of payment. A credit shall be given for the two residential units existing at the site which will be removed by this project.
- C. All fees and deposits required by other agencies having jurisdiction shall be paid prior to City approval and issuance of the Building, Encroachment, Grading or Site Development Permit, whichever comes first.

IX. Grading

- A. All grading shall require a grading and drainage plan prepared by a registered Civil Engineer, a soils report prepared by a registered Geotechnical Engineer and a Grading Permit approved by the City Engineer. The grading plans and soils report shall require review by the City's geotechnical consultant with all costs to be borne by the applicant.
- B. All recommendations made in the Soil Engineers report, (unless amended through the City's review) and all recommendations made by the City's geotechnical consultant shall be incorporated into the design and construction of the project.
- C. The on-site finish grading shall require drainage to be directed away from all building foundations at a slope of 2 percent minimum to 20 percent maximum toward approved drainage facilities or swales. Non-paved drainage swales shall have a minimum slope of 1 percent. A minimum 4-ft. wide clear access shall be provided around each building.
- D. Contour grading techniques with spot elevations shall be employed throughout the project to achieve a more natural appearance, even where this will increase the amount of grading. Tops of cuts or toes of fills adjacent to existing public rights-of-way or easements shall be set back two feet minimum from said rights-of-way and easements.
- E. Erosion control measures shall be implemented per plans approved by the City Engineer for all grading work not completed before October 1. At the time of approval of the improvement and/or grading plans, an approved Erosion Control Plan prepared by a registered Civil Engineer shall be filed with the City Engineer.

- F. All graded slopes in excess of 5 ft. in height shall be landscaped or hydroseeded no later than September 15 and irrigated (if necessary) to ensure establishment prior to the onset of the rainy season.
- G. The applicant's engineer shall certify the actual pad elevation for the lot in accordance with City standards prior to issuance of Building Permit.
- H. All front yard landscaping or alternate erosion control measures shall be installed prior to release for occupancy to mitigate erosion problems on each lot.
- I. The finished grading shall be inspected and certified by the developer's engineer that it is in conformance with the approved Grading Plan and Soils Report pursuant to the provisions of Title 15 of the Martinez Municipal Code.
- J. The grading and finished lot pads shall meet or exceed the requirements of a 100-year (1 percent) flood zone.**
- K. Any grading on adjacent properties will require written approval of those property owners affected.
- L. If cultural resources are discovered during subsurface excavations, the Contractor shall cease construction and a qualified archeologist shall be contacted to make recommendations for mitigation.
- M. The plans shall include the boundary treatment shown on cross sections, drawn to scale, for retaining walls, fencing and drainage.
- X. Drainage
 - A. A hydrologic study shall be prepared and submitted to the City Engineer and Contra Costa County Flood Control District, when required, for review and approval to ensure discharge of storm runoff to facilities of adequate capacity. **The study shall include analysis of the capacity of the existing system downstream of the project. The developer shall make all necessary upgrades to existing systems, as deemed necessary by the City Engineer. Drainage area is defined as all that area draining into, and including, the area of the proposed development.**
 - B. All concentrated runoff shall be collected and conveyed to an approved storm drainage system. Existing slopes that have no additional discharge directed onto them or are not substantially regraded can remain as natural runoff.
 - C. Applicant shall not increase storm water runoff to adjacent downhill lots unless either, (1) a Drainage Release is signed by the property owner(s) of affected downhill lots and recorded in the office of the County Recorder; or (2) site drainage is collected and conveyed in approved drainage facilities within a private drainage easement through a downhill property. This

condition may require collection of on-site runoff and construction of an off-site storm drainage system. All required releases and/or easements shall be obtained prior to issuance of the Building, Encroachment, Grading or Site Development Permit, whichever comes first.

- D. The storm drain system shall be designed per City and County Flood Control District Standards to carry at least a 10-year storm. Furthermore, the system shall be designed to ensure that local streets remain passable during a 100-year storm, **or as required by the City Engineer**. Passable is defined as one 10-ft. travel lane in each direction, pavement free of water runoff. The developer shall install a drainage system to ensure passability. Should the runoff due to the proposed development contribute incrementally to an existing flooding problem, then the developer may be required to contribute funds for his proportional share of future drainage system costs as required by the City Engineer.
- E. Parking lots and on-site drainage shall be collected and conveyed to an approved storm drainage facility. When approved by the City Engineer, drainage may be conveyed under the sidewalk and discharged through the curb in accordance with City standards. Drainage shall be directed to a concrete curb and gutter whenever practical. Drainage from covered parking lot shall be directed to the sanitary sewer system.
- F. All public drainage facilities, which cross private lots and to be maintained by the City, shall require a 10-ft. minimum width storm drain easement. Private storm drain facilities to be maintained by the owner (s).
- G. Concentrated drainage flows shall not be permitted to cross sidewalks or driveways.
- H. The developer shall comply with Contra Costa County Flood Control District Design requirements.
- I. Fifteen (15) inch minimum RCP (reinforced concrete pipe) shall be used for all public storm drain lines and 12-inch minimum pipe shall be used for laterals and for private storm drain lines, unless otherwise approved by the City Engineer.

XI. NPDES Requirements

- A. Trash enclosures and dumpster areas shall be covered and protected from roof and surface drainage.
- B. All areas used for washing, steam cleaning, maintenance, repair or processing shall have impermeable surfaces and containment berms, roof covers, recycled water wash facilities, and shall discharge into the sanitary sewer, as approved by the City Engineer.

- C. Efficient irrigation, appropriate landscape design and proper maintenance shall be implemented to reduce excess irrigation runoff, promote surface filtration, and minimize use of fertilizers, herbicides, and pesticides.
- D. To the maximum extent practicable, as determined by the City Engineer, drainage from paved surfaces shall be routed through grassy swales, buffer strips or sand filters prior to discharge into the storm drain system.
- E. All storm drain inlets (catch basins) shall be imprinted with the sign "No Dumping, Flows to Creek" as per City Standard #SD-1.
- F. For projects one (1) acre or larger, developer shall comply with the State Water Resources Control Board requirements, NPDES permit, for construction. The Developer shall be responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) for the project. A copy of the SWPPP and the Notice of Intent (NOI) shall be submitted to the City. The SWPPP and The NOI shall be kept at the job site during construction.
- G. **C.3 Requirements:** Developer shall comply with the State Water Resources Control Board NPDES permit requirements for constructing this project. The project's plans (with support documentations and reports) shall incorporate storm water flow-control and treatment measures designed to meet the criteria in the latest edition of the Contra Costa Clean Water Program's *Stormwater C.3 Guidebook*.
 - 1. Prior to issuance of a grading permit the applicant shall prepare and submit a complete storm water control plan and operation and maintenance plan for review and approval in accordance with the *Stormwater C.3 Guidebook*. The construction plans shall include drawings and specifications, consistent with the approved storm water control plan, to implement all measures required in the approved Plan. The permit application shall also include a completed stormwater control plan, "Construction Plan C.3 Checklist" as described in the *Stormwater C.3 Guidebook*.
 - 2. As may be required by the City of Martinez, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape, and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs permanent source control BMPs, and other features that control stormwater flow and potential stormwater pollutants.

3. **The stormwater control facilities shall be maintained by the property owner. The applicant shall be responsible and pay all costs associated with the preparation of all documents, construction of facilities, and the implantation, operation and maintenance of the stormwater control plan (including required annual reporting). Prior to issuing permits for construction, the applicant shall execute an agreement(s) pertaining to the responsibility of long-term maintenance and operation of the stormwater management facilities. The property owner shall give the City and other regulatory agencies the rights to enter onto the property to inspect the stormwater control facilities, if necessary.**

4. **Prior to building permit final and issuance of a Certificate of Occupancy, the applicant shall submit, for the review and approval of the City of Martinez, as built plans for the stormwater control facilities and the final operation and maintenance plan.**

Guidelines for the preparation of Stormwater BMP Operation and Maintenance Plans are in Appendix F of the Contra Costa County Clean Water Program, Stormwater C.3 Guidebook.

- H. Development shall include adequate accessible and convenient areas for collecting and loading recyclable materials, to the satisfaction of the City Engineer, in conformance with the California Integrated Waste Management Board Recycling Ordinance.

XII. Street Improvements

A. Frontage improvement: Pursuant to Chapter 12.30 of the Martinez Municipal Code, sidewalks, curb, gutter shall be constructed along the entire frontage of the property. Street pavement shall be constructed or reconstructed, along the entire property frontage to center line of the street as determined necessary by the City Engineer. Following are required frontage improvements:

1. **The developer shall replace and construct new sidewalk along the entire frontage of the property. Public sidewalk located outside the public right of way shall be included within a public sidewalk easement dedicated to the City. A continuous public sidewalk shall be provided along the perimeter of the property, unless otherwise approved by the City Engineer. The width of sidewalk shall be per City standards (5.5 feet, as measured from face of curb).**

2. **Pavement: Existing street pavement section shall be rehabilitated, resurfaced, removed and/or replaced along the frontage of the property to the centerline of the streets if the existing structural section is cracked or damaged in any way, or if the street structural section is determined by the City Engineer to be inadequate for the**

intended traffic. Pavement damaged as a result of construction beyond the centerline of the streets shall also be repaired. The condition of the pavement shall meet the approval of the City Engineer prior to final approval of the project and release of bonds and deposits. The required pavement improvement shall be determined by the City engineer by field inspection after most of the construction is complete.

3. Existing damaged curb and gutter shall be replaced along the entire frontage of the property.
4. Standard street lights shall be installed along the entire frontage of the property unless otherwise approved by the City Engineer.
5. All streets shall be paved and improved after utilities are installed in accordance with City of Martinez Standard Drawings and Design Guidelines and the Approved plans.
6. No retaining walls (including the footings for the walls) shall be allowed in the public right of way. All walls supporting the street right of way shall be constructed with durable materials and be constructed to the satisfaction of the City Engineer.
7. Handicap access ramps shall be reconstructed at all curb returns per the current Caltrans standard details.
8. All traffic control devices, including Stop signs, No Parking signs, legends and striping shall be installed in accordance with plans approved by the City Engineer.
9. All improvements shall be subject to the approval of the City Engineer.
10. Public streets design and requirements:
 - a) All required right of way and/or public sidewalk easements shall be dedicated to the City of Martinez as required by the City Engineer prior to approval and issuing permit(s).
 - b) Pavement design and construction control for all public streets shall be per City Standards and based on State of California "R" value method, using Traffic Indices (T.I.'s) of 5.5 with a minimum 0.20 ft. AC pavement section over a minimum 0.50 ft. Class 2 aggregate base.
 - c) Unless otherwise approved by the City Engineer, the minimum width of pavement, as measured from face of curb to face of curb, shall be as follows: Foster Street, 20 ft with no parking on either side; Richardson & Buckley Streets 32 feet; and

Berrellesa Street, 36 ft. The street design shall also provide for approved provisions for access and turning around of Police Department and Fire Department apparatus as required.

- d) The radius of curb return at the intersection of Richardson and Foster Streets shall be 25 feet. All other curb returns shall match the radiuses of the existing curb returns, but in no case shall be less than 10 feet, unless otherwise approved by the City Engineer.**

B. Private parking lot design and requirements:

Paving design and construction control shall be based on State of California "R" value method, using Traffic Indices (T.I.'s) approved by the City Engineer. The street section design shall utilize a T.I. of 5.0 with a minimum 0.20 ft. AC pavement section over a minimum 0.50 ft. Class 2 aggregate base or equivalent section. The minimum width of private driveway shall be 20 ft. Parking lots and stalls dimensions shall meet City standards. Parking lot and driveway width is subject to the approval of Police and Fire Departments.

- C. All new utility distribution services on-site and off-site shall be installed underground.
- D. Sidewalk pipe drains shall be installed on either side of driveways and shall conform to City Standard No. S-13.
- E. A City Encroachment Permit is required for any work within the City Right-of-Way.
- F. All improvement shall be designed and constructed to the satisfaction of the City Engineer.

XIII. Water System

- A. Water system facilities shall be designed to meet the requirements of the Martinez Water District and the fire flow requirements of the Contra Costa County Consolidated Fire Protection District. All requirements of the responsible agency shall be guaranteed prior to approval of the improvement plans.
- B. Water system connection, including installation of the water meter, shall be made in accordance with appropriate Water District standards. Prior to obtaining water service, fees shall be paid in accordance with the water fee schedule in effect at time of payment.

- C. Backflow prevention, required as part of the water service installation, must be completed before occupancy of the building, and appropriately screened with suitable material.

XIV. Sanitary Sewer System

- A. Sewer system connections and plans for sanitary sewer facilities shall be approved by the Central Contra Costa Sanitary District. All requirements of that District shall be met before approval of the improvement plans.

XV. Other Requirements

- A. Construction shall comply with all applicable City and State building codes and requirements including handicapped and energy conservation requirements, grading and erosion control ordinances.
- B. Design of all public improvements shall conform to the City of Martinez Design Guidelines, Standard Special Provisions, and Standard Drawings. Prior to preparation of improvement plans, the developer or his representative should contact the City's Engineering Development Review section of the Community Development Department.
- C. Complete grading, site and improvement plans, specifications and calculations shall be submitted to and approved by the City Engineer, Community Development Director, and/or other agencies having jurisdiction for all improvements within the proposed development prior to issuance of a Building, Site, Grading or Encroachment Permit whichever comes first. Approved plans shall become the property of the City of Martinez upon being signed by the City Engineer and Community Development Director.
- D. Prior to City approval of the plans, all fees, bonds, and deposits shall be paid and posted; all agreements shall be executed and all grading and improvement plans shall be approved by the City Engineer and Community Development Director. No construction shall take place until the issuance of the appropriate Encroachment, Site, Grading and/or Building Permits.
- E. Prior to issuance of the building permit, the access to building sites shall be graded and improved to at least an all-weather surface condition, and operating fire hydrants shall be in place, unless waived by City Engineer.
- F. Prior to issuance of the certificate of occupancy, the public improvements including streets, sewers, storm drains, street lights, and traffic signs required for access to the sites of that phase of the project shall be completed. All public improvements shall be completed and accepted by the City prior to issuance of certificate of occupancy on final dwelling unit in the project.

- G. Prior to acceptance of improvements, offers of dedication, and release of bonds and deposits by the City, the City's record copies of the grading, site, and improvement plans shall be updated to show "As Built" conditions of the project. Said plans shall be prepared by the responsible Civil Engineer of work and shall reflect all changes made during the course of project construction. Grading and improvement plans shall be 24" x 36" in size. The as built plans and final map shall be provided in 4 mil photo mylars and in the form of electronic files compatible with AutoCAD.
- H. All on-site improvements not covered by the building permit including sidewalks, driveways, paving, sewers, drainage, curbs and gutters must be constructed in accordance with approved plans and/or standards and a Site Development Permit approved by the City Engineer.
- I. Building permits for retaining walls shall be obtained as follows:
 - 1. For major walls to be constructed during the mass-grading phase, obtain permit prior to issuance of the Grading Permit.
 - 2. For all other walls, obtain permit prior to issuance of Permits for structures on the respective lot.
- J. Any existing water wells on the property shall be filled and sealed off or otherwise disposed of as directed by the City Engineer.
- K. Approval by the applicant's Soils Engineer, the City's Soils Consultant, the Fire District, Sewage District, water agency, and other regulatory agencies of all improvements and buildings is required prior to City approval of construction plans.
- L. Swimming pools and any public facility with kitchen (restaurants, meeting and recreation rooms) shall be approved by the Contra Costa County Health Department.
- M. There shall be no parking of construction vehicles or equipment on the surrounding residential streets, including all workers vehicles.

XVI. Validity of Permit and Approval

- A. Planning Commission approval is subject to: (i) appeal to the City Council within ten calendar days of the approval, and, if applicable (ii) the City Council's approval of the requested rezoning and/or general plan amendment.
- B. All permits and approvals shall expire in one year from the date on which they became effective (unless extended under C) unless building permit is obtained and construction begun within the one year time period. Unless an appeal is filed, the *effective date* of the permit and approval is August 11, 2009.

- C. The time extension of the expiration date, August 11, 2010, of a permit or approval can be considered if an application with required fee is filed at least 45 days before the original expiration date. (Otherwise a new application is required.) A public hearing will be required for all extension applications, except those involving only Design Review. Extensions are not automatically approved: Changes in conditions, City policies, surrounding neighborhood, and other factors permitted to be considered under the law, may require or permit denial.
- D. The applicant and its successors in interest, shall defend, indemnify and hold harmless the City and its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys or employees to attack, set aside, void, or annul the Planning Commission's decision to approve UP 09-01 and DR 09-12, and any environmental document approved in connection therewith. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorneys' fees, and other costs and expenses incurred in connection with such action whether incurred by applicant and its successors in interest, the City, and/or the parties initiating or bringing such action.
- E. The applicant and its successors in interest shall defend, indemnify and hold harmless the City, its agents, officers, employees and attorneys for all costs incurred in additional investigation of, or study of, or for supplementing, preparing, redrafting, revising, or amending any document (such as the Negative Declaration), if made necessary by said legal action and if the applicant and its successors in interest desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.
- F. In the event that a claim, action or proceeding described in Subsection E, above, is brought, the City shall promptly notify the applicant and its successors in interest of the existence of the claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that the applicant and its successors in interest is required to defend the City in connection with any said claim, action, or proceeding, the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably be withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with the applicant and its successors in interest in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own to defend any claim, action or proceeding where the applicant and its successors in interest has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City, except that the fees and expenses of the City Attorney shall be paid by the applicant.

- G. The applicant and its successors in interest shall indemnify the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.

- H. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirement, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.