

**FINDINGS AND CONDITIONS OF APPROVAL FOR "WESTBOROUGH" CONDOMINIUMS AS APPROVED BY THE COUNTY PLANNING COMMISSION ON OCTOBER 28, 2014. MOMO DEVELOPMENT 2013, LLC. (APPLICANT) AND WILLIAM ASHURST & MARGARET SLUUS AND SARAH LOMBARDO (OWNERS). COUNTY FILE #SD14-9376, DP14-3018 & RZ14-3225**

**I. FINDINGS**

**A. Tentative Map Findings**

1. ***Required Finding:*** *The Planning Commission shall not approve a tentative map unless it finds that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the applicable general plan required by law.*

**Project Finding:** The tentative map for the Westborough condominiums, in conjunction with the final development plan, is consistent with the applicable goals and policies as found in the County 2005-2020 General Plan. According to the Land Use Element (Chapter 3) of the General Plan, there are no specific land use policies that apply to the project based on its specific location, such as is the case for the Saranap area.

With regard to the other applicable goals and policies found in the General Plan such as those in the Growth Management Element, Transportation and Circulation Element, Public Facilities/Services Element, etc., the project has been found to be consistent those goals and policies.

In terms of conformance with the density requirement of the Multiple-Family Residential, Medium-Density (MM) General Plan designation in which the property is located, the proposed density for the Westborough development will be 15.2 units per net acre, which is within the density range of MM designation which permits a density range of 12.0 to 21.9 units per net acre.

**B. Final Development Plan Findings**

1. ***Required Finding:*** *The applicant intends to start construction within two and one-half years from the effective date of the zoning change and plan approval.*

**Project Finding:** The applicant intends to start construction shortly after approval of the tentative map, final development plan and rezoning.

2. **Required Finding:** *The proposed planned unit district is consistent with the county general plan.*

**Project Finding:** The Westborough condominiums are consistent with all applicable goals and policies of the County General Plan. At 15.2 units per net acre, the project density is within range of the Multiple-Family Residential Medium-Density (MM) General Plan Designation in which it is located (see A1 above for additional General Plan analysis).

3. **Required Finding:** *The project will constitute a residential environment of sustained desirability and stability, and will be in harmony with the character of the surrounding neighborhood and community.*

**Project Finding:** The Westborough condominiums will be located in an area that is highly suitable for residential uses and in an area that is experiencing a high demand for residential units. The site is located near public transportation (Walnut Creek BART, County Connection), major highways (Hwy 680, 24) and shopping (Downtown Walnut Creek).

The design and layout of the Westborough condominiums is consistent with the other uses surrounding the project site. The buildings have been laid out in a manner that they will all front on the new "U" shaped private roadway instead of facing Tice Valley Boulevard, which is consistent with the character of Tice Valley Boulevard in the vicinity of the project. The building designs, including building height and massing is also consistent with the other uses in the vicinity of the project, including the single family uses to the east of the site. These design and layout considerations, in conjunction with the approved landscaping plan, will result in a project that is in harmony with the character of the surrounding neighborhood and community and a project with sustained desirability and stability.

4. **Required Finding:** *The development of a harmonious integrated plan justifies exceptions from the normal application of the code.*

**Project Finding:** The Westborough condominiums represent an attractive, well designed development project in a desirable area of unincorporated Walnut Creek. Under the development standards of the M-12 zoning district it would not be possible to develop the site in a manner that is as compatible or consistent with the surrounding uses. The M-12 development standards are mainly suited for development of apartment style, multi-family units, not condominiums.

### C. Variance Findings

1. ***Required Finding:*** *That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.*

**Project Finding:** A variance to the Planned Unit District (P-1) 5-acre minimum lot size requirement for the Westborough project does not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.

At the State and County level, development of in-fill properties, specifically high density residential project located near transit and population centers, is being encouraged. This is evident with the passage of Senate Bill 375 in 2008 and adoption of the 2009 Housing Element Update by the Board of Supervisors in 2009.

Senate Bill (SB) 375 passed into law in 2008. It was one of the first efforts by state government to coordinate land use and transportation planning to reduce greenhouse gas (GHG) emissions in response to implementing the provisions of the landmark California Global Warming and Solutions Act of 2006 (otherwise known as Assembly Bill 32). One of the key provisions of SB 375 was to require the planning for housing by cities and counties to be linked and consistent with land use and transportation planning for GHG emission reductions mandated under AB 32.

The County's Housing Element identifies removal of the 5-acre minimum lots size restriction for the P-1 zoning as a five-year objective of the County's Housing Plan. By removing this restriction, the P-1 zoning could be used to develop smaller in-fill properties near transit centers as required by State law and the County Housing Element. Based on its proximity to freeways, public transportation and shopping, this project is a perfect example of the use of the P-1 zoning for a small in-fill project as encouraged by the passage of SB 375 by the State and the Housing Element Update by the Board of Supervisors.

For this project, the P-1 zoning provides the flexibility to develop the property with a desirable product (for-sale units) that is in short supply and high demand in the vicinity of the site. The P-1 also provides the flexibility to design the project in a manner that is compatible and consistent with the surrounding uses.

2. ***Required Finding:*** *That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict*

*application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.*

**Project Finding:** Due to the relatively small size of the site (1.2-acres), development of the property in a manner that would be compatible with the surrounding neighborhood, utilizing the M-12 zoning standards, would be difficult. The subject property abuts single family residential uses on two sides, so development of the site with an apartment building, utilizing the M-12 zoning standards or any other of the multiple-family zoning districts, is not consistent with the existing pattern of development. Therefore, in order to develop the site in a manner that is compatible with the neighborhood, specifically the adjacent uses, establishment of a Planned Unit District (P-1) to allow for the development of a condominium complex is necessary and appropriate, even though the P-1 zoning requires a minimum of size of 5-acres.

3. **Required Finding:** *That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the subject property is located.*

**Project Finding:** The variance to the minimum lot size requirements of the Planned Unit Zoning District (P-1) will permit development of the subject property in a manner that is consistent with the intent and purpose of the P-1 zoning district and compatible with the surrounding uses.

#### **D. Growth Management Findings**

1. **Traffic:** The traffic generated by the 14 unit Westborough condominium project will not result in a decrease in the existing levels of service (LOS) in the vicinity of the project.
2. **Water:** The project site is within the service area of the East Bay Municipal Utility District (EBMUD) who has indicated that public water service is available for the project.
3. **Sanitary Sewer:** The project is within the service area of the Central Contra Costa Sanitary District (CCSD) who will provide waste water services for the project.
4. **Fire Protection:** The project is located less than 1-mile from Fire Station 3 of the Contra Costa County Fire Protection District.

5. **Public Protection:** The 14 unit Westborough condominiums **will** not increase the population by more than 1,000. Therefore, no additional Sheriff facilities will be required.
6. **Parks and Recreation:** The 14 unit Westborough condominiums **will** not increase the population by more than 1,000. Therefore, no additional park facilities are required.
7. **Flood Control and Drainage:** There has been no indication from the County Public Works Department or Flood Control District that the 14 unit Westborough condominium project would require improvements to existing storm drain facilities in order to accommodate peak flows generated by the project.

#### **E. Tree Permit Findings**

1. **Tree Permit Findings:** With regard to removal of 23 code protected trees and work within the dripline of 11 code protected trees (as shown in the tree removal plan dated May 27, 2014 and in the Tree Preservation Report dated April 1, 2014), the following factors, as provided for in Section 816-6.8010 of the County Coed, have been identified in permitting the removal and alteration of the trees;
  - Reasonable development of the property would require the alteration or removal of the tree and this development could not be reasonably accommodated on another area of the lot.
  - Where the arborist or forester report has been required, the Community Development Division is satisfied that the issuance of a permit will not negatively affect the sustainability of the resource.

## **II. CONDITIONS OF APPROVAL**

1. Approval of the vesting tentative map and the preliminary/final development plan for the Westborough 14 unit condominium development is based on the following documents:
  - Westborough Preliminary Development Plan/Final Development Plan Submittal (6 pages), dated May 27, 2014 (stamped received June 11, 2014) which includes the following:
    - Vesting Tentative Map (Sheet 2 of 6)
    - Preliminary and Final Development Plan (Sheet 3 of 6)
    - Preliminary Grading and Utility Plan (Sheet 4 of 6)
    - Tree Removal Plan (Sheet 5 of 6)
    - Boundary and Topographic Survey (Sheet 6 of 6)
  - Tice Valley Subdivisions 9177 Amenities Plan and Planting Plan, dated April 1, 2014 (received April 3, 2014), Sheets L-1 thru L-2, prepared by Thomas Baak & Associates, LLP.
  - Architectural drawings for Westborough, prepared by William Hezmalhalch Architects, Inc., received on April 3, 2014;
  - Westborough artist's rendering by [stevehubbardstudios.com](http://stevehubbardstudios.com), dated received on June 11, 2014;
  - Tree Preservation Report, Tice Valley Blvd., prepared by Traverso Tree Service, received on April 3, 2014;
  - Geotechnical Investigation, Proposed Residential Development 1640, 1660 Tice Valley Boulevard, Contra Costa County, California; prepared by Friar Associates, Inc., dated received on June 11, 2014;
  - Preliminary Stormwater Control Plan for Westborough, Walnut Creek, California; prepared by DK Consulting, received on April 3, 2014;
2. Approval of the Westborough tentative map is contingent upon approval of the Final Development Plan (County File #DP14-3018) and Rezoning (County File #RZ14-3225) by the Board of Supervisors.

3. This permit authorizes the development of fourteen (14) condominium units on the subject property as identified in the Westborough Preliminary Development Plan/Final Development Plan documents referenced above.
4. The Westborough condominiums shall be constructed as shown in the architectural drawings dated received April 3, 2014. Prior to the issuance of a building permit, elevations and architectural design of the building and building colors and roofing material shall be submitted for final review and approval by the Community Development Division (CDD).

### **Tree Permit**

5. This approval authorizes the removal 23 code protected trees and work within the dripline of 11 code protected trees. The trees authorized for removal and alteration are as shown in the *Tree Preservation Report* prepared by Traverso Tree Service, received on April 3, 2014 and the *Tree Removal Plan* (Sheet 5 of 6) dated May 27, 2014, found in the Preliminary Development Plan/Final Development Plan submittal.

### **Indemnification**

6. At least 30 days prior filing the Final Map, the applicant shall submit a letter stating the following: "Pursuant to Government Code Section 66474.9, the applicant (including the sub-divider or any agent thereof) shall defend, indemnify, and hold harmless the County and its agents, officers, and employees from any claim, action, or proceeding against the Agency (the County) or its agents, officers, or employees to attack, set aside, void, or annul, the Agency's approval concerning this subdivision map application, which action is brought within the time period provided for in Section 66499.37. The County will promptly notify the sub-divider of any such claim, action, or proceeding and cooperate fully in the defense."

### **Application Fees**

7. This application is subject to an initial application deposit of \$12,327, which was paid with the application submittal, plus time and materials costs if the application review expenses exceed 100% of the initial deposit. Any additional costs due must be paid within 60 days of the permit effective date or prior to use of the permit, whichever occurs first. The applicant may obtain current costs by contacting the project planner. If you owe additional fees, a bill will be sent to you shortly after permit issuance.

**Inclusionary Housing In-Lieu Fee**

8. Prior to the issuance of the first building permit for any of the condominium buildings within the development, the project Inclusionary Housing Ordinance In-Lieu fee of \$54,248 (\$3,874.89 per unit) shall be paid in full to the Department of Conservation and Development.

**Park Dedication Fees**

9. Prior to the issuance of the building permit for each unit, the applicant shall pay the appropriate Park Dedication Fee for each unit as required per Chapter 920-6 of the County Code.

**Child Care**

10. The applicant shall pay a fee of \$400.00 per unit toward child care facility needs in the area as established by the Board of Supervisors.

**Police Services District**

11. **Election for Establishment of a Police Services District to Augment Police Services:** Prior to the recording of the parcel map, the owner of the property shall participate in the provision of funding to maintain and augment police services by voting to approve a special tax for the parcels created by this subdivision approval. The tax shall be per parcel annual amount (with appropriate future CPI adjustment) then established at the time of voting by the Board of Supervisors. The election to provide for the tax shall be completed prior to filing the Parcel Map. The property owner shall be responsible for paying the cost of holding the election, payable at the time the election is requested by the owner. Allow a minimum of three to four months for processing.

**Compliance Report**

12. At least 45 days prior to filing of the Parcel Map or issuance of a grading or building permit, whichever occurs first, the applicant shall provide a permit compliance report to the Department of Conservation and Development, Community Development Division (CDD) for review and approval. The report shall identify all conditions of approval that are administered by the CDD. The report shall document the measures taken by the applicant to satisfy all relevant conditions. Copies of the permit conditions may be obtained from the CDD. Unless otherwise indicated, the applicant



will be required to demonstrate compliance with the conditions of this report prior to filing the Parcel Map.

The permit compliance review is subject to staff time and materials charges, with an initial deposit of \$1,000 which shall be paid at the time of submittal of the compliance report.

### **CC&R's**

13. Covenants, Conditions and Restrictions shall be submitted for review with the final map, and shall be subject to review and approval by the CDD. This document shall provide for establishment, ownership and maintenance of the common open space and parking, fire protection, fencing, private streets and drainage maintenance, keeping of pets, and establishment of signs.

### **Landscaping**

14. Comply with the following landscape/irrigation improvement and initial protection requirements subject to the review and approval of the CDD:
  - A. Final Landscape Plan: At least 60 days prior to the issuance of a grading permit or acceptance of a final map (whichever comes first), a final landscape/irrigation, amenities and fencing plan, prepared by a licensed landscape architect, shall be submitted to the CDD, providing for landscape and amenities improvements of common areas and areas. The final plan shall be designed in general accord with the *Amenities Plan (Sheet L-1)* and *Planting Plan (Sheet L-3)* exhibits prepared by Thomas Baak & Associates, LLP., dated received April 3, 2014 by the Department of Conservation and Development.
  1. Minimum Size Plants: All proposed trees shall be a minimum of 15-gallon size; all shrubs shall be a minimum 5-gallon size.
  2. Maintenance Cost: Landscaping shall generally be designed to minimize landscape maintenance cost.
  3. Compliance with Water Conservation and Sight Obstruction Ordinance Requirements: The landscape plan shall contain sufficient information to demonstrate compliance with the reporting requirements and standards of the Water Conservation Landscaping in New Developments ordinance (Chapter 82-26) or better, and the Sight Obstruction at Intersections

ordinance (Chapter 82-18). The latter ordinance applies to intersections with public roads. The landscape architect shall certify that the plan complies with the ordinance improvement standards and reporting requirements.

- B. Security to Assure Correct Installation of Landscape/Fencing Improvements and Replacement of Failed Improvements Following Initial Installation: The landscape and fencing plan shall be accompanied by an itemized estimate from the landscape architect or landscape contractor of the cost of materials and labor for the proposed improvements.

Prior to issuance of a building/grading permit or acceptance of a final map, whichever comes first, the applicant shall (1) enter into a landscape agreement and (2) post a cash performance bond or security for the approved landscape and fencing plan. The above agreement shall assure (1) the correct installation of the approved landscape and fencing improvements, and (2) the replacement or repair of the improvements for a **minimum 24-month period** following the date of the acceptance of the improvements by the Community Development Division in the event of plant failure or other or damaged or deficient improvement.

Prior to filing a landscape agreement proposal, the applicant shall contact the project planner to obtain the appropriate forms and filing fees. Acceptance of the security instruments in excess of a certain amount requires acceptance from the Board of Supervisors.

- C. Landscape Architect Report on Survival of Plants-One Year After Planting: At least 12 months following the date of CDD acceptance of the completion of the landscape improvements and no later than 18-months after said date, the Landscape Architect shall make an on-site inspection of the improvements for any failed or failing plants shown on the approved landscape plans. Substitution of non-performing plants will require approval of the CDD.

Before the CDD will consider the release or partial release of the landscape bond the inspection findings of the landscape architect and any corrective action initiated by the applicant shall be submitted in a written report to the CDD. A copy of the report shall be forwarded to the HOA.

### **Water Efficient Landscape Ordinance**

15. The applicant shall comply with California Model Water Efficient Landscape Ordinance (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495) or the County's Water Efficient Landscape Ordinance, if the County ordinance is adopted. Project sponsors should be aware that Section 31 of the East Bay Municipal Utility District's (EBMUD) Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense. Any questions regarding these requirements can be directed to EBMUD Water Service Planning at (510) 287-1365.

### **Biological Conditions**

16. **Bats:** In order to avoid impacts to roosting special-status bats, a biologist shall survey trees and buildings 15 days prior to commencing with any removal or demolition. All bat surveys shall be conducted by a biologist with known experience surveying for bats. The applicant shall provide the biologist conducting the surveys access to the boarded-up structure. If no special-status bats are found during the surveys, then there would be no further regard for these bat species.

If special-status bat species are found on the project site, then there shall be a determination if young bats present (i.e., the biologist shall determine if there are maternal roosts). If young are found roosting in any tree or building, then impacts to the tree or building shall be avoided until the young are flying free and are feeding on their own. A non-disturbance buffer fenced with orange construction fencing shall also be established around the maternity site. The size of the buffer zone shall be determined by a qualified bat biologist at the time of the surveys. If adults are found roosting in a tree or building on the project site but no maternal sites are found, then the adult bats can be flushed or a one-way eviction door can be placed over the tree cavity (or building access opening) for a 48 hour period prior to the time the tree or building in question would be removed or disturbed. No other mitigation compensation would be required.

17. **Nesting Passerine Birds:** A nesting bird survey shall be conducted on the project site and within a zone of influence around the project site if the project would commence between March 1 and September 1st. This is the formally recognized bird nesting season enforced by the California Department of Fish and Wildlife. The zone of influence includes those areas off the project site where birds could be disturbed by earth-moving vibrations or noise associated with construction. Accordingly, the

nesting survey(s) must cover the project site and an area around the project site boundary. If project site disturbance associated with the project would commence between March 1 and September 1st, the nesting surveys should be completed 15 days prior to commencing with any activities that would disturb the current site conditions. If common (that is, not special-status) birds, for example, California towhee, western scrub jay, or acorn woodpeckers are identified nesting on or adjacent to the project site, a non-disturbance buffer of 75 feet should be established around the nest or as otherwise prescribed by a qualified ornithologist. The buffer should be demarcated via the installation of orange construction fencing. Disturbance within the buffer should be postponed until it is determined by a qualified ornithologist that the young have fledged and have attained sufficient flight skills to leave the area or that the nesting cycle has otherwise completed.

Typically, most nesting birds in the region of the project site are expected to complete nesting by August 1st. However, many species can complete nesting by early to mid-July. Regardless, nesting buffers should be maintained until August 1st unless a qualified ornithologist determines that young have fledged and are independent of their nests at an earlier date. If buffers are removed prior to August 1st, the qualified biologist conducting the nesting surveys should prepare a report that provides details about the nesting outcome and the removal of buffers. This report should be submitted to the Contra Costa County Department of Conservation and Development prior to the time that nest protection buffers are removed if the date is before August 1st.

### **Exterior Lighting**

18. At least 45 days prior to submittal of building permits, an exterior lighting plan shall be submitted for the review and approval by CDD. The plan shall include details of location and design of outside lighting fixtures, proposed screening, and hours of operation of exterior lights.

Exterior lights shall be deflected so that the lights shine onto subject property and not toward adjacent properties.

### **60 dBA Noise Impacts**

19. At least 30-days prior to issuance of the building permit for the first units, a noise study shall be prepared by a licensed acoustical engineer to determine the 24-hour noise level at the site. If the noise level is shown to exceed the 60 DNL the applicant

shall identify and incorporate specific construction techniques to reduce the interior noise levels to less than 45 DNL. (Noise MM 12a)

**Construction Conditions of Approval**

20. Contractor and/or developer shall comply with the following:

- A. All construction activities shall be limited to the hours of 8:00 A.M. to 5:30 P.M., Monday through Friday, and shall be prohibited on state and federal holidays on the calendar dates that these holidays are observed by the state or federal government as listed below:

New Year's Day (State and Federal)  
Birthday of Martin Luther King, Jr.(State and Federal)  
Washington's Birthday/Presidents' Day (State and Federal)  
Lincoln's Birthday (State)  
Cesar Chavez Day (State)  
Memorial Day (State and Federal)  
Independence Day (State and Federal)  
Labor Day (State and Federal)  
Columbus Day (State and Federal)  
Veterans Day (State and Federal)  
Thanksgiving Day (State and Federal)  
Day after Thanksgiving (State)  
Christmas Day (State and Federal)

For details on the actual days that the state and federal holidays occur, please visit the following websites:

Federal: [http://www.opm.gov/Operating\\_Status\\_Schedules/fedhol/2014.asp](http://www.opm.gov/Operating_Status_Schedules/fedhol/2014.asp)

State: <http://www.sos.ca.gov/holidays.htm>

- B. The Project sponsor shall require their contractors and subcontractors to fit all internal combustion engines with mufflers which are in good condition and shall locate stationary noise-generating equipment such as air compressors and concrete pumpers as far away from existing residences as possible.
- C. The applicant shall make a good-faith effort to avoid interference with existing neighborhood traffic flows.

- D. Construction equipment shall be parked onsite to the maximum extent practicable.
  - E. The site shall be maintained in an orderly fashion. Following the cessation of construction activity, all construction debris shall be removed from the site. Any debris found outside the site shall immediately be collected and deposited in appropriate receptacles.
21. The construction control measures listed below shall be implemented during project construction and shall be included on all construction plans:
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to three minutes.
  - Clear signage shall be provided for construction workers at all access points.
  - All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
  - All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
  - All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - All vehicle speeds on unpaved roads shall be limited to 15 mph.
  - All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
  - Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
- Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.).
- Limit traffic speeds on unpaved roads to 15 mph.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Replant vegetation in disturbed areas as quickly as possible.
- Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.
- Install wind breaks, or plant trees/vegetative wind breaks at windward side(s) of construction areas.
- Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.
- Limit the area subject to excavation, grading and other construction activity at any one time. (MM 3d & 3e)

### **Debris Recovery**

22. At least 15 days prior to the issuance of a grading permit or building permit the developer shall demonstrate compliance with the debris recovery program, which

requires at least 50 percent of the jobsite debris generated by construction projects of 5,000 square feet or greater to be recycled, or otherwise diverted from landfill disposal. All green waste shall be delivered to a permitted green waste recycling facility and the developer shall provide evidence to CDD that 100% of the green waste generated by the project was delivered to a permitted green waste recycling facility.

**Required Restitution for Approved Tree Removal**

23. The following measures are intended to provide restitution for the removal of 23 code-protected trees:
- a. Planting and Irrigation Plan: Prior to issuance of a grading or building permit, whichever occurs first, the applicant shall submit a tree planting and irrigation plan prepared by a licensed arborist or landscape architect for the review and approval of the Department of Conservation and Development, Community Development Division (CDD). The plan shall provide for the planting of 32 trees, minimum 15 gallons in size. The plan shall comply with the State's Model Water Efficient Landscape Ordinance or the County's Water Efficient Landscape Ordinance, if the County's ordinance has been adopted, and verification of such shall accompany the plan. The plan shall also include an estimate prepared by a licensed landscape architect, arborist, or landscape contractor for the materials and labor costs to complete the improvements (accounting for supply, delivery, and installation of trees and irrigation).
  - b. Required Security to Assure Completion of Plan Improvements: A security shall be provided to ensure that the approved planting and irrigation plan is implemented. Prior to issuance of a grading or building permit, whichever occurs first, the applicant shall submit a security that is acceptable to the CDD. The security shall be the amount of the approved cost estimate described in Section 21.a above, plus a 20% inflation surcharge.
  - c. Initial Deposit for Processing of Security: The County ordinance requires that the applicant pay fees to cover all staff time and material costs for processing the required security. At the time of submittal of the security, the applicant shall pay an initial deposit of \$100.00.
  - d. Duration of Security: When the replacement trees and irrigation have been installed, the applicant shall submit a letter to CDD, composed by a licensed landscape architect, landscape contractor, or arborist, verifying that the installation has been done in accordance with the approved planting and



irrigation plan. The CDD will retain the security for a minimum of 12 months up to 24 months beyond the date of receipt of this letter. As a prerequisite of releasing the bond between 12 and 24 months, following completion of the installation, the applicant shall arrange for the consulting arborist to inspect the replacement trees and to prepare a report on the trees' health. The report shall be submitted for the review of the CDD and shall include any additional measures necessary for preserving the health of the trees. These measures shall be implemented by the applicant.

24. Any replacement tree that dies within the first year of being planted shall be replaced by another tree of the same species and size. If the CDD determines that the applicant has not been diligent in ensuring the replacement trees' health, then all or part of the security may be used by the County to ensure that the approved restitution plan is successfully implemented.
25. Security for Possible Damage to Trees Intended for Preservation: Pursuant to the requirements of Section 816-6.1204 of the Tree Protection and Preservation Ordinance, to address the possibility that construction activity damages trees that are to be preserved, the applicant shall provide the County with a security to allow for replacement of trees that are significantly damaged or destroyed by construction activity. Prior to issuance of grading permits or building permits, whichever occurs first, the applicant shall provide a security that is acceptable to the Department of Conservation and Development, Community Development Division (CDD).
  - a. Amount of Security: The security shall be an amount sufficient to cover:
    - i. Preparation of a tree planting and irrigation plan by a licensed landscape architect, arborist, or landscape contractor. The plan shall provide for the planting and irrigation of 15 trees, minimum 15 gallons in size, or an equivalent planting contribution as determined appropriate by the CDD. The plan shall comply with the State's Model Water Efficient Landscape Ordinance or the County's Water Efficient Landscape Ordinance, if the County's ordinance has been adopted, and verification of such shall accompany the plan. If deemed necessary by the CDD, the plan shall be implemented prior to final building inspection.
    - ii. The estimated materials and labor costs to complete the improvements shown on the approved planting and irrigation plan (accounting for supply, delivery, and installation of trees and irrigation).

- iii. An additional 20% above the costs described in Sections 8.a.i and 8.a.ii above to account for inflation potential.
  - b. Initial Deposit for Processing of Security: The County ordinance requires that the applicant pay fees to cover all staff time and material costs for processing the required security. At the time of submittal of the security, the applicant shall pay an initial deposit of \$100.
  - c. Duration of Security: After the final building inspection for the last unit has been completed, the applicant shall submit a letter to the CDD, composed by a consulting arborist, describing any construction impacts to trees intended for preservation. The security shall be retained by the County for a minimum of 12 months up to 24 months beyond the date of receipt of this letter. As a prerequisite of releasing the bond between 12 and 24 months, the applicant shall arrange for the consulting arborist to inspect the trees and to prepare a report on the trees' health. The report shall be submitted to the CDD for review, and it shall include any additional measures necessary for preserving the health of the trees. These measures shall be implemented by the applicant. In the event that the CDD determines that trees intended for preservation have been damaged by development activity, and that the applicant has not been diligent in providing reasonable restitution of the damaged trees, then the CDD may require that all or part of the security be used to provide for mitigation of the trees damaged, including replacement of any trees that have died.
26. Compliance with Arborist Recommendations: The applicant shall implement all measures recommended by the consulting arborist that are intended to mitigate the impacts of construction activities.
27. Arborist Expenses: The applicant shall be responsible for all arborist expenses related to the work authorized by this permit.

## **Geology**

28. Prior to issuance of a grading or building permit on the subject property, the applicant shall provide a report prepared by a licensed geotechnical or soils engineer indicating how the recommendations in the *May 2014 Geotechnical Investigation prepared by Friar Associates, Inc.* are being followed and incorporated into the project. The report is subject to peer review by the County Peer Review Geologist.

### **Archaeology**

29. Should archaeological materials be uncovered during grading, trenching or other on-site excavation(s), earthwork within 30 yards of these materials shall be stopped until a professional archaeologist who is certified by the Society of Professional Archaeology (SOPA) has had an opportunity to evaluate the significance of the find and suggest appropriate mitigation(s), if deemed necessary.
30. If human remains are encountered, work within 50 feet of the discovery should be redirected and the County Coroner notified immediately. At the same time, an archaeologist should be contacted to assess the situation. If the human remains are of a Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods.

Upon completion of the assessment, the archaeologist should prepare a report documenting the methods and results, and provide recommendations for the treatment of the human remains and any associated cultural materials, as appropriate and in coordination with the recommendations of the MLD. The report should be submitted to the Northwest Information Center and appropriate Contra Costa agencies.

### **Transportation Demand Management**

31. At least 30 days prior to recording the Final Map, the applicant shall submit a Transportation Demand Management (TDM) information program in accord with the requirements of Chapter 82-32 of the County Zoning Code for review and approval of the CDD. Applicant shall also comply with the County Growth Management Program and Bay Area Air Quality Management District regulations regarding transportation.

## **PUBLIC WORKS RECOMMENDED CONDITIONS OF APPROVAL FOR SUBDIVISION SD14-9376/PERMIT DP14-3018**

Applicant shall comply with the requirements of Title 8, Title 9 and Title 10 of the Ordinance Code. Any exception(s) must be stipulated in these Conditions of Approval.

Conditions of Approval are based on the site plan/(vesting) tentative map submitted to the Department of Conservation and Development, Community Development Division, on June 11, 2014.

Unless otherwise specified, comply with the following conditions of approval prior to filing of the final map or issuance of building permits, whichever occurs first.

**General Requirements**

32. In accordance with Section 92-2.006 of the Ordinance Code, this subdivision shall conform to all applicable provisions of the Subdivision Ordinance (Title 9). Any exceptions therefrom must be specifically listed in this conditional approval statement. The drainage, road and utility improvements outlined below shall require the review and approval of the Public Works Department and are based on the Vesting Tentative Map received by the Department of Conservation and Development, Community Development Division, on June 11, 2014.
33. Improvement plans prepared by a registered civil engineer shall be submitted, if necessary, to the Public Works Department, Engineering Services Division, along with review and inspection fees, and security for all improvements required by the Ordinance Code for the conditions of approval of this subdivision. Any necessary traffic signing and striping shall be included in the improvement plans for review by the Transportation Engineering Division of the Public Works Department.

**Roadway Improvements (Frontage)**

34. Applicant shall construct a 6.5-foot-wide PCC sidewalk (width measured from curb face), longitudinal and transverse drainage (as necessary), street lighting, pavement markings and traffic signage along the frontage of Tice Valley Boulevard. Alignment of improvements shall conform to existing curb lines and grades.
35. Any cracked and displaced curb and gutter, shall be removed and replaced along the project frontage of Tice Valley Boulevard. Concrete shall be saw cut prior to removal. Existing lines and grade shall be maintained. New curb and gutter shall be doveled into existing improvements.
36. Applicant shall construct a street-type connection with 20-foot radii curb returns in lieu of standard driveway depressions at both project driveways. The northern driveway shall be configured and signed to restrict it to right-turn ingress/egress only subject to review and approval of the Public Works Department. This may include a

restrictive center island, median modifications or other improvements to be determined.

**Proof of Access**

37. Applicant shall furnish proof to the Public Works Department of the acquisition of all necessary rights-of-way, rights-of-entry, permits and/or easements for the construction of off-site, temporary or permanent, public and private road and drainage improvements.

**Encroachment Permit**

38. Applicant shall obtain an encroachment permit from the Application and Permit Center, if necessary, for construction of driveways or other improvements within the right-of-way of Tice Valley Boulevard.

**Abutter's Rights**

39. Applicant shall relinquish abutter's rights of access along Tice Valley Boulevard with the exception of the proposed private road/driveway intersections.

**Sight Distance**

40. Applicant shall provide sight distance at the on-site driveways and Tice Valley Boulevard for a design speed of 45 miles per hour. The applicant shall trim vegetation, as necessary, to provide sight distance at these driveways. Any new landscaping, signs, fencing, retaining walls, or other obstructions proposed at the driveways shall be setback to ensure that the sight lines are clear.

**Private Roads**

41. Applicant shall construct the on-site roadways and the internal road network to current County private road standards, subject to the review of the Fire District. Although the proposed on-site roadways are shown as private, the pavement structural section shall conform to County public road standards.

**Pedestrian Facilities/Pedestrian Access**

42. Curb ramps and driveways shall be designed and constructed in accordance with current County standards. A detectable warning surface (e.g. truncated domes) shall

be installed on all curb ramps. Adequate right-of-way shall be dedicated at the curb returns to accommodate the returns and curb ramps; accommodate a minimum 4-foot landing on top of any curb ramp proposed.

Applicant shall design all public and private pedestrian facilities in accordance with Title 24 (Handicap Access) and the Americans with Disabilities Act. This shall include all sidewalks, paths, driveway depressions, and curb ramps.

### **Transit/Bus Stops**

43. The existing bus stop/shelter near the north end of the project frontage shall be reconstructed in cooperation with the Central Contra Costa Transit Authority. Additional sidewalk width may be necessary to meet the shelter and ADA requirements.

### **Parking**

44. "No Parking" signs shall be installed along Tice Valley Boulevard subject to the review of the Public Works Department and the review and approval of the Board of Supervisors.

Parking shall be prohibited on one side of on-site roadways where the curb-to-curb width is less than 36 feet and on both sides of on-site roadways where the curb-to-curb width is less than 28 feet. "No Parking" signs shall be installed along these portions of the roads subject to the review and approval of the Public Works Department.

### **Utilities/Undergrounding**

45. Applicant shall underground all new and existing utility distribution facilities, including those along the frontage of Tice Valley Boulevard. The developer shall provide joint trench composite plans for the underground electrical, gas, telephone, cable television and communication conduits and cables including the size, location and details of all trenches, locations of building utility service stubs and meters and placements or arrangements of junction structures as a part of the Improvement Plan submittals for the project. The composite drawings and/or utility improvement plans shall be signed by a licensed civil engineer.

### **Maintenance of Facilities**

46. The maintenance obligation of all common and open space areas, private roadways, any private street lights, public and private landscaped areas, perimeter walls/fences, and on-site drainage facilities shall be included in the covenants, conditions, and restrictions (CC&Rs). The language shall be submitted for the review and approval of the Zoning Administrator and the Public Works Department at least 60 days prior to filing of the Final Map for the first phase.

**Drainage Improvements/Collect and Convey**

47. The applicant shall collect and convey all stormwater entering and/or originating on this property, without diversion and within an adequate storm drainage system, to an adequate natural watercourse having definable bed and banks, or to an existing adequate public storm drainage system which conveys the stormwaters to an adequate natural watercourse, in accordance with Division 914 of the Ordinance Code.

**Miscellaneous Drainage Requirements**

48. The applicant shall design and construct all storm drainage facilities in compliance with the Ordinance Code and Public Works Department design standards.

Applicant shall prevent storm drainage from draining across the sidewalk(s) and driveway(s) in a concentrated manner.

**National Pollutant Discharge Elimination System (NPDES)**

49. The applicant shall be required to comply with all rules, regulations and procedures of the National Pollutant Discharge Elimination System (NPDES) for municipal, construction and industrial activities as promulgated by the California State Water Resources Control Board, or any of its Regional Water Quality Control Boards (San Francisco Bay - Region II).

Compliance shall include developing long-term Best Management Practices (BMPs) for the reduction or elimination of stormwater pollutants. The project design shall incorporate wherever feasible, the following long-term BMPs in accordance with the Contra Costa Clean Water Program for the site's stormwater drainage:

- Minimize the amount of directly-connected impervious surface area.
- Place advisory warnings on all catch basins and storm drains using current storm drain markers.

- Construct concrete driveway weakened plane joints at angles to assist in directing run-off to landscaped/pervious areas prior to entering the street curb and gutter.
- Other alternatives comparable to the above as approved by the Public Works Department.
- Shallow roadside and on-site swales.
- Distribute public information items regarding the Clean Water Program and lot specific IMPs to buyers.
- Filtering inlets.
- The applicant shall sweep the paved portion of the site at least once a year between September 1st and October 15th utilizing a vacuum type sweeper. Verification (invoices, etc.) of the sweeping shall be provided to the County Clean Water Program Administrative Assistant at 255 Glacier Drive, Martinez CA 94553 (925) 313-2238).
- Trash bins shall be sealed to prevent leakage, OR, shall be located within a covered enclosure.

#### **Stormwater Management and Discharge Control Ordinance**

50. The applicant shall submit a FINAL Storm Water Control Plan (SWCP) and a Stormwater Control Operation and Maintenance Plan (O+M Plan) to the Public Works Department, which shall be reviewed for compliance with the County's National Pollutant Discharge Elimination System (NPDES) Permit and shall be deemed consistent with the County's Stormwater Management and Discharge Control Ordinance (§1014). To the extent required by the NPDES Permit, the Final Stormwater Control Plan and the O+M Plan will be required to comply with NPDES Permit requirements that have recently become effective that may not be reflected in the preliminary SWCP and O+M Plan. All time and materials costs for review and preparation of the SWCP and the O+M Plan shall be borne by the applicant.

Improvement Plans shall be reviewed to verify consistency with the final SWCP and compliance with Provision C.3 of the County's NPDES Permit and the County's Stormwater Management and Discharge Control Ordinance (§1014).

Stormwater management facilities shall be subject to inspection by Public Works Department staff; all time and materials costs for inspection of stormwater management facilities shall be borne by the applicant.

The property owner(s) shall enter into a standard Stormwater Management Facility Operation and Maintenance Agreement with Contra Costa County, in which the



property owner(s) shall accept responsibility for, and related to, operation and maintenance of the stormwater facilities, and grant access to relevant public agencies for inspection of stormwater management facilities.

The property owner(s) shall annex the subject property into Community Facilities District (CFD) No. 2007-1 (Stormwater Management Facilities), which funds responsibilities of Contra Costa County under its NPDES Permit to oversee the ongoing operation and maintenance of stormwater facilities by property owners.

Any proposed water quality features that are designed to retain water for longer than 72 hours shall be subject to the review of the Contra Costa Mosquito & Vector Control District.

### **ADVISORY NOTES**

- The applicant will be required to comply with the requirements of the Bridge/Thoroughfare Fee Ordinance for the South Walnut Creek Area of Benefit as adopted by the Board of Supervisors.
- The applicant will be required to comply with the drainage fee requirements for Drainage Area 15A as adopted by the Board of Supervisors.
- This project may be subject to the requirements of the Department of Fish and Wildlife. It is the applicant's responsibility to notify the Department of Fish and Wildlife, P.O. Box 47, Yountville, California 94599, of any proposed construction within this development that may affect any fish and wildlife resources, per the Fish and Wildlife Code.
- This project may be subject to the requirements of the Army Corps of Engineers. It is the applicant's responsibility to notify the appropriate district of the Corps of Engineers at 1455 Market St #16, San Francisco, CA 94103 to determine if a permit is required, and if it can be obtained.
- Although the Stormwater Control Plan has been determined to be preliminarily complete, it remains subject to future revision, as necessary, during preparation of improvement plans in order to bring it into full compliance with C.3 stormwater requirements. Failure to update the SWCP to match any revisions made in the improvement plans may result in a substantial change to the County approval, and the

project may be subject to additional public hearings. Revisions to California Environmental Quality Act (CEQA) documents may also be required. This may significantly increase the time and applicant's costs associated with approval of the application.

- The applicant shall comply with the requirements of the following agencies:
  - Department of Conservation and Development, Building Inspection Division
  - Contra Costa County Fire Protection District
  - Contra Costa Central Sanitary District
  - East Bay Municipal Utility District