



# CITY OF SAN MATEO

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## Agenda Report

Agenda Number: 13

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**TO:** City Council  
**FROM:** Alex Khojikian, City Manager  
**PREPARED BY:** Community Development Department  
**MEETING DATE:** February 20, 2024

**SUBJECT:**

Appeal of a Planning Commission Approval of a New Five-Story Mixed-Use Building at 477 9<sup>th</sup> Avenue (PA-2022-047)

**RECOMMENDATION:**

Adopt a Resolution to deny the appeal and uphold the Planning Commission's decision to approve the Special Use Permit (SUP), Site Plan and Architectural Review (SPAR) and Site Development Planning Application (SDPA) for a new five-story mixed-use building with office uses and 120 residential units at 477 9<sup>th</sup> Avenue, based on the Findings and subject to the Conditions of Approval, and find that the project is Categorically Exempt from the California Environmental Quality Act pursuant to Section 15332 (In-Fill Development Projects).

**BACKGROUND:**

On July 11, 2022, Stephen Siri of The Martin Group (Applicant), submitted a Planning Application (PA-2022-047) for a new mixed-use project consisting of 29,207 square feet of office uses and 120 residential units. The Planning Commission approved the proposed project on December 12, 2023, by a vote of 5-0. The Resolution with Findings and Conditions of Approval is included as Attachment 1. On December 21, 2023, Michelle Maccarra (Appellant) filed an appeal of the Planning Commission decision citing concerns related to the proposed removal of heritage trees along the building perimeter. The appeal form is included as Attachment 2. San Mateo Municipal Code (SMMC) Section 27.08.090 authorizes the City Council to take action on an appeal of a Planning Commission decision. This staff report provides a summary of the project, the issues raised in the appeal, and a discussion of how the project complies with the applicable standards and policies for purposes of approving the project.

As noted below, state law significantly limits the City's ability to deny the project (or reduce its density) absent very narrow circumstances where the project would have a specific adverse impact on public health or safety based on objective written health or safety standards, as specified. This state law is called the **Housing Accountability Act**.

Project Description

The project site is located at 477 9th Avenue and is bounded by 9<sup>th</sup> Avenue to the south, S. Claremont Street to the east and the Caltrain rail corridor to the west. The site is zoned E2-2 (Executive Office with a maximum floor area ratio of 2.0) and has a parcel area of 1.6 acres (69,976 square feet). Adjacent uses include a two-story office building to the north, auto service shops to the east across S. Claremont Street, and one- and two-story mixed-use buildings (commercial/residential) to the south. A location map showing the project site and its vicinity is included as Attachment 3.

The project includes demolition of the existing one-story office structure and construction of a new five-story, 209,204 square-foot mixed-use building, with 29,207 square feet of office space on the first two floors, and 120 for-rent residential apartment units on the third, fourth and fifth floors. The project includes 12 below market rate (BMR) units that would be affordable at the Very Low income category. Since two-third of the project's floor area is devoted to residential uses, it qualifies as a Housing Accountability Act Project, which limits a local government's ability to deny, reduce the density of or

render infeasible a housing development project if objective standards are met. The project is located within 0.5-mile of a major transit stop, which is the Downtown San Mateo Caltrain station. Therefore, pursuant to Government Code Section 65863.2 (AB 2097), this project is not subject to minimum parking requirements or parking in-lieu fees. However, the project is voluntarily proposing 150 parking stalls (112 for residents and 38 for office) on the first two floors.

As part of the project, removal of a total of 32 trees, seven of which qualify as heritage trees, is proposed. All trees proposed for removal are located within the proposed building footprint or other site improvements. The equivalent landscape unit (LU) value of the removed trees would be replaced as conditioned through a combination of planting of new trees and payment of an in-lieu fee in accordance with Municipal Code Chapter 27.71. The project proposes to preserve four heritage trees on-site, including two large Oak trees (trees #11 and #17) along the project street frontage, and to protect eight additional heritage trees located adjacent to the project site. The project proposes to plant 37 new trees, which includes eight trees in the parking lot and dog run area, 11 trees along both street frontages, and 18 trees within the second floor courtyard of the building. However, only 19 of the 37 trees are proposed at-grade and are credited as replacement planting. The project will pay an in-lieu fee toward the City's Tree Planting Fund for the remainder loss of LU value as required by the Code. The in-lieu fee is anticipated to be approximately \$50,325, and would be used by the City towards replanting trees throughout the city. Project plans showing the proposed site plan, floor plans, elevations and landscape improvements are included in [Attachment 4](#).

#### **APPLICABLE CODE AND POLICY REVIEW:**

##### General Plan and Zoning Code

The General Plan Land Use Map designates the project site as Executive Office, which is intended for office park developments. A list of applicable General Plan policies and a discussion of the project's conformance to them is included in the Resolution ([Attachment 1](#)).

The project site is zoned E2-2 (Executive office), which outlines development standards in Chapter 27.48 of the Municipal Code pertaining to density, floor area ratio (FAR), setbacks, parcel coverage and open space. The E2 zoning district allows residential units on parcels without a residential overlay, subject to the residential density in the R4 zoning district (50 units per acre). A Project Data Table listing the applicable Zoning Code standards and the project's conformance to them is included as [Attachment 5](#). As noted in the table, the project conforms to all applicable development standards, with the exception to certain development standards through state density bonus law (Government Code Section 65915) and associated concessions and waiver requests, including a 50% density bonus, increase in allowable floor area ratio, reduced at-grade open space and increase of number of compact parking stalls.

##### Housing Accountability Act

The Housing Accountability Act (HAA), as implemented under Government Code Section 65589.5, establishes application review limitations for new development projects where at least two-thirds of the proposed square footage is designated for residential uses. Under the HAA, if a housing development project complies with applicable objective general plan and zoning standards and criteria, including design review standards, (and subdivision standards in other situations) then the local agency can only disapprove the project or require that it be developed at a lower density where it makes written findings that (1) the project would have a "specific adverse impact" on public health or safety, and (2) there is no feasible method to satisfactorily mitigate or avoid the adverse impact, both as specified. Govt. §65589.5(j)(1). A "specific, adverse impact" means "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions." Govt. §65589.5(j)(1)(A).

The proposed mixed-use development project contains at least two-thirds of the project square footage devoted to residential uses (166,491 square feet out of 209,204 square feet, inclusive of parking), and is therefore subject to the HAA. As proposed, this project meets all applicable objective standards in the General Plan, Zoning Code, and other local policy documents. Therefore, again, the City may only deny or reduce the density of the project if certain findings pertaining to adverse impacts to codified, objective public health or safety standards can be made. Here, no such findings can be made because the proposed removal of trees is in compliance with Municipal Code Chapter 23.40 (Site Development Planning Application for Tree Removal) and thus does not legally qualify as specific adverse impacts on public health or safety, as further explained below.

### State Density Bonus Law and Measure Y

The project utilizes the provisions of State Density Bonus Law in accordance with Government Code Section 65915. To comply with State Density Bonus Law and to implement the City's Housing Element, the City must allow for the provision of increased residential density, reduced parking standards, as well as "concessions" and "waivers" or reductions from development standards for residential projects that set aside a certain percentage of units as affordable to Very Low, Low, or Moderate-Income households.

The project site's zoning designation of E2-2 permits a maximum base density of 50 units per acre, which yields the project site with a base density of 80 units. The applicant proposes to devote 15 percent of the 80 units (12 units) as affordable (below market rate or BMR) at the Very Low-Income level (50% Area Median Income), which entitles the applicant to a 50% density bonus. In this case, the applicant is seeking the full 50% density bonus for a total density of 75 units per acre. The Measure Y density limit of 50 units per acre is preempted by state law, in that under the State Density Bonus Law the granting of a density bonus does not require an amendment to the General Plan, which includes Measure Y. Govt. §65915(f)(5).

State Density Bonus Law also permits the applicant to request up to three concessions from development standards when this percentage of affordable units at the Very-Low Income level are provided. Applicants may also request unlimited waivers from City development standards if application of a City development standard would have the effect of physically precluding the construction of a project at the densities permitted. The applicant has requested one waiver to increase the Floor Area Ratio maximum from 2.0 to 3.0 to allow for additional residential square footage due to the above-grade parking garage that accounts for 0.9 of the project FAR. The applicant requests two concessions to reduce the at-grade open space requirement from 20 percent to 16 percent, and to increase the maximum number of compact stalls from 40 percent to 50 percent of the total parking stalls provided. No waivers or concessions are requested for the building height as the project's proposed building height (53'-6" at plate line) is compliant with the maximum 55-feet height limit set by Measure Y for this project site.

In accordance with Government Code Section 65915(d)(1), the City shall grant the concession requests unless findings can be made that the concession would 1) not result in identifiable and actual cost reductions to provide the affordable housing units, 2) have a specific adverse impact upon public health and safety, or 3) be contrary to state or federal law. Similarly, waivers need not be granted if they would have a specific adverse impact on health or safety and there is no feasible method to satisfactorily mitigate or avoid the impact. Staff has evaluated the waiver and concession requests and has not found any evidence to support any of these findings to deny the requests. The reduced at-grade open space and increased compact stalls results in a cost savings that is less than the applicant's estimated cost of constructing all 12 affordable residential units. Lastly, the waiver request to exceed the maximum FAR is necessary to allow construction of the project at the densities permitted under the State Density Bonus Law.

### **APPEAL:**

As stated in the Appeal Form, the Appellant cited the following areas of concern with the proposed project:

1. The Appellant contends that the proposed tree removal "is in direct conflict to the laws San Mateo has in place around tree preservation" under SMMC 27.71.150(e) and "the site design should make accommodations to preserve these [heritage] trees and all of the additional trees should be transplanted in Central Park by the builder;"
2. The Appellant also states that, "The removal of these trees also goes against the 2030 General Plan" (General Plan Policy C/OS 6.1: Tree Preservation); and,
3. According to the Appellant, environmental review regarding "mitigation measures" and "many heritage and protected trees have been removed in the last few years and this project could represent a significant cumulative effect but the analysis needs to be completed."

The following is a summary of staff's evaluation and response to the issues raised in the appeal:

1. Proposed Tree Removal and Preservation

All trees proposed for removal were reviewed in accordance with the City's Landscape for Planning Application and Protected Tree Ordinance under Municipal Code Chapters 27.71 and 23.40. The Municipal Code defines a Protected Tree as any heritage tree or street tree. Heritage trees include any oak tree with a minimum diameter of 10 inches measured at 54 inches above natural grade as well as any other species with a diameter of 15 inches measured at 54 inches above natural grade. The project site includes a total of 11 heritage trees, with seven proposed for removal. Of the heritage trees proposed for removal, the four located along the proposed building perimeter are the focus of the Appellant's concern. An assessment of each of these four heritage trees and their suitability for preservation is provided below:

- Tree #16 is a 41-inch Blackwood Acacia located at the corner on 9<sup>th</sup> Avenue and S. Claremont Street. The overall condition is fair but the structure is poor due to a codominant stem leaning against the street and ingrown bark. Several roots have been cut near the sidewalk, which may have a negative effect on the overall tree stability. Furthermore, this tree is classified as "invasive" by the California Invasive Plant Council. The tree has a low suitability for preservation and is not recommended to be retained for this project.
- Tree #18 is a 26-inch Coast live oak located along 9<sup>th</sup> Avenue that is in fair condition. This tree appears to be in declining health due to a sparse crown foliage and dieback (decline) of the canopy. Retaining this tree will require heavy pruning of up to 25% of its root system and canopy due to the proposed building. This tree is not recommended for preservation due to concerns of the tree's stability following removal of the structural roots and unbalanced canopy.
- Tree #19 is a 37-inch Coast live oak located along 9<sup>th</sup> Avenue that is in poor condition with a sparse canopy, twig dieback and abnormally enlarged buttressed roots. This tree conflicts with the proposed building, utilities and sidewalk improvements. This tree is expected to lose more than 25% of its root system as a result of the building construction, which may compromise the stability of the tree. Therefore, this tree is not recommended to be retained.
- Tree #3 is a 22-inch Chinese Elm located in the surface parking lot area that currently conflicts with the proposed underground stormwater treatment measures. This tree is in moderate health and may be suitable for preservation without changing the proposed building. However, preservation of this tree will require modification to the proposed stormwater treatment plan and surface parking lot configuration to remove one office parking space.

The project's Preliminary Arborist Report is provided as [Attachment 6](#). Staff, including the Community Development's Managing Arborist, reviewed the report and concurred with the findings that the above trees are in low-moderate health with low suitability for preservation, except for Tree #3 in the parking lot, which is in moderate health. While the appellant cited Municipal Code Section 27.71.150(e) for the project to make every reasonable effort to preserve heritage trees, the code also specifies that heritage trees "shall be removed if their preservation would result in a threat to...[their] stability" or have "an unreasonable effect upon the economic enjoyment of the property, consistent with Chapter 13.40." Based on these criteria, the above trees are not recommended for preservation as they would conflict with the proposed improvements and are expected to decline, regardless of management or treatment, as indicated in the report.

Staff also reviewed the Appellant's request to transplant the removed trees. This method of preservation is not required under the City's Protected Trees Ordinance. The City currently does not have a program to receive transplanted trees and transplantation does not always guarantee success at the receiving site. This method requires excavation of the entire root ball under the drip line, which would likely threaten the health and stability of the tree, and would impact the public right-of-way. Given the challenge and low success rate, the City does not recommend transplanting as a method of preservation.

Given the trees' low suitability for preservation and their conflict with the proposed improvements, there is sufficient evidence to justify removal of these heritage trees. The project proposes to plant a total of 37 new trees,

including 19 replacement trees around the site and along both street frontages, and will pay in-lieu fees for the remainder of trees not planted on-site and at-grade. The project also proposes preservation of two heritage Oaks (trees #11 and 17), one of which is the largest heritage tree on-site. As proposed, the project complies with the City's Landscape for Planning Application requirements and Protected Tree Ordinance.

2. General Plan Policy for Tree Preservation

The Appellant raised concerns about the project meeting the City's adopted General Plan Policy for Tree Preservation, C/OS 6.1: "Tree Preservation. Preserve heritage trees in accordance with the City's Heritage Tree Ordinance." Based on staff's review, this policy focuses on implementation of the City's Protected Tree Ordinance under Municipal Code Chapters 13.40, 23.40 and 27.71. As discussed previously, staff has evaluated the project's proposed tree removals in accordance with the Municipal Code and determined that the proposed removals are justified, due to the low stability for preserving the heritage trees and their conflict with the proposed building footprint and site improvements.

The General Plan also contains policy C/OS 6.2 for Replacement Planting, which requires significant replacement planting for trees removed. The project meets this policy by providing a combination of on-site replacement tree plantings (24-inch and 36-inch box trees) and payment of in-lieu fees that are equivalent to the values of trees removed. Therefore, the project is consistent with the General Plan policies.

3. Environmental Review

In review of the concerns regarding the "cumulative impact" of tree removals over the last three years and "mitigation measures" for nesting birds and migratory birds, the project is conditioned to address these concerns. Municipal Code Chapter 27.71 requires that all Planning Applications proposing tree removal shall first obtain a Site Development Permit (SDP). This process requires the equivalent landscape unit (LU) value of all trees removed to be replaced on-site with new trees. However, projects that are unable to replace the trees may pay in-lieu fees for the remainder of trees not physically replanted on-site. The SDP process is intended to offset the impacts of tree removals from all proposed development projects. Secondly, the project is conditioned to submit a report and pre-construction survey from a qualified ornithologist prior to issuance of any building permits, that identify any active nests on-site and demonstrate that the project shall conduct tree removal outside of the nesting bird period (after August 31 and before February 1), as required under Federal law through the Migratory Bird Treaty Act. Staff would like to clarify that the conditions of approval are not mitigation measures as they are required under Federal law for all projects. Implementation of these conditions would prevent disturbance of any nesting birds and raptors.

Regarding concerns about loss of trees as a cumulative impact under CEQA, the project was reviewed for conformance with CEQA and found to be categorically exempt. Tree removals in an urban setting are not considered a significant cumulative CEQA impact if tree protection and replacement standards are met, and the City's General Plan also contains policies (C/OS 6.1 and 6.2) that support the conclusion that tree removal and associated impacts are presumed to be a less than significant impact through the project's compliance with the City's Protected Tree Ordinance and replacement planting program. Additionally, the City's adopted Environmental Impact Review (EIR) that was completed for the General Plan 2030 considers the cumulative impacts on biological resources, and states that the City's replacement measures would reduce the impact to a less than cumulatively considerable level. Therefore, further environmental review is not needed for the proposed tree removal.

In summary, staff has evaluated the proposed project and the concerns raised by the Appellant and recommends that the City Council approve the proposed project as it meets all applicable policies and regulations ([Attachment 1](#)). The project also meets the City's objective standards and findings to allow tree removal by providing a combination of replacement tree plantings and payment of in-lieu fees. Thus, there is sufficient evidence to allow the proposed tree removal.

Furthermore, as explained above, the Housing Accountability Act (HAA) limits the City from denying or reducing the density of a project when all objective standards are met. The proposed tree removal will not have a specific, adverse

impact on public health or safety, given that the project meets all objective standards and proposes adequate replacement landscaping and tree plantings, and payment of in-lieu fees that are equivalent to value of landscape units of removed trees.

#### **FISCAL IMPACT:**

As a new mixed-use project, the project would be subject to several impact and in-lieu fees in effect at the time of the application filing date, including the ones listed below, which are assessed and collected prior to the issuance of building permits or occupancy:

- Landscape Unit In-Lieu Fee of approximately \$50,325, assessed for each Landscape Unit value not physically planted on-site (at-grade or along street frontages).
- Commercial Linkage Fee of approximately \$86,000, to offset the impact of development projects on the need for affordable housing.
- Child Care Development Fee to offset the impact on the need for future childcare space needs by new development.
- Park Impact Fee to offset the increased demands on park and recreation facilities serving new developments.
- Sanitary Sewer Connection Charge, for net increase of wastewater generation based on new dwelling units and increase in plumbing fixtures for commercial uses.
- Transportation Improvement Fee of approximately \$404,000, to offset the cost of transportation improvements to serve new development.
- Wastewater Treatment Plant Phase II Impact Fee for net increase of wastewater generation per gallon of average daily flow.
- South Trunk Area Sewer Improvement Fee, for net increase of wastewater generation based on new dwelling units and increase in plumbing fixture for commercial uses.
- School Impact Fees, to offset the increased demands on school facilities caused by new development. This is collected by the San Mateo Union High School District for all schools in San Mateo.

#### **ENVIRONMENTAL DETERMINATION:**

In accordance with the California Environmental Quality Act (CEQA), the project meets the criteria to be Categorically Exempt from further environmental review pursuant to Section 15332 (Class 32 - In-Fill Development Projects). A Categorical Exemption Memorandum prepared by the City's environmental review consultant, David J. Powers, and was included with the agenda report for the December 12, 2023 Planning Commission meeting ([Attachment 7](#)). The memorandum provides supporting evidence that the project is eligible for a Categorical Exemption since it is consistent with all applicable general plan and zoning designations, policies, and regulations; occurs within an urban setting on a site less than five acres in size; has no habitat value for endangered, rare, or threatened species; and is adequately served by all utilities and public services. It also does not present any unusual circumstance that would result in a significant effect on the environment. The project has been evaluated in the technical studies referenced in the memorandum for transportation, greenhouse gas emissions, noise and air quality; and subject to the Conditions of Approval in [Attachment 1](#). Regarding traffic, a Transportation Impact Analysis (TIA) concluded that the project will not result in any significant impacts based on the City's adopted TIA Guidelines. The Appellant's concern regarding the project's potential adverse effect to nesting birds and migratory raptors is addressed by implementation of the Conditions of Approval. The proposed tree removal also does not cause a cumulative impact since the project will replace the LU value of all removed trees through a combination of replacement plantings and payment of in-lieu fees, consistent with the City's Protected Tree requirements. Thus, the project would not result in any significant effects related to traffic, noise, air, water quality, or biological resources.

#### **PUBLIC COMMENTS:**

Public comments submitted to staff during the planning application review are included in [Attachment 8](#). A total of 23 public comments were received and are generally supportive of the project's architectural style and creation of new housing units. Some concerns raised in the public comments are related to the proposed tree removal/preservation, sustainable construction practices, lack of sufficient on-site parking, neighborhood scale, and consideration for more

family-sized units and amenities. Additional comments not specific to the project but generally pertaining to overall downtown development and resulting traffic congestion are also included. Additional public comments received following the publishing of this agenda report will be forwarded to the City Council for review and consideration at the Public Hearing and posted to this item on the City's [Public Meeting Portal](#) as "Post Packet Public Comments."

**NOTICE PROVIDED:**

In accordance with Government Code section 65090, notice of this Public Hearing was published in the San Mateo Daily Journal newspaper more than ten days in advance of this City Council meeting. In accordance with Government Code section 65091 and the City's Municipal Code noticing requirements in Section 27.08.050, this hearing was noticed to the following parties ten days in advance of the City Council meeting:

- Property owners, residential tenants and business tenants within 1,000 feet of the project site;
- The City's "900 List" which contains nearly 100 Homeowner Associations, Neighborhood Associations, local utilities, media, and other organizations interested in city-wide planning projects;
- The City's Planning "Notify Me" email list; and,
- The interested parties list, which includes interested individuals who contacted the City and requested to be added to the project notification list.

**ATTACHMENTS**

Att 1 - Resolution with Findings and Conditions of Approval

Att 2 - Appeal Form to the City Council

Att 3 - Location Map

Att 4 - Project Plans

Att 5 - Project Data Sheet

Att 6 - Preliminary Arborist Report

Att 7 - Categorical Exemption Memorandum

Att 8 - Public Comments

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