



**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

STAFF REPORT

TO: PLANNING COMMISSION
HEARING DATE: AUGUST 6, 2018

GENERAL INFORMATION

APPLICATION TYPE & NUMBER	PLN2015-00180, Vesting Tentative Tract Maps 8296 and 8297 – Amendments
APPLICANT	D Street Investments LLC, Marc Crawford, President
PROPOSAL	Review and approval of revisions to Planning Commission Resolution 17-13 including conditions of approval related to subdivision improvements, easements and public services for Tract Maps 8296 and 8297, located at 3231 and 3247 “D” Street, unincorporated Fairview, approved previously by the Planning Commission on September 18, 2017.
LOCATION & SIZE OF PARCEL	3231 and 3247 “D” Street, Parcel size 9.78 acres
ASSESSOR'S PARCEL NUMBER	417-0240-001-00; 417-0240-006-00; 417-0250-021-00; 417-0240-004-00; 417-0240-012-04; 417-0240-005-00 and 417-0250-001-00
ZONING	The property is designated “R-1- B-E” (Single Family Residence, 10,000 M.B.S.A., 15’ side yard setback and 30’ front yard setback) District.
GENERAL PLAN DESIGNATION	<i>Fairview Area Specific Plan, as part of the Alameda County General Plan (Eden Area Plan) adopted September 4, 1997.</i>
ENVIRONMENTAL REVIEW	An Environmental Impact Report (EIR) was prepared for the project (the Tract Maps) pursuant to the California Environmental Quality Act (CEQA); the EIR was certified by the Planning Commission on September 18, 2017, at the same time the Tract Maps were approved. The proposed changes are minor and would have no different or additional environmental effects that were not disclosed in the EIR. However, an Addendum to the EIR has been prepared for approval by the Planning Commission, as required by Section 15164 of the CEQA Guidelines.

STAFF RECOMMENDATION

The Planning Commission should review the staff report and the draft Resolution as amended and its conditions of approval, take public comment, and approve the amended Resolution.

SUMMARY

The subject project (Tract Maps 8296 and 8297) was reviewed and approved by the County Planning Commission after an extensive community review process in the fall of 2017. The project was reviewed for consistency with the Fairview Specific Plan and the County's Subdivision Ordinance and approved by the Planning Commission on September 18, 2017 by Resolution R-17-13. No appeals were received.

Subsequent to that approval, while the project proponent was working towards fulfilling the conditions of approval, several issues were identified that now require revisions to certain conditions, as they were found by the applicant and the County to be infeasible or stated in an impractical or erroneous way. Most importantly, due to a combination of factors that include sloping terrain, legal obligations and County standards, the County (Planning Department and Public Works Agency or PWA) and the applicant have agreed that it is not feasible to design a public street that meets PWA standards on Tract 8297 (the 'upper' or eastern tract map of the two tract maps associated with the original approval), while also maintaining driveway access and prescriptive easement rights (i.e., established or acquired by regular use and not having been purchased, negotiated, or granted by a formal agreement) held by the adjacent Fobroy property at 3301 D Street. The reasons for this are discussed in further detail below.

Other changes to the Resolution and the conditions of approval relate to the correct Fire Code standards that apply to the Fairview Fire Protection District, reversing and thereby correcting the references to the subdivision names in the first recital paragraph (Fairview Meadows and Fairview Orchards, as *respectively* Tracts 8296 & 8297), a single typographical error, and modifying the language used in the Resolution findings with regard to easements, to recognize the formal and prescriptive easements that exist on the four parcels making up Tract Map 8297. Exhibit B, sheet 5 of 15, also needs to be corrected to strike the note that the existing easement along the north side of Assessor's Parcel No. 417-0240-012-04 (one of the Tract 8297 parcels) for ingress, egress and roadway will be quitclaimed with alternate provisions for access. With a change to a private street within Tract 8297, a quitclaim process is unnecessary.

The proposed amendments were previously reviewed at a public hearing on July 17, 2018 by the Fairview Municipal Advisory Council for their recommendations, at which time the Council took public comment and recommended approval to the Planning Commission of the amended Resolution. A summary of the hearing is provided below.

Additionally, due to a dispute with a neighbor, Roger DeRuig, who holds easements on a small portion of the site for Tract Map 8297, grading of the access street will be modified to avoid to the greatest extent possible any alteration of the existing grade and conditions of the driveway serving Mr. DeRuig. This requires a moderately different slope treatment within the easement area. Mr. DeRuig has submitted a letter to the Planning Commission for consideration (attached), and Planning staff consider some of the recommendations to be merited. Discussion of the matter is provided below.

PROPOSED REVISIONS

The proposed revisions to the conditions are summarized as follows and discussed more fully below:

- **Recitals:** *Various corrections and insertions to reflect review of the proposed amendments, and reference to existing easements.* The Resolution has been amended, in underlined/strikeout and red printing to reflect the review and approval of the amendments, correct the references to the 'respective' subdivision names, and change one sheet of the approved Exhibit B (sheet 5 of 15) to eliminate the intent to quitclaim the recorded easements on official records for all lands of DeRuig.
- **Condition 10:** *Changing a requirement that both subdivisions be served by public county roads.* Existing easements and driveway access that must be maintained and sloping terrain at the project entrance for the upper subdivision, Fairview Orchards (Tract Map 8297) have made it infeasible to provide a public street.

To maintain existing driveway access to the adjacent Fobroy property, the street to serve Tract Map 8297 must be reduced in width. As a result, the street would not meet County standards for a public street and must now be established as a private street (Parcel A, to be known as Bassard Lane, based on the family name of the long-time prior property owner). It is also impractical to retain the public street on the lower subdivision, Fairview Meadows (Tract Map 8296) since there would be a common HOA for both Tract Map residences.

- **Conditions 46 & 47:** *Changing fire hydrant requirements pursuant to the Fairview Fire Protection District (FFPD).* The original conditions required the project to install fire hydrants per the City of Hayward standard at 1,500 GPM, where the approval should have required only 500 GPM as required by the fire district jurisdiction (Fairview Fire Protection District).
- **Condition 58:** *Correcting a typographical error.* Condition 58 erroneously refers to Condition 72 as requiring presence/absence surveys to determine if special status plants are on the site prior to construction, whereas it clearly was meant to refer to Condition 57, wherein such surveys are required.
- **Finding Related to Easements:** *Revising findings to recognize existing easements so as to ensure continued roadway access to adjacent properties, as a basic requirement of the subdivision process.* As streets in the subdivisions become private streets, they no longer require existing easement holders to relinquish (via a quitclaim) their easements to allow dedication to the County.

Proposed changes to Resolution R-17-13 (shown below with underlined insertions and strikethroughs, and in red) followed below with separate discussions of each (or jointly in the case of Conditions 46 & 47). Firstly, under the third “Be it further resolved”, with respect to the Vesting Tentative Tract Maps, finding no. 5 is amended as follows:

5. The design and improvements of the subdivision will not conflict with easements acquired by the public at large for access through, or for use of, property within the proposed land division in that ~~none~~ such public easements are known to exist and the private streets will allow existing private easements to be retained, while providing new public easements for emergency access, access to stormwater protection features, and other public improvements. The Subdivider will be required to provide final verification of all property boundaries and resolve any disputes prior to recording the Final Map.

Discussion. The amendment to the finding clarifies that there are no known public easements on the parcels, but acknowledges existing private easements on the property (within the Tract 8297 properties) and that the amendments would ensure such rights are preserved while also accommodating new public easements for emergency access, and access required for inspection of stormwater control features and other public services and facilities. There are no existing public easements on any of the project parcels that the project would conflict with. The use of a private street would forego the requirement to obtain clear title of the DeRuig easement, which can instead be preserved under the approved subdivision plan for Parcel A, comprising a combination of common landscaping for the subdivision, a bio-retention zone, and a driveway serving the DeRuig and Brooks parcels.

The remaining amendments pertain to the numbered conditions of approval (and sub-conditions) as noted.

10. Access roads in both tracts (Street A in Tract 8296 and Street A in Tract 8297) shall be improved as ~~public roadways~~ private streets, as shown on Exhibit “BC” and as specified herein below.
 - a) Street design and construction with regards to width, curb return radius, intersection, curb ramps, crosswalks at entrances, grade, drainage and cul-de-sac features shall be in accordance with the current specifications of the County Traffic and Road Departments or as approved by the Director of Public Works.

- b) Streetlights on public roadways shall meet County standards and, upon acceptance by the Board of Supervisors, they shall be owned and maintained by the County. These lights shall be energized at the PG&E LS-2 rate schedule.
 - c) Streetlights on private streets may be decorative as approved by the Director of Public Works and they shall be owned and maintained by the HOA. These lights shall be energized at the PG&E LS-2 rate schedule.
17. At the intersection of both of the Project's access streets with D Street, Applicant shall either provide "bulbouts" or a narrower street that reduce the curb-to-curb roadway width to 24 feet where pedestrians would cross. These bulbouts shall be on the northernmost 10 feet of both local access streets, allowing for a reduction in pedestrian crossing distances for pedestrians on D Street. The design shall be subject to an encroachment permit and approval of the Director of Public Works.
29. Pursuant to the Municipal Regional Stormwater NPDES Permit (MRP)... [strike references to public streets and replace with private streets in body of condition and sub-condition 29.d]

Discussion. Although the applicant's Tract 8297 property frontage along D Street is 50 feet wide, which is sufficient to accommodate a public street, the cement driveway serving the Fobroy property on the east side of that frontage is approximately five feet higher in elevation than the planned public street elevation. The elevation difference makes it infeasible or very impractical to maintain access to the driveway from the public street, if required to be 46 feet in width. While the existing asphalt driveway that provides access to the Fobroy parcel and a number of other homes bordering the Tract 8297 property, as well as the Hilltop Care Center (recently purchased and renamed the Vista Post-Acute Care Center), slopes somewhat steeply up from D Street to serve the Fobroy and Care Center driveways (over 20 percent slope), a much milder slope is required to meet Public Works Agency and Fairview Fire Protection District standards (under 10 percent) for the street entry segment, regardless of whether it is a public street as planned before, or a private street. However, if the street width was to be narrowed to 30 feet, there would be enough distance from the new street to allow for construction of a new driveway within the applicant's property to serve the existing cement Fobroy driveway.

The Fobroy family (currently the Roberta F. Fobroy Trust) has had a prescriptive easement for access to its cement driveway for an estimated 50 years through the applicant's property, from the existing asphalt driveway, along with other prescriptive and formal easements serving three other properties adjacent to the Tract 8297 property. There is a five-foot elevation difference between the cement Fobroy driveway and the planned public street entry elevation bordering the driveway that would prevent a feasible connection between the street and driveway if the street is built to a width of 46 feet as shown on the approved Exhibit "B" (Sheet 7 of 15), as required to meet the County's public street standards. However, if the street is built as a private street (i.e., not meeting the requirements of a public street) with a total width of 30 feet at the entry or bordering the Fobroy property, including two 10-foot travel ways and two 5-foot-wide sidewalks, there would be enough distance for a steeply sloped but serviceable driveway to the existing cement driveway. A Preliminary Alternate Driveway Grading Plan has been prepared that illustrates the current proposal and is attached for consideration and acceptance by the Public Works Agency in its review of the final improvement plans. The Alternate Grading Plan would be considered as an Amendment to Exhibit B (Sheet 7), and would be attached as Sheet 7.B to the amended Resolution.

It was expected by the developer that the owner of the Fobroy property would agree to a substitute driveway with access from D Street, because the slope that would have been required to maintain the existing driveway from the new public street would have required an extremely steep and unviable sloped encroachment into the Fobroy property. However, after the death of the long-time owner Roberta Fobroy and the subsequent conveyance of the property into a family trust, it became evident that the family was not in a position to agree on a substitute driveway, nor is such an agreement anticipated in the foreseeable future. For this reason, the applicant requested approval of a change from requiring a public street meeting public street standards (46 feet minimum width for a cul-de-sac, including two 10-foot wide travel lanes, two 8-foot wide parallel parking

lanes and two 5-foot wide sidewalks), to a private street meeting Public Works Agency's private street standards, which require only a minimum width of 30 feet where no parking is allowed.

This configuration would only be used at the Tract 8297 street entry bordering the west side of the Fobroy parcel; the street would widen to the approved 46 feet uphill of the Fobroy parcel and care-center driveway to provide the on-street parking on each side of the travel lanes, as well as sidewalks. The Director of Public Works has agreed to this request for the reasons described above, and Planning Department staff and its Director also have consented. The private street design will still be able to provide an equivalent for the street entry bulb-outs (per amendments to Condition 17) of reducing the curb-to-curb width to a minimum of 24 feet across each of the subdivision streets, and to just 20 feet for Tract 8297. The street for Tract 8296 (downhill from Tract 8297) would also be narrowed to 24 feet (curb-to-curb) for the street entry, and the street made private for consistency with Tract 8297. The HOA will be responsible for street maintenance, which is largely consistent with the arrangements for residential cul-de-sac development in the Fairview area. In terms of physical development there would be very limited change as a result of the change from a public street to a private one.

The addition of a new sub-condition to guide approval of streetlights on the private streets is necessary to be consistent with the redesignation of the roadways as private streets and provide for HOA maintenance. Allowing them to be decorative provides for an appropriate level of flexibility for the developer to improve each street with streetlights that will make the subdivision attractive. Sub-condition 10.b is appropriate to be retained to apply to new street lights that may be required to be installed on D Street. The changes to condition 29 and sub-condition 29.d are needed to be consistent with the change from public streets to private streets.

46. All structures and improvements shall comply with the recommendations and requirements of the City of Hayward Fire Department under its contract with the Fairview Fire Protection District, including:
 - d. Design of the ~~public~~ private street intersection shall be consistent with ~~nationally recognized~~ Alameda County Public Works Agency standards, designed and engineered to withstand 75,000 lbs. gross vehicle weight of fire apparatus. Such standard is also applicable to pavers or decorative concrete that may be placed in the intersection or within the private street right-of-way.

47. In addition, the following requirements included in the Hayward Fire Department letter dated November 3, 2015 shall be implemented as amended:
 - d. The minimum fire flow ~~of 1500 GPM~~ shall be provided in accord with the regulations of the Fairview Fire Protection District under its contract with the Hayward Fire Department and as approved by the Hayward Fire Chief. A water flow test report less than 5 years old shall be provided.

Discussion. Condition of approval no. 46 refers to the requirements of the City of Hayward Fire Department, when it should instead refer to the requirements of the Fairview Fire Protection District (FFPD). Although the FFPD is operated by the Hayward Fire Department, the FFPD has adopted different standards for fire flow (or water pressure), based directly on the 2016 California Fire Code.

While Hayward Fire Department fire hydrant standards would have required a fire flow of 1,500 gallons per minute (GPM), the California Fire Code requires only 500 GPM. An excerpt from the Fire Code, with highlighted portions of Table B105.1(1) showing the fire flow required for one- and two-family dwellings is attached. Condition 47 and sub-condition 47.d would be amended to reflect the applicable, amended standards of the FFPD. Also attached are the two EBMUD Water Service Applications for each of the Tract Maps, showing Fire Marshall approval on December 14, 2017 of a fire flow of 500 GPM for homes that do not exceed 3,600 square feet in area (no homes of that size are planned for either Tract Map). Based on discussion by and

the recommendations of the Fairview Municipal Advisory Council (see below), the Hayward Fire Chief will have final authority to approve the fire flow for the project.

Also, sub-condition 46.d refers to a public street intersection and imprecise “nationally recognized” standards for the design of the intersection. The changes shown are necessary to be consistent with changing the public streets to private streets (amended condition no. 10), and to refer correctly and clearly to the Public Works Agency as the authority for approval of the street intersection design. (Condition no. 46, not proposed for any change, also provides for the Hayward Fire Chief to approve street construction plans.)

58. If any special status plants are found on site during the presence/absence surveys per Condition ~~72~~⁵⁷, any such special status plants shall be salvaged prior to construction. Salvage shall be conducted in consultation with CDFW, and may consist of seed collection and relocation or plant transplantation.

Discussion. As indicated in the summary, this amendment is solely to correct a typographical error, in that condition no. 58 was clearly meant to refer to condition 57, which is the condition requiring presence/absence surveys. (Condition no. 72 requires utility distribution facilities to be placed underground). A survey was conducted as specified in Condition no. 57 in the early spring of 2018, and no protected botanical species were detected, so both conditions 57 and 58 have been met.

Fairview Municipal Advisory Council Deliberations. At a hearing on July 17, 2018, the Council heard a presentation from Planning staff (Planning Director Albert Lopez) describing the proposed change from a public to a private street and the other changes that were required or proposed. Hayward Fire Deputy Chief Contreras also spoke to the Council and indicated that while the Hayward Fire Department objective for fire flow remained at 1,500 GPM, it was recognized that infrastructure limitations could require accepting a fire flow of approximately 1,000 GPM or as close to that flow as possible. The existing EBMUD 8" water line would need to be replaced with a 12" water line. In the absence of a new water main, alternative or supplemental requirements for building materials, setbacks and sprinklers in attics, in addition to general sprinkler requirements for each new house, could allow for acceptance by the Hayward Fire Chief of less than 1,500 GPM. A tie-in to the City of Hayward's water lines in the vicinity could also serve to meet the fire flow objective. However, the Fire Chief would be certain to exercise the Department's authority under state code to double the minimum of 500 GPM to around 1,000 GPM due to the urban-wildland interface that characterizes the project area. He did not disagree that the obligation of the developer was to meet the standards of the Fairview Fire Protection District (FFPD) under its contract with the Hayward Fire Department.

The applicant, Marc Crawford, assured the Counsel that he intended to conform to the requirements and standards of the FFPD, even if they were doubled to 1,000 GPM, and he was working with EBMUD on infrastructure calculations. However, he considered the fire flow objective of 1,500 GPM to be unrealistic, and wished to have the requirement defer to the FFPD as managed by the Hayward Fire Department. He also explained the difficulty of trying to replace and relocate the driveway easement for the Fobroy property, but indicated that under current and foreseeable future circumstances, the existing driveway and prescriptive easement from the planned street had to be maintained and that it necessitates narrowing the street and designating it as a private street.

The Council took public comment from area residents, which raised issues of traffic and water pressure, but the principle opinion expressed was that the off-site sidewalks discussed in conditions 18 and 19 should be located along the north side of D Street. It had been previously recognized (including at a discussion of the matter by the Council at its June 5, 2018 meeting) that there are too many obstacles on the south side of D Street. The Council did not choose to take up discussion of the off-site sidewalks, as it was not within the scope of the agenda. Some members of the Council suggested it should be discussed only by the Planning Commission. For this reason, the Planning Commission may wish to modify or supplement condition 18 to specifically require the off-site sidewalk along the north side of D Street, subject to approval by the Director of Public Works. At present, condition 18 provides for an option for the applicant (or Subdivider, or building

contractor) to either pay the Cumulative Traffic Impact Mitigation (CTIM) fees or, if approved by the Director of Public Works and with an encroachment permit, install off-site sidewalk improvements to the extent possible a cost equal to or less than the CTIM fees. Such a condition of approval would provide more assurance to the community that off-site sidewalks would be installed where they are anticipated and where the applicant had verbally indicated his intent to do so.

Mr. Roger DeRuig spoke about the project and how the applicant should preserve his access easement rights and provide improvements, especially with the new Exhibit and grading plan, that would result in a new 2:1 slope bordering his driveway (with a maximum height of about 15 feet). He requested that the Council recommend a condition or stipulation for the changed grading exhibit to require a new paved roadway and a safety barrier to prevent any vehicle on the driveway from accidentally sliding down the hill to the sidewalk or new street. The applicant responded that such a barrier would have to be agreed upon by the owner of the easement, because it would constitute a potential impediment within the easement. Planning Director Lopez commented that such a barrier would not constitute an impediment because it would preserve access, and that it was a reasonable request. It would not necessarily be a County requirement, he said, but it could be a recommendation of the Council to the Planning Commission. The Council debated making such a recommendation, but decided it was a matter to be addressed by the applicant and Mr. DeRuig, or to be taken up by the Planning Commission.

The Council then considered motions to make recommendations to the Planning Commission regarding the amended Resolution and conditions of approval. The Council then approved a motion to recommend that the Planning Commission accept the proposed amendments as proposed by Planning Department staff, with suggested added language to the condition regarding fire flow that is now reflected in the proposed amendments to the Resolution.

DeRuig Easement Considerations. Mr. DeRuig provided an undated letter addressed to the Planning Commission for the current hearing (attached), which summarized the discussion at the Fairview MAC hearing, and described the applicant as being opposed to constructing safety barriers as it could be an impediment to Mr. DeRuig's access. The letter asserts that no California law would disallow a safety barrier as long as it retained access. Planning staff have reviewed the letter and attachments and recommend that the Resolution also be amended to require a paved roadway serving Mr. DeRuig's property within his easement and construction of a safety barricade along the top of the new slope and the bordering side of the DeRuig driveway, as may be approved by the Director of Public Works.

Mike Loss E-Mail Considerations. Just prior to completion of this staff report, the President of the Carlson Court homeowners association submitted an e-mail to Planning Department staff (copy attached) asking for the sidewalk to be installed along the north side of D Street, from the east side of Carlson Court. He also asked to have parking restrictions imposed along D Street east of the new Tract 8297 private street (AKA Bassard Lane), and consider a stop sign at this same intersection as a pedestrian safety measure. Lastly, he urged the FFPD and EBMUD to agree on fire flow calculations before the development proceeds further. The Planning Commission may wish to discuss these suggestions, although as indicated, the author of the e-mail is unlikely to be present to comment further.

RECOMMENDATION

The Planning Commission should review the staff report and the draft Resolution as amended and its conditions of approval, take public comment, and approve the amended Resolution.

Attachments: Draft Planning Commission Resolution 18-XX Amending Prior Resolution No. R-17-13
(Markup with strikethroughs and additions)
Addendum, pursuant to CEQA Guidelines, Section 15164

Note: List of attachments continues on following page

Excerpts from the Fire Code, including portions of Table B105.1(1)
EBMUD Water Service Applications for Tract Maps 8296 and 8297, signed by the City of
Hayward Fire Department Fire Marshall Miles Massone
Letter (undated) and attachments from Roger DeRuig, 3355 D Street, Hayward, CA
E-Mail from Mike Loss, President of the Carlson Court Homeowners Association, July 30,
2018
Exhibit "D" (to replace Sheets 5 through 8 of 15 of Exhibit B of September 18, 2017)

PREPARED BY: Andrew Young Senior Planner
REVIEWED BY: Albert Lopez Planning Director

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