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WHEREAS, in 2007 the Regents of the University of California, serving as the master developer for the site, submitted an application for a mixed use development on the San Pablo Avenue frontage of University Village property located at the northwest and southwest corner of the intersection of San Pablo Avenue and Monroe Street; and

WHEREAS, on July 16, 2012, the City Council approved a series of policy-level actions associated with the University Village Mixed Use project including zoning map amendments, zoning text amendments, planned unit development, density bonus to accommodate a senior housing project, grocery store, and retail space; and

WHEREAS, formal applications for tentative parcel maps and design review for 1075/1096 Monroe Street and 1100 San Pablo Avenue, and a tentative parcel map for 1080 Monroe Street (collectively, “the applications”) were filed by the applicants on August 14, 2013; and

WHEREAS, the applications are for retail and senior housing uses in the San Pablo Commercial Zoning District/University Village San Pablo Avenue Overlay District; and

WHEREAS, beginning in 2013, the Commission held a series of study sessions on the Planning, Zoning and Subdivision actions associated with the applications; and

WHEREAS, the Planning & Zoning Commission held public hearings on May 8, 2013, June 12, 2013, July 24, 2013, October 9, 2013, October 30, 2013, and November 20, 2013 and December 11, 2013 to discuss the design, scope, and improvements set forth in the applications; and

1 **WHEREAS**, a public hearing notice was mailed to property owners within
2 300 ft. of the subject site and was posted in three public places on Friday November
3 8, 2013 and November 27, 2013 for the Planning Commission hearing pursuant to
4 Government Code Section 65090; and

5
6 **WHEREAS**, on December 11, 2013 the Planning & Zoning Commission held
7 a public hearing, considered all public comments received, the presentation by City
8 staff, the staff report, and all other pertinent documents regarding the applications;
9 and

10
11 **WHEREAS**, the Planning & Zoning Commission reviewed and approved the
12 applications at its December 11, 2013 hearing, including tentative maps and design
13 review for 1075/1096 Monroe Street and 1100 San Pablo Avenue, and a tentative
14 map for 1080 Monroe Street; and

15
16 **WHEREAS**, an appeal of the Planning & Zoning Commission decision was
17 filed with the City on December 20, 2013 by Edward Fields; and

18
19 **WHEREAS**, the appellant identified twelve (12) issues as the basis for the
20 appeal, summarized as follows:

- 21
22 1. City lacks a valid Housing Element
23 2. No dates of submittal or revisions on project plans
24 3. Tentative Map does not meet Parkland Dedication requirement
25 4. Tentative Map is incomplete
26 5. Project does not conform to PUD approval
27 6. Project does not conform with private or common open space
28 requirements
29 7. Project is inconsistent with the Planning and Zoning Code due
30 to off-street parking occupying building frontage
31 8. Project is inconsistent with Design Review requirements

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- 9. Project lacks an Affordable Housing Agreement
- 10. Project is inconsistent with Tree Preservation and Creek Conservation policies in the General Plan
- 11. Conditions should be modified to include Ohlone Native American monitor during construction
- 12. Approval is invalid because completed application not received and required fees not paid by the time of approval

WHEREAS, City staff scheduled the appeal hearing for City Council on March 5, 2014 pursuant to Section 20.100.080 (E) (1);and

WHEREAS, a public hearing notice was mailed to property owners within 300 ft. of the subject site and was posted in three public places on February 21, 2014 for the City Council appeal pursuant to Government Code Section 65090; and

WHEREAS, on March 5, 2013 the City Council held a public hearing, considered all public comments received, the presentation by City staff, the staff report, and all other pertinent documents regarding the proposed request; and

WHEREAS, Planning and Zoning Code Section 20.100.080.F establishes the following standards for review of appeals:

When reviewing any decision of the Planning and Zoning Commission on appeal, the City Council shall use the same standards for decision making and is required to make findings in accordance with the Municipal Code. The Council may adopt the Planning and Zoning Commission's decision and findings as its own. In either case, the City Council shall have the option to prepare a resolution stating the council's decision or shall render its decision by minute action.

1 **WHEREAS**, Attachment 1 and supplementary information provided in the
2 tentative maps and project plans respond to the issue filed by the appellant and
3 provides analyses and findings in response to the appeal.

4
5 **WHEREAS**, Attachment 2 responds to additional issues raised by the
6 appellant after the appeal deadline and provides analyses and findings in response.

7
8 **NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of
9 Albany denies the appeal based on the analyses and findings in Attachment 1, and as
10 supplemented by Attachment 2.

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14 **PASSED AND ADOPTED** by the City Council of the City of Albany on the 5th day
15 of March 2014.

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AYES: Council members: Atkinson, Barnes, Maass, Vice Mayor
Wile, & Mayor Thomsen

NOES: none

ABSENT: none

ABSTAIN: none



MAYOR THOMSEN

ATTEST: 

Nicole Almaguer
Albany City Clerk

ATTACHMENT 1 – Response to Edward Fields Appeal (filed 12/20/13)

The appellant has identified 12 items as the basis for the appeal. A summary response and complete analysis follow each appeal item are presented below.

1. **City lacks a valid Housing Element** - The appellant states that because the City lacks a valid housing element, it cannot make the findings that the proposed tentative maps and project designs are consistent with the General Plan.

Summary

The City Council adopted the Housing Element on March 3, 2014 for the 2007-2014 planning period. Therefore, the assertion that the City lacks a valid Housing Element will no longer be germane. **Revised findings to reflect the March 3, 2014 action are proposed.**

Analysis

The City initiated an update of its 2007-2014 Housing Element in 2007. A partial draft was completed and submitted to the State Department of Housing and Community Development (HCD) in July 2009. The State, in turn, provided technical assistance comments to the City on October 22, 2009. Revisions to the Element, including completion of policies and actions, were delayed in 2010-2012 due to staff reductions. In 2013, the City restarted work on the Element to pursue certification by the State. The Planning and Zoning Commission conducted five study sessions on the Housing Element in 2013 and 2014, including May 22, September 25, October 8, October 15, and January 22, 2014. In addition, a Town Hall style public meeting was held at City Hall on October 1, 2013 to discuss housing policy issues.

On October 25, 2013, the City of Albany submitted a draft of its Housing Element to HCD for review. Following a 60-day review period by the State, HCD provided feedback to the City in a letter dated December 26, 2013. City staff worked with HCD to respond to the issues raised in the letter, as well as other issues raised through public comments on the October draft and prepared a revised draft for public review.

The Planning and Zoning Commission reviewed the revised Draft Housing Element on January 22, 2014 and recommended adoption by the City Council. The City Council adopted the Housing Element on March 3, 2014, and thus the City can make findings that the project is consistent with the a valid Housing Element and General Plan.

The Housing Element includes the UC Village senior housing project in the site inventory as a site approved for market rate senior housing and thus appropriate for “Above Moderate Income” households. Thus, it is not included in the sites inventory for below market housing. Other sites in the Element allow the City to meet its fair share of the Regional Housing Needs Allocation for below market housing.

2. **No dates of submittal or revisions on project plans** - The appellant states that the Resolutions refer to Tentative Parcel Maps and Project Plans, but that no dates of submittal or revision are specified.

Summary

In order to clarify which tentative map and project plans were approved, conditions of approval are proposed to be revised. Specific modifications are set forth below, by parcel.

Analysis

Senior Housing Development at 1100 San Pablo Avenue

Planning & Zoning Commission Resolution 2013-10 and 2013-07 resolved to approve design review and the tentative map, respectively, for the senior housing development at 1100 San Pablo Avenue subject to Exhibit A: Conditions of Approval for the Tentative Map and Design Review and Exhibit B: Project Plans. For clarification purposes, Condition SP-1 in Exhibit A to these resolutions is proposed to be amended as follows:

SP-1: Development of the project shall be substantially in conformance with the following plans: the Tentative Parcel Map submitted by BKF Engineers on February 3, 2014, and ~~date~~ approved December 11, 2013 by the Planning & Zoning Commission, and as modified by the City Council on March 5, 2014; and the Architectural, Landscaping, and Lighting Plans ~~prepared~~ submitted by HKIT on September 5, 2013 and ~~date~~ approved December 11, 2013 by the Planning & Zoning Commission, and as modified by the City Council on March 5, 2014, except as modified by the conditions contained herein.

Retail Development at 1075-1095 Monroe Street

Planning & Zoning Commission Resolution 2013-08 and 2013-05 resolved to approve design review and Planning & Zoning Commission Resolution 2013-05 resolved to approve the tentative map for the retail development at 1075-1095 Monroe Street subject to Exhibit A: Conditions of Approval for the Tentative Map and Design Review and Exhibit B: Project Plans. Condition SP-1 in Exhibit A to these resolutions is proposed to be amended as follows:

SP-1: Development of the project shall be substantially in conformance with the following plans: the Tentative Parcel Map submitted by BKF Engineers on February 24, 2014 , and ~~date~~ approved December 11, 2013 by the Planning & Zoning Commission, and as modified by the City Council on March 5, 2014; and the Architectural, Landscaping, and Lighting Plans ~~prepared~~ submitted by Lowney Architects on February 20, 2014 and ~~date~~ approved December 11, 2013 by the Planning & Zoning Commission, and as modified by the City Council on March 5, 2014, except as modified by the conditions contained herein.

Retail Development at 1080 Monroe Street

Planning & Zoning Commission Resolution 2013-06 approved the tentative map for the retail development at 1080 Monroe Street subject to Exhibit A: Conditions of Approval for the Tentative Map and Design Review and Exhibit B: Project Plans. Condition SP-1 in Exhibit A to these resolutions is proposed to be amended as follows:

SP-1: Development of the project shall be substantially in conformance with the following plans: the Tentative Parcel Map submitted by BKF Engineers on February 24, 2014, and date approved December 11, 2013 by the Planning & Zoning Commission, and as modified by the City Council on March 5, 2014, except as modified by the conditions contained herein.

As a result of these changes to the conditions of approval to the Planning & Zoning Commission approvals, the City Council is being asked to take action on the Tentative Maps and Design Review for the senior housing and retail development components of the project, which includes the revisions to the Condition of Approval described above.

3. **Tentative Map does not meet Parkland Dedication requirement** - The appellant states that the Tentative Map is not consistent with Chapter 22.8.4 of the Municipal Code as it does not meet parkland dedication requirements.

Summary

The City accepts the open space designated along the creeks as satisfying the parkland dedication requirements for the project. **To clarify this relationship, the conditions of approval are proposed to be modified, as described below, and an additional graphic is proposed to be added to augment the project plans. As a result, the City Council is being asked to take action on the Design Review approval for the residential component of the project.**

Analysis

Section 22.8.4 of the Subdivision Ordinance identifies parkland dedication requirements. It specifies a formula for calculating required parkland based on the average number of persons per dwelling, with a specific factor of .00315 acres/dwelling unit assigned for "Assisted Living Units," the category that applies to this senior development project. (Parkland dedication is not required for retail uses.) With 175 units, the project requires at least 0.55125 acres of parkland dedication or the equivalent in-lieu fee. Section 22.8.4(d) identifies several principal considerations for types of parkland including "integration with hiking, riding, and bicycle trails, natural stream and creek bed reserves, the East Bay Shoreline and other open space."

Planning and Zoning Code Section 20.100.060 allows Planned Unit Development (PUD) within the City of Albany. The purpose of the PUD regulations is to promote flexibility of design and increase available usable open space in developments by allowing diversification in the relationships of various buildings, structures and open spaces in building groups and the

allowable heights of the buildings and structures, while insuring substantial compliance with the district regulations and other provisions of the Planning and Zoning Code.

The City Council approved a PUD for senior housing development and adjacent grocery development on July 9, 2012 (Resolution 2011-52). The resolution included required findings determining that the project incorporates an exceptional level of amenity or other benefit to the community which could not be achieved without the PUD. These findings included the following open space benefits:

- Participation in implementation of the approved Codornices Creek Restoration project abutting the project including the construction and/or funding of bikeways, plazas, and other open spaces and the delivery of necessary public right of way which in combination with grants obtained by the City will result in an open space area exceeding 30,000 square feet; and
- Creation of a publicly accessible creek-side linear open spaces along Village Creek through the provision of public pathways, benches and the ongoing management of Village Creek enabling public enjoyment of an approximately 360-foot riparian open space.

This creek open space area is illustrated as follows. The Tentative Map (Sheet TM-4) identifies the proposed open space easement for Codornices Creek, identifying the University of California as the grantor and the City of Albany as the grantee. The Site Plan (Sheet A1.0) identifies the conceptual location. An additional graphic, labeled Sheet EXH-1, is proposed to be included in the project plans to confirm the size and extent of the public open space amenity. As shown on Sheet EXH-1, the project's contribution to the restoration project and connecting pedestrian/bicycle path along the creek and 10th Street will result in 23,700 square feet and 7,045 square feet, respectively. In total, the public open space areas adjacent to Codornices Creek include 30,745 square feet (0.71 acres) thereby satisfying the parkland dedication requirement.

Attached to Resolution 2013-10 and 2013-07, Exhibit A: Conditions of Approval is proposed to be amended as set forth below. A new Condition of Approval for the senior housing project is proposed as SP-74A, under a new header:

Parkland Dedication

The applicant shall satisfy fulfillment of the parkland dedication requirement, per Planning and Zoning Code Section 22-8.4, by providing an easement for the Codornices Creek Restoration project. The easement shall be substantially in conformance with the extent of the area in the Open Space Exhibit (Sheet EXH-1) submitted by HKIT on August 2, 2013.

As described in response item #2, the City Council is being asked to take action on the Design Review for the senior housing component of the project, which includes the revisions to the Condition of Approval described above and the inclusion of Sheet EXH-1.

4. **Tentative Map is incomplete** - The appellant states that the Tentative Map does not meet the requirements of Chapter 22-4.2 because it does not show: the location, width, and direction of flow of all water courses; the location of areas subject to inundation or storm water overflow; the boundaries of public areas within or adjacent to the subdivision, including their existing or proposed use, and approximate area; or a statement covering the existing and proposed zoning of the property, existing and proposed uses, including specific detail on any public uses proposed and the proportion of the total area of the subdivision represented by each such use, any proposed deed restrictions, and information pertinent to whether the proposed subdivision and the provisions for its design and improvement are consistent with the General Plan or any applicable specific plan.

Summary

The Tentative Maps for both the retail and senior housing developments have been supplemented to add information not included as part of the original submittal in order to satisfy the requirements of Section 22-4.2 of the Subdivision Ordinance. As a result, the City Council is being asked to take action on the Tentative Maps.

Analysis

Additions to the tentative maps are set forth below.

Senior Housing Development at 1100 San Pablo Avenue

The Tentative Map for 1100 San Pablo Avenue includes the following additions:

- Sheet TM-1 identifies the existing and proposed uses, including proposed public uses/public access easements and the total area of each public use
- Sheet TM-5, TM-6, TM-9, TM-10, and TM-11 identify Codornices Creek, including the width and direction of flow for the creek
- Sheet TM-5 identifies the 100-year flood potential inundation area

Existing public areas are shown on Sheets TM-1 and TM-5 and include University Park, San Pablo Avenue, Tenth and Monroe streets, and Codornices Creek. Proposed public facilities are identified on Sheets TM-6 and include street and multi-modal improvements to Monroe Street. These improvements include: pedestrian crossing signals and enhanced crosswalks, widened medians, and a cycle/pedestrian path on San Pablo Avenue, and a new cycle/pedestrian path along Codornices Creek.

Retail Development at 1075-1095 Monroe Street and 1080 Monroe Street

The Tentative Map for 1075-1095 Monroe Street and 1080 Monroe Street includes the following additions:

- Sheet TM-1 identifies the existing and proposed uses, including proposed public uses/public access easements and the total area of each public use

- Sheet TM-1 now states that the site is outside of the 100-year flood potential inundation area
- Sheet TM-4 identifies Village Creek, including the width and direction of flow for the creek

Existing public areas are shown on Sheets TM-4 and include San Pablo Avenue, Tenth and Monroe streets, and Village Creek. Proposed public facilities are identified on Sheets TM-5 and include street and multi-modal improvements to Monroe Street. These improvements include: a cycle/pedestrian path on San Pablo Avenue, lane reconfiguration on Monroe Street, and a new multi-use path along Village Creek and the west side of the site.

As described in response item #2, the City Council is being asked to take action on the augmented tentative maps.

5. **Project does not conform to PUD approval** - The appellant states that the open space in the approved project plans does not provide the required open space area exceeding 30,000 square feet along Codornices Creek. The appellant also states the PUD approval (Resolution 2011-52) refers to the development plan submitted on April 4, 2011; later presentations accommodate the open space area along the Creek by setting the building back. As a result, the applicant states that the structure does not conform to the development plan as approved in the PUD.

Summary

During the period of time between the July 2012 PUD approval and the December 2013 approval of the tentative map and design review, the project was refined to respond to community preferences, design guidelines, and regulatory requirements. These refinements did not affect the project's conformance with the approved PUD. **No changes to the resolution findings or conditions of approval are warranted.**

Analysis

As described in item #3 above, the purpose of PUD regulations is to promote flexibility of design while insuring substantial compliance with the district regulations and other provisions of the Planning and Zoning Code. Although the project must comply with parkland dedication requirements, as per Section 22.8.4 of the Subdivision Ordinance, the Ordinance does not prescribe how precisely required open space must be achieved.

As described in the PUD approval (page 10, line 11), approval of the PUD does not constitute an express or implied approval of other required actions, including design review. It goes on to state: "The size and location of buildings and other on-site and off-site improvements may be required to comply with regulatory requirements that are part of subsequent applications." Like many projects, this senior housing development was refined over time to respond to community preferences, design guidelines, and regulatory requirements.

In terms of the senior housing development's relationship to the creek in particular, the following standards regulate structure setbacks from the creek. The Watercourse (WC) Overlay District includes areas within 75 feet of the centerline of Codornices Creek. The WC District is intended to promote the preservation and restoration of Albany's creekside areas and regulate land use in flood-prone areas. According to the WC development standards, structures may not be located within 20 feet from the top of the natural creek bank. The senior housing building is planned more than 20 feet from the top edge of the Codornices Creek. This deeper setback reduces runoff impacts into the creek and provides the opportunity for a bike/pedestrian path parallel to the creek and connecting to the ball fields west of the site. This modification to the setback does not conflict with the approved PUD. As a result, no changes to the resolution findings or conditions of approval are recommended.

6. **Project does not conform with private or common open space requirements** - The appellant states that the project is not consistent with Chapter 20.24.090: Usable Open Space, not limited to: at least 200 square feet of common usable open space per unit is not provided; indoor open space should not be counted; the requirement should not include recreational area; and the assisted living facility is not a suitable recreation structure.

Summary

Usable open spaces in the senior housing development, including common indoor and outdoor open spaces, satisfy the City's usable open space requirement. No changes to the resolution findings or conditions of approval are warranted.

Analysis

Planning and Zoning Code Section 20.24.090 identifies common and private usable open space requirements, establishing a standard of 200 square feet of common open space per dwelling unit (or a combination of common and private open space). Therefore, for this 175-unit project, 35,000 square feet of common open space is required.

The code defines usable open space to include "areas located on the ground or on a roof, balcony, deck, porch or terrace, which are accessible and available to all residents for whose use the space is intended." The code specifically excludes the following types of uses: "street rights-of-way, public and private surface easements, accessory buildings, open parking areas, driveways, and access ways for the dwellings, land area utilized for garbage and refuse disposal or other servicing maintenance, and required front yards or street side yards." The Planning and Zoning Code Section 20.24.090 does not preclude indoor common areas from satisfying the usable open space requirement. Rather, Section 20.24.090 states that "suitable recreational structures designed to be consistent with the intent of this subsection may be considered usable open space."

Resolution 2013-10 states a finding that the Planning & Zoning Commission finds that interior activity areas in the senior housing building that are connected to outdoor open space are consistent with the intent of the requirement to provide open space. The inclusion of indoor activity areas as part of private open space requirement is not only allowed under the code, but is

particularly appropriate in light of the use of the facility for senior housing in which many residents' main recreation activity will be conducted in indoor common areas.

As specified on Sheet A1.0 of the senior housing project plans, submitted September 5, 2013, the project includes several outdoor gardens, courtyards, and terraces that provide common outdoor open space for residents of the project, as well as several recreational, dining, and meeting space areas that provide common indoor open space and connect to the outdoor spaces. These common open spaces total 35,262 square feet, as shown in Table 1, and represent suitable recreation structures that are appropriate for seniors and consistent with the intent of Section 20.24.090.

TABLE 1: USABLE OPEN SPACE

Usable Open Space Area/Type	Square Feet
Outdoor Open Space	
Southeast Garden	741
Southwest Garden	1,138
Landscape along 10 th Street	2,597
Courtyard	3,568
South Terrace (2 nd floor)	1,755
Northeast Terrace (2 nd floor)	3,986
North Courtyard (2 nd floor)	10,909
<i>Subtotal</i>	<i>24,694</i>
Indoor Open Space Connected to Outdoor	
Lobby / Great Room	2,180
Town Hall	1,449
Bar Bistro	1,309
Dining	3,048
Other First Floor Open Space	1,341
Memory Care Dining (2 nd floor)	758
Activities (2 nd floor)	483
<i>Subtotal</i>	<i>10,568</i>
Total Usable Open Space	35,262

As a result, the project's usable open spaces satisfy the City's usable open space requirement and no changes to the resolution findings or conditions of approval are recommended.

7. **Project is inconsistent with the Planning and Zoning Code due to off-street parking occupying building frontage** - The appellant states that approval of the project plans is inconsistent with Planning and Zoning Code Section 20.12.040 (Table 1.A note 3) and Section 20.100.060 because ground-floor building frontage along San Pablo Avenue is reserved for commercial activity, but that the residential project includes off-street parking facing the San Pablo Avenue street frontage.

Summary

The intent of the approved PUD was to modify the Planning and Zoning Code Section 20.12.040 development standards in order to permit residential uses on the ground-floor, as stated in Modification #12 of the PUD. **An amendment to the PUD is recommended to clarify the precise development standard modified.**

Analysis

The frontage of the senior housing development site is zoned San Pablo Commercial (SPC) District. As described in Planning and Zoning Code Section 20.12.060, the SPC District accommodates commercial and retail businesses serving a citywide or larger market in a boulevard environment. The zoning district also provides opportunities for high-density residential development, which may be in mixed-use settings.

Table 1 of Planning and Zoning Code Section 20.12.040 identifies permitted land uses by district. Note #4 of the table is a footnote to “Large Residential Care Facilities” as a permitted use in the SPC zone and states that these uses are “not permitted on [the] ground floor.” The approved PUD specifically provides a modification to this requirement (p. 9, Modification #12), allowing “residential and residential care facility uses on the ground floor.” However, the project, as approved, is represented by the use classification “Multiple Family Dwellings” and not “Large Residential Care Facilities.” While Modification #12 of the approved PUD specifically allows residential uses on the ground floor, it does not specifically modify footnote #3 of Table 1 which pertains to “Multiple Family Dwellings” and states:

Ground floor building frontage along San Pablo Avenue is reserved for commercial activity, except for any necessary access to residential facilities; residential use is permitted elsewhere on the ground floor, and above the ground floor. Off-street parking in support of residential use is not permitted to occupy building frontage along San Pablo Avenue.

Based on the intent of the modification to permit residential uses on the ground-floor, including off-street parking, the PUD is proposed to be modified as follows to reflect the change to footnote #3 of Table 1:

Modification #12: The requirements of Planning and Zoning Code Section 20.12.040.A.2 Table 1 (Note 3 and 4) (Ground Floor Uses in SPC District) are modified for Parcel B as follows:

- Allow residential or residential care facility uses, including off-street parking, on the ground floor.

8. **Project is inconsistent with Design Review requirements since it does not meet at least one San Pablo Avenue Design Guidelines’ objective** - The appellant states that approval of the project is inconsistent with design review procedures described in Planning and Zoning Code Section 20.100.050 with respect to conformance with the General Plan, any applicable Specific Plan, and applicable design guidelines, specifically the San Pablo Avenue Design

Guidelines, not limited to Objective 1 which seeks to “create a ‘retail boulevard’ that reflects the quality of Albany.”

Summary

An amendment to the design review Resolution is proposed to clarify how the San Pablo Avenue Design Guidelines were considered as part of the design review process for the senior housing development.

Analysis

The San Pablo Avenue Design Guidelines establish a vision for a retail “boulevard” along San Pablo Avenue. They contain a variety of guidelines for development for how development addresses the public street to create a thriving corridor. However, the Design Guidelines do not regulate use. Unlike the City’s Planning and Zoning Code, the guidelines do not prescribe specific requirements or outcomes. Specifically, page 4 of the Guidelines provides a section on Understanding and Using the Guidelines, stating that “The importance of adhering strictly to particular guidelines will need to be weighed during the design review process.”

Section 20.100.050 regarding design review procedures provides specific requirements for approving any project on San Pablo Avenue. These procedures require findings that the San Pablo Avenue Design Guidelines have been considered and incorporated in the project. Resolution 2013-10 refers to the Design Guidelines and the role of the UC Village project in supporting potential further development on the corridor (page 1) and identifies a finding (page 5) that the Guidelines were considered as part of the project review.

Additionally, Resolution 2013-10 references findings (page 9) from the approved PUD suggesting that the project supports the intent of the Guidelines to encourage commercial vitality. However, as stated in the Resolution finding, several of the candidate developers who expressed interest in the site, agreed that Monroe Street was better suited than San Pablo Avenue for prosperous retail. The PUD finding also stated that this market observation was consistent with ground floor retail vacancies that neighboring communities are experiencing along San Pablo Avenue.

To clarify the extent to which the Design Guidelines were considered as part of design review, Finding A.5 on page 5 of Resolution 2013-10 is proposed for the City Council to uphold the Planning and Zoning Commission’s action, subject to this modification:

The City-adopted San Pablo Avenue Design Guidelines have been considered and incorporated in the project.

Explanation: The project is generally consistent with the intent of the San Pablo Avenue Design Guidelines to revitalize this district and create special locations along the street. While the senior housing block does not provide retail development along San Pablo Avenue, it does provide a horizontal mix of uses with retail planned along Monroe Street and housing planned along San Pablo Avenue. Additionally, the grocery store site is directly adjacent, providing retail fronting both San Pablo Avenue and Monroe Street.

This site plan configuration is consistent with site planning recommendations from other local developers. In particular, during Fall 2012, the University of California sought proposals from retail real estate developers. Three different development teams met with City staff and during these meetings expressed their view that retail space in this area of San Pablo Avenue would not attract quality retail tenants. Moreover, the proposed senior housing project contributes to the retail boulevard by enhancing pedestrian activity on the street with new residents. It also ~~and~~ reflects the urban character of San Pablo Avenue with main entrances located on San Pablo Avenue, large windows that provide transparency into common spaces, and new street trees that introduce a pedestrian rhythm at the ground-floor. The re-orientation of the retail portion of the project was discussed at the Planning & Zoning Commission's May 8, 2013 meeting.

In order to add the expanded finding above, the City Council is being asked to take action on design review approval for the senior housing component of the project.

9. **Project lacks an Affordable Housing Agreement** – The appellant states that approval of the project plans is inconsistent with Planning and Zoning Code Section 20.40.030 and 20.40.040 since an Affordable Housing Agreement has not been executed despite the applicant receiving a density bonus, which constitutes a form of assistance.

Summary

The project is a 100 percent market-rate rental senior housing project. The City does not have the legal authority to require inclusionary housing units, and thus an Affordable Housing Agreement is not warranted. **No changes to the resolution findings or conditions of approval are recommended.**

Analysis

In 2005, the City adopted an inclusionary housing ordinance. The ordinance requires that any development with five or more units set aside 15 percent of those units for low or very-low income households at prices deemed affordable to those groups. Planning and Zoning Code Section 20.40.030 describes requirements for inclusionary housing. The City requires applicants who produce inclusionary housing units to enter into an Affordable Housing Agreement with the City for the purpose of assuring continuing affordability of such units.

In 2009, the California Court of Appeals ruled that cities could not enforce inclusionary housing requirements for new rental properties (Palmer/Sixth St Properties vs. City of Los Angeles). Thus, Albany's ordinance is currently only enforced on for-sale projects. Since the development is proposed as a rental project, it is not required to provide affordable housing units and thus did not need to prepare an Affordable Housing Agreement.

The State Density Bonus law allows bonuses for qualifying affordable housing and senior housing (including 100% market-rate housing) projects. The project is eligible for the density bonus

because it is a senior housing development. The applicant applied for and received a reduction in parking ratio standards as a result of the density bonus provisions in Planning and Zoning Code Section 20.40.040 and California Government Code 65915 through 65918. However, participation in the Density Bonus program through a qualifying senior housing project (Government Code Section 65915(b)(1)(C), does not require an Affordable Housing Agreement described in Planning and Zoning Code Section 20.40.040. the approved parking development standard reduction, does not constitute a form of assistance that triggers the requirement for affordable housing

Moreover, the grant of a Density Bonus, nor a waiver or reduction of a development standard such as parking ratio granted pursuant to Government Code Section 65915(e)(1), and Planning and Zoning Code Section 20.40.040E, does not constitute a form of assistance, since the City is not making a direct financial contribution to the project under Government Code 65916. Section 20.40.040G does not apply to this senior housing project because the project did not need to apply for an Affordable Housing Agreement. Therefore, no changes to the resolution findings or conditions of approval are warranted.

10. Project is inconsistent with Tree Preservation and Creek Conservation policies in the General Plan – The appellant states that approval of the design review and landscape plans is not consistent with the General Plan policies including but not limited to LU 7.1, LU 7.2, LU 9.2, CROS 1.4, CROS 4.5, and CHS 1.1. The plans do not show: the preservation or relocation of mature, heritage, and endangered trees; Tree Protection Zone around trees that are to be preserved; nor how soil compaction around trees to be preserved will be avoided by the proposed adjacent paved surfaces. Additionally, the appellant suggests that more mature trees could be preserved if the parking provided for the grocery and retail component of the project were reduced. The appellant states that the parking requirement is currently exceeded by 59 percent.

Tree Removal Plans

Summary

In order to provide for the protection of existing trees during construction, one additional condition and one modified condition of approval are proposed. Specific modifications are set forth below. A discussion of the tree removal plans and the City’s policies are also described below. Parking requirements are described in a separate subsection.

Analysis

The General Plan policies referred to by the appellant regarding tree preservation are as follows:

- With respect to trees, Policy LU 7.1 encourages the City to “consider preserving a portion of the Gill Tract, particularly those portions with important and significant stands of trees, as open spaces when any reuse of this area is proposed.” With respect to trees, Policy LU

7.2 provides similar intent to “protect and preserve the important stands of trees on the site.” The project site is not part of the Gill Tract as referenced by the policy.

- Policy CROS 1.4 calls for the City to “Develop policies to be included in the Watercourse Combining District to protect riparian habitat within the Creek Conservation Zone where practically feasible and applicable.”
- Policy CROS 4.5 calls for the City to “Require tree preservation measures during site design and construction.”
- Policy CHS 1.1 is as follows: “Conserve riparian and littoral habitat within the area 100 feet from the creek centerline in appropriate areas both for its importance in reducing flood impacts and for its aesthetic value.”

Planning and Zoning Code Section 20.48 describes the process for removal of trees. The purpose of this Section is to encourage the retention of living trees on undeveloped property and applies to living trees, over five feet in height, on unimproved lots. Section 20.48.060 permits an applicant to request permission to remove trees through the design review process if it is included in the submission for design review.

Sheet L3.1 of the senior housing project plans, submitted September 5, 2013, lists and maps trees identified for removal and describes the health of those trees as determined by an arborist. The project includes removal of 16 trees and planting of 26 new trees. Sheet L1.1 of the retail development plans, dated October 25, 2013, identifies 49 trees to be removed as well as 16 to be retained (primarily in the Village Creek stream management area). Additionally, the plans include the relocation of three (3) small Oak trees and planting of 112 new trees. These tree disposition plans were reviewed and accepted by the Planning & Zoning Commission as part of the design review approval process.

Additionally, Condition of Approval LNDSC-1c calls for existing native trees to be retained and incorporated into the landscape plan to the maximum extent practicable. On the retail development, Condition of Approval SP-8 requires the applicant to provide a stream management plan for the portion of Village Creek abutting the project. This plan will include a monthly inspection and repair program including trash removal and erosion control, and monitoring of plantings including seasonal trimming/clearing.

Since the General Plan’s adoption in 1992, there have been several changes to the trees in the Gill Tract. Mostly notably, as it pertains to Policy LU 7.1, the significant stands of trees referred to in the policy have been removed due to disease over the past six years. In 2007, U.C. Berkeley staff and consultants determined that the Monterey Pines located near the corner of San Pablo Avenue and Marin Avenue were diseased and hazardous due to the risk of falling. As a result, in January 2008, U.C. removed approximately 185 trees.

In order to specifically implement policy CROS 4.5 described above, a new Condition of Approval for the retail project is proposed as SP-74:

SP-74: Prior to the commencement of construction activity, the applicant must work with an ISA-certified arborist to establish the tree protection zone (TPZ) and critical root zone (CRZ) of all trees to be preserved. The ISA-certified arborist is to provide a tree protection

plan and mitigation measures for all preserved trees that may potentially be impacted during construction. Prior to any grading work, the applicant must protect all existing trees being retained from damage due to soil compaction or construction activities. All trees to be retained within the grading or construction area shall be protected with chain link fencing or other rigid fence enclosure (minimum 5-foot high) acceptable by the Planning Director. Fenced enclosures for trees to be protected shall be erected at the dripline of trees or as established by an ISA-certified arborist to establish the CRZ in which no soil disturbance is permitted and activities are restricted. Construction traffic and material storage must be kept away from tree root areas. If compaction to the upper 12-inch soil within the TPZ is proposed, then the applicant must apply at least a 4-inch layer of wood chips around all protected trees within the fenced area to reduce compaction from vehicles that inadvertently cross the barricades. Paving and other soil compacting material that encroaches within the TPZ should include an aeration system designed by an ISA-certified arborist. The applicant shall plan locations of trenching—including for utilities, cable TV and roof drains—to avoid all possible cuts beneath tree canopies.

Additionally, condition SP-8 is proposed to be modified to ensure the protection of the trees identified for preservation on Sheet L1.1 of the retail plans:

SP-8: Prior to approval of the final map by the City Engineer, the applicant shall provide a stream management plan for the portion of Village Creek abutting the proposed project, including a monthly inspection and repair program including trash removal and erosion control, monitoring of plantings including seasonal trimming/clearing and protection of the 16 trees identified for preservation on the Tree Preservation and Removal Plan, and installation and maintenance of informational signage and public benches. The Plan shall be submitted to the Community Development Director for review and approval prior to issuance of a grading permit.[PUD Requirement].

As a result of these additional and modified conditions of approval, the City Council is being asked to take action on the design review approval for the retail development.

Parking Requirement

Summary

The appellant provides a suggestion for how the project could be modified to accommodate preservation of more trees and **does not represent a separate basis supporting an appeal**. For informational purposes, an analysis is provided below.

Analysis

Planning and Zoning Code Section 20.28.030 identifies off-street parking requirements for retail uses (including grocery stores) as 1 space per 400 square feet of gross floor area. With 33,384 gross square feet included in the Parcel A portion of the retail project, at least 83 spaces are required. The appellant is correct in stating that the off-street parking provided for the Parcel A portion of the retail project—at 126 spaces—exceeds what is required. However, these parking

spaces are also serving the retail site on Parcel B (which does not yet have an application), as described by condition SP-55, which requires a shared parking arrangement granting Parcel B an easement on Parcel A to allow its users to park. Moreover, the City's Code states minimum parking requirements—not maximum requirements—and in this case, the anchor tenant requested these additional spaces due to experiences at other nearby stores. Furthermore, the footprint of the proposed parking lot area contains just seven (7) existing trees proposed for removal, so there is only limited opportunity to save additional trees by reducing the parking area.

The PUD modifies the Section 20.28.030 parking requirements by reducing the standard dimensions of the parking spaces from 9 x 18 feet to 9 x 15 feet, which has the effect of reducing the amount of impervious surfaces that otherwise would be required by the same number of parking spaces provided at standard space dimensions. This reduction allows the grocery and retail buildings to be consolidated on the site and for open space, pedestrian/bicycle paths and other landscaping amenities to be provided on the site and in the adjacent rights-of-way.

11. Conditions should be modified to include Ohlone Native American Monitor during construction – The appellant requests that Conditions of Approval SP-69, SP-70, SP-71, and GEN-9 be modified to require Ohlone Native American Monitor on site during excavation and grading.

Summary

The comment provides a suggestion for how the project mitigation measures could be altered. **No changes to the conditions of approval are warranted.**

Analysis

For both the senior housing development and the retail project, Conditions of Approval SP-69, SP-70, SP-71 correspond to mitigation measures from the UC Village Master Plan Project Environmental Impact Report (EIR) Mitigation Monitoring and Reporting Program (MMRP) and GEN-9 to standard conditions of approval applied by the City. GEN-9 specifically addresses the scenario and process for contacting Native American organizations.

- SP-69: During grading and construction, should an archaeological resource be encountered, the construction contractor shall halt construction in the vicinity of the find and shall notify the City. [MMRP CULT-1]
- SP-70: During grading and construction, if paleontological resources are encountered, all work within 25 feet of the discovery shall be redirected until a qualified paleontologist has assessed the discoveries and made recommendations. [MMRP CULT-2]
- SP-71: During grading and construction, if human remains are encountered, work within 25 feet of the discovery shall be redirected and the Alameda County Coroner notified immediately. At the same time, an archaeologist shall be contacted to assess the situation and consult with the appropriate agencies. [MMRP CULT-3]
- GEN-9: Archeological Remains - In the event subsurface archeological remains are discovered during any construction or preconstruction activities on the site, all land

alteration work within 100 feet of the find shall be halted, the Community Development Department notified, and a professional archeologist, certified by the Society of California Archeology and/or the Society of Professional Archeology, shall be notified. Site work in this area shall not occur until the archeologist has had an opportunity to evaluate the significance of the find and to outline appropriate mitigation measures, if deemed necessary. If prehistoric archeological deposits are discovered during development of the site, local Native American organizations shall be consulted and involved in making resource management decisions.

These conditions represent the standard and best practices to address potential impacts associated with the archeological and paleontological resources that could be encountered during construction. They were developed by professionals with expertise in archaeology to address potential impacts on this site. Based on the analysis and conclusions in the EIR, changes to these mitigations measures are not recommended or warranted.

12. Approval is invalid because completed application not received and required fees not paid by the time of approval – The appellant states that the Planning and Zoning Commission’s approval of Resolution Nos. 2013-05, 2013-06, 2013-07, 2013-08, 2013-09, 2013-10, and 2013-11, including Conditions of Approval, tentative maps, design review plans, landscape plans, and special findings is invalid because at the time of the approval (December 11, 2013) the City had not yet received completed applications for the tentative parcel maps or design reviews, and the required fees had not yet been paid.

Analysis

The following section provides a timeline for the project review and approval process:

- The senior housing applicant and retail project entered into a reimbursement agreements in June 2013.
- Following communication with City staff about the completeness of the application, the applications for the senior housing and retail development, were deemed complete on Friday November 8, 2013 when the public hearing notice recommending action on the application was sent and posted in three places. Subsequent supplemental information has been submitted for both applications.

ATTACHMENT 2

From: Jeff Bond

RE: Response to Additional Comments Submitted by Edward Fields

Date: March 4, 2014

Albany resident Edward Fields appealed the December 11, 2013 Planning & Zoning Commission approval of the UC Village project. The City will address this appeal during the March 5, 2014 Special City Council Hearing. After the appeal deadline, Mr. Field subsequently submitted a series of comments to the City Council on February 23, 2014, raising new issues not included in his appeal. While the untimely submittal of these additional grounds do not comply with the appeal provisions of the City's Code, this supplemental attachment is included to provide further clarity. This attachment complements the responses described and addressed in Resolution No. 2014-22 (Attachment 5b w/ Attachment 1).

Item #1 – Assisted Living Definition. *Commenter states: “Note that in subsection 22-8.4 d “Standards and Formula for Dedication of Land”, the Belmont Village project does not meet the definition in the subsection: “Assisted Living Unit shall mean the living area or unit as defined by California Health and Safety Code Section 1771, as may be amended.”*

Response: The City has determined that the project meets the definition of California Health and Safety Code Section 1771 which defines an assisted living unit as “the living area or unit within a continuing care retirement community that is specifically designed to provide ongoing assisted living services.”

Item #2 – Parkland Dedication. *Commenter states: “Subsection 22-8 .4, PARKLAND DEDICATION, subsection 22-8.4 j Procedure states: “1. At the time of the approval or conditional approval of the subdivision map or parcel map, the Planning and Zoning Commission shall determine after a report and recommendation from the Park and Recreation Commission, whether land is to be dedicated or in lieu fees are to be paid by the subdivider or any combination of land and fees.”*

The commenter further states: “The Commission needs to be provided with the square footage and location of the open space along Codornices Creek which meets the conditions of the PUD, the square footage and location of the land which meets the Parkland Dedication requirements based on the recommendation of the Parks and Recreation Committee, and the square footage and location of the open space for the residents of the assisted living facility which meets the requirements of 20.24.090 of the Code.”

Response: The UC Village site includes both Codornices and Village Creeks, providing unique opportunities for public open space for the project and the community at-large. The dedication of land and provision of open space along the creeks has been a priority for the City and has been discussed at numerous Planning & Zoning Commission meetings. To that end, an amendment was made to the City's Park Dedication Requirements regarding requirements for assisted living units, for the purposes of this project. In addition, Section 22-8.4 of the City's Code states that where park and recreational facilities identified in the General Plan or Parks and Recreation Plan are located within the proposed subdivision and are reasonably related to serving the present and future needs of the residents of the subdivision, the subdivider "shall dedicate land for park and recreation facilities sufficient in size and topography to meet that purpose." The land proposed to be dedicated is in within the Creek Conservation Zone set out in the General Plan Conservation and Open Space Plan Map, and the Watercourse Overlay District in the General Plan Land Use Plan Map and is within the scope of General Plan Land Use Element policy LU 7.2B relating to the protection and enhancement of creeks running through the UC Village property, and Conservation, Recreation and Open Space Element policy CROS 1.4 (regarding protection of creek conservation zone areas). The land to be dedicated is also identified in the Parks and Recreation Plan as an area needed to preserve open space along Codornices creek (page 5.5 and 6.33). As such, there was no need for the additional step of having the Park and Recreation Commission determine whether a dedication or in-lieu fee was appropriate (pursuant to 22-8.4j) since it was apparent that dedication would be required and the amount of land satisfies the dedication requirement and were suitable in the opinion of the City staff.

The appeal response and attachments provide supplementary information and graphics defining the square footage values and locations for: (1) the Village and Codornices Creek public open spaces and improvements which provide amenities as stipulated by the PUD; (2) the Codornices Creek and 10th Street public open spaces, which satisfy the parkland dedication requirement for the senior housing component of the project (the retail component does not have a requirement, but open space is provided along Village Creek); and (3) the common open space provided for the senior housing residents.

Item #3 – Flood Protection. *Commenter states: "Failure to comply with Albany's Zoning Code, including, but not limited to, Section 20.52 Flood Damage Prevention Regulations and Subsection 20.52.060 C Standards for Subdivisions. (Construction within Flood Zones AO and X.)"*

Response: As stated in Condition of Approval SP-42 of 1100 San Pablo (senior housing), prior to approval of the final map, the applicant must submit a request to the Federal Emergency Management Agency (FEMA) for a Letter of Map Revision (LOMR). The LOMR must show that the project would, upon construction, affect the hydrologic or hydraulic characteristics of a

flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or Special Flood Hazard Area. This action will remove the building from the 100-year floodplain.

Item #4 – Project Consistency. *The commenter states that the project does not comply with the 2004 UC Village Master Plan, which does not comply with the 2009 EIR.*

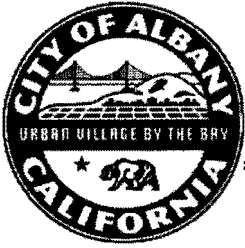
Response: Comment noted. The Master Plan is a conceptual document prepared by the University of California and is not binding on the City, as described in Resolution 2013-11. The EIR, certified in 2012, evaluated the project for environmental impacts and not compliance with the 2004 UC Village Master Plan.

Item #5 – Tree and Creek Preservation. *Commenter alleges inconsistency between the project's tree removal plans and the General Plan policies related to tree preservation, creek preservation/restoration and urban development (LU 7.1, LU 7.2, LU 9.2; CROS 1.4, CROS 4.5; CHS 1.1). The commenter refutes the finding made in Planning & Zoning Commission Resolution 2013-11 stating that these General Plan policies relate to the stand of pine trees removed due to disease in 2009.*

Response: For practical use, the Gill Tract now refers to the area north of Village Creek, which is outside the boundary of this structure. As the commenter states, the General Plan Conservation/Open Space map identifies “Significant Trees” only north of Village Creek at Marin Avenue, where the Monterey Pines were located at the time of the General Plan adoption. As a result, the Commission made a finding in Resolution 2013-11 that policies LU 7.1, LU 7.2, LU 9.2, CROS 1.4, CROS 4.5, and CHS 1.1 related to the stand of trees along Marin Avenue that were removed in 2009.

Still, the Planning & Zoning Commission did consider all General Plan policies in the review and approval of the project, including complex policies, such as LU 7.1 and LU 7.2 that seek to both “designate” commercial retail and compatible uses and “consider preserving a portion of the Gill Tract, particularly those portions with important and significant stands of trees.” Weighing these land uses and adjusting the site plan to accommodate tree preservation and creek protection were key parts of the project review process.

Additionally, mitigation measures in the EIR and conditions of approval for the senior housing and retail components of the project support creek preservation (SP-6 through SP-11), flood control (SP-41 and SP-42), drainage, erosion control, and biological habitat preservation, including during construction (SP-62 through SP-68). These conditions include implementation of the Codornices Creek Restoration project (SP-9) and a stream management plan for Village Creek (SP-8).



City of Albany

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RESOLUTION NO. 2014-22

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 5th day of March, 2014, by the following votes:

AYES: Council Members Atkinson, Barnes, Maass, Vice Mayor Wile & Mayor Thomsen

NOES: none

ABSENT: none

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this 6th
day of March, 2014.

Eileen Harrington
DEPUTY CITY CLERK