



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** September 1, 2020

**TO:** Christine Daniel, City Manager

**FROM:** Charles S. Bryant, Community Development Director

**SUBJECT:** Study Session: San Pablo Affordable Apartments, 3600 San Pablo Avenue

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### RECOMMENDATION

Staff recommends that the City Council receive a presentation on the proposed Project and provide direction and comment to the applicant.

### PROJECT DESCRIPTION

The proposal is to redevelop a 0.375-acre site with a 7-story, 90-unit, 100% affordable housing project with a minimum of 3,600 square feet of ground floor commercial space for the Emeryville Citizens' Assistance Program (ECAP) ("Project"). The applicant proposes that the Project be processed under SB 35, which mandates ministerial approval (i.e. staff level) for affordable housing projects, and AB 1763, which specifies no density limit for projects within one-half mile of transit.

The Project site consists of three parcels on the east side of San Pablo Avenue between 36th and 37th Streets, totaling about 16,328 square feet or 0.375 acres. The site is currently occupied by a locksmith on the northern parcel (3620 San Pablo Avenue), Emeryville Citizens' Assistance Program (ECAP) on the center parcel (3610 San Pablo Avenue), and a vacant restaurant building on the southern parcel (3600 San Pablo Avenue). To the west across San Pablo Avenue are various small commercial and mixed-use buildings; to the north across 37th Street is the recently completed Estrella Vista affordable housing project; to the east along 36th and 37th Street are smaller scale residential buildings, mostly in Oakland, with the applicant's affordable Bay Bridge Apartment project immediately adjacent to the east on 36th Street; and to the south across 36th Street is the I-580 freeway. The Project site is at the southeastern-most corner of Emeryville, with Oakland to the south and east.

The applicant proposes demolishing all existing structures on the site to create a new affordable housing project. According to the Applicant's Project description, the Project will offer 90 affordable apartment units and a minimum of 3,600 square feet of ground-floor retail space in a seven-story mixed-use building of approximately 86,000 gross square feet (80,000 square feet not including parking). ECAP, which will be temporarily relocated during construction, will return to activate the ground floor along San Pablo Avenue.

The Project will include:

- 27 studios (30.0%),
- 42 one-bedroom units, (46.7%),
- 16 two-bedroom units (17.8%), and
- 5 three-bedroom units (5.6%).

Unit sizes range from approximately 400 square feet to over 1,000 square feet with the average unit size being approximately 564 square feet. Except for one manager's unit, all units will be considered affordable, restricted to households earning between 30% and 80% of the Area Median Income (AMI). At least 25% of the units will be permanent supportive housing units, targeted towards households experiencing homelessness. The manager's unit will not be income restricted nor considered affordable. The monthly affordable rent for each unit will be calculated pursuant to the City's then-current Housing Affordability Table of Maximum Sales Prices and Rents.

The main residential entrance lobby, mail, and manager's office will be located on the ground floor along 36th Street, and the entrance to the ground floor parking garage will be on 37th Street. (Please see Sheet A.10 of attached plans.) The proposed ground floor height will accommodate high ceilings in the retail area, the mechanized parking system, and a mezzanine level along 36th Street over the parking garage and ground floor residential lobby and office area. The mezzanine level will accommodate bicycle parking, maintenance office and storage, ECAP offices, and the on-site manager's residential unit. (See Sheet A.11.) Above the podium structure would be a five-story, U-shaped volume with residential units that frame an outdoor, east-facing courtyard with common amenity spaces activating the courtyard edge. The first residential level would include 13 units and amenities including laundry, learning center, lounge, resident services office, storage, and the podium courtyard. (See Sheet A.12.) The four residential levels above would each contain 19 units. (See Sheet A.13.)

The applicant proposes to extend the curb out along 36th Street to accommodate storm-water treatment, which will also provide a green buffer between the building and traffic and will help to create a safer pedestrian crossing at this busy intersection. Utilities and other support functions, along with curbside service and deliveries would be located along 37th Street adjacent to the garage entrance. Existing overhead power and data lines will be rerouted underground along the Project frontage, and a recessed alcove is proposed along the 37th Street frontage to accommodate an underground transformer to serve the building.

## **BACKGROUND**

The City has long been interested in the development of an affordable housing project on the Project site and negotiated with the former owner for several years in an unsuccessful attempt to acquire the property. In May of 2017, the Planning Commission and City Council each held study sessions on possible development of the site for supportive housing, low-income affordable housing, or mixed income family housing. Both the Commission and Council expressed support for supportive housing for formerly homeless individuals, as well as ground floor space for ECAP.

The property subsequently went into foreclosure, and the Bankruptcy Court selected Resources for Community Development (RCD) as the approved buyer of the site. RCD is a nonprofit affordable housing developer that already owns the Bay Bridge Apartments on 36th Street, immediately adjacent to the site, as well as the nearby Ambassador and Triangle Court affordable housing projects in Emeryville. On September 17, 2019, the City Council directed staff to prepare loan and regulatory documents for the acquisition of the site by RCD, with the condition that RCD redevelop the property as a 100% affordable housing project of at least 39 units, 25% of which would be permanent supportive housing units targeted to formerly homeless households, and with approximately 3,600 square feet of ground floor space for ECAP. On November 5, 2019, the Council approved a Predevelopment Loan Agreement and an Affordable Housing Agreement to provide \$2 million towards RCD's acquisition of the site, and RCD closed on the property on December 3, 2019.

RCD proposes that the Project be processed under SB 35 and AB 1763, two recently adopted state laws that allow for unlimited density and ministerial (i.e. staff level) approval of affordable housing projects (see further discussion below). However, the City's funding agreement with RCD calls for two Planning Commission study sessions, one community meeting, and one City Council study session, if requested, prior to staff approval of the Project.

On May 28, 2020, the Planning Commission held their first study session to review the Project. Staff responded to questions regarding the Commission's role in this Project considering that the application is being processed under SB 35 and AB 1763, noting that, while the Commission has no discretion in this case, their feedback is still valuable and may help shape the Project. The Commission was generally very supportive of the Project, especially that it is 100% affordable and provides a permanent home for ECAP. Commissioners praised the Project team for incorporating art as a "gateway feature" per the direction of the General Plan and Design Guidelines. The Commission strongly recommended that the Project team include more open space, specifically recommending exploring private balconies not facing the freeway and the possibility of a roof deck. The Commission pointed out that, while the development is allowed a waiver from the Emeryville requirement for private and common open space under SB 35, the neighborhood is very short on park space and the lack of open space will significantly impact residents at this location. Commissioners also provided suggestions regarding the finishes of the building, including considering the use of light to highlight artistic or architectural features, and to avoid white or easily dirtied finishes due to the proximity to the freeway.

A community meeting organized by the applicant was held on June 23, 2020. About 35 people attended via Zoom, including City staff and the applicant team. Questions were raised regarding the amount of parking provided, the affordability of the Project, coordination with other local planning processes (such as the San Pablo Avenue corridor), funding sources, and the Project timeline. There was general support for the Project and design concept.

The formal application for the Project was received on July 22, 2020, initiating the 60 day period the City has under SB 35 to provide the applicant with written documentation of any conflicts of the proposed Project with any objective planning standards (i.e. until September 20, 2020).

In the Applicant Statement, the applicant addresses the Planning Commission feedback that adding both private and common open space is a critical component of the Project. The applicant team found adding a roof deck or balconies to be financially infeasible, but did reconfigure the residential levels of the buildings to provide an additional 121 square feet of common open space. One of the Planning Commission's suggestions was to relocate the three-bedroom units to the 37<sup>th</sup> Street side of the Project, so that at least those units could have balconies added that did not face the freeway. The applicant team assessed this option and found that this would not work as the larger units "need to take advantage of the bends in the building on the San Pablo Ave side to achieve large enough unit sizes. "

The plans submitted on July 22, 2020 differ from the plans reviewed by the Planning Commission in the following ways:

- The floor area ratio (FAR) and gross building area have increased from and FAR of 4.90 FAR (80,000 square feet) to an FAR of 5.22 (85,281 square feet).
- Lot coverage has decreased by one percent from 91% to 90%.
- The residential levels have been redesigned to accommodate an increase in common open space from 1,420 square feet to 1,541 square feet.
- The number of studios has been reduced from 28 to 27, while the number of one-bedroom units has been increased from 41 to 42 units.
- The ground floor retail space for ECAP has decreased from 4,900 square feet to 4,673 square feet which allows more space for discards (trash, recycling, compost), storage, and utility rooms.
- Vehicular parking has been modified to provide for more accessible parking spaces, reducing the total number of spaces from 42 to 37.
- Short-term bicycle parking spaces have been decreased by one space, to a total of 6 spaces; while long-term bicycle parking spaces have been increased by one to 93 total spaces.
- Unit plans are now provided.
- Project details are now provided including detailed renderings, materials information, landscaping, courtyard plans, parking areas, discards areas, and fire and security information.
- In response to Planning Commission feedback that white or easily dirtied finishes should be avoided due to the proximity to the freeway, the applicant has changed the dominant color of the building exterior to gray.

The second Planning Commission study session was originally scheduled for July 23, 2020, but has now been rescheduled for September 24, 2020 at the request of the applicant. As this meeting will take place after the 60 day window in which the City must respond to the applicant, the September Planning Commission study session will include a summary of staff's response to the applicant, including how the applicant responded to

feedback provided by staff, the community, the Planning Commission and City Council, and whether the Project complies with the City's objective standards.

## **DISCUSSION**

### **Review and Approval Process**

RCD applied for planning approval under SB 35, which mandates ministerial approval (i.e. no discretionary standards apply) for affordable housing projects, and AB 1763, which specifies no density limit for projects within one-half mile of transit. Normally, as discussed in further detail below, this would preclude any Planning Commission or City Council review of the Project. However, under the Predevelopment Loan Agreement, RCD has agreed that "regardless of whether the process for obtaining the Land Use Approvals for the Development includes a public engagement process, the Developer shall hold at least one community meeting and at least two study sessions with the Planning Commission to present the Development Concept and design for the Development as well as participate in at least one study session with the City Council, if requested by the City Council and Developer shall make a good faith effort to address community concerns and comments."

### State Law

SB 35. Senate Bill 35, sponsored by San Francisco State Senator Scott Weiner, was part of a 15-bill housing package passed by the State legislature in 2017 aimed at addressing the state's housing shortage and high housing costs. Specifically, it requires the availability of a Streamlined Ministerial Approval Process for developments in localities that have not yet made sufficient progress towards meeting their Regional Housing Needs Allocation (RHNA). Developments eligible for approval pursuant to SB 35 must be on land zoned for residential use; designate at least 10% of units as below market rate housing if located in localities that did not meet above moderate income RHNA; designate at least 50% of units as below market rate housing in localities that did not meet low income RHNA; not be constructed in an ecologically protected area; be multi-unit housing and not single family homes; and pay construction workers prevailing wages. In June 2019, the California Department of Housing and Community Development (HCD), published its updated "SB 35 Statewide Determination Summary". According to this summary, Emeryville is one of 213 cities and counties in California that have made insufficient progress toward their Lower income RHNA (Very Low and Low income), and is therefore subject to the Streamlined Ministerial Approval Process for proposed developments with at least 50% affordability. The Project meets the criteria for the SB 35 Streamlined Ministerial Approval Process.

On November 29, 2018, HCD issued Guidelines for the Streamlined Ministerial Approval Process mandated by SB 35 ("HCD Guidelines"). These Guidelines are attached for reference. A fundamental concept of this ministerial approval process is that the Project may only be held to "objective development standards", defined as "standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal." Thus, any kind of discretionary planning permit, such as a conditional use permit, is

precluded by SB 35. Design review is permissible, but it must be based only on “objective standards”.

A development project proposed under SB 35 may include up to one-third nonresidential square footage, and the HCD Guidelines stipulate that “Both residential and non-residential components of a qualified mixed-use development are eligible for the Streamlined Ministerial Approval Process. Additional permitting requirements pertaining to the individual business located in the commercial component (e.g. alcohol use permit or adult business permit) are subject to local government processes.” ECAP is not subject to any additional permitting requirements, so it would be included in the ministerial approval process for the Project.

AB 1763. Assembly Bill 1763, known as the “Super Density Bonus Law”, sponsored by San Francisco State Assembly member David Chiu, was part of a package of housing bills passed by the State legislature in 2019. It modified the State Density Bonus Law by adding a provision for an 80% density increase for projects in which 100% of the total units, exclusive of a manager’s unit or units, are for lower income households (i.e. extremely low income, very low income, and/or low income), except that up to 20% of the total units may be for moderate-income households. However, for projects that are within a half-mile of a major transit stop or high-quality transit corridor (i.e. bus routes with at least 15-minute headways during peak commute hours), a city may not impose any maximum density. Projects meeting the criteria of AB 1763 are eligible for four incentives or concessions, and, if located within one-half mile of a major transit stop or high-quality transit corridor, shall also receive a height increase of up to three additional stories, or 33 feet. Since all of Emeryville is within a half-mile of a major transit stop or high-quality transit corridor, this effectively means that there is no maximum density for 100% affordable projects that meet the criteria of AB 1763, and that all such projects would receive a 3-story height increase plus four incentives or concessions. In addition, the applicant may also request an unlimited number of waivers of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of the State Density Bonus Law.

Pursuant to Section 65915(k) of the California Government Code, “incentive or concession” means: (1) a reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building code standards, such as reduced setbacks, square footage requirements, or parking requirements, that results in identifiable and actual cost reductions, to provide for affordable housing costs; (2) approval of mixed-use zoning if commercial, office, industrial, or other land uses will reduce the cost of the housing development; or (3) other regulatory incentives or concessions proposed by the developer or the city that result in identifiable and actual cost reductions to provide for affordable housing costs.

Pursuant to Section 65915(e) of the California Government Code, “waiver” means the City’s reducing or eliminating any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of the State Density Bonus Law at the densities permitted by the Law.

While “incentive or concession” and “waiver” may seem like similar concepts, they differ in two important ways: (1) “incentive or concession” focuses on cost, while “waiver” focuses on physical limitations, and (2) a 100% affordable housing project is eligible for four “incentives or concessions”, while it is eligible for an unlimited number of waivers. The law explicitly states that “A proposal for the waiver or reduction of development standards ... shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled.”

### Requested Concessions and Waivers

The applicant is seeking the following concessions and waivers. Staff and the applicant differ in their determinations of whether an item is a concession or a waiver, however, it is agreed that all of the items listed below fall under the provisions of SB 35 and AB 1763.

Concessions (Cost Limitations). Pursuant to Section 65915(k) of the California Government Code, the applicant is seeking the following concessions for site development standards that would otherwise make the Project cost prohibitive:

1. Unit mix and family-friendly design requirements
  - “Providing enough larger units to satisfy this standard at the density provided would require additional floors to accommodate these units. Adding any floors would require transitioning from Type III to financially infeasible Type I construction.” (SB 35 Eligibility document, page 10)
2. Open space requirements
  - “Compliance with this regulation would increase costs because it would require expansion of the podium courtyard and costs associated with courtyard infrastructure such as pavement and landscaping. An expanded courtyard would result in a reduction of useable office, amenity, and residential space across all 5 residential levels. Leasable residential spaces would be abandoned to accommodate the necessary management offices.” (SB 35 Eligibility document, page 9)
3. On-site loading
  - “Modification of the parking arrangement would require abandonment of the parking lift, reducing parking efficiency, and would increase costs by requiring construction of additional parking space, potentially on multiple levels. Further, expansion of the parking garage reduces the amount of leasable commercial and residential space, by requiring movement of infrastructure and building amenities into those areas.” (SB 35 Eligibility document, page 5)

Waivers (Physical Limitations). Pursuant to Section 65915(e) of the California Government Code, the applicant is seeking the following waivers from City regulations that would otherwise have the effect of physically precluding the construction of the development at the densities permitted by the State Density Bonus Law:

1. Exceeding the maximum FAR
  - “Required to physically enable construction at the bonus density provided by the state Density Bonus Law.” (SB 35 Eligibility document, page 10)

2. Waiver of the Neighborhood Retail Overlay and Neighborhood Center Sidewalk Dimensions
  - “Compliance with these guidelines would require widening of the sidewalks along the perimeter of the building. This would result in an overall decreased project footprint and a reduction in the number of leasable units, thereby increasing project costs.” (SB 35 Eligibility document, page 8)
3. Courtyard requirements
  - “Compliance with this regulation would increase costs because it would require expansion of the podium courtyard and costs associated with courtyard infrastructure such as pavement and landscaping. An expanded courtyard would result in a reduction of useable office, amenity, and residential space across all 5 residential levels. Leasable residential spaces would be abandoned to accommodate the necessary management offices.” (SB 35 Eligibility document, page 9)

### City Regulations

Development projects that exceed the base density, floor area ratio, and/or height normally require “development bonus points” and must be approved through a “discretionary” conditional use permit process. Under this process, the Project would be considered by the Planning Commission, which would need to exercise judgement in making findings in order to approve it and would normally impose conditions of approval. However, because of SB 35, the Project is considered “ministerial”, which means that no judgement is involved, there are no findings, and no conditions of approval may be imposed. A ministerial approval is based on a “yes” or “no” analysis of the project’s compliance with development standards; if the project complies with the standards, it is approved; if it does not comply, it is not approved.

Zoning Compliance Review. The City’s procedure for processing ministerial approvals is called Zoning Compliance Review. This is defined at Section 9-8.226(e) of the Planning Regulations as “a ministerial procedure for reviewing new or expanded uses or structures to ensure that they comply with the applicable requirements of these Planning Regulations.” The Zoning Compliance Review procedures are codified in Article 3 of Chapter 7 of the Planning Regulations. These procedures stipulate that “if the [Community Development] Director determines that the proposal conforms to the requirements of these Planning Regulations, a zoning compliance approval shall be issued. If the Director determines that the proposal does not conform to the requirements of these Planning Regulations, a zoning compliance approval shall not be issued, and the applicant shall be advised as to how the proposal could be brought into compliance.” Thus, it is the Community Development Director, and not the Planning Commission, that makes the decision on a ministerial approval.

Design Review. Normally for a new building, the Planning Commission would make the decision on Design Review under the discretionary Design Review procedure in Article 4 of Chapter 7 of the Planning Regulations. However, SB 35 stipulates that a development project may be subject only to objective design review standards in effect at the time that



the development is submitted to the City. “Objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Therefore, Design Review under SB 35 is ministerial and subject to the Zoning Compliance Review procedure described above. Most of the City’s design review guidelines and criteria are subjective, requiring some degree of personal judgement. Topics covered in the Emeryville Design Guidelines include Sidewalks and Landscaping, Parking and Access, Site Planning, Building Massing, Building Form and Articulation, Architecture and Building Materials, Open Space, Signs, Area Specific Guidelines, Building and Use Types, and Street Types. Staff will attempt to identify those design review criteria contained in the Emeryville Design Guidelines and the City’s various other plans and policy documents that could be considered “objective design review standards”, and will apply those to the Project as part of the Zoning Compliance Review process. (Please also see further discussion below under “General Plan and Zoning Analysis”).

Objective Development Standards. One of the most challenging aspects of the approval process for this Project will be to determine the City’s “objective development standards” that apply to this Project. As part of their July 22, 2020 submittal, the applicant submitted a 63-page “Objective Standards Table”. This is the applicant’s attempt to evaluate every standard that would normally be applied to this Project to decide, first, if the standard is “objective” as defined by SB 35, and second, if it is, to assess how the Project conforms with the standard. Staff has also analyzed the City’s existing objective standards that would be applicable to this Project. As an example, a measurable standard such as the City’s open space requirements would be applicable, whereas a more subjective criterion, such as Design Guideline E-1, “Find opportunities for diversity, creativity, and innovation in building form”, would not be applicable because it is not “uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” In other words, it is subjective and not measurable, and therefore not permissible under SB 35. In the Zoning Analysis discussion below, staff has identified the basic development standards that would apply to the Project, and those for which waivers may be necessary under the State Density Bonus Law. (It should be noted that the City has received a grant from HCD to develop Objective Development Standards for use in processing ministerial projects, and has selected a consultant for this work. However, these standards will not be ready in time to apply to this Project.)

Because the Project is not subject to discretionary approval, there will be no “conditions of approval” document prepared or adopted. However, in order to keep track of the planning requirements for the Project, staff intends to prepare a “development standards” document that will be similar to conditions of approval, but that will only include the objective development standards that are applicable to the Project.

## **General Plan and Zoning Analysis**

General Plan Land Use Classification. The General Plan Land Use Diagram (Figure 2-2) classifies the Project site as Mixed Use with Residential and Neighborhood Retail Overlay. The General Plan Land Use Element describes the “Mixed Use with Residential” classification as: “One or more of a variety of residential and non-residential uses including but not limited to offices, retail and hotel.” Concerning the Neighborhood Retail Overlay, General Plan Land Use Policy LU-P-20 states: “Along San Pablo Avenue neighborhood-oriented retail establishments – that may serve a regional clientele as well – with housing above will be promoted.” The proposed Project is consistent with this General Plan land use designation and policy.

Zoning District and Use Classifications. This property is located in the Mixed Use with Residential South (MURS), Neighborhood Retail Overlay (NR), and Pedestrian Priority (PP) zones.

The applicant proposes developing 90 units of affordable housing, with at least 25 percent of the units providing supportive housing. Section 9-2.207 of the Planning Regulations defines Multi-Unit Residential as “Three or more dwelling units on a single lot that may be either attached or detached. Typical uses include townhouses, condominiums, and apartment buildings.” No distinction is made in the Planning Regulations between affordable units and market rate units. Section 9-2.217 defines Supportive Housing as “Housing with no limit to the length of stay that is linked to supportive services, either on or off-site, to assist residents in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community. This use classification includes assisted living facilities. See also Section 9-5.214.” Section 9-5.214 states that “A Supportive Housing or Transitional Housing development shall be considered a residential use of property subject only to those same restrictions that apply to other residential uses of the same type (e.g. One Unit, Two Unit, or Multi-Unit) in the same zoning district.” Multi-Unit Residential and Multi-Unit Supportive Housing are both permitted uses in the MURS zone.

The applicant also proposes to provide a minimum of 3,600 square feet of ground floor commercial space for the Emeryville Citizens’ Assistance Program (ECAP). ECAP is classified as a Social Service Facility, which is defined in Section 9-2.357 of the Planning Regulations as “Noncommercial facilities providing basic necessities including meals, showers, clothing, groceries laundry facilities, job referrals and housing placement. This use classification may include the on-site preparation and storage of meals and groceries. This classification excludes Residential uses and Emergency Shelters.” This is a conditionally permitted use in the MURS zone. ECAP was founded in 1985 prior to the requirement for a conditional use permit, and is therefore considered a legal nonconforming use. Pursuant to Section 9-5.1009 of the Planning Regulations, “Any nonconforming use or structure may be continued and maintained indefinitely if it has remained in continuous existence since the adoption of these Planning Regulations. The right to continue a nonconforming use or structure shall run with the land. Any substitution, expansion, restoration or reestablishment of such nonconforming use or structure shall be

subject to the requirements of this Article.” Also, pursuant to Section 9-5.1010, “Any use that is nonconforming solely by reason of the absence of a conditional use permit may be changed to a conforming use by obtaining a minor conditional use permit, subject to all applicable findings and requirements for the use.” Section 9-5.1013 of the Planning Regulations stipulates that a nonconforming use shall be deemed to be abandoned when the site is vacated. Therefore, relocation of ECAP to another site during construction of the Project would constitute an abandonment of this nonconforming use. Section 9-5.1013 further specifies that an abandoned nonconforming use can be reestablished within 90 days without requiring a conditional use permit, and may also be reestablished with a minor conditional use permit within one year. After one year, ECAP would require a conditional use permit as a new use.

However, as noted above, SB 35 allows up to one-third nonresidential square footage in a project, and the HCD Guidelines stipulate that “Both residential and non-residential components of a qualified mixed-use development are eligible for the Streamlined Ministerial Approval Process.” Therefore, ECAP would be included in the ministerial approval process for the Project, without the need for a conditional use permit.

Neighborhood Retail Overlay (NR) Zone. According to Section 9-3.102(b)(3), “The purpose of the NR Overlay Zone is to implement the provisions of the General Plan applicable to the Neighborhood Retail Overlay land use classification.” The description of the Neighborhood Retail Overlay land use classification in the General Plan states: “This designation is intended for four neighborhood centers. It is intended for stores, offices, services, and restaurants/café’s that serve the local community, as well as “flex space” that can be adapted for retail/restaurant use in the future, but may be used for other uses in the interim. A majority of the ground floor use, and a substantial portion of the frontage along any public street, shall be devoted to these uses. Establishments shall generally be smaller sized, lending themselves to the pedestrian-oriented nature of the centers; however larger establishments (such as supermarkets), that serve the local community and are designed appropriately with a pedestrian orientation are also permitted. Retail and eating and drinking establishments can comprise up to 100 percent of the building area.” The NR Overlay Zone does not modify the basic provisions of the MURS Zone for Multi-Unit Residential, Supportive Housing, or Social Service Facilities. Section 9-3.404(a)(5) stipulates that “All development proposals in the NR Neighborhood Retail Overlay Zone shall be subject to the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to the Neighborhood Retail Overlay and Neighborhood Centers.” Figure 3-2 of the Emeryville Design Guidelines, “Neighborhood Retail Overlay and Neighborhood Center Sidewalk Dimensions” specifies a 15-foot sidewalk corridor, including a 3-foot building entry/public space, an 8-foot pedestrian pathway, and a 4-foot landscaping/street furniture zone adjacent to the curb. The existing sidewalk is 12 feet wide, and can accommodate the 8-foot pedestrian pathway and 4-foot landscaping/street furniture zone, but not the 3-foot building entry/public space. (It should be noted that, if the proposed building were set back 3 feet to accommodate this building entry/public space zone, it would conflict with the San Pablo Urban Design Plan guidelines noted below, which stipulate that ground-floor facades of new buildings on San Pablo Avenue should lie on or within 2 feet of the front property line.) With the exception of sidewalk width, the Project is consistent with the intent and provisions of the NR Overlay Zone. Thus, the Project will

require a waiver of the Neighborhood Retail Overlay and Neighborhood Center Sidewalk Dimensions.

Pedestrian Priority (PP) Zone. Section 9-3.102(b)(6) states: “The purpose of the PP overlay zone is to implement the provisions of the General Plan applicable to Pedestrian Priority Zones.” Regarding Pedestrian Priority Zones, the General Plan says: “These are zones in which high volumes of pedestrian traffic are encouraged along the sidewalk. This includes zones around neighborhood centers, regional retail areas, and around school and other public facilities. Sidewalks should be wide with ample pedestrian amenities. Building frontages should provide high level of pedestrian interest. Pedestrian crossings should have a high priority at intersections. In some locations, well-protected mid-block crosswalks may be appropriate.” The PP Overlay Zone does not modify the basic provisions of the MURS Zone for Multi-Unit Residential, Supportive Housing, or Social Service Facilities. Section 9-3.407(a)(1) stipulates that “All development proposals in the PP Pedestrian Priority Overlay Zone shall be subject to the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to Pedestrian Priority Zones.” Figure 3-4 of the Emeryville Design Guidelines, “Pedestrian Priority Zone Sidewalk Dimensions” specifies a 12-foot sidewalk corridor, including an 8-foot pedestrian pathway and a 4-foot landscaping/street furniture zone adjacent to the curb. The existing 12-foot sidewalk can accommodate this. However, the Emeryville Design Guidelines specify, on page 38, that if a site lies within more than one area, the guidelines for Neighborhood Retail Overlay and Neighborhood Centers shall take precedence over those for Pedestrian Priority Zones. As noted above, the Project does not comply with the design guidelines for Neighborhood Retail Overlay and Neighborhood Centers because of the lack of a 3-foot building entry/public space. Nonetheless, the Project is consistent with the intent and provisions of the PP Overlay Zone.

San Pablo Avenue Urban Design Plan. The San Pablo Avenue Urban Design Plan was prepared by the Emeryville Redevelopment Agency in 1990-91, and is referenced in Figure 1-3 of the General Plan. In describing this plan, the General Plan states: “The San Pablo Avenue Urban Design Plan outlines a phased strategy for the development of San Pablo Avenue into an active, attractive, neighborhood retail center. The document targets land uses for three phases of catalyst projects, establishes goals for public circulation and streetscape improvements, and design guidelines for new development along and near the avenue.” Policy UD-P-18 of the General Plan Urban Design Element states “The San Pablo Avenue Urban Design Plan will continue to be used to improve landscaping, and streetscape design and guide development in the San Pablo Corridor district.” The Urban Design Plan includes the following design guidelines for new development along San Pablo Avenue:

- Major entries and lobbies should be visible and accessible from public streets, and inhabited spaces should be oriented so windows face and observe the street.
- Buildings should occupy at least 67% of the lot frontage on San Pablo Avenue, and at least 75% of each ground-floor facade on San Pablo Avenue should lie on or within 2 feet of the front property line.

- Structured parking should front on San Pablo Avenue only if retail sales and services occupy at least 75% of the ground-floor frontage. On other streets, structured parking should either be located behind inhabited ground-floor spaces, or placed partly or entirely below grade.
- Facades should incorporate 3-dimensional elements which break up large surfaces, and create a visual play of light and shadow. Such elements include cornices at the roof and at the top of the ground-floor; piers at corners and structural bays; and windows set into the wall surface.
- Developments which front on San Pablo, 40th, Park or Yerba Buena should be landscaped in a style consistent with the improvements planned for the public rights-of-way.

Concerning landscaping along the street, the Streetscape Concept drawings on page 26 of the Urban Design Plan indicate street trees along the frontage of the Project site, and the Implementation Options for Public Improvements in Appendix D of the plan indicate that sidewalk trees on San Pablo Avenue should be Sycamores planted 24 feet on center. This would translate to approximately eight street trees along the Project's San Pablo Avenue frontage. The Project plans show four existing and one or two new trees along San Pablo Avenue, but no details are provided. Depending on required street level lighting standards reviewed by the Public Works Department, additional street trees may need to be provided.

Floor Area Ratio (FAR). The base FAR of the site is 1.5, and the bonus FAR is 3.0. The Project site is approximately 16,328 square feet and the existing buildings are about 9,200 square feet, which equates to an existing FAR of about 0.56. Under the base FAR of 1.5, a building of about 24,492 square feet of total floor area (not including parking and loading) would be allowed. The bonus FAR of 3.0 would allow a building of about 48,984 square feet. However, bonus FAR is discretionary, and since this Project is subject to ministerial approval, only the base FAR would be allowed. The Project is 85,281 gross square feet of floor area (not including parking and loading), which equates to an FAR of 5.22, which exceeds both the base and bonus FAR. The applicant is requesting FAR as one of the waivers under the State Density Bonus Law.

Building Height. The Project will have a height of 73 feet. The maximum base building height at this location is 40 feet, with a bonus height of 75 feet. Again, the bonus height is not applicable because it is discretionary, and this Project is subject to ministerial approval. However, under AB 1763, because the site is within one-half mile of public transit, the Project is allowed an additional height of three stories, or 33 feet, above the base height. Thus, a height of up to 73 feet would be allowed. The Project is consistent with this requirement.

Residential Density. The base residential density at this location is 50 units per acre, with a bonus density of up to 100 units per acre. The site is about 0.375 acres, which equates to 19 units at the base density and 38 units at the bonus density. The proposed 90 unit Project equates to a density of about 240 units per acre, well above both the base and bonus densities. Because the site is within one-half mile of public transit, AB 1763 allows unlimited density. Thus, the Project of 90 units, at 240 units per acre, would be allowed.

**Unit Mix.** Pursuant to Section 9-5.2003, Multi-Residential developments of 10 units or more must have a unit mix consisting of at least 50% two-bedroom or larger units, including at least 15% three-bedroom or larger units, and no more than 10% studios. In addition, units with two or more bedrooms are required to comply with the applicable provisions of the Emeryville Design Guidelines pertaining to Family-Friendly Residential Unit Design. As noted above, the Project would have 17.8% two-bedroom units, 5.6% three-bedroom units, 46.7% one-bedroom units, and 30% studios, which does not comply with the unit mix requirements, as indicated in the table below.

Unit Type	Required per Section 9-5.2003	Proposed
Studio	10% maximum	30%
1 Bedroom	[not specified]	46.7%
2 Bedrooms	35% or more	17.8%
3 Bedrooms	15% or more	5.6%

Section 9-5.2004 allows for the City Council to grant an exemption to these requirements based on a finding that “There is a demonstrated need for a housing type or types that deviate from the unit mix and/or design requirements ... [and] the importance of meeting this need outweighs the importance of compliance with these requirements.” Because it provides 100% affordable housing, including supportive housing for individuals who previously experienced homelessness, this Project would appear to qualify for such an exemption. However, the exemption is a discretionary action, and this Project is subject only to ministerial approval. Therefore, the exemption is not available in this case, and the applicant is requesting a waiver of the unit mix and design requirements as one of the concessions under the State Density Bonus Law.

**Off-Street Parking.** On April 21, 2020, the City Council passed Ordinance No. 20-005, amending the Planning Regulations to eliminate the minimum parking requirements. The ordinance took effect on May 21, 2020. However, accessible parking spaces are still required, based on the estimated parking demand. For the uses proposed in this Project, the estimated parking demand is as follows:

Use	Estimated Demand	Quantity	Total Spaces
Multi-Unit Market Rate	1 space per unit	1 unit (manager's)	1 space
	0.2 guest spaces per unit	1 unit (manager's)	0.2 spaces
Multi-Unit Low-Income	0.5 spaces per unit	66 units	33 spaces
	0.2 guest spaces per unit	66 units	13.2 spaces
Supportive Housing	0.25 spaces per bed	46 beds*	11.5 spaces
Social Service Facility (ECAP)	3 spaces per 1,000 square feet	2,100 square feet**	6.3 spaces
<b>TOTAL ESTIMATED PARKING DEMAND Rounded</b>			<b>65.2 spaces 65 spaces</b>
Minimum Parking Requirement (Not including accessible spaces)			0 spaces
Maximum Parking Allowed (Demand + 10%) Rounded			71.7 spaces 72 spaces
* Assumes 23 units with an average of 2 beds per unit ** Per Section 9-4.404(c), the first 1,500 square feet of nonresidential uses are subtracted.			

Under the new code requirements, the Project is not required to provide any parking spaces, except for accessible spaces as required by the Building Code based on the estimated parking demand of 65 spaces, which would equal three accessible spaces. The applicant is proposing to provide a maximum of 37 spaces in 4-high parking lifts, which averages about 0.41 spaces per unit. Project plans indicate that three accessible parking spaces will be provided adjacent to the parking lifts. (See Sheets A.09 and A.10), which meets this code requirement.

Electric Vehicle Charging. Under the new code requirements (Section 9-4.406(l)), the number of EV charging stations required is the number of EV capable spaces as specified in the Tier 2 Residential Voluntary Measures in Appendix A4 of the California Green Building Standards Code (CALGreen), except that such spaces are to actually be equipped with Electric Vehicle Supply Equipment (EVSE), which shall be Level 2 or better. All other parking spaces shall be EV capable spaces designed in accordance with the Tier 2 Residential Voluntary Measures in Appendix A4 of the CALGREEN Code for new residential buildings. Raceways and service panels installed to support future EVSE are to be 50% larger than those required by the current CALGreen Code. The current CALGreen requirement for new multifamily dwellings is 20 percent of spaces. Thus, if 37 spaces are provided, at least seven spaces would need to be EV charging stations and the other 30 spaces would need to be EV capable. (Note that this requirement is anticipated to increase with each new three-year CALGreen code cycle. The requirement applicable to the Project will be that in effect when the building permit application is filed.)

**Bicycle Parking.** Under the new code requirements, Multi-Unit residential uses must provide one covered long-term bicycle parking space per dwelling unit, and one short-term bicycle parking space for every 20 dwelling units. For all other uses, the long-term bicycle parking requirement is the greater of two short-term bicycle parking spaces or one short-term bicycle parking space for every ten spaces of estimated automobile parking demand, and the long-term bicycle parking requirement is the same. Thus, the bicycle parking requirement for the proposed 90 units is 90 long-term spaces and five short-term spaces, while the bicycle parking requirement for ECAP is two long-term spaces and two short-term spaces. Project plans indicate that at least this many bicycle parking spaces will be provided.

Bicycle parking must be designed in accordance with the standards in Section 9-4.408 of the Planning Regulations. In general, short-term bicycle parking shall be provided within a convenient distance of, and clearly visible from, the main entrance to the building, and shall not be farther than the closest automobile parking space, excluding accessible parking. Long-term bicycle parking must be in an enclosed, covered, locked area, surrounded by a fence or wall at least seven feet tall, restricted to bicycle parking users, which includes fixed rack elements; or in bicycle lockers that are either weather-proof or covered. Long-term bicycle parking may also be vertical, using either wall-mounted racks or wall- or ceiling mounted hooks, installed per the manufacturer's specifications. Project plans indicate a bike room on the mezzanine level (see Sheet A.22), which could accommodate the required long-term residential bicycle parking by providing a mix of vertical wall mount racks, double-decker horizontal racks, and 10 pull-in horizontal spaces on the ground, four of which are oversized spaces to accommodate a variety of bicycles including cargo bikes, bikes with trailers, and recumbent bikes. The plans do not explicitly demonstrate how the short-term residential, or either the short-term or long-term bicycle parking for ECAP, will be accommodated.

**Loading.** Section 9-4.409 specifies the loading requirements. For residential uses of 50 to 149 units, the requirement is one small loading space, which is defined as a width of no less than ten feet, a length of no less than 25 feet and a vertical clearance of no less than eight feet. Section 9-4.409(c) states that "In approving a project, the Director, Planning Commission, or City Council, as the case may be, may modify the number and size of loading spaces required ... because of the nature of the use or the design of the project." The applicant is proposing not to provide any off-street loading spaces, but instead to have an on-street loading space along the 37th Street frontage of the Project, adjacent to the parking garage driveway. This could be considered either a modification under Section 9-4.409(c), or a concession under the State Density Bonus Law.

**Setbacks.** Section 9-4.301 specifies the setback requirements. There are no setback requirements in the MURS Zone.

**Courts.** Pursuant to Section 9-4.302, the minimum width of a court opposite a window of a habitable room shall equal the height of the opposite wall, but need not exceed 50 feet, and, if there is a required window of a habitable room in the opposite wall, shall not be less than 20 feet if the window in question is for a living room, or 14 feet if the room in question is for a habitable room other than a living room. Required courts shall extend horizontally



ten feet in both directions from the centerline of a required window, and shall extend upward from the lowest floor level of the exterior wall containing the window. While the plans do not provide dimensions or window openings to fully assess compliance, it is clear from what is in the plans, as well as the Objective Standards Table submitted by the applicant, that the Project does not comply with these regulations for courts, and a waiver of the court requirement, under the State Density Bonus Law, will be necessary.

Open Space. Pursuant to Section 9-4.303(a), the open space requirement for new Multi-Unit residential developments is a minimum of 60 square feet per dwelling unit, consisting of 40 square feet of private open space and 20 square feet of common open space. Where it is infeasible to provide private open space, common open space may be substituted for private open space at the ratio of 2:1 (i.e. 80 square feet of common open space may substitute for 40 square feet of required private open space). Open space is also subject to certain dimensional and design standards. For the 90 proposed units, each unit should have a private balcony, deck, or patio of at least 40 square feet, and the overall Project should have at least 1,800 square feet of common open space. If no private open space were provided, the Project would need to have 9,000 square feet of common open space (90 units x 40 square feet per unit x 2 = 7,200 square feet plus 1,800 square feet). The Project includes no private open space for the individual units, and 1,541 square feet of common open space in a podium courtyard. This is substantially below the requirements of the Planning Regulations, and the applicant is requesting a waiver of the open space requirements as one of the concessions under the State Density Bonus Law.

Landscaping. Section 9-4.504(b) requires that development projects in non-industrial zones shall include landscaped areas consisting of at least ten percent of the project site. For this 16,328 square foot site, that equates to about 1,633 square feet of landscaping. Section 9-8.212(a) defines “landscaping” as “living vegetation, planted in the ground, including some combination of trees, ground cover, shrubs, vines, flowers, or lawns. In addition, the combination or design may include natural features such as rock and stone; and structural features, including but not limited to, fountains, reflecting pools, artworks, screen walls, fences and benches, but not including swimming pools or spas.” Project plans indicate landscaped areas on the podium, on the east side of the building, and along the 36th Street and San Pablo Avenue frontages for a total area of 1,644 square feet. (See Sheet L.03) While it is not standard practice to include off-site landscaping in the public right-of-way, per staff recommendation, the applicant is placing the required stormwater treatment area along 36<sup>th</sup> Street to provide a landscape buffer between pedestrians and vehicular traffic. Therefore, in this circumstance, this landscaped area is included towards the landscape requirement. The Project thus complies with the landscaping requirements of the Planning Regulations.

Public Art. Emeryville Municipal Code Section 3-2.403 stipulates that “private residential and live-work building developments of 20 or more units and subject to design review approval pursuant to [Article 4 of Chapter 7 of the Planning Regulations] shall devote an amount not less than one-half of one percent (0.5%) of such costs for acquisition and installation of publicly accessible art on the development site.” As noted above, this Project is not subject to discretionary design review approval under Article 4 of Chapter 7. Therefore, there is no public art requirement for the Project.

However, the Project site is identified as a “gateway” location in Figure 5-1 (“City Structure”) of the General Plan, and the applicant’s design is intended to respond to this. General Plan goals and policies related to gateways include the following:

- Goal UD-G-18: A city identity - An identity that distinguishes Emeryville for the community and its visitors.
- Goal UD-G-19: High-quality - Design and construction that respects existing architecture, but creates new signature places.
- Policy UD-P-73: The City will create visual gateways through streetscape design, signage, and building massing to establish identity at key entry points to the city.
- Policy UD-P-74: The City will continue to invest in a citywide public art program that contributes to an awareness of the city’s history and culture.

According to the applicant: “The project’s site has been identified in planning documents as a ‘gateway’ to the City of Emeryville. To that end, the project strives to highlight the City’s thriving arts community in this ‘gateway’ building. To this end, the upper floors of the building will be articulated with smooth plaster walls with insets areas that incorporate dynamic, artistic expressions of color that extend across the façade.”

Water Efficient and Bay Friendly Landscaping. Section 9-4.602(c) specifies that “New landscaping equal to or greater than 500 square feet and less than 2,500 square feet of landscaped area requiring Design Review shall comply with landscape requirements for smaller landscapes for planting, soil, mulch, grading, and irrigation, as specified by the Director.” The Project would include less than 2,500 square feet of landscaping. However, because it is not subject to Design Review, these landscaping requirements do not apply. Nonetheless, the applicant has demonstrated compliance with Water Efficient Landscaping Ordinance (WELO) requirements.

Stormwater Treatment. The Project will create or replace more than 10,000 square feet of impervious surface area. Therefore, a stormwater treatment permit from the Public Works Director is required pursuant to Chapter 13 of Title 6 of the Emeryville Municipal Code. As noted above, the applicant proposes to create a stormwater treatment area adjacent to the south side of the property by extending out the curb along 36th Street.

Discards. Section 9-4.704 establishes standards for trash, recyclables, and compostables. These are administered by the Environmental Services Division of the Public Works Department. The Project plans indicate trash rooms on each floor, as well as separate retail and residential trash collection rooms adjacent to the parking garage. The applicant will work with the Public Works department to ensure that the standards for discards are met.

## **Environmental Review**

The Project is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to the statutory exemption at Section 15268(a) of the State CEQA Guidelines, which states that “ministerial projects are exempt from the requirements of CEQA.”

## **Staff Comments**

The Project was reviewed at the Development Coordinating Committee (DCC) meeting on April 15, 2020. The Committee discussed the permitting process under SB 35 and AB 1763, and the limitations that staff has to provide feedback under these State laws. The proposed plans did not include the undergrounding of adjacent utility wires on 36th and 37th Streets; staff noted that this is required by both Building and Fire regulations as well as the General Plan. Staff identified that parking could be reduced because of the recent City Council approval to eliminate parking minimums, which also includes electric vehicle charging requirements that need to be incorporated into the Project. Staff recommended that the applicant follow-up with multiple people and departments to address various considerations of development, including Building and Fire requirements, a discards (trash, compost, recycling) plan, and environmental requirements. Staff also requested that the applicant provide more information on the ground floor tenant’s (ECAP) loading and delivery needs, and noted that stormwater treatment (“C3”) is required. Staff suggested that the C3 could be located on 36th Street, adjacent to the Project, which would simultaneously provide more site flexibility for the applicant while adding greenery and a buffer between pedestrians and vehicular traffic on a busy roadway.

In response to staff comments, the applicant revised the plans before they were reviewed by the Planning Commission, and again before formally submitting the application and plans being reviewed by the City Council. The plans now indicate undergrounding of utility wires along the 36th and 37th Street Project frontages, include C3 stormwater treatment along 36th Street, and illustrate and integrate artistic expression as a gateway feature. The applicant met with the Building Division, Fire Department, and Public Works Environmental Services Division, and indicated that a Fire Protection Engineer will be consulted for the Project.

## **FISCAL IMPACT**

Ministerial approval of the Project will have no fiscal impact on the City. As noted in the “Background” section above, “On September 17, 2019, the City Council directed staff to prepare loan and regulatory documents for the acquisition of the site by RCD, with the condition that RCD redevelop the property as a 100% affordable housing project of at least 39 units, 25% of which would be permanent supportive housing units targeted to formerly homeless households, and with approximately 3,600 square feet of ground floor space for ECAP. On November 5, 2019, the Council approved a Predevelopment Loan Agreement and an Affordable Housing Agreement to provide \$2 million towards RCD’s acquisition of the site, and RCD closed on the property on December 3, 2019.”

## **STAFF COMMUNICATION WITH THE PUBLIC**

As noted above, a Planning Commission study session was held on May 28, 2020. A notification to property owners and residents within three hundred feet of the Project site was mailed for both the Planning Commission study session and the City Council study session. The applicant was provided with the same mailing list to notify neighbors of their community meeting held on June 23, 2020. At the time this staff report was submitted, staff had not received any comments from the public regarding this Project.

## **CONFLICT OF INTEREST**

No Planning Commissioners or City Council Members have a conflict of interest with this Project.

## **CONCLUSION**

After hearing a presentation from staff and the applicant, and taking public testimony, staff requests that the City Council provide comment on the following issues and any other issues identified by the Council:

1. Does the Council have any feedback regarding the overall Project?
2. Does the Council have any feedback on the concessions and waivers of development standards requested by the applicant?

**PREPARED BY:** Navarre Oaks, Assistant Planner

## **APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Christine Daniel, City Manager

## **ATTACHMENTS:**

1. Applicant Statement dated July 21, 2020
2. Plans dated July 21, 2020
3. Compliance with Objective Zoning Standards
4. Applicant Memo "SB 35 Eligibility Checklist for Resources for Community Development's Proposed Affordable Housing Development at 3600 San Pablo Avenue"
5. SB 35 Eligibility Screening Maps; SB 35 Environmental Mapping
6. Prevailing Wages Letter
7. Applicant Memo "Legislative Context and Draft State Density Bonus Law Proposal for 3600 San Pablo Avenue, City of Emeryville" dated May 4, 2020, including "Initial Proposal for Concessions and Waivers"
8. HCD Streamlined Ministerial Approval Process Guidelines