

*City of Albany*  
**Planning and Zoning Commission**  
**Staff Report**

Meeting Date: September 23, 2008

Prepared by: Ac

Agenda Item: 6a

Reviewed by: JB

**Subject:** 904 Santa Fe. Continuation of Planning Application 07-087. Design Review. Request for approval on an application for Design Review of a new mixed-use building, which includes two residential units and one commercial retail space.

**Applicant/  
Owner:** Mina Moubedi

**Recommendation**

Staff recommends that the Planning and Zoning Commission approve the project, subject to the attached findings and conditions of approval.

**Project Description**

The subject property has a single-story residence located on a 4,180 square foot lot. The applicant would like to demolish the existing home and construct a new three story mixed-use building that includes two residential units that are each approximately 1,200 square foot in area, and a commercial retail space that is approximately 1,075 square foot in area. There is a 5'-6" side yard setback on the south side and a zero, lot line setback on the north side. The third story is a partial story that steps in 11' from the rear property line. The building has a maximum height of 31'-11". The building is of a contemporary style with a tile roof and stucco finish. There are various divided light windows, balcony, roof top deck and variation in wall depths that articulate the elevations. The deck and balcony provide the required 100 square foot of private open space for each unit.

Planning and Zoning Code Section 20.28.040(B2) states that up to 1,500 sq. ft. of ground floor retail area is exempt from parking requirements. The retail area of the proposed project is 1,076 sq. ft. therefore, there no parking required for the one retail space. There is a four car parking garage for residents located below grade that is accessed from a driveway off Santa Fe. Municipal Code Section 20.24.050 (C1) states that enclosed parking that is completely below grade for mixed-use buildings are exempt in the Floor-Area-Ration calculations. In this case, the garage is as far below grade as practically possible to maintain safety and functionality.

**Background on Application**

The application was received on November 1, 2007 and was first heard at a study session of the Planning and Zoning Commission on December 11, 2007 where the Commission provided the

applicant feedback and direction on appropriate changes. The Commission reviewed the project a second time at the previous Commission meeting on September 9, 2008 where the project was continued to allow potential changes, for purposes discussed in further detail below.

### **Environmental Analysis**

Staff has determined that the proposed project is categorically exempt from the requirements of CEQA per Section 15332 of the CEQA Guidelines, which exempts infill development.

### **September 9, 2008 Public Hearing**

The Commission discussed the project at length on September 9, 2008. (See the staff report for the September 9, 2008 discussion (attachment 4) for a discussion of all key issues.) During the discussion, there appeared to be a consensus that the architectural style and integrity of the building are well detailed and attractive. There also was a consensus about the rear elevation being more attractive and appropriate for neighbors as a hipped instead of a gabled roof. The Commission also agreed that building permit plans should be reviewed, if the project is approved, to ensure they accurately reflect the approved plans and provide appropriate details.

Some of the Commissioners, however, had concerns about the project making a suitable "transition" between commercial properties to the north and residential properties to the south and west. Similarly, neighbors to the south and to the west expressed concerns about impacts that the proposed third story and balconies may have on privacy and sunlight.

There also was public comment and Commission questions about the inconsistency between the General Plan land use designation and the zoning map. Attached are several pages from the *California Land Use and Planning Law Handbook* on this topic. As staff noted in the hearing, the inconsistency appears to be the result of a drafting error on the General Plan land use map, and not related to an inconsistency between General Plan goals, policies, or objectives and the requirements of the Planning and Zoning Code.

### **Conclusion**

Other than daylight plane requirements, the city does not have specific site regulations or a transitional zoning district separating the commercial district from residential, and thus the proposed project complies with site regulations. Based on the project's compliance with the site regulations, staff recommends approval of the project.

The Commission, however, does clearly have authority in Design Review Standards of Review to consider massing, bulk, and privacy concerns. Specifically, the Standards of Review specifically allow the Commission to consider whether an application is harmonious with its surroundings and whether balanced attention has been given to the benefits of the proposed project and the privacy of residential occupants of adjacent properties.

There are a range of outcomes from the Public Hearing that are possible. First, a motion could be made to either approve or deny the application. Three affirmative votes would be required in

either case. A two-two tie vote would essentially deny the project. In the case of denial or tie vote, it is recommended that Commissioners not supporting the project state for the record specific elements of the project that in their judgment do not meet the standards of review.

Regardless of the outcome of the Commission's action, there exists a potential for appeal to the City Council. In addition to the specific issues of this project, staff also would suggest that the Commission provide the Council with thoughts on the more general policy questions that this application raises. The general policy questions will help frame the Council's consideration of this project as well as give the Commission and staff have guidance in the event future projects of this nature come forward.

Appeals:

The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council if such appeal is filed within 14 days of the date of action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.

Attachments:

1. Analysis of Zoning Requirements
2. Draft Findings of Approval
3. Draft Conditions of Approval
4. Staff Report from 9/9/08
5. Application, Project Plans
6. Renderings provided by Neighbor
7. Excerpts from *California Land Use and Planning Law*

ATTACHMENT 1 - ANALYSIS OF COMPLIANCE WITH ZONING REQUIREMENTS

20.12 Zoning Districts And Permitted Uses

General Plan:           Low Density Residential  
 Zoning:                 SC (Solano Commercial)

20.16 Land Use Classifications

Restaurant with drive-through

Surrounding           North - Office (SC)                                 East - SFR       (SC & R-1)  
 Property Use         South - SFR (R-1)                                 West - SFR     (SC & R-1)

20.20.080 Secondary Residential Units.

Not applicable.

20.24.020 Table Of Site Regulations By District.

	Existing (approx.)	Proposed	Requirement
Setbacks			
Front (east)	20'	15'	15'
Side (south)	5'-6"	5'-6"	5'
Side (north)	4'	0'	0'
Rear (west)	33'	0'	0'
Area			
Lot Size	4,180	No change	--
Lot Coverage	40%	80%	100%
Maximum Height	--	31'-11"	35'

20.24.030 Overlay District Regulations.

Not applicable.

20.24.040 Hillside Residential Regulations.

Not applicable.

20.24.050 Floor-Area-Ratio.

	<b>Proposed</b>	<b>Requirement</b>
Lot Size	4,180	--
Floor Area		
Garage	2564	--
First Floor	2397	
Second Floor	2097	
Third Floor	722	
Total	7780	--
Total Counted	5216*	--
Floor Area Ratio	1.25%	1.25%

\* Municipal Code Section 20.24.050 (C1) states that parking that is completely below grade for mixed-use buildings are exempt in the Floor-Area-Ration calculations.

20.24.060 Setback Areas, Encroachments.

Not applicable.

20.24.100 Distances Between Structures.

See discussion of key issues.

20.24.110 Fences, Landscaping, Screening.

See discussion of key issues.

20.24.130 Accessory Buildings.

Not applicable.

20.28 Off-Street Parking Requirement.

See discussion of key issues.

20.40 Housing Provisions

The project is not subject to inclusionary housing requirements since there are fewer than five units.

20.44 Non-conforming Uses, Structures and Lot

Not applicable.

20.48 Removal of Trees

Not applicable.

20.52 Flood Damage Prevention Regulations

Not applicable.

20.100.030 Use Permits.

Not applicable.

20.100.040 Variances.

Not applicable.

20.100.010 Common Permit Procedures.

Public notice of this application was provided on August 29, 2008 in the form of mailed notice to property owners and occupants within a 300-foot radius, and posted in three locations.

20.100.050 Design Review.

See Summary of Key Issues

Green Building

See attachment

ATTACHMENT 2 - FINDINGS

**Findings for Design Review approval (Per section 20.100.050.E of the AMC)**

Required Finding	Explanation
<p>1. <i>The project conforms to the General Plan, any applicable specific plan, applicable design guidelines adopted by the City of Albany, and all applicable provisions of this Chapter.</i></p>	<p>The General Plan designates this area for residential development. The project, however, meets City zoning standards for location, intensity and type of development and complies with stated land use policies in the General Plan.</p>
<p>2. <i>Approval of project design is consistent with the purpose and intent of this section, which states "designs of projects...will result in improvements that are visually and functionally appropriate to their site conditions and harmonious with their surroundings, including natural landforms and vegetation. Additional purposes of design review include (but are not limited to): that retention and maintenance of existing buildings and landscape features are considered; and that site access and vehicular parking are sufficient."</i></p>	<p>The proposal is in scale and harmony with existing development in the vicinity of the site. The architectural style, design and building materials are consistent with the City's Design Standards. The proposed project will provide safe and convenient access to the property for both vehicles and pedestrians. The project will not remove any significant vegetation. The project will not create a visual detriment at the site or the neighborhood.</p> <p>The building is of a contemporary style with some Spanish style accents such as a tile roof and stucco finish. All the elevations, except for the north, are well articulated and attractive. The applicant has made a conscious effort to add architectural details such as wood railings and tile details, which enhance the appearance of the building. A master sign plan and landscape plan will also increase the aesthetic quality of the site.</p>
<p>3. <i>Approval of the project is in the interest of public health, safety and general welfare.</i></p>	<p>The proposed project will not be detrimental to the health, safety, convenience and welfare of those in the area and would not adversely impact property, improvements or potential future development in the area. The project meets all development requirements.</p> <p>Four parking spaces have been provided for the two housing units and the commercial space is small in size, which is preferable for its location and close proximity to residential properties. The second and third stories are stepped away from the properties at the west and south and does not reach the maximum allowable height limit thus</p>

	will have less impact on neighbors. It will increase housing opportunities in the City and provide a small, lower impact commercial space to transition from Solano Avenue to Santa Fe Avenue.
4. <i>The project is in substantial compliance with applicable general and specific Standards for Review stated in Subsection 20.100.050.D.</i>	The project as designed is in substantial compliance with the standards as stated, including access, architecture, natural features, coordination of design details, and privacy. Additional railings and reduction in size of decks and balconies have increased privacy for adjacent neighbors.

**COMMUNITY DEVELOPMENT DEPARTMENT CONDITIONS OF APPROVAL**

**GENERAL PROJECT CONDITIONS**

- Gen-1      **Project Approval.** This Design Review approval is for Mina Moubedi, owner of property located at 904 Santa Fe as substantially shown and described on the project plans, except as may be modified by conditions herein. Plans include preliminary master site plan prepared by Mahmood Pourzand date received August 26, 2008, architectural plans (project perspectives, building sections, and floor plans, all as presented to the Planning and Zoning Commission on September 9, 2008]. For any condition herein that requires preparation of a Final Plan where the project developer has submitted a conceptual plan, the project developer shall submit final plan(s) in substantial conformance with the conceptual plan, but incorporate the modifications required by the conditions herein for approval by the City.
- GEN-2      **Project Approval Expiration.** This Design Review approval expires on September 23, 2009 (one year from the date on which this approval becomes effective) or at an alternate time specified as a condition of approval, unless [a building permit has been issued and construction diligently pursued; a certificate of occupancy has been issued; the use is established; the use permit, variance or design review approval is renewed]. The approval may be renewed by the Community Development Director for a period up to an additional two (2) years, provided that, at least ten (10) days prior to expiration of one (1) year from the date when the approval becomes effective, an application for renewal of the approval is filed with the Community Development Department. The Community Development Director may grant a renewal of an approval where there is no change in the original application, or there is no request to change any condition of approval.
- Gen-3      **FEES.** The applicant shall pay any and all City and other related fees applicable to the property, as may be modified by conditions herein. Fees shall be based on the current fee structure in effect at the time the relevant permits are secured, and shall be paid prior to issuance of said permit or prior to any City Council final action approval. Notice shall be taken specifically of Plan Check, Engineering, Fire and Inspection Fees. The project developer shall also reimburse



the City for direct costs of planning; building and engineering plan check and inspection, as mutually agreed between the City and developer.

- GEN-4      **Appeals.** The Albany Municipal Code provides that any action of the Planning staff may be appealed to the Planning and Zoning Commission, and any action of the Planning and Zoning Commission may be appealed to the City Council as per the procedures described in Section 20.100.080. The City Clerk will then schedule the matter for the next available City Council meeting.
- GEN-5      **Requirement for Building Permit.** Approval granted by the Planning and Zoning Commission does not constitute a building permit or authorization to begin any construction or demolish an existing structure. An appropriate permit issued by the Community Development Department must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.
- GEN-6      **Fire Department Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Albany Fire Department have, or will be, met to the satisfaction of the AFD.
- GEN-7      **Engineering Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Public Works Department have, or will be, met to the satisfaction of the City Engineer.
- GEN-8      **Construction Hours.** Construction activity shall be restricted to the hours of 8:00 a.m. to 6:00 p.m. Mondays through Saturdays, and 10:00 a.m. to 6:00 p.m., Sundays and legal holidays, unless otherwise approved in writing by the City Engineer for general construction activity. Failure to comply with construction hours may result in stop work orders or other administrative actions.
- 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.
- GEN-10     **Modifications to Approved Plans.** The project shall be constructed as approved. Planning staff may approve minor modifications in the project design, but not the permitted land use (per MC 20.12). A change in an item requiring discretionary approval and any other changes deemed appropriate by the Planning staff shall require further Planning and Zoning Commission approval through the Design Review process.

- GEN-11 **Hold Harmless Agreement.** Pursuant to Government Code Section 66474.9, the applicant (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provide for in Section 66499.37. The City will promptly notify the applicant of any such claim action or proceeding and cooperate fully in the defense.
- GEN-12 **Public Improvements Standards.** Public improvements shall be designed and constructed in accordance with the City's Standard Specifications and Standard Details, unless specifically waived in writing by the City Engineer.
- GEN-13 **Title 24 Standards.** All construction shall be designed and built in accordance with California Title 24 handicap accessibility standards. Appropriate details and specifications shall be incorporated into the plans and submitted at time of building permit application.
- GEN-14 **Energy Conservation Standards.** All buildings shall be designed in accordance with the State of California energy conservation standards for non-residential buildings. The necessary plans and documentation shall be submitted at time of building permit application.

#### ARCHITECTURE CONDITIONS

- ARCH-1 **Material Samples.** Samples of final exterior materials and the proposed color palette shall be submitted for review and approval by the Community Development Department as part of building permit application.
- ARCH-2 **Final Architectural Drawings.** The applicant shall submit final architectural elevations, details and revisions for the review and approval of the Community Development Department as part of building permit application.
- ARCH-3 **Window Recess.** All new windows shall be recessed two inches from face of building to provide adequate shade and shadow and to promote visual relief. Final window details shall be submitted for review and approval at the time of building permit application.
- ARCH-4 **Non-Reflective Glazing.** Any glazing material shall be non-reflective.

#### LIGHTING CONDITIONS

- LGHT-1 **Exterior Lighting.** All exterior lighting shall be installed in such a manner that glare is directed away from surrounding properties and rights-of-way. If required, exterior light fixtures shall be equipped with "cut off" lenses to minimize light and glare spill over onto adjacent properties.
- LGHT-2 **Shielding of Lighting.** Prior to the certificate of occupancy all accent lighting shall be directed downward and, if necessary, fixed with cut-off lenses to ensure that no glare spills onto neighboring properties.

**LANDSCAPING CONDITIONS**

- LNDSC-1      **Tree Preservation.** All existing trees on the site shall be preserved to the fullest extent practicable. Removal will be allowed only upon prior written approval from the Community Development Department.
- LNDSC-2      **Street Tree Requirement.** The applicant shall apply for one street tree prior to the issuance of the building permit. The City's Environmental Resource Assistance will determine the type and location of the tree and may waive this requirement if site conditions will not reasonably support establishment of a new tree.
- LNDSC-3      **Landscape Plan.** The applicant shall submit a landscape and irrigation plan, subject to staff review and approval, prior to issuance of a building permit.

**PARKING CONDITIONS**

- Park-1      All parking solutions shall conform to the approved plans as shown in the plans, as described in condition GEN-1 and maintained available for parking as shown on approved plans.

**SIGN CONDITIONS**

- SIGN -1      **Signage Design Review Approval.** The applicant shall submit a master sign plan reflecting that shown on the August 29, 2008 approved plans, subject to staff review and approval.

**PUBLIC WORKS DEPARTMENT CONDITIONS**

*GENERAL ENGINEERING CONDITIONS*

- ENGR-1      **Title Report.** A recent preliminary title report for the property, prepared within six months of the date of application, shall be submitted to the City Engineer for review. If any interior lot line(s) exist, the applicant must obtain approval of a minor lot line adjustment from the City to remove the interior lot line(s), and cause that lot line adjustment to be recorded before any building permits will be issued.
- ENGR-2      **Geo-Technical Report.** The applicant shall submit, as part of a building permit application, a geotechnical investigation report prepared by a California certified engineering geologist and geotechnical engineer, if required by the City's Engineering Department. The investigation shall specifically address any hazards of surface fault rupture in accordance with the Alquist-Priolo Special Study Zones Act. Any mitigation measures or conditions requiring further review noted during the Planning process shall be fully addressed prior to plan check.
- ENGR-3      **Backflow Device.** Any required water service for fire protection purposes shall be equipped with a City approved backflow device. Services for irrigation purposes also require a separate City approved backflow prevention device.

**GRADING CONDITIONS**

- GRAD-1      **Grading Permit.** Any grading required in association with the project shall require a grading permit from the Community Development Department. To obtain this permit, the applicant shall submit a grading plan, indicating the extent and volumes of earth proposed to be moved. A grading permit is subject to 2001 California Building, Appendix 33.
- GRAD-2      **Demolition Permit.** Site demolition shall not occur until construction permits are issued for the development project. All demolition shall be in accordance with permits issued by the City and Bay Area Air Quality Management District (BAAQMD).
- GRAD-3      **Water on Site.** The site shall be graded so as to prevent rainfall runoff originating from improved areas on the project site from crossing onto adjoining private property. Building floor elevations shall be above the FEMA-mapped 100-year flood plain as established by a licensed civil engineer. Provide the elevation and compaction certificates during and upon the completion of grading required by the Uniform Building Code and in conformance with the recommendations of the geotechnical engineer's report. Shore and dewater all excavations in accordance with the requirements of the geotechnical engineer's report.
- GRAD-4      **Flooding Damages.** The project developer shall execute an assumption of risk, indemnification and hold harmless agreement as required by the City. The agreement, in substance, shall state that the project developer, and any successor in interest, shall assume all risk for damages to the project and to project improvements, flooding caused by surface water intrusion, stormwater runoff, or water under the ground surface pressing on or flowing or seeping through foundations, walls, floors, or paved surfaces, basements, whether paved or not, or windows, doors or other openings, and shall indemnify and hold the City harmless from any claims of such damages, including third-party claims, of such damage or of such damages or of damages arising from rainfall runoff which is not prevented from leaving the project site in violation of Condition GRAD-3.
- GRAD-5      **Dust Control Program.** A dust control program shall be prepared by the project developer and approved by the Community Development Department and City Engineer prior to issuance of a grading permit. The dust control plan shall address such items as covering stockpiled material, frequent watering of graded areas, revegetating graded areas, speed limits for grading equipment and similar items.
- GRAD-6      **Stormwater Pollution Prevention Plan.** The project developer shall submit a Stormwater Pollution Prevention Plan (SWPPP) for review by the City prior to the issuance of a building or grading and/or building permit. The SWPPP shall be consistent with standards adopted by the Regional Water Quality Control Board and the City of Albany Clean Water Program and implemented by the project general contractor, all subcontractors and suppliers of material and equipment. Construction site cleanup and control of construction shall also be addressed in the SWPPP. The project developer shall be responsible for SWPPP compliance. A copy of the SWPPP shall be kept at the construction site at all times.

**INFRASTRUCTURE CONDITIONS**

- INFR-1        **Sewer System Requirements.** The sewer system for the subject building shall be in compliance with Chapter 15 of the Albany Municipal Code and to the satisfaction of the City Engineer prior to Final Inspection approval of the construction permit.
- INFR-2        **Two-Way Cleanout.** Installation of a two-way curbside cleanout shall be required per Chapter 15 of the Albany City Code. This applies to all properties, including properties with a valid upper sewer lateral certificate of compliance. All 2-way curbside clean outs shall be fitted with a loose cap in accordance with the City's standard detail SS6.
- INFR-3        **Property Run-off Requirements.** All runoff from impervious surfaces shall be intercepted at the project boundary and shall be collected and conducted via an approved drainage system through the project site to an approved storm drain facility, as determined by the City Engineer. Development that contributes additional water to the existing drainage system shall be required to complete a hydraulic study and make improvements to the system as required to accommodate the expected ultimate peak water flow and to stabilize erosive banks that could be impacted by additional storm water flow.
- INFR-4        **Roof Drainage.** Roof drainage from the structure shall be collected via a closed pipe and conveyed to an approved storm drain system off the street curb. No concentrated drainage of surface flow across sidewalks shall be permitted. Alternative natural treatment measures are subject review and approval by the City Engineer.
- INFR-5        **Hydraulic Calculations.** The applicant shall submit hydraulic calculations, prepared by a California licensed civil engineer, necessary to determine if the existing water and sewer mains that serve this lot have available capacity for the addition of the proposed development. If capacity is not available, sewer and water mains of adequate size shall be designed and secured prior to issuance of building permits and constructed in a manner acceptable to the City Engineer prior to occupancy release, unless determined otherwise by the City Engineer.
- INFR-6        **Undergrounding of Utilities.** Electrical, gas, telephone and all other services and utilities shall be provided underground to each lot. All utilities shall be located and provided within public utility easements and sized to meet utility company standards.
- INFR-7        **EMBUD Water Service.** The applicant shall provide the City Engineer with a letter from East Bay Municipal Utility District stating that the District has agreed to furnish water service to the project.
- INFR-8        **EBMUD Approval.** East Bay Municipal Utility District shall review and approve the improvement plans as evidenced on their signature on the Title Sheet of the improvement plans.
- INFR-8        **EBMUD Requirements.** The discharge of any chemicals into the sanitary sewer system is subject to the requirements and approval of the East Bay Municipal Utility District.

INFR-13      **Completion of Off-Site Improvements.** Off-site improvements shall be complete prior to issuance of a Certificate of Occupancy unless alternatives are approved in writing by the Albany City Engineer.

PUBLIC IMPROVEMENTS CONDITIONS

PUBIM-1      **Encroachment Permit.** The applicant shall obtain an encroachment permit from the Engineering Division prior to commencing any construction activities within any public right-of-way or easement.

PUBIM-2      **Debris Removal.** All mud, dirt or construction debris carried off the construction site onto adjacent streets shall be removed each day. No materials shall be discharged onto a sidewalk, street, gutter, storm drain or creek.

PUBIM-3      **Damage to Street Improvements.** Any damage to street improvements now existing or done during construction on or adjacent to the subject property shall be repaired to the satisfaction of the City Engineer at the full expense of the applicant. This shall include sidewalk repair, slurry seal, street reconstruction or others, as may be required by the City Engineer.

PUBIM-4      **Right-of-Way Construction Standards.** All improvements within the public right-of-way, including curb, gutter, sidewalks, driveways, paving and utilities, shall be reconstructed in accordance with approved standards and/or plans and shall comply with the standard plans and specification of the Community Development Department and Chapter 14 of the City Code.

PUBIM-5      **Public Street Improvements.** The following public street improvements shall be made:

FIRE DEPARTMENT CONDITIONS

FIRE-      **Construction of 1,500 Square Feet or Greater.** 1500 sq. ft. or more or any addition, remodel, rehabilitation, etc. is 50% of the existing sq. ft.:

- a) This dwelling will be required install an Automatic Fire Extinguishing System throughout the entire dwelling. Ordinance No. 94-010, Albany Municipal Code, Chapter 11, Section 11-2.3a(3)(a).
- b) Plans, information sheets on all sprinkler components and hydraulic calculations are required.
- c) A 110-volt interconnected smoke alarm system with a 10-year lithium batter back-up is acceptable with a fire suppression system.

FIRE-4      **Fire Rated Construction.** Any portion of a building five (5) feet or less from the property line shall comply with fire-rating requirements of the CBC.

FIRE-5      **Gallons-per-Minute Requirement.** The water system for fire protection shall provide a minimum of \_\_\_\_\_ gallons per minute with a minimum residual main pressure of 20 psi for a

two-hour duration. Fire flow test data and water system plans must be provided at time of building plan check. The plans must include all equipment, components and layout of the system. Private fire protection water systems shall be supplied through an approved backflow device per City Engineering Division standards.

FIRE-6 **Fire Access Requirements.** No portion of the structure(s) shall exceed 150 feet from an approved access roadway. Where a fire apparatus access roadway is required, a minimum of 13'-6" vertical clearance and minimum width, to be determined for the Fire Department, shall be provided. All private access roadways exceeding 150 feet in length shall be designed and constructed with an approved turnaround area per City Engineering standards, a maximum grade of 15% and a traffic index of 4.5, or as otherwise approved by the Fire Department.

FIRE-7 **Distance From Fire Hydrant.** No portion of a structure(s) shall exceed \_\_\_\_\_ ft. from a fire hydrant with a water pressure (gal/min), to be determined by the Fire Department. Prior to building permit issuance the distance from existing fire hydrants to the building shall be verified or a new hydrant shall be shown on the plans and installed prior to combustible construction.

#### *NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM CONDITIONS*

#### STRUCTURAL CONTROL MEASURES

STRUC-1 **Illegal Dumping to Storm Drain Inlets and Waterways.** On-site storm drain inlets shall be clearly marked with the words "No Dumping! Flows to Bay," or equivalent, using methods approved by the City of Albany.

STRUC-2 **Interior Floor Drains.** Interior floor drains shall be plumbed to the sanitary sewer system and shall not be connected to storm drains. The applicant shall contact the City Engineer for specific connection and discharge requirements.

STRUC-3 **Parking Lots.** Interior level parking garage floor drains shall be connected to [a water treatment device approved by the City of Albany prior to discharging to] the sanitary sewer system. The applicant shall contact the City Engineer for specific connection and discharge requirements.

STRUC-4 **Pesticide/Fertilizer Application** Landscaping shall be designed to minimize irrigation and runoff, promote surface infiltration where appropriate, and minimize the use of fertilizers and pesticides that can contribute to stormwater pollution. If a landscaping plan is required as part of a development project application, the plan shall meet the following conditions related to reduction of pesticide use on the project site:

- a) Where feasible, landscaping shall be designed and operated to treat stormwater runoff by incorporating elements that collect, detain, and infiltrate runoff. In areas that provide detention of water, plants that are tolerant of saturated soil conditions and prolonged exposure to water shall be specified.
- b) Plant materials selected shall be appropriate to site specific characteristics such as soil type, topography, climate, amount and timing of sunlight, prevailing winds, rainfall, air

movement, patterns of land use, ecological consistency and plant interactions to ensure successful establishment.

- c) Existing native trees, shrubs, and ground cover shall be retained and incorporated into the landscape plan to the maximum extent practicable.
- d) Proper maintenance of landscaping, with minimal pesticide use, shall be the responsibility of the property owner.

#### OPERATIONAL BEST MANAGEMENT PRACTICES (BMPs)

**BMP-GEN1 Stormwater Pollution Prevention Control Measures.** The project plans shall include stormwater pollution prevention and control measures for the operation and maintenance of the project during and after construction for the review and approval of the City or County Engineer. The project plan shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site in order to limit to the maximum extent practicable the entry of pollutants into stormwater runoff.

**BMP-GEN2 Responsibility of Contractors.** The applicant is responsible for ensuring that all contractors and subcontractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations and/or a project stop order.

**BMP-3 Paved Sidewalks and Parking Lots.** Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. Debris resulting from pressure washing shall be trapped and collected to prevent entry into the storm drain system. Washwater containing any soap, cleaning agent or degreaser shall be collected and discharged to the sanitary sewer and shall not be discharged to a storm drain. The applicant shall contact the City Engineer for specific connection and discharge requirements.

**BMP-4 Private Streets, Utilities and Common Areas.** The owner of private streets and storm drains shall prepare and implement a plan for street sweeping of paved private roads and cleaning of all storm drain inlets.

**BMP-5 Property Owners Association Responsibilities for Maintenance.** For residential developments, a property owners association shall be created and shall be responsible for maintaining all private streets and private utilities and other privately owned common areas and facilities on the site including landscaping. These maintenance responsibilities shall include implementing and maintaining stormwater BMPs associated with improvements and landscaping. CC&R's creating the association shall be reviewed and approved by the City Attorney prior to the recordation of the Final Map and recorded prior to the sale of the first residential unit. The CC&R's shall describe how the stormwater BMPs associated with privately owned improvements and landscaping shall be maintained by the association.

**BMP-6 Vehicle/Equipment Repair and Maintenance.** No person shall dispose of, nor permit the disposal, directly or indirectly, of vehicle fluids, hazardous materials, or rinsewater from part cleaning operations into storm drains.



**GENERAL CONSTRUCTION BEST MANAGEMENT PRACTICES**

- BMP-CNST1    **Construction Access Routes.** Construction access routes shall be limited to those approved by the City Engineer and shall be shown on the approval grading plan.
- BMP-CNST2    **Collection of Construction Debris.** Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to stormwater pollution.
- BMP-CNST3    **Removal of Waste.** Remove all dirt, gravel, rubbish, refuse and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work.
- BMP-CNST4    **Sweeping of Public Right-of-Way.** Broom sweep the sidewalk and public street pavement adjoining the project site on a daily basis. Caked on mud or dirt shall be scraped from these areas before sweeping.
- BMP-CNST5    **Filter Materials at Storm Drain Inlet.** Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlet nearest the downstream side of the project site prior to:  
a) start of the rainy season (October 1);  
b) site dewatering activities;  
c) street washing activities;  
d) saw cutting asphalt or concrete; and  
e) order to retain any debris or dirt flowing into the City storm drain system.  
Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding. Dispose of filter particles in the trash.
- BMP-CNST6    **Containment of Materials.** Create a contained and covered area on the site for the storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site that have the potential for being discharged to the storm drain system by wind or in the event of a material spill.
- BMP-CNST7    **Cleaning of Equipment.** Never clean machinery, tools, brushes, etc. or rinse containers into a street, gutter, storm drain or stream. See the *Building Maintenance/ Remodeling* flyer for more information.
- BMP-CNST8    **Minimize Removal of Natural Vegetation.** Minimize removal of natural vegetation or ground cover from the site in order to minimize the potential for erosion and sedimentation problems. Replant the area as soon as possible. All cut and fill slopes shall be stabilized as soon as possible after grading is completed. No site grading shall occur between October 1 and April 15 unless approved erosion and sedimentation control measures are in place.

**Appeals:** The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council, if such appeal is filed within 14 days of the date of the action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.

*City of Albany*  
**Planning and Zoning Commission**  
**Study Session/Staff Report**

Meeting Date: September 9, 2008

Prepared by: JPB

Agenda Item: 6c

Reviewed by: AC

**Subject:** 904 Santa Fe. Planning Application 07-087. Design Review. Request for approval on an application for Design Review of a new mixed-use building, which includes two residential units and one commercial retail space.

**Applicant/  
Owner:** Mina Moubedi

**Recommendation**

Staff recommends that the Planning and Zoning Commission provide direction to the applicant on any appropriate design changes and approve Planning Application 07-087, Design Review, subject to the attached findings and conditions of approval.

**Project Description**

The subject property has a single-story residence located on a 4,180sq.ft. lot. The applicant would like to demolish the existing home and construct a new three story mixed-use building that includes two residential units that are each approximately 1,200sq.ft. in area, and a commercial retail space that is approximately 1,075sq.ft. in area. There is a 5'-6" side yard setback on the south side and a zero, lot line setback on the north side. The third story is a partial story that steps in 11' from the rear property line. The building has a maximum height of 31'-11". The building is of a contemporary style with a tile roof and stucco finish. There are various divided light windows, balcony, roof top deck and variation in wall depths that articulate the elevations. The deck and balcony provide the required 100sq.ft. of private open space for each unit.

Planning and Zoning Code Section 20.28.040(B2) states that up to 1,500 sq. ft. of ground floor retail area is exempt from parking requirements. The retail area of the proposed project is 1,076 sq. ft. therefore, there no parking required for the one retail space. There is a four car parking garage for residents located below grade that is accessed from a driveway off Santa Fe. Municipal Code Section 20.24.050 (C1) states that enclosed parking that is completely below grade for mixed-use buildings are exempt in the Floor-Area-Ration calculations. In this case, the garage is as far below grade as practically possible to maintain safety and functionality.

**Background on Application**

The application was received on November 1, 2007 and was first heard at a study session of the Planning and Zoning Commission on December 11, 2007 where the Commission provided the applicant feedback and direction on appropriate changes. The applicant has maintained the

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**ATTACHMENT 4**

project's original concept but has made revisions to the architectural details, including changes to the roof, decks, windows, etc.

### Environmental Analysis

Staff has determined that the proposed project is categorically exempt from the requirements of CEQA per Section 15332 of the CEQA Guidelines, which exempts infill development.

### Summary of Key Issues

#### Land Use

The property is zoned SC (Solano Commercial), which allows mixed-use development. The property to the north is also zoned SC and the two parcels at the rear are zoned SC. There is, however, a small portion of the lot at the rear southwest corner, 907 Carmel, that is zoned R-1 (Single-family residential). This parcel is unique in that the General Plan Use designation is inconsistent with the Planning and Zoning Code. It is designated as "low density residential" in the General Plan and is zoned SC (Solano Commercial). In the case of a charter city such as Albany, the zoning ordinance generally takes precedence over the general plan in the event of an inconsistency.

Where a commercial zoned property abuts residential zoned property, a maximum of 20' high wall must be setback 10' from the property line with a 45-degree daylight plane. Alternatively, a maximum 12' high wall can be at the property line and a 45-degree daylight plane is required. Because a majority of the lot abuts an SC district, the daylight plane has not been provided. In addition, the southwest corner where the zoning districts differ is where there are no second or third stories.

It should also be noted that there is a slight change in grade with the subject property sitting approximately 1'-6" to 2' taller than the properties at the rear. The property to the south is a residential property so a 5' side yard setback and a 45-degree daylight plane from the 20' tall building is required. It should be noted that the roof eaves slightly encroach into the daylight plane area.

The commercial portion of the project is located in the first half of the building on the first floor. The residential units are located in the rear area of the first floor, span the entire length of the second-floor and up to a partial third story at the rear half of the building. There are 0' lot line setbacks on the north and west sides. The maximum height of the building is 31'-11" and the maximum height of the building at the rear property line is 14'. The rear wall is part of an open roof, 11' from the wall of the third story. The parking garage is located below grade and is accessed from a driveway that is located on the south end of the building.

Design Review and Changes from December 11, 2007 Study Session

The building is of a contemporary style with some Spanish style accents such as a tile roof and stucco finish. All the elevations, except for the north, are well articulated with various divided light windows that have a trim and ledge accenting them. Architectural details include:

- Extended beams under the decks and second-floor.
- Balconies and porches, which create a variation in wall depth and provides some architectural interest on the facades.
- The front elevation has the wall of full-length windows spanning almost the entire width. It has tile accents and an arched entrance, which are attractive.
- The south elevation is accented by all of the windows, variation in wall depth and porch railings.
- The northern elevation is plain with no openings on the wall since there is a 0', lot line setback proposed.
- There are number of gabled roofs that create a layered appearance. The third story has the only hipped roof, which is somewhat awkward since all of the other roofs are gabled.

At the study session, the Commission generally liked the project design and concept. One Commissioner recommended that the second floor patio be reduced or moved. Another recommendation was to increase the articulation on the east elevation. A three-dimensional or model was requested, with the neighboring properties included. Finally, the Commission requested that the applicant work with neighbors to the rear to address their concerns above loss of privacy, shading and visual mass.

The applicant has brought in the roof deck at the rear, approximately 3' from the property line where originally it abutted the property line. A tile roof has been added as a result and creates a more attractive rear elevation. The applicant has brought in the balcony on the south elevation 4' from towards the east and railings have been added to both areas to increase privacy for the neighbors. The roof on the rear has been change from a hipped to a gable. Staff believes that the original proposal of a gabled roof is preferable because it brings down the visual mass of the top floor. No changes have been made to the front elevation and staff concurs with one of the Commission's recommendation that some addition architectural detail be added to the front elevation.

Some of the neighbors at the rear have reviewed the revised plans but continue to have concerns about privacy, even with the revisions in the balcony and roof deck. The applicant has provided renderings to provide a visual of how they may affect their privacy (see attachment \_\_\_\_). Ideally, the neighbors would like the mass of the building to be moved towards the front (eastern) portion of the lot.

*Landscaping and Fencing*

Staff recommends that if the Planning and Zoning Commission wishes to approve the project that a conceptual landscape plan be provided for Commission review before issuance of a building

permit. In addition, there is an existing fence along the side and rear property line. Staff recommends that any damaged or aged fencing be replaced by the applicant.

#### *Signs and Lighting*

The applicant has provided samples of the type of signage that they would like for the building. The examples are essentially externally lit, raised letter wall signs (attached to project plans).

#### Green Building

The applicant has provided the multi-family green points checklist. A total of 56 green points have been provided. The applicant has stated that bicycle storage shall be provided to attain green points. Staff recommends that the applicant clarify location of the bicycle parking. Insulated wall panels, solar panels and FSC-certified wood are just some of the measures proposed to meet the green building requirements.

#### Conclusion

Overall, staff believes that there are some very attractive features of the project, and based on the project's compliance with the City's Planning and Zoning Code, recommends approval of the project. Staff, however, also recognizes neighbor concerns about the loss of privacy and increased mass on an adjacent property. The Commission's authority to address bulk and privacy is incorporated into the design review standards of review, and specifically whether an application is harmonious with its surroundings and whether balanced attention has been given to the benefits of the proposed project and the privacy of residential occupants of adjacent properties.

#### Appeals:

The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council if such appeal is filed within 14 days of the date of action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.

#### Attachments:

1. Analysis of Zoning Requirements
2. Application, Project Plans
3. Renderings provided by Neighbor

ATTACHMENT 1 - ANALYSIS OF COMPLIANCE WITH ZONING REQUIREMENTS

20.12 Zoning Districts And Permitted Uses

General Plan: Low Density Residential  
 Zoning: SC (Solano Commercial)

20.16 Land Use Classifications

Restaurant with drive-through

Surrounding	North - Office (SC)	East - SFR	(SC & R-1)
Property Use	South - SFR (R-1)	West - SFR	(SC & R-1)

20.20.080 Secondary Residential Units.

Not applicable.

20.24.020 Table Of Site Regulations By District.

	Existing (approx.)	Proposed	Requirement
Setbacks			
Front (east)	20'	15'	15'
Side (south)	5'-6"	5'-6"	5'
Side (north)	4'	0'	0'
Rear (west)	33'	0'	0'
Area			
Lot Size	4,180	No change	--
Lot Coverage	40%	80%	100%
Maximum Height	--	31'-11"	35'

20.24.030 Overlay District Regulations.

Not applicable.

20.24.040 Hillside Residential Regulations.

Not applicable.

20.24.050 Floor-Area-Ratio.

	<b>Proposed</b>	<b>Requirement</b>
Lot Size	4,180	--
Floor Area		
Garage	2564	--
First Floor	2397	
Second Floor	2097	
Third Floor	722	
Total	7780	--
Total Counted	5216*	--
Floor Area Ratio	1.25%	1.25%

\* Municipal Code Section 20.24.050 (C1) states that parking that is completely below grade for mixed-use buildings are exempt in the Floor-Area-Ration calculations.

20.24.060 Setback Areas, Encroachments.

Not applicable.

20.24.100 Distances Between Structures.

See discussion of key issues.

20.24.110 Fences, Landscaping, Screening.

See discussion of key issues.

20.24.130 Accessory Buildings.

Not applicable.

20.28 Off-Street Parking Requirement.

See discussion of key issues.

20.40 Housing Provisions

The project is not subject to inclusionary housing requirements since there are fewer than five units.

20.44 Non-conforming Uses, Structures and Lot

Not applicable.

20.48 Removal of Trees

Not applicable.

20.52 Flood Damage Prevention Regulations

Not applicable.



20.100.030 Use Permits.

Not applicable.

20.100.040 Variances.

Not applicable.

20.100.010 Common Permit Procedures.

Public notice of this application was provided on August 29, 2008 in the form of mailed notice to property owners and occupants within a 300-foot radius, and posted in three locations.

20.100.050 Design Review.

See Summary of Key Issues

Green Building

See attachment

ATTACHMENT 2 - FINDINGS

**Findings for Design Review approval (Per section 20.100.050.E of the AMC)**

<i>Required Finding</i>	Explanation
<p>1. <i>The project conforms to the General Plan, any applicable specific plan, applicable design guidelines adopted by the City of Albany, and all applicable provisions of this Chapter.</i></p>	<p>The General Plan designates this area for residential development. The project, however, meets City zoning standards for location, intensity and type of development.</p>
<p>2. <i>Approval of project design is consistent with the purpose and intent of this section, which states "designs of projects...will result in improvements that are visually and functionally appropriate to their site conditions and harmonious with their surroundings, including natural landforms and vegetation. Additional purposes of design review include (but are not limited to): that retention and maintenance of existing buildings and landscape features are considered; and that site access and vehicular parking are sufficient."</i></p>	<p>The proposal is in scale and harmony with existing development in the vicinity of the site. The architectural style, design and building materials are consistent with the City's Design Standards. The proposed project will provide safe and convenient access to the property for both vehicles and pedestrians. The project will not remove any significant vegetation. The project will not create a visual detriment at the site or the neighborhood.</p> <p>The building is of a contemporary style with some Spanish style accents such as a tile roof and stucco finish. All the elevations, except for the north, are well articulated and attractive. The applicant has made a conscious effort to add architectural details such as wood railings and tile details, which enhance the appearance of the building. A master sign plan and landscape plan will also increase the aesthetic quality of the site.</p>
<p>3. <i>Approval of the project is in the interest of public health, safety and general welfare.</i></p>	<p>The proposed project will not be detrimental to the health, safety, convenience and welfare of those in the area and would not adversely impact property, improvements or potential future development in the area. The project meets all development requirements.</p> <p>Four parking spaces have been provided for the two housing units and the commercial space is small in size, which is preferable for its location and close proximity to residential properties. The second and third stories are stepped away from the properties at the west and south and does not reach the maximum allowable height limit thus will have less impact on neighbors. It will</p>

	increase housing opportunities in the City and provide a small, lower impact commercial space to transition from Solano Avenue to Santa Fe Avenue.
4. <i>The project is in substantial compliance with applicable general and specific Standards for Review stated in Subsection 20.100.050.D.</i>	The project as designed is in substantial compliance with the standards as stated, including access, architecture, natural features, coordination of design details, and privacy. Additional railings and reduction in size of decks and balconies have increased privacy for adjacent neighbors.

**COMMUNITY DEVELOPMENT DEPARTMENT CONDITIONS OF APPROVAL**

**GENERAL PROJECT CONDITIONS**

- Gen-1 **Project Approval.** This Design Review approval is for Mina Moubedi, owner of property located at 904 Santa Fe as substantially shown and described on the project plans, except as may be modified by conditions herein. Plans include preliminary master site plan prepared by Mahmood Pourzand date received August 26, 2008, architectural plans (project perspectives, building sections, and floor plans, all as presented to the Planning and Zoning Commission on September 9, 2008]. For any condition herein that requires preparation of a Final Plan where the project developer has submitted a conceptual plan, the project developer shall submit final plan(s) in substantial conformance with the conceptual plan, but incorporate the modifications required by the conditions herein for approval by the City.
  
- GEN-2 **Project Approval Expiration.** This Design Review approval expires on September 23, 2009 (one year from the date on which this approval becomes effective) or at an alternate time specified as a condition of approval, unless [a building permit has been issued and construction diligently pursued; a certificate of occupancy has been issued; the use is established; the use permit, variance or design review approval is renewed]. The approval may be renewed by the Community Development Director for a period up to an additional two (2) years, provided that, at least ten (10) days prior to expiration of one (1) year from the date when the approval becomes effective, an application for renewal of the approval is filed with the Community Development Department. The Community Development Director may grant a renewal of an approval where there is no change in the original application, or there is no request to change any condition of approval.
  
- Gen-3 **FEES.** The applicant shall pay any and all City and other related fees applicable to the property, as may be modified by conditions herein. Fees shall be based on the current fee structure in effect at the time the relevant permits are secured, and shall be paid prior to issuance of said permit or prior to any City Council final action approval. Notice shall be taken specifically of Plan Check, Engineering, Fire and Inspection Fees. The project developer shall also reimburse the City for direct costs of planning; building and engineering plan check and inspection, as mutually agreed between the City and developer.

- GEN-4      **Appeals.** The Albany Municipal Code provides that any action of the Planning staff may be appealed to the Planning and Zoning Commission, and any action of the Planning and Zoning Commission may be appealed to the City Council as per the procedures described in Section 20.100.080. The City Clerk will then schedule the matter for the next available City Council meeting.
- GEN-5      **Requirement for Building Permit.** Approval granted by the Planning and Zoning Commission does not constitute a building permit or authorization to begin any construction or demolish an existing structure. An appropriate permit issued by the Community Development Department must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.
- GEN-6      **Fire Department Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Albany Fire Department have, or will be, met to the satisfaction of the AFD.
- GEN-7      **Engineering Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Public Works Department have, or will be, met to the satisfaction of the City Engineer.
- GEN-8      **Construction Hours.** Construction activity shall be restricted to the hours of 8:00 a.m. to 6:00 p.m. Mondays through Saturdays, and 10:00 a.m. to 6:00 p.m., Sundays and legal holidays, unless otherwise approved in writing by the City Engineer for general construction activity. Failure to comply with construction hours may result in stop work orders or other administrative actions.
- 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.
- GEN-10     **Modifications to Approved Plans.** The project shall be constructed as approved. Planning staff may approve minor modifications in the project design, but not the permitted land use (per MC 20.12). A change in an item requiring discretionary approval and any other changes deemed appropriate by the Planning staff shall require further Planning and Zoning Commission approval through the Design Review process.
- GEN-11     **Hold Harmless Agreement.** Pursuant to Government Code Section 66474.9, the applicant (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany

and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provide for in Section 66499.37. The City will promptly notify the applicant of any such claim action or proceeding and cooperate fully in the defense.

- GEN-12     **Public Improvements Standards.** Public improvements shall be designed and constructed in accordance with the City's Standard Specifications and Standard Details, unless specifically waived in writing by the City Engineer.
- GEN-13     **Title 24 Standards.** All construction shall be designed and built in accordance with California Title 24 handicap accessibility standards. Appropriate details and specifications shall be incorporated into the plans and submitted at time of building permit application.
- GEN-14     **Energy Conservation Standards.** All buildings shall be designed in accordance with the State of California energy conservation standards for non-residential buildings. The necessary plans and documentation shall be submitted at time of building permit application.

ARCHITECTURE CONDITIONS

- ARCH-1     **Material Samples.** Samples of final exterior materials and the proposed color palette shall be submitted for review and approval by the Community Development Department as part of building permit application.
- ARCH-2     **Final Architectural Drawings.** The applicant shall submit final architectural elevations, details and revisions for the review and approval of the Community Development Department as part of building permit application.
- ARCH-3     **Window Recess.** All new windows shall be recessed two inches from face of building to provide adequate shade and shadow and to promote visual relief. Final window details shall be submitted for review and approval at the time of building permit application.
- ARCH-4     **Non-Reflective Glazing.** Any glazing material shall be non-reflective.

LIGHTING CONDITIONS

- LGHT-1     **Exterior Lighting.** All exterior lighting shall be installed in such a manner that glare is directed away from surrounding properties and rights-of-way. If required, exterior light fixtures shall be equipped with "cut off" lenses to minimize light and glare spill over onto adjacent properties.
- LGHT-2     **Shielding of Lighting.** Prior to the certificate of occupancy all accent lighting shall be directed downward and, if necessary, fixed with cut-off lenses to ensure that no glare spills onto neighboring properties.

LANDSCAPING CONDITIONS

- LNDSC-1     **Tree Preservation.** All existing trees on the site shall be preserved to the fullest extent practicable. Removal will be allowed only upon prior written approval from the Community Development Department.
- LNDSC-2     **Street Tree Requirement.** The applicant shall apply for one street tree prior to the issuance of the building permit. The City's Environmental Resource Assistance will determine the type and location of the tree and may waive this requirement if site conditions will not reasonably support establishment of a new tree.
- LNDSC-3     **Landscape Plan.** The applicant shall submit a landscape and irrigation plan, subject to staff review and approval, prior to issuance of a building permit.

**PARKING CONDITIONS**

- Park-1     All parking solutions shall conform to the approved plans as shown in the plans, as described in condition GEN-1 and maintained available for parking as shown on approved plans.

**SIGN CONDITIONS**

- SIGN -1     **Signage Design Review Approval.** The applicant shall submit a master sign plan reflecting that shown on the August 29, 2008 approved plans, subject to staff review and approval.

**PUBLIC WORKS DEPARTMENT CONDITIONS**

*GENERAL ENGINEERING CONDITIONS*

- ENGR-1     **Title Report.** A recent preliminary title report for the property, prepared within six months of the date of application, shall be submitted to the City Engineer for review. If any interior lot line(s) exist, the applicant must obtain approval of a minor lot line adjustment from the City to remove the interior lot line(s), and cause that lot line adjustment to be recorded before any building permits will be issued.
- ENGR-2     **Geo-Technical Report.** The applicant shall submit, as part of a building permit application, a geotechnical investigation report prepared by a California certified engineering geologist and geotechnical engineer, if required by the City's Engineering Department. The investigation shall specifically address any hazards of surface fault rupture in accordance with the Alquist-Priolo Special Study Zones Act. Any mitigation measures or conditions requiring further review noted during the Planning process shall be fully addressed prior to plan check.
- ENGR-3     **Backflow Device.** Any required water service for fire protection purposes shall be equipped with a City approved backflow device. Services for irrigation purposes also require a separate City approved backflow prevention device.

**GRADING CONDITIONS**

- GRAD-1 **Grading Permit.** Any grading required in association with the project shall require a grading permit from the Community Development Department. To obtain this permit, the applicant shall submit a grading plan, indicating the extent and volumes of earth proposed to be moved. A grading permit is subject to 2001 California Building, Appendix 33.
- GRAD-2 **Demolition Permit.** Site demolition shall not occur until construction permits are issued for the development project. All demolition shall be in accordance with permits issued by the City and Bay Area Air Quality Management District (BAAQMD).
- GRAD-3 **Water on Site.** The site shall be graded so as to prevent rainfall runoff originating from improved areas on the project site from crossing onto adjoining private property. Building floor elevations shall be above the FEMA-mapped 100-year flood plain as established by a licensed civil engineer. Provide the elevation and compaction certificates during and upon the completion of grading required by the Uniform Building Code and in conformance with the recommendations of the geotechnical engineer's report. Shore and dewater all excavations in accordance with the requirements of the geotechnical engineer's report.
- GRAD-4 **Flooding Damages.** The project developer shall execute an assumption of risk, indemnification and hold harmless agreement as required by the City. The agreement, in substance, shall state that the project developer, and any successor in interest, shall assume all risk for damages to the project and to project improvements, flooding caused by surface water intrusion, stormwater runoff, or water under the ground surface pressing on or flowing or seeping through foundations, walls, floors, or paved surfaces, basements, whether paved or not, or windows, doors or other openings, and shall indemnify and hold the City harmless from any claims of such damages, including third-party claims, of such damage or of such damages or of damages arising from rainfall runoff which is not prevented from leaving the project site in violation of Condition GRAD-3.
- GRAD-5 **Dust Control Program.** A dust control program shall be prepared by the project developer and approved by the Community Development Department and City Engineer prior to issuance of a grading permit. The dust control plan shall address such items as covering stockpiled material, frequent watering of graded areas, revegetating graded areas, speed limits for grading equipment and similar items.
- GRAD-6 **Stormwater Pollution Prevention Plan.** The project developer shall submit a Stormwater Pollution Prevention Plan (SWPPP) for review by the City prior to the issuance of a building or grading and/or building permit. The SWPPP shall be consistent with standards adopted by the Regional Water Quality Control Board and the City of Albany Clean Water Program and implemented by the project general contractor, all subcontractors and suppliers of material and equipment. Construction site cleanup and control of construction shall also be addressed in the SWPPP. The project developer shall be responsible for SWPPP compliance. A copy of the SWPPP shall be kept at the construction site at all times.

INFRASTRUCTURE CONDITIONS

- INFR-1      **Sewer System Requirements.** The sewer system for the subject building shall be in compliance with Chapter 15 of the Albany Municipal Code and to the satisfaction of the City Engineer prior to Final Inspection approval of the construction permit.
- INFR-2      **Two-Way Cleanout.** Installation of a two-way curbside cleanout shall be required per Chapter 15 of the Albany City Code. This applies to all properties, including properties with a valid upper sewer lateral certificate of compliance. All 2-way curbside clean outs shall be fitted with a loose cap in accordance with the City's standard detail SS6.
- INFR-3      **Property Run-off Requirements.** All runoff from impervious surfaces shall be intercepted at the project boundary and shall be collected and conducted via an approved drainage system through the project site to an approved storm drain facility, as determined by the City Engineer. Development that contributes additional water to the existing drainage system shall be required to complete a hydraulic study and make improvements to the system as required to accommodate the expected ultimate peak water flow and to stabilize erosive banks that could be impacted by additional storm water flow.
- INFR-4      **Roof Drainage.** Roof drainage from the structure shall be collected via a closed pipe and conveyed to an approved storm drain system off the street curb. No concentrated drainage of surface flow across sidewalks shall be permitted. Alternative natural treatment measures are subject review and approval by the City Engineer.
- INFR-5      **Hydraulic Calculations.** The applicant shall submit hydraulic calculations, prepared by a California licensed civil engineer, necessary to determine if the existing water and sewer mains that serve this lot have available capacity for the addition of the proposed development. If capacity is not available, sewer and water mains of adequate size shall be designed and secured prior to issuance of building permits and constructed in a manner acceptable to the City Engineer prior to occupancy release, unless determined otherwise by the City Engineer.
- INFR-6      **Undergrounding of Utilities.** Electrical, gas, telephone and all other services and utilities shall be provided underground to each lot. All utilities shall be located and provided within public utility easements and sized to meet utility company standards.
- INFR-7      **EMBUD Water Service.** The applicant shall provide the City Engineer with a letter from East Bay Municipal Utility District stating that the District has agreed to furnish water service to the project.
- INFR-8      **EBMUD Approval.** East Bay Municipal Utility District shall review and approve the improvement plans as evidenced on their signature on the Title Sheet of the improvement plans.
- INFR-8      **EBMUD Requirements.** The discharge of any chemicals into the sanitary sewer system is subject to the requirements and approval of the East Bay Municipal Utility District.



INFR-13      **Completion of Off-Site Improvements.** Off-site improvements shall be complete prior to issuance of a Certificate of Occupancy unless alternatives are approved in writing by the Albany City Engineer.

**PUBLIC IMPROVEMENTS CONDITIONS**

PUBIM-1      **Encroachment Permit.** The applicant shall obtain an encroachment permit from the Engineering Division prior to commencing any construction activities within any public right-of-way or easement.

PUBIM-2      **Debris Removal.** All mud, dirt or construction debris carried off the construction site onto adjacent streets shall be removed each day. No materials shall be discharged onto a sidewalk, street, gutter, storm drain or creek.

PUBIM-3      **Damage to Street Improvements.** Any damage to street improvements now existing or done during construction on or adjacent to the subject property shall be repaired to the satisfaction of the City Engineer at the full expense of the applicant. This shall include sidewalk repair, slurry seal, street reconstruction or others, as may be required by the City Engineer.

PUBIM-4      **Right-of-Way Construction Standards.** All improvements within the public right-of-way, including curb, gutter, sidewalks, driveways, paving and utilities, shall be reconstructed in accordance with approved standards and/or plans and shall comply with the standard plans and specification of the Community Development Department and Chapter 14 of the City Code.

PUBIM-5      **Public Street Improvements.** The following public street improvements shall be made:

**FIRE DEPARTMENT CONDITIONS**

FIRE-      **Construction of 1,500 Square Feet or Greater.** 1500 sq. ft. or more or any addition, remodel, rehabilitation, etc. is 50% of the existing sq. ft.:

- a) This dwelling will be required install an Automatic Fire Extinguishing System throughout the entire dwelling. Ordinance No. 94-010, Albany Municipal Code, Chapter 11, Section 11-2.3a(3)(a).
- b) Plans, information sheets on all sprinkler components and hydraulic calculations are required.
- c) A 110-volt interconnected smoke alarm system with a 10-year lithium batter back-up is acceptable with a fire suppression system.

FIRE-4      **Fire Rated Construction.** Any portion of a building five (5) feet or less from the property line shall comply with fire-rating requirements of the CBC.

FIRE-5      **Gallons-per-Minute Requirement.** The water system for fire protection shall provide a minimum of \_\_\_\_\_ gallons per minute with a minimum residual main pressure of 20 psi for a two-hour duration. Fire flow test data and water system plans must be provided at time of

building plan check. The plans must include all equipment, components and layout of the system. Private fire protection water systems shall be supplied through an approved backflow device per City Engineering Division standards.

- FIRE-6      **Fire Access Requirements.** No portion of the structure(s) shall exceed 150 feet from an approved access roadway. Where a fire apparatus access roadway is required, a minimum of 13'-6" vertical clearance and minimum width, to be determined for the Fire Department, shall be provided. All private access roadways exceeding 150 feet in length shall be designed and constructed with an approved turnaround area per City Engineering standards, a maximum grade of 15% and a traffic index of 4.5, or as otherwise approved by the Fire Department.
- FIRE-7      **Distance From Fire Hydrant.** No portion of a structure(s) shall exceed \_\_\_\_\_ft. from a fire hydrant with a water pressure (gal/min), to be determined by the Fire Department. Prior to building permit issuance the distance from existing fire hydrants to the building shall be verified or a new hydrant shall be shown on the plans and installed prior to combustible construction.

*NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM CONDITIONS*

STRUCTURAL CONTROL MEASURES

- STRUC-1      **Illegal Dumping to Storm Drain Inlets and Waterways.** On-site storm drain inlets shall be clearly marked with the words "No Dumping! Flows to Bay," or equivalent, using methods approved by the City of Albany.
- STRUC-2      **Interior Floor Drains.** Interior floor drains shall be plumbed to the sanitary sewer system and shall not be connected to storm drains. The applicant shall contact the City Engineer for specific connection and discharge requirements.
- STRUC-3      **Parking Lots.** Interior level parking garage floor drains shall be connected to [a water treatment device approved by the City of Albany prior to discharging to] the sanitary sewer system. The applicant shall contact the City Engineer for specific connection and discharge requirements.
- STRUC-4      **Pesticide/Fertilizer Application** Landscaping shall be designed to minimize irrigation and runoff, promote surface infiltration where appropriate, and minimize the use of fertilizers and pesticides that can contribute to stormwater pollution. If a landscaping plan is required as part of a development project application, the plan shall meet the following conditions related to reduction of pesticide use on the project site:
- a) Where feasible, landscaping shall be designed and operated to treat stormwater runoff by incorporating elements that collect, detain, and infiltrate runoff. In areas that provide detention of water, plants that are tolerant of saturated soil conditions and prolonged exposure to water shall be specified.
  - b) Plant materials selected shall be appropriate to site specific characteristics such as soil type, topography, climate, amount and timing of sunlight, prevailing winds, rainfall, ai:

- movement, patterns of land use, ecological consistency and plant interactions to ensure successful establishment.
- c) Existing native trees, shrubs, and ground cover shall be retained and incorporated into the landscape plan to the maximum extent practicable.
  - d) Proper maintenance of landscaping, with minimal pesticide use, shall be the responsibility of the property owner.

OPERATIONAL BEST MANAGEMENT PRACTICES (BMPs)

- BMP-GEN1 **Stormwater Pollution Prevention Control Measures.** The project plans shall include stormwater pollution prevention and control measures for the operation and maintenance of the project during and after construction for the review and approval of the City or County Engineer. The project plan shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site in order to limit to the maximum extent practicable the entry of pollutants into stormwater runoff.
- BMP-GEN2 **Responsibility of Contractors.** The applicant is responsible for ensuring that all contractors and subcontractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations and/or a project stop order.
- BMP-3 **Paved Sidewalks and Parking Lots.** Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. Debris resulting from pressure washing shall be trapped and collected to prevent entry into the storm drain system. Washwater containing any soap, cleaning agent or degreaser shall be collected and discharged to the sanitary sewer and shall not be discharged to a storm drain. The applicant shall contact the City Engineer for specific connection and discharge requirements.
- BMP-4 **Private Streets, Utilities and Common Areas.** The owner of private streets and storm drains shall prepare and implement a plan for street sweeping of paved private roads and cleaning of all storm drain inlets.
- BMP-5 **Property Owners Association Responsibilities for Maintenance.** For residential developments, a property owners association shall be created and shall be responsible for maintaining all private streets and private utilities and other privately owned common areas and facilities on the site including landscaping. These maintenance responsibilities shall include implementing and maintaining stormwater BMPs associated with improvements and landscaping. CC&R's creating the association shall be reviewed and approved by the City Attorney prior to the recordation of the Final Map and recorded prior to the sale of the first residential unit. The CC&R's shall describe how the stormwater BMPs associated with privately owned improvements and landscaping shall be maintained by the association.
- BMP-6 **Vehicle/Equipment Repair and Maintenance.** No person shall dispose of, nor permit the disposal, directly or indirectly, of vehicle fluids, hazardous materials, or rinsewater from parts cleaning operations into storm drains.

**GENERAL CONSTRUCTION BEST MANAGEMENT PRACTICES**

- BMP-CNST1 **Construction Access Routes.** Construction access routes shall be limited to those approved by the City Engineer and shall be shown on the approval grading plan.
- BMP-CNST2 **Collection of Construction Debris.** Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to stormwater pollution.
- BMP-CNST3 **Removal of Waste.** Remove all dirt, gravel, rubbish, refuse and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work.
- BMP-CNST4 **Sweeping of Public Right-of-Way.** Broom sweep the sidewalk and public street pavement adjoining the project site on a daily basis. Caked on mud or dirt shall be scraped from these areas before sweeping.
- BMP-CNST5 **Filter Materials at Storm Drain Inlet.** Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlet nearest the downstream side of the project site prior to:
- a) start of the rainy season (October 1);
  - b) site dewatering activities;
  - c) street washing activities;
  - d) saw cutting asphalt or concrete; and
  - e) order to retain any debris or dirt flowing into the City storm drain system.
- Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding. Dispose of filter particles in the trash.
- BMP-CNST6 **Containment of Materials.** Create a contained and covered area on the site for the storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site that have the potential for being discharged to the storm drain system by wind or in the event of a material spill.
- BMP-CNST7 **Cleaning of Equipment.** Never clean machinery, tools, brushes, etc. or rinse containers into a street, gutter, storm drain or stream. See the *Building Maintenance/ Remodeling* flyer for more information.
- BMP-CNST8 **Minimize Removal of Natural Vegetation.** Minimize removal of natural vegetation or ground cover from the site in order to minimize the potential for erosion and sedimentation problems. Replant the area as soon as possible. All cut and fill slopes shall be stabilized as soon as possible after grading is completed. No site grading shall occur between October 1 and April 15 unless approved erosion and sedimentation control measures are in place.

**Appeals:** The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council, if such appeal is filed within 14 days of the date of the action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.

Date Received: 11/1/07  
 Planning Application No.: ~~44727A~~ 07-087  
 Fee Paid: 560.00

Receipt # 47322



# City of Albany



## PLANNING APPLICATION FORM (GENERAL PROJECTS)

<p>For <b>PLANNING &amp; ZONING COMMISSION</b> action:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Conditional Use Permit*</li> <li><input checked="" type="checkbox"/> Design Review (residential, residential additions, commercial, office and multi-family*, )</li> <li><input type="checkbox"/> General Plan Amendment from _____ to _____</li> <li><input type="checkbox"/> Parcel Map/ Tentative Map/ Vesting Tentative Map, Lot Line Relocation</li> <li><input type="checkbox"/> Parking Exceptions/Reductions</li> <li><input type="checkbox"/> Precise Development Plan</li> <li><input type="checkbox"/> Second Unit Use Permit *</li> <li><input type="checkbox"/> Variance *</li> <li><input type="checkbox"/> Zone Change from _____ to _____</li> <li><input type="checkbox"/> Other:</li> </ul>	<p>For <b>ADMINISTRATIVE</b> action:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Admin. Lot Line Relocation</li> <li><input type="checkbox"/> Home Occupations</li> <li><input type="checkbox"/> Sign Review</li> <li><input type="checkbox"/> Other:</li> </ul>
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\* Please complete the appropriate Supplemental Questionnaire.

The City of Albany Municipal Code has certain requirements for Planning Applications. Your answering the following questions will help staff assess how to process your application. Thus, we may have additional questions based on your responses below. Additionally, after your application is accepted for processing, staff and Planning and Zoning Commissioners will likely make at least one field visit to your house and neighborhood.

Job Site Address: <u>904 SANTA FE</u>		Zone: <u>SC</u>
Property Owner(s) Name: <u>MINA MOUBEDI</u>	Phone: <u>(910) 333 3524</u> Fax: <u>(910) 527 6872</u>	Email:
Mailing Address: <u>127 ARLINGTON AVE</u>	City: <u>KENSINGTON</u>	State/Zip: <u>CA. 94707</u>
Applicant(s) Name (contact person): <u>MINA MOUBEDI</u>	Phone: <u>(910) 333 3524</u> Fax: <u>(910) 527 6872</u>	Email:
Mailing Address: <u>127 ARLINGTON</u>	City: <u>AKENINGTON</u>	State/Zip: <u>CA 94707</u>

**PROJECT DESCRIPTION** (Please use back of sheet or attach extra sheets, if necessary): CONSTRUCT A TWO AND HALF STORY MIXED-USED BUILDING. (1780 SQFT.)

**GENERAL INFORMATION** (Please fill out this section if you are asking for approval of a project that will require construction):

Item	Existing	Proposed
Lot size (square feet)	4180	NO CHANGES
Size of structure(s) or commercial space (square feet)	1570	5216
Height and No. of stories	1	2 1/2
Lot coverage <sup>1</sup>	43.43%	79.60%
Floor Area Ratio (FAR) <sup>2</sup>	0.375	1.25
Impervious Area <sup>3</sup>		
Slope Density <sup>4</sup>		
No. of dwelling units	1	2
Parking <sup>5</sup> Number of off-street spaces	1	4
Number of spaces in garage		
Size of spaces		

<sup>1</sup> Lot Coverage applies to all zoning districts. It is defined as the land area covered by all the structures on a site, including all projections, except portions of uncovered decks, porches or landings, balconies, or stairways that are less than six feet above grade and are not enclosed by walls on more than two sides; eaves, trellises and similar structures that do not have solid roofs.

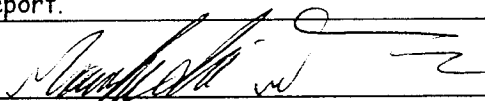
<sup>2</sup> Floor Area Ratio (FAR) is defined as the proportion of building floor area per area of the parcel of land upon which the building rests. See the informational handout "How to Calculate Floor Area Ratio" for details on what is included and excluded.

<sup>3</sup> Impervious Area includes the total square footage of building footprint(s), driveway(s), patio(s), parking lots, walkway(s), and any other impervious surfaces.

<sup>4</sup> Slope Density requirements apply in the HD Zoning District pursuant to Measure K. See handout on how to measure slope density in this area.

<sup>5</sup> Minimum parking requirements were enacted under Measure D. This Measure requires that all residential development must have a minimum of two off-street parking spaces. Some exceptions may apply to your project, see residential development handout.

**Restrictions:** Are there any deed restrictions, easements, etc. that affect the property, and, if so, what are they? In some instances, you may be required to provide a title report.

  
 \_\_\_\_\_  
 Signature of Property Owner

  
 \_\_\_\_\_  
 Signature of Applicant

NOV-1-07  
 \_\_\_\_\_  
 Date

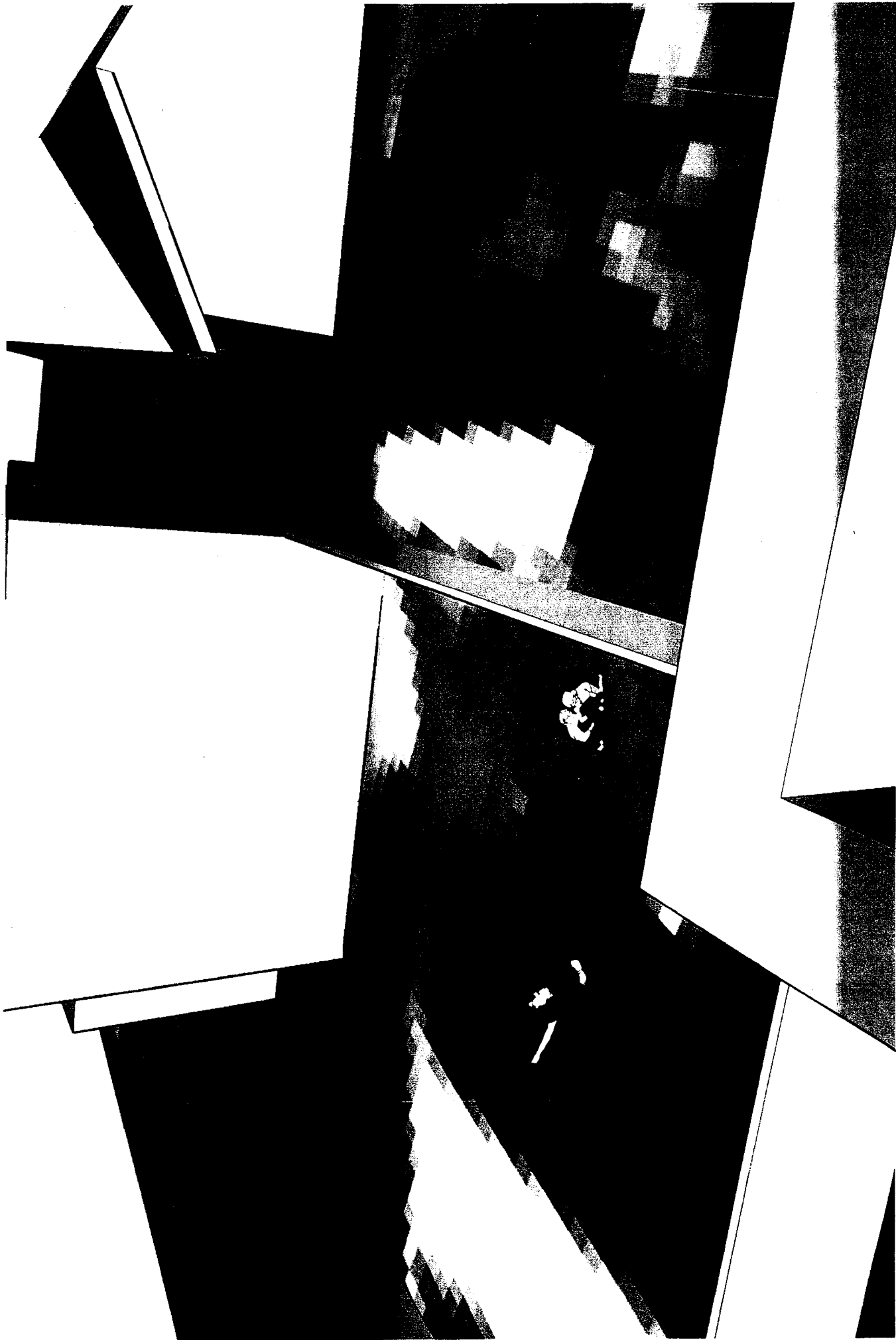
NOV-1-07  
 \_\_\_\_\_  
 Date

Community Development Department staff is available between 8:30 a.m. and 7:00 p.m. on Mondays, 8:30 a.m. through 5:00 p.m. on Tuesdays through Thursdays, and 8:30 a.m. to 12:30 p.m. on Fridays at 1000 San Pablo Avenue, Albany, CA 94706; TEL: (510) 528-5760.



904 Santa Fe  
ATTACHMENT # ~~5~~ 6

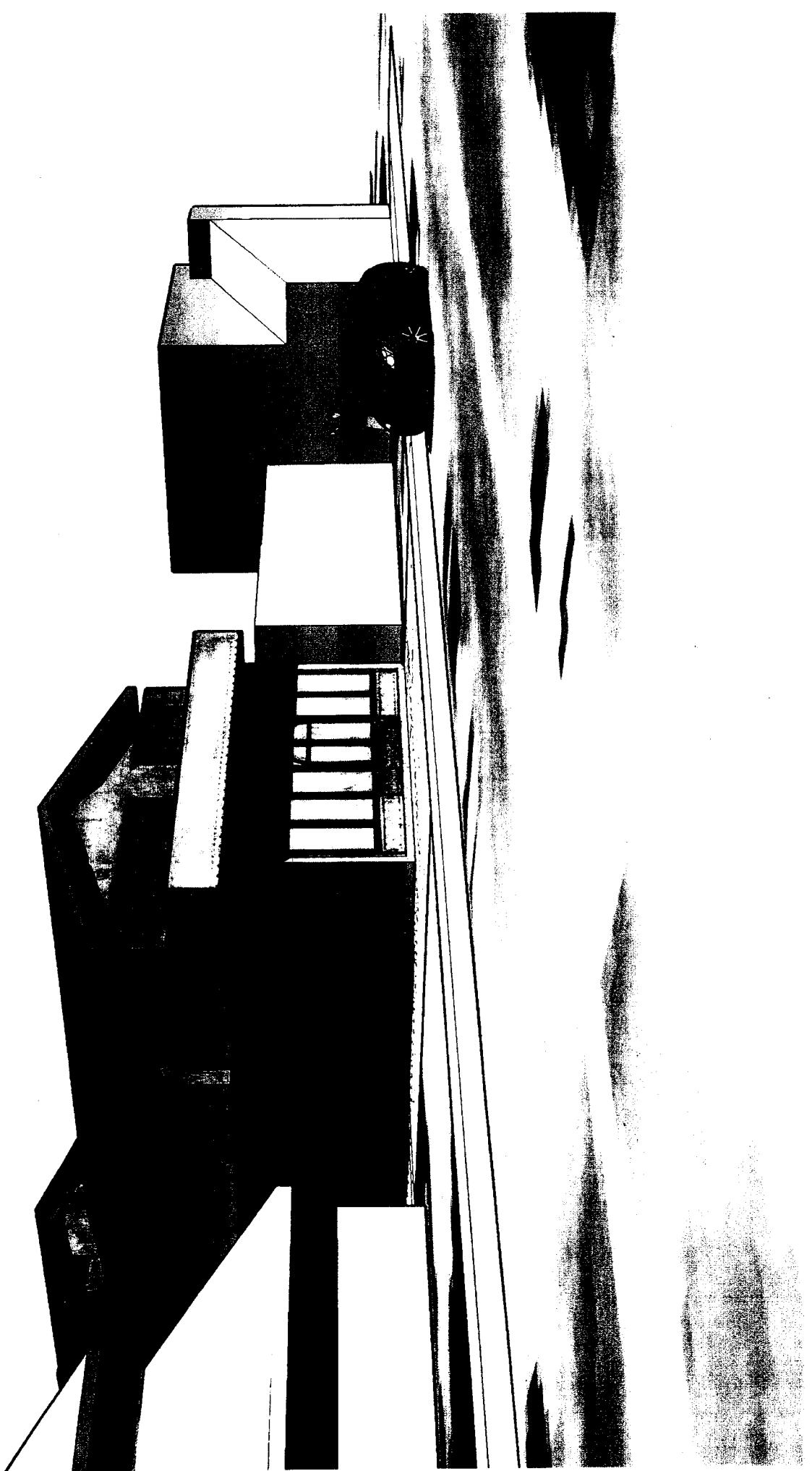






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*The internal consistency requirement may not be evaded by incorporating a subordination or precedence clause, such as "in the event of a conflict, the land use element controls."*

The internal consistency requirement may not be evaded by incorporating a subordination or precedence clause, such as "in the event of a conflict, the land use element controls." See *Sierra Club v. Board of Supervisors*, 126 Cal. App. 3d 698, 708 (1981) (expressly rejecting use of a precedence clause, where the county general plan's land use and open space elements designated conflicting land uses for the same property).

As discussed earlier in this chapter, housing legislation passed in 2004 deviates somewhat from these previously accepted principles relating to the equality of elements in a general plan and the requirement that a general plan be internally consistent by providing that if a development project is proposed on a site that is identified for very low, low-, or moderate-income households in the jurisdiction's housing element, and is consistent with the density specified in the housing element, it may not be disapproved on the basis that it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation. Gov't Code § 65589.5(d)(5). Thus, this section essentially may trump land use designations elsewhere in the general plan, thereby permitting internal inconsistency in such circumstances.

### **Consistency Between General Plan and Other Land Use and Development Actions (Vertical Consistency)**

*Since the general plan is the constitution for all future development, any decision by a city affecting land use and development must be consistent with the general plan.*

Since the general plan is the constitution for all future development, any decision by a city affecting land use and development must be consistent with the general plan. See *Friends of Lagoon Valley*, 154 Cal. App. 4th at 815; *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553, 570 (1990).

"An action, program or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." Governor's Office of Planning and Research, *General Plan Guidelines* (2003), page 164. See also *Corona-Norco Unified Sch. Dist. v. City of Corona*, 17 Cal. App. 4th 985, 994 (1993); *City of Irvine v. Irvine Citizens Against Overdevelopment*, 25 Cal. App. 4th 868, 879 (1994). To be consistent, an action, program, or project must be "in agreement or harmony" with the general plan. *Friends of Lagoon Valley*, 154 Cal. App. 4th at 817 (upholding the City's approval of the Lower Lagoon Valley Policy Plan Implementation Project and the City's finding that the Project was consistent with its general plan).

As discussed above, charter cities are exempt from the mandate that zoning be consistent with the general plan, unless the city's charter provides otherwise. Gov't Code § 65803. See *Garat v. City of Riverside*, 2 Cal. App. 4th at 282 (where city regulations did not provide for consistency); *City of Irvine v. Irvine Citizens Against Overdevelopment*, 25 Cal. App. 4th at 868 (where city ordinance did require consistency). However, this exemption applies only to zoning and not to consistency requirements for subdivision map approval, public works construction, or for other subordinate land use or development approvals.

Reviewing courts generally defer to cities' superior abilities to interpret and apply the general plan policies they have authored. "When we review an agency's decision for consistency with its own general plan, we accord great deference to the agency's determination. This is because the body which adopted the general plan policies in its legislative capacity has unique competence to

interpret those policies when applying them in its adjudicatory capacity.” *Save Our Peninsula Comm. v. County of Monterey*, 87 Cal. App. 4th 99, 142 (2001) (citing *City of Walnut Creek v. County of Contra Costa*, 101 Cal. App. 3d 1012, 1021 (1980)). The court’s review of a city’s interpretation of its general plan is highly deferential because “policies in a general plan reflect a range of competing interests, the [city] must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purpose.” *Friends of Lagoon Valley*, 154 Cal. App. 4th at 816; *see also Anderson First Coalition v. City of Anderson*, 130 Cal. App. 4th 1173 (2005); *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco*, 102 Cal. App. 4th 656, 668 (2002).

It is the city’s responsibility to determine whether proposed land use development approvals are consistent with the general plan. A determination regarding such consistency is a legislative decision, and will not be set aside by a court unless the city has acted arbitrarily, capriciously, or without evidentiary support, or has failed to follow proper procedures, such as failing to give notice as required by law. *See San Franciscans Upholding the Downtown Plan v. City and County of San Francisco*, 102 Cal. App. 4th at 668 (claim that redevelopment plan amendments were inconsistent with the general plan reviewed under arbitrary and capricious standard); *No Oil, Inc. v. City of Los Angeles*, 196 Cal. App. 3d 223, 233 (1987) (judicial review of a zoning ordinance’s consistency with the general plan is limited to a determination of whether the agency’s action was arbitrary, capricious, or entirely without evidentiary support); *Mitchell v. County of Orange*, 165 Cal. App. 3d 1185, 1191–92 (1985) (county’s determination that a specific plan is consistent with its general plan is legislative, and the reviewing court is limited to an examination of whether the action was arbitrary and capricious).

Although a city’s decision regarding consistency of an action with the general plan is legislative, the decision necessitates some level of factual determinations. *See Building Indus. Ass’n v. City of Oceanside*, 27 Cal. App. 4th 744, 761 (1994); *Building Indus. Ass’n v. Superior Court*, 211 Cal. App. 3d 277, 291 (1989). A court will defer to a city’s interpretation of its own general plan and factual findings unless “based on the evidence before [the] city council, a reasonable person could not have reached the same conclusion.” *No Oil*, 196 Cal. App. 3d at 243 (upholding city’s specific finding of consistency between general plan and ordinance establishing oil drilling zones).

Notwithstanding such purported judicial deference, at least three appellate courts have overturned a city or county’s finding that a land use approval was consistent with the agency’s general plan. In *Families Unafraid to Uphold Rural El Dorado County v. County of El Dorado*, the court overturned the county’s finding that a planned development was consistent with the general plan, stating that it was “readily apparent that the [Low Density Residential] designation for [the development] is inconsistent with the Draft General Plan. . . .” 62 Cal. App. 4th 1332, 1341 (1998). Despite the usual deference of courts to consistency determinations, the county was unable to overcome the “specific, mandatory and fundamental inconsistencies” of the project with the land use policies of the general plan. *Id.* at 1342.

Even if there is no direct conflict, at least one appellate court has found a land use approval inconsistent where it did not implement or advance the

*It is the city’s responsibility to determine whether proposed land use development approvals are consistent with the general plan.*

*Although a city’s decision regarding consistency of an action with the general plan is legislative, the decision necessitates some level of factual determinations.*

goals of the general plan. In *Napa Citizens For Honest Gov't v. County of Napa Bd. of Supervisors*, the court overturned the county's determination that an updated specific plan was consistent with the general plan. 91 Cal. App. 4th 342 (2001). While the specific plan did not directly conflict with any stated goals or policies of the general plan, it did not, as the county conceded, actually implement general plan goals and policies, nor did it require any specific action that would further such goals and policies. The specific plan in question included a circulation element that contained no specific highway improvements, nor any detailed statement of goals or policies. In addition, it contained no specific action which would further the housing goals and policies within the general plan. *Id.* at 379–381.

*Although courts generally will defer to an agency's factual findings of consistency with a general plan, project approvals may be overturned if a court determines that no reasonable person could have reached the same conclusion on the relevant evidence.*

Although courts generally will defer to an agency's factual findings of consistency with a general plan, project approvals may be overturned if a court determines that no reasonable person could have reached the same conclusion on the relevant evidence (the “arbitrary and capricious” standard of review). In *Endangered Habitats League, Inc. v. County of Orange*, the court overturned a set of project approvals due to their inconsistency with the general plan. 131 Cal. App. 4th 777 (2005). The court found that the project's traffic impacts were in conflict with mandatory requirements of the general plan. The court also found that the provisions of the proposed specific plan amendment which allowed a “balancing” of specific plan requirements and exempted the project from such mandatory specific plan requirements were in conflict with the general plan. Stating that the language of the general plan was “unambiguous,” the court rejected the county's consistency arguments.

*The Subdivision Map Act does not require an exact match between the tentative map and the general plan or specific plan.*

In the subdivision context, Government Code section 66473.5 requires that approvals of tentative maps be consistent with a city's general plan. However, the Subdivision Map Act (Gov't Code § 66410 *et seq.*) does not require an exact match between the tentative map and the general plan or specific plan. The tentative map only need be in agreement or harmony with the general or specific plan. See *Sequoyah Hills Homeowners Ass'n v. City of Oakland*, 23 Cal. App. 4th 704, 717–18 (1993) (city's determination that the map was consistent with 14 of 17 general plan policies was held legally adequate); *Greenbaum v. City of Los Angeles*, 153 Cal. App. 3d 391, 408 (1984). As to consistency, the *Sequoyah Hills* court held that a given project including a map need not be in perfect conformity with each and every general plan policy.

Indeed, it is beyond cavil that no project could completely satisfy every policy stated in the [Oakland Comprehensive Plan], and that state law does not impose such a requirement (*Greenbaum v. City of Los Angeles*, 153 Cal. App. 3d at 406–07; 59 Ops. Cal. Atty. Gen. 129, 131 (1976)). A general plan must try to accommodate a wide range of competing interests—including those of developers, neighboring homeowners, prospective homebuyers, environmentalists, current and prospective business owners, jobseekers, taxpayers, and providers and recipients of all types of city-provided services—and to present a clear and comprehensive set of principles to guide development decisions. Once a general plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be “in harmony” with the policies stated in the plan. [Citation omitted.] It is, emphatically, not the role of the courts to micromanage these development decisions.

Our function is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies, whether the city officials made appropriate findings on this issue, and whether those findings are supported by substantial evidence. (Code Civ. Proc. § 1094.5(c); *Youngblood v. Board of Supervisors*, 22 Cal. 3d 644, 651 (1978)).

*Sequoyah Hills Homeowners Assn. v. City of Oakland*, 23 Cal. App. 4th at 719–20; but see *Families Unafraid to Uphold Rural El Dorado County v. County of El Dorado*, 62 Cal. App. 4th 1332 (1998) (holding that the county’s findings of consistency between a proposed residential subdivision and the county’s draft general plan were not supported by substantial evidence).

There are at least two exceptions to the Subdivision Map Act’s consistency requirement. In *Corona-Norco Unified School District v. City of Corona*, the court held that Government Code section 65996 creates an express exception to the general requirement of consistency by precluding a city from denying approval of a development project under the Map Act based on inadequate school facilities. 13 Cal. App. 4th 1577, 1584 (1993). Although the court stated that it did not “mean to diminish the importance of the consistency doctrine in the planning process,” the Legislature made clear “that development takes precedence to the adequacy of school facilities.” *Id.* at 1585.

In addition, under Government Code section 65589.5(d), a city may not disapprove a housing development on the basis that such development is inconsistent with the city’s general plan and zoning designation so long as the proposed project is on a site identified for very low-, low-, or moderate-income households in the city’s housing element and is consistent with the density specified in the housing element, even if the project is inconsistent with the city’s general plan and zoning designation.

Finally, consistency is required only in the context of approvals for future development. For example, as to public works projects, a city is not required to bring existing public works projects, including neighborhoods and streets, into compliance with the general plan. See *Friends of H Street v. City of Sacramento*, 20 Cal. App. 4th 152, 169 (1993) (requirements of general plan compliance were not applicable to the maintenance and operation of an existing street completed before the consistency mandate came into effect).

*Consistency is required only in the context of approvals for future development—a city is not required to bring existing public works projects into compliance with the general plan.*

### **Consistency with Airport Land Use Plan**

General plans must be consistent with any Airport Land Use Plan (ALUP) adopted by a county airport land use commission pursuant to Public Utilities Code section 21675, unless the city overrules the commission and makes certain findings. Gov’t Code § 65302.3(a); *Muzzy Ranch v. Solano County Airport Land Use Com’n*, 41 Cal. 4th 372, 384 (2007). If a city does not concur with any aspect of the ALUP, it may overrule the commission’s ALUP by a two-thirds vote if it makes specific findings that the decision to overrule the ALUP is consistent with the purposes of protecting public health, safety, and welfare, minimizing the public’s exposure to excessive noise, and minimizing safety hazards within areas around the public airport. See Pub. Util. Code §§ 21670, 21676. At least 45 days prior to such decision, the city shall provide a copy of the

ALUP = Airport Land Use Plan

*The court must determine whether the regulation, in light of its probable effect, represents a reasonable accommodation of the competing interests.*

must identify the competing interests affected by the restriction, e.g., open space versus affordable housing. Finally, the court must determine whether the regulation, in light of its probable effect, represents a reasonable accommodation of the competing interests. In all cases, the regulation must have a "real and substantial" relationship to the public welfare.

Numerous courts have applied the *Livermore* test to determine whether a zoning ordinance is valid, reaching varied results. For example, in *Arnel*, the court struck down a rezoning initiative aimed at defeating a multi-family housing project as an improper exercise of the police power. The record demonstrated that the initiative discriminated against a particular piece of property, and failed to consider the competing interest of the community in the development of affordable housing. 126 Cal. App. 3d at 337-38. Conversely, in *Del Mar*, the court upheld the San Diego North City West Housing Development Plan, concluding that the regulation bore a substantial and reasonable relationship to the public welfare. 133 Cal. App. 3d at 415.

The California Supreme Court upheld the City of Santa Monica's anti-demolition ordinance against an attack that it operated to deprive a landowner of property without due process of law by restricting his right to go out of the rental business. See *Nash v. City of Santa Monica*, 37 Cal. 3d 97 (1984). The Court stated that the applicable legal test "requires the regulation be 'procedurally fair and reasonably related to a proper legislative goal. The wisdom of the legislation is not at issue in analyzing its constitutionality. . . .'" *Id.* at 108-09. The Court stated that the city's ordinance met the *Livermore* test. *Id.* at 109.

In *Hernandez v. City of Hanford*, the city adopted a zoning ordinance that prohibited the sale of furniture in a planned commercial district, with a limited exception for large department stores. 41 Cal. 4th 279 (2007). The California Supreme Court upheld the zoning ordinance's general prohibition on the sale of furniture. Although the ordinance concededly intended, at least in part, to regulate competition, the Supreme Court held that the ordinance was adopted to promote the legitimate public purpose of preserving the economic viability of the Hanford downtown business district. *Id.* at 298. The ordinance was not adopted to serve any impermissible private anti-competitive purpose. Additionally, the Supreme Court held that the ordinance did not violate the equal protection clause because it survived the rational basis test, even though it served the dual purpose of protecting the city's downtown economic health and attracting large department stores. *Id.* at 300.

### **Zoning Must Be Consistent with the General Plan**

*Zoning ordinances must be consistent with the general plan and any applicable specific plan.*

Zoning ordinances must be consistent with the general plan and any applicable specific plan. Gov't Code § 65860(a). This provision does not apply to charter cities, with the exception of Los Angeles. Gov't Code §§ 65803, 65860(d). However, a charter city can, on its own, require consistency by charter or by ordinance. See *Verdugo Woodlands Homeowners Ass'n v. City of Glendale*, 179 Cal. App. 3d 696 (1986); *City of Irvine v. Irvine Citizens Against Overdevelopment*, 25 Cal. App. 4th 868 (1994) (where the charter city of Irvine required consistency); *Garat v. City of Riverside*, 2 Cal. App. 4th 259 (1991) (the charter of the City of Riverside did not require consistency).



A zoning ordinance is consistent with a city's general plan only if:

- The city has officially adopted such a plan, and
- The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in such a plan

Gov't Code § 65860(a)

Under new 2007 legislation, each city located within the Sacramento-San Joaquin Valley will be required to amend its zoning ordinances so that they are consistent with the flood protection goals and policies of the city's general plan. Gov't Code §§ 65302.9(a), 65860.1.

Applying the consistency test set forth in the Governor's Office of Planning and Research, *General Plan Guidelines* (2003) page 166, a zoning ordinance is consistent with a city's general plan where, considering all of its aspects, the ordinance furthers the objectives and policies of the general plan and does not obstruct their attainment. See *City of Irvine*, 25 Cal. App. 4th at 879.

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Any resident or property owner within a city may bring an action in superior court to enforce compliance with the consistency requirement. Such actions or proceedings are governed by Code of Civil Procedure section 1084 *et seq.* Except for certain exceptions in Government Code section 65009(d) expressly relating to housing projects for low-income persons and families, any actions or proceedings must be taken within 90 days of the enactment of any new zoning ordinance or the amendment of any existing zoning ordinance, and any such action also must be served on a city within this 90-day period. Gov't Code § 65860(b). The purpose of this remedy is to "compel amendment of a nonconforming zoning ordinance to bring it into compliance with the general plan." *Gonzalez v. County of Tulare*, 65 Cal. App. 4th 777, 785 (1998). Also, a city can avail itself of this statute of limitations period in a pre-election challenge to an initiative or referendum related to zoning. See *City of Irvine*, 25 Cal. App. 4th at 879.

A city's findings that the zoning ordinance is consistent with its general plan can be reversed only if it is based on evidence from which no reasonable person could have reached the same conclusion. See *A Local & Reg'l Monitor v. City of Los Angeles*, 16 Cal. App. 4th 630, 648 (1993).

The courts have stated that a zoning ordinance inconsistent with the general plan at the time of enactment is "void *ab initio*," meaning invalid when passed. See *Lesher Commc'ns, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531, 541 (1990); *City of Irvine*, 25 Cal. App. 4th at 879; *Bldg. Indus. Ass'n v. City of Oceanside*, 27 Cal. App. 4th 744, 762 (1994); *deBottari v. City Council*, 171 Cal. App. 3d 1204, 1212 (1985). However, while an inconsistent ordinance is void when adopted, its invalidity still must be determined judicially in an appropriate legal action, and any such action is governed by the appropriate statute of limitations. See *Gonzalez*, 65 Cal. App. 4th at 785–91. If a zoning ordinance becomes inconsistent with a general plan by reason of an amendment to the plan, or to any element of the plan, the ordinance must be amended within a reasonable time so that it is consistent with the amended general plan. Gov't Code § 65860(c).

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Since general plan consistency is required, the absence of a valid general plan, or the failure of any relevant elements thereof to meet statutory criteria, precludes the enactment of zoning ordinances and the like. See *Res. Def. Fund v.*

*County of Santa Cruz*, 133 Cal. App. 3d 800, 806 (1982).<sup>2</sup> For further discussion of general plan consistency, see chapter 2 (General Plan).

### **Zoning Must Be Consistent with Airport Land Use Plan**

*Just as a city's general plan must be consistent with any ALUP that overlaps with the city's planning area, so too must a city's zoning be consistent with any applicable ALUP.*

**ALUP = Airport Land Use Plan**

Just as a city's general plan must be consistent with any Airport Land Use Plan (ALUP) that overlaps with the city's planning area, so too must a city's zoning be consistent with any applicable ALUP, unless the city overrules the airport land use commission and makes certain findings. Pub. Util. Code § 21676(b). Prior to adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the ALUP, a city must first refer the proposed action to the commission that adopted the relevant ALUP. Pub. Util. Code § 21676(b). In the event the commission finds the zoning regulation to be inconsistent with its ALUP, and upon making specific findings, the city may overrule the commission by a two-thirds vote. Pub. Util. Code § 21676(b). The timeframes, procedures, and findings requirements for overruling a commission's findings of inconsistency in order to approve a zoning regulation are the same as those for overruling an ALUP to amend a general plan and are explained in chapter 2 (General Plan). See also Pub. Util. Code § 21676(b). For a comprehensive discussion of Airport Land Use Commissions, how they devise Airport Land Use Plans, and how they determine consistency with local agencies' proposed general plans and zoning regulations, see *The California Airport Land Use Planning Handbook*, California Department of Transportation, Division of Aeronautics, January 2002 (available at [www.dot.ca.gov/hp/planning/aeronaut/htmlfile/landuse.php](http://www.dot.ca.gov/hp/planning/aeronaut/htmlfile/landuse.php)).

### **Due Process Requirements**

*Rezoning, no matter how small the parcel, and text amendments are legislative acts and are not administrative or quasi-judicial in nature.*

Rezoning, no matter how small the parcel, and zoning text amendments are legislative acts and are not administrative or quasi-judicial in nature. See *Arnel Dev. Co. v. City of Costa Mesa*, 28 Cal. 3d 511, 514 (1980). As a general rule, procedural due process requirements of notice and hearing to nearby property owners only apply in quasi-judicial or adjudicatory hearings and not in the adoption of general legislation. See *Horn v. County of Ventura*, 24 Cal. 3d 605, 612 (1979). However, notice and hearing are statutorily required where zoning ordinance amendments change property from one zone to another, or impose or delete certain regulations listed in Government Code section 65850. For more detail, see the requirements set forth in Government Code section 65854 *et seq.* Any other amendment to a zoning ordinance may be adopted as other ordinances are adopted (Gov't Code § 65853), although special provision is made for notice and hearing on interim ordinances, such as urgency measures. Gov't Code § 65858.

Although the State Zoning Law requires both a hearing before the planning commission, if there is one, and a hearing before the city council prior to the enactment of certain amendments to zoning ordinances, it requires only that

2. The Attorney General opined that a county may incorporate land use designations and other provisions of its zoning ordinances into its general plan and then repeal its zoning ordinances and replace them with a single ordinance that requires all land use activity to conform to the general plan. See 81 Ops. Cal. Atty. Gen. 57 (1998).