

CITY COUNCIL RESOLUTION NO. 23-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD APPROVING A TENTATIVE PARCEL MAP (MS 354-22) TO SUBDIVIDE A 5.3-ACRE PARCEL INTO TWO PARCELS OF 2.78 AND 2.52 ACRES IN SIZE, RESPECTIVELY, LOCATED ON THE SOUTHEAST CORNER OF SAND CREEK ROAD AND THE STATE ROUTE 4 NORTHBOUND OFF RAMP (APN 019-110-074).

WHEREAS, Robert A. Karn & Associates, Inc. ("Permittee") submitted an application for a tentative parcel map (MS 354-22) to allow the subdivision of a 5.3-acre parcel into two smaller parcels of 2.78 and 2.52 acres, respectively, located on the southeast corner of Sand Creek Road and the State Route 4 northbound off ramp (APN 019-110-074); and

WHEREAS, the Permittee concurrently submitted a request for design review (DR 22-011) to allow the construction of a 9,000 square foot restaurant, with a 2,414 square foot outdoor dining area and associated site improvements; and

WHEREAS, collectively, MS 354-22 and DR 22-011 constitute the "Project;" and

WHEREAS, the City referred the Project to various departments and agencies for review and recommendations; and

WHEREAS, in 2017 the City adopted a Mitigated Negative Declaration (SCH# 2017102022) and corresponding mitigation measures, attached hereto as Exhibit "B," which covers projects that fall below the maximum contemplated development of the site, which is 103,890 square feet of commercial space and 520 parking spaces, which is based on the maximum Floor Area Ratio (FAR), 0.45, as provided in Table 2.0.2 of the City of Brentwood General Plan Environmental Impact Report (EIR); and

WHEREAS, the City distributed a notice of public hearing to all property owners within 300 feet of the Project Site and published it in the Brentwood Press on August 4, 2023, in accordance with City policies and Government Code Section 65090, and a public hearing notice sign was posted on the site during this same timeframe; and

WHEREAS, the Planning Commission held a public hearing on August 15, 2023, reviewed said tentative parcel map request, and studied the compatibility of this request with adjacent land uses, and considered this request in accordance with Title 16 (Subdivisions and Land Development) and Chapter 17.456 (PD-6) of the Brentwood Municipal Code, as well as testimony received by the Permittee and interested parties; and

WHEREAS, on August 15, 2023, the Planning Commission held a public hearing and approved MS 354-22 and DR 22-011 via Planning Commission Resolutions No. 23-013 and No. 23-014, respectively; and

WHEREAS, on August 17, 2023, City Council member Jovita Mendoza timely filed a call for review of the Planning Commission's action approving MS 35-22 and DR 22-011; and

WHEREAS, the City Distributed a Notice of Public Hearing to all property owners of record within 300 feet of the Project Site and published it in the Brentwood Press on September 15, 2023, in accordance with City policies and Government Code Section 65090, and a public hearing notice sign was posted on the site during this same timeframe; and

WHEREAS, the City Council considered the call for review of the Project at its regular meeting of September 26, 2023, and considered the staff report, all accompanying information, and testimony received from the Permittee and other interested parties.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Brentwood:

- A. Hereby finds that the California Environmental Quality Act (Public Resources Code §§ 21000, *et. seq.*, hereafter "CEQA") requires analysis of agency approvals of discretionary "projects." A "project," under CEQA, is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The proposed tentative parcel map is a project under CEQA. However, on December 12, 2017, the City Council of the City of Brentwood adopted Resolution 17-163, adopting a Mitigated Negative Declaration (SCH# 2017102022) for the subject site which contemplated buildout of the site based on the maximum Floor Area Ratio (FAR), 0.45, as provided in Table 2.0.2 of the City of Brentwood General Plan Environmental Impact Report (EIR). Based on the size of the project site and the maximum FAR, the site could be developed with a maximum of 103,890 square feet of commercial space and a maximum of 520 parking spaces and remain within the envelope of what was studied in the MND. The proposed subdivision and development falls below the maximum capacity that was contemplated and therefore no further environmental review would be required provided that the Permittee abides by all Mitigation Measures identified in Exhibit "B".
- B. Hereby finds with respect to the tentative parcel map findings required pursuant to Brentwood Municipal Code section 16.05.040 and Government Code section 66474:
 1. *That the proposed map is consistent with the community development plan and any applicable specific plans.*

The subject site has a General Plan land use designation of Regional Commercial (RC), and is "intended for businesses that serve the needs of Brentwood residents as well as neighboring communities."

2. *The design or improvement of the proposed subdivision is consistent with the community development plan and any applicable specific plans..*

The Project Site is located within Planned Development 6, Planning Area 3, and the design or improvement of the subdivision will allow development of the Project Site for commercial uses, provides for vehicular and pedestrian circulation and infrastructure improvements designed to facilitate the efficient movement of people and goods (Goal CIR1), requires payment of impact fees to mitigate the effects of the development on infrastructure and potential habitat (Action COS 3a), and will adhere to noise restrictions during construction (Action COS 3a) as the project involves. General Plan Policy LU 6-6 provides "encourage quality landscape and design." The project proposes to incorporate more shade trees into its landscaping (23% lot coverage) than is required by the BMC (16% lot coverage), and will add vegetation to a currently un-landscaped portion of Sand Creek Road.

3. *That the site is physically suitable for the type of development.*

The design or improvement of the proposed subdivision is consistent with the City of Brentwood General Plan and the PD-6, Planning Area 3 zoning district inasmuch as the project involves the subdivision of approximately 5.29 acres into two commercial lots, and each proposed parcel meets the minimum lot area and minimum lot width requirements identified in the development standards for PD-6, Planning Area 3 as provided in the table below. Additionally, the site is a relatively flat infill parcel with roads and utilities provided to the borders.

	PD-6, Planning Area 3 requirements	Parcel A	Parcel B
Min Lot Area (sf)	5,000 sf	2.78 acres	2.52 acres
Min Lot Width (ft)	No minimum	474 ft.	363 ft.

4. *That the site is physically suitable for the proposed density of development.*

The site is physically suitable for the proposed density of development in that the lots exceed the minimum lot size required by the development standards contained in Chapter 17.456 (PD-6), as set forth above, and the lots are relatively flat.

5. *That the design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and unavoidably injure fish or wildlife or their habitat unless an Environmental Impact Report ('EIR') was prepared with respect to the project and a finding was made pursuant to Public Resources Code Section 21081(c) that specific*

economic, social, or other considerations make infeasible the mitigation measure or project alternatives identified in the EIR.

The design of the subdivision and the associated proposed improvements are not likely to cause substantial environmental damage, nor is it likely to unavoidably injure fish or wildlife or their habitats, as all potential impacts have been analyzed through the 2017 Mitigated Negative Declaration, with which this Project complies, and all studied environmental impacts have been addressed through the mitigation measures and the conditions of approval.

6. *That the design of the subdivision or type of improvements cause serious public health problems.*

The design of the subdivision and the associated improvements are not likely to cause serious public health problems due to the fact that the design and improvements allow for adequate emergency vehicle access, and do not include the use or transport of any hazardous materials.

7. *That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.*

No easements have been acquired by the public at large for access through or use of the property within the proposed subdivision.

- C. Hereby approves Minor Subdivision No. 354-22, subject to the conditions contained in Exhibit "A" attached hereto and made a part of this resolution.
- D. The Planning Commission shall have jurisdiction to hear any modifications to MS 354-22.
- E. The documents and materials associated with this Resolution that constitute the record of proceedings on which these findings are based are located at 150 City Park Way in Brentwood, California. Planning Manager Erik Nolthenius is the custodian of records for the record of proceedings.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this tentative parcel map is valid for two years and will expire on September 26, 2025, unless a final map is recorded prior to that date, or written extension request and application fees are submitted by the Permittee and approved by the Planning Commission prior to the expiration date.

ADOPTED by the City Council of the City of Brentwood at its regular meeting on September 26, 2023.

AYES:
NOES:
ABSENT:
RECUSE:

APPROVED

Joel R. Bryant
Mayor

ATTEST:

Margaret Wimberly, MMC
City Clerk

**EXHIBIT "A" TO
CITY COUNCIL RESOLUTION NO.
CONDITIONS OF APPROVAL FOR
MINOR SUBDIVISION NO. 354-22**

1. The Permittee, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. Minor Subdivision No. 354-22 ("Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.
2. The parcel map shall be in substantial compliance with the Tentative Parcel Map prepared by Robert A. Karn & Associates, Inc., dated "March 14, 2023" unless modified by the Planning Commission or other conditions herein.
3. Permittee shall pay all applicable development fees for Parks/Trails and Community Facilities per the Development Fee Program to the satisfaction of the Director of Parks and Recreation.
4. The Permittee shall indemnify, defend (with counsel of the City's reasonable choosing), and hold harmless City and its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void, or annul the City's approval of the project approved herein, including adoption of MS 354-22, and any environmental determination made with regard thereto. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, cause of action, suit or proceeding. The Permittee shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition. City shall promptly notify the Permittee of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense.
5. The Permittee shall abide by all Mitigation Measures contained in Attachment "B" of this resolution.
6. The Project shall be consistent with all applicable City's General Plan Policies.
7. All improvements shall be designed and constructed; all permits issued; all fees paid; and all securities submitted pursuant to applicable Federal and state laws, the Subdivision Map Act, the Brentwood Municipal Code, the City Engineering Department's Standard Plans and Specifications, and the City Engineering Department's Engineering Procedures Manual.

8. Prior to approving the Parcel Map:

- a. The Parcel Map shall comply with the current Subdivision Map Act.
- b. The Parcel map shall include the relinquishment of abutters rights along Sand Creek Road to except at approved driveway locations to the satisfaction of the City Engineer.
- c. The Project shall annex into the most current City Community Facilities District, and annex into, or form a street lighting and landscape maintenance assessment district, or provide and execute an alternative funding mechanism acceptable to the City for the maintenance of City improvements.
- d. The Project shall annex into the most current Emergency Medical and Fire Protection Service Funding Community Facilities District (see Brentwood Municipal Code Chapter 17.635) as required by the Contra Costa County Fire Protection District.
- e. All applicable City fees shall be paid including, but not limited to, the Agricultural Mitigation Fee, the Contra Costa Flood Control and Water Conservation District Fee.

**EXHIBIT "B" TO
CITY COUNCIL RESOLUTION NO.
ADOPTED MITIGATION MEASURES FOR
MINOR SUBDIVISION NO. 354-22**

The following Mitigation Measures are extracted from the Initial Study. These measures are designed to avoid or minimize potentially significant impacts, and thereby reduce them to an insignificant level. A Mitigation Monitoring and Reporting Program (MMRP) is an integral part of project implementation to ensure that mitigation is properly implemented by the City of Brentwood and the implementing agencies. The MMRP will describe actions required to implement the appropriate mitigation for each CEQA category including identifying the responsible agency, program timing, and program monitoring requirements. Based on the analysis and conclusions of the Initial Study, the impacts of proposed project would be mitigated to less-than-significant levels with the implementation of the mitigation measures presented below.

Mitigation Measure AES-1: Prior to construction of the proposed project, the developer shall coordinate with the City of Brentwood Planning Commission to ensure that significant new sources of glare are not generated by the proposed project. This may include, but is not limited to, ensuring that the number of and/or location of windows and/or other potential sources of daytime glare that are generated by proposed project buildings, such as reflective siding or other building materials, do not adversely affect day or nighttime views in the area.

Mitigation Measure AES-2: In conjunction with development of the proposed project, the developer shall shield all on-site lighting so that nighttime lighting is directed within the project site and does not illuminate adjacent properties. A detailed lighting plan shall be submitted for the review and approval by the Community Development Department and the Public Works Department in conjunction with the project improvement plans. The lighting plan shall indicate the locations and design of the shielded light fixtures.

Mitigation Measure AG-1: The Project Permittee must preserve agricultural lands by paying an in-lieu fee established by City Council resolution. The fee may be adjusted annually but may not be increased by more than ten percent during any twelve-month period.

Mitigation Measure AIR-1: Prior to the issuance of a grading permit, the Permittee/Developer shall prepare an Erosion Prevention and Dust Control Plan. The plan shall be followed by the project's grading contractor and submitted to the Public Works Department, which will be responsible for field verification of the plan during construction.

The plan shall comply with the City's grading ordinance and shall include the following control measures and other measures as determined by the Public Works Department to be necessary for the proposed project:

- Cover all trucks hauling construction and demolition debris from the site;
- Water all exposed or disturbed soil surfaces at least twice daily;
- Use watering to control dust generation during demolition of structures or break-up of pavement;
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved parking areas and staging areas;
- Sweep daily (with water sweepers) all paved parking areas and staging areas;
- Provide daily clean-up of mud and dirt carried onto paved streets from the site;
- 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) or 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;
- Unnecessary idling of construction equipment shall be avoided;
- Equipment engines shall be maintained in proper working condition per manufacturers' specifications;
- During periods of heavier air pollution (May to October), the construction period shall be lengthened to minimize the amount of equipment operating at one time;
- Where feasible, the construction equipment shall use cleaner fuels, add-on control devices and conversion to cleaner engines.

Mitigation Measure AIR-2: To the extent feasible, construction employees shall be hired from local populations, since it is more likely that they have been previously exposed to the fungus which causes Valley Fever and are therefore immune.

Mitigation Measure AIR-3: During periods of high dust in the grading phase,

crews must use National Institute for Occupational Safety and Health (NIOSH) approved N95 masks or better or other more stringent measures in accordance with the California Division of Occupational Safety and Health regulations.

Mitigation Measure AIR-4: The operator cab of area grading and construction equipment must be enclosed and air-conditioned.

Mitigation Measure BIO-1: ECCCHCP. Prior to the issuance of grading or construction permits for the project site, the developer shall submit an application and obtain coverage under the ECCCHCP. This will include payment of the applicable ECCCHCP per-acre fee in effect for Zone I in compliance with Section 16.168.070 of the Brentwood Municipal Code. The developer shall receive a Certificate of Coverage from the City of Brentwood and submit a construction monitoring report to the ECCC Habitat Conservancy for review and approval. The Certificate of Coverage will confirm the fee has been received, that other ECCC HCP/NCCP requirements have been met or will be performed, and will authorize take of covered species.

Mitigation Measure BIO-2a: San Joaquin Kit Fox. Prior to any ground disturbance related to covered activities, a USFWS/CDFW-approved biologist shall conduct a preconstruction survey in areas identified in the planning surveys as supporting suitable breeding or denning habitat for San Joaquin kit fox. The surveys shall establish the presence or absence of San Joaquin kit foxes and/or suitable dens and evaluate use by kit foxes in accordance with USFWS survey guidelines (U.S. Fish and Wildlife Service, 1999). Preconstruction surveys shall be conducted within 30 days of ground disturbance. On the parcel where the activity is proposed, the biologist shall survey the proposed disturbance footprint and a 250-foot radius from the perimeter of the proposed footprint to identify San Joaquin kit foxes and/or suitable dens. Adjacent parcels under different land ownership will not be surveyed. The status of all dens shall be determined and mapped. Written results of preconstruction surveys shall be submitted to USFWS within 5 working days after survey completion and before the start of ground disturbance. Concurrence is not required prior to initiation of covered activities. If San Joaquin kit foxes and/or suitable dens are identified in the survey area, Mitigation Measure BIO-2b shall be implemented.

Mitigation Measure BIO-2b: San Joaquin Kit Fox. If a San Joaquin kit fox den is discovered in the proposed development footprint, the den shall be monitored for 3 days by a USFWS/CDFW-approved biologist using a tracking medium or an infrared beam camera to determine if the den is currently being used. Unoccupied dens shall be destroyed immediately to prevent subsequent use. If a natal or pupping den is found, USFWS and CDFW shall be notified immediately.

The den shall not be destroyed until the pups and adults have vacated and then only after further consultation with USFWS and CDFW.

If kit fox activity is observed at the den during the initial monitoring period, the den shall be monitored for an additional five consecutive days from the time of the first observation to allow any resident animals to move to another den while den use is actively discouraged. For dens other than natal or pupping dens, use of the den can be discouraged by partially plugging the entrance with soil such that any resident animal can easily escape. Once the den is determined to be unoccupied it may be excavated under the direction of the biologist. Alternatively, if the animal is

still present after five or more consecutive days of plugging and monitoring, the den may have to be excavated when, in the judgment of a biologist, it is temporarily vacant (i.e., during the animal's normal foraging activities).

If dens are identified in the survey area outside the proposed disturbance footprint, exclusion zones around each den entrance or cluster of entrances shall be demarcated. The configuration of exclusion zones shall be circular, with a radius measured outward from the den entrance(s). No covered activities shall occur within the exclusion zones. Exclusion zone radii for potential dens shall be at least 50 feet and will be demarcated with four to five flagged stakes. Exclusion zone radii for known dens shall be at least 100 feet and will be demarcated with staking and flagging that encircles each den or cluster of dens but does not prevent access to the den by kit fox.

Mitigation Measure BIO-3a: Burrowing Owl. Prior to any ground disturbance related to covered activities, a USFWS/CDFW-approved biologist shall conduct a preconstruction survey in areas identified in the planning surveys as having potential burrowing owl habitat. The surveys shall establish the presence or absence of Western Burrowing Owl and/or habitat features and evaluate use by owls in accordance with CDFW survey guidelines (California Department of Fish and Game, 1995).

On the parcel where the activity is proposed, the biologist shall survey the proposed disturbance footprint and a 500-foot radius from the perimeter of the proposed footprint to identify burrows and owls. Adjacent parcels under different land ownership will not be surveyed. Surveys shall take place near sunrise or sunset in accordance with CDFW guidelines. All burrows or burrowing owls shall be identified and mapped. Surveys shall take place no more than 30 days prior to construction. During the breeding season (February 1– August 31), surveys shall document whether burrowing owls are nesting in or directly adjacent to disturbance areas. During the nonbreeding season (September 1– January 31),

surveys shall document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results shall be valid only for the season (breeding or nonbreeding) during which the survey is conducted. Copies of both surveys shall be submitted to ECCC Habitat Conservancy and the City for review and approval.

Mitigation Measure BIO-3b: Burrowing Owl. If burrowing owls are found during the breeding season (February 1– August 31), the project proponent shall avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance shall include establishment of a non-disturbance buffer zone (described below). Construction shall occur during the breeding season if a qualified biologist monitors the nest and determines that the birds have not begun egg-laying and incubation or that the juveniles from the occupied burrows have fledged. During the nonbreeding season (September 1– January 31), the project proponent shall avoid the owls and the burrows they are using, if possible. Avoidance shall include the establishment of a buffer zone (described below).

During the breeding season, buffer zones of at least 250 feet in which no construction activities can occur shall be established around each occupied burrow (nest site). Buffer zones of 160 feet shall be established around each burrow being used during the nonbreeding season. The buffers shall be delineated by highly visible, temporary construction fencing.

If occupied burrows for burrowing owls are not avoided, passive relocation shall be implemented. Owls shall be excluded from burrows in the immediate impact zone and within a 160-foot buffer zone by installing one-way doors in burrow entrances. These doors shall be in place for 48 hours prior to excavation. The project area shall be monitored daily for a week to confirm that the owl has abandoned the burrow. Whenever possible burrows shall be excavated using hand tools and refilled to prevent reoccupation (California Department of Fish and Game, 1995). Plastic tubing or a similar structure shall be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.

Mitigation Measure BIO-4a: *Swainson's Hawk*. Prior to any ground disturbance during the nesting season (March 15– September 15), a qualified biologist shall conduct a preconstruction survey no more than 1 month prior to construction to establish whether Swainson's hawk nests within 1,000 feet of the project site are occupied. If potentially occupied nests within 1,000 feet of the project site are found, then their occupancy shall be determined by observation from public roads or by observations of Swainson's hawk activity (e.g., foraging) near the project site. If nests are occupied, minimization measures and construction monitoring are

required (as provided in Mitigation Measure BIO-4b, below). A copy of the preconstruction survey shall be submitted to the ECCC Habitat Conservancy and the City for review and approval.

Mitigation Measure BIO-4b: Swainson's Hawk. If occupied nests are located within 1,000 feet of the project site, during the Swainson's hawk nesting season (March 15–September 15), covered activities within 1,000 feet of occupied nests or nests under construction shall be prohibited to prevent nest abandonment. If site-specific conditions or the nature of the covered activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be used, the Implementing Entity shall coordinate with California Department of Fish and Wildlife (CDFW)/United States Fish and Wildlife (USFWS) to determine the appropriate buffer size. If young fledge prior to September 15, covered activities can proceed normally. If the active nest site is shielded from view and noise from the project site by other development, topography, or other features, the project Permittee can apply to the ECCC Habitat Conservancy and the City for a waiver of this avoidance measure. Any waiver must also be approved by USFWS and CDFW. While the nest is occupied, activities outside the buffer can take place. No trees shall be removed during project construction. All active nest trees shall be preserved on site, if feasible. Nest trees, including non-native trees, lost to covered activities shall be mitigated by the project proponent according to the requirements of Mitigation Measure BIO-4c (below).

Mitigation Measure BIO-4c: Swainson's Hawk. The loss of non-riparian Swainson's hawk nest trees shall be mitigated prior to project operation by the project proponent by:

If feasible on-site, planting 15 saplings for every tree lost with the objective of having at least 5 mature trees established for every tree lost according to the requirements listed below, and either:

1. Pay the Implementing Entity an additional fee to purchase, plant, maintain, and monitor 15 saplings on the HCP/NCCP Preserve System for every tree lost according to the requirements listed below, OR
2. The project proponent will plant, maintain, and monitor 15 saplings for every tree lost at a site to be approved by the Implementing Entity (e.g., within an HCP/NCCP Preserve or existing open space linked to HCP/NCCP preserves), according to the requirements listed below.

The following requirements shall be met for all planting options:

- Tree survival shall be monitored at least annually for 5 years, then every

other year until year 12. All trees lost during the first 5 years will be replaced. Success will be reached at the end of 12 years if at least 5 trees per tree lost survive without supplemental irrigation or protection from herbivory. Trees must also survive for at least three years without irrigation.

- Irrigation and fencing to protect from deer and other herbivores may be needed for the first several years to ensure maximum tree survival.
- Native trees suitable for this site should be planted. When site conditions permit, a variety of native trees will be planted for each tree lost to provide trees with different growth rates, maturation, and life span, and to provide a variety of tree canopy structures for Swainson's hawk. This variety will help to ensure that nest trees will be available in the short term (5-10 years for cottonwoods and willows) and in the long term (e.g., Valley oak, sycamore). This will also minimize the temporal loss of nest trees.
- Riparian woodland restoration conducted as a result of covered activities (i.e., loss of riparian woodland) can be used to offset the nest tree planting requirement above, if the nest trees are riparian species.
- Whenever feasible and when site conditions permit, trees should be planted in clumps together or with existing trees to provide larger areas of suitable nesting habitat and to create a natural buffer between nest trees and adjacent development (if plantings occur on the development site).
- Whenever feasible, plantings on the site should occur closest to suitable foraging habitat outside the UDA.

Trees planted in the HCP/NCCP preserves or other approved offsite location will occur within the known range of Swainson's hawk in the inventory area and as close as possible to high-quality foraging habitat.

Mitigation Measure CL-1: Prior to grading permit issuance, the developer shall submit plans to the Community Development Department for review and approval which indicate (via notation on the improvement plans) that if historic and/or cultural resources are encountered during site grading or other site work, all such work shall be halted immediately within the area of discovery and the developer shall immediately notify the Community Development Department of the discovery. In such case, the developer shall be required, at their own expense, to retain the services of a qualified archaeologist for the purpose of recording, protecting, or curating the discovery as appropriate. The archaeologist shall be required to submit to the Community Development Department for review and approval a report of the findings and method of curation or protection of the resources. Further grading or site work within the area of discovery would not be

allowed until the preceding work has occurred.

Mitigation Measure CL-2: Pursuant to State Health and Safety Code §7050.5 (c) State Public Resources Code §5097.98, if human bone or bone of unknown origin is found during construction, all work shall stop in the vicinity of the find and the Contra Costa County Coroner shall be contacted immediately. If the remains are determined to be Native American, the coroner shall notify the Native American Heritage Commission who shall notify the person believed to be the most likely descendant. The most likely descendant shall work with the contractor to develop a program for re-interment of the human remains and any associated artifacts. Additional work is not to take place within the immediate vicinity of the find until the identified appropriate actions have been implemented.

Mitigation Measure GEO-1: All project buildings shall be designed in conformance with the current edition of the California Building Code (CBC).

Mitigation Measure GEO-2: All grading and foundation plans for the development shall be designed by a Civil and Structural Engineer and reviewed and approved by the Director of Public Works/City Engineer, Chief Building Official, and a qualified Geotechnical Engineer prior to issuance of grading and building permits to ensure that all geotechnical recommendations specified in the geotechnical report are properly incorporated and utilized in the project design.

Mitigation Measure GEO-3: Prior to grading permit issuance, the Permittee shall submit a final geotechnical evaluation of the project site that analyzes soil stability including soil expansion, and the potential for lateral spreading, subsidence, liquefaction or collapse. The report shall identify any on site soil and seismic hazards and provide design recommendations for onsite soil and seismic conditions. The geotechnical evaluation shall be reviewed and approved by the Director of Public Works/City Engineer, Chief Building Official, and a qualified Geotechnical Engineer to ensure that all geotechnical recommendations specified in the geotechnical report are properly incorporated and utilized in the project design.

Mitigation Measure GEO-4: Prior to grading permit issuance, the Permittee shall submit a final grading plan to the Director of Public Works/City Engineer for review and approval. If the grading plan differs significantly from the proposed grading illustrated on the approved project plans, plans that are consistent with the new revised grading plan shall be provided for review and approval by the Director of Public Works/City Engineer.

Mitigation Measure GEO-5: *Any Permittee for a grading permit shall submit an erosion control plan to the Director of Public Works/City Engineer for review and approval. The*

plan shall identify protective measures to be taken during construction, supplemental measures to be taken during the rainy season, the sequenced timing of grading and construction, and subsequent revegetation and landscaping work to ensure water quality in creeks and tributaries in the General Plan Area is not degraded from its present level. All protective measures shall be shown on the grading plans and specify the entity responsible for completing and/or monitoring the measure and include the circumstances and/or timing for implementation.

Mitigation Measure GEO-6: Grading, soil disturbance, or compaction shall not occur during periods of rain or on ground that contains freestanding water. Soil that has been soaked and wetted by rain or any other cause shall not be compacted until completely drained and until the moisture content is within the limit approved by a Soils Engineer. Approval by a Soils Engineer shall be obtained prior to the continuance of grading operations. Confirmation of this approval shall be provided to the Public Works Department prior to commencement of grading.

Mitigation Measure HAZ-1: Prior to initiation of any ground disturbance activities, evenly distributed soil samples shall be conducted throughout the proposed project property for analysis of pesticides and heavy metals. The samples shall be submitted for laboratory analysis of pesticides and heavy metals per DTSC and EPA protocols. The results of the soil sampling shall be submitted to the City of Brentwood. If elevated levels of pesticides or heavy metals are detected during the laboratory analysis of the soils, a soil cleanup and remediation plan shall be prepared and implemented prior to the commencement of grading activities.

Mitigation Measure HYD-1: Prior to issuance of grading permits, the contractor shall prepare a Storm Water Pollution Prevention Plan (SWPPP). The Developer shall file the Notice of Intent (NOI) and associated fee to the SWRCB. The SWPPP shall serve as the framework for identification, assignment, and implementation of BMPs. The contractor shall implement BMPs to reduce pollutants in stormwater discharges to the maximum extent practicable. The SWPPP shall be submitted to the Director of Public Works/City Engineer for review and approval and shall remain on the project site during all phases of construction. Following implementation of the SWPPP, the contractor shall subsequently demonstrate the SWPPP's effectiveness and provide for necessary and appropriate revisions, modifications, and improvements to reduce pollutants in stormwater discharges to the maximum extent practicable.

Mitigation Measure HYD-2: Prior to the completion of construction, the Permittee shall prepare and submit, for the City's review, an acceptable Stormwater Control Operation and Maintenance Plan. In addition, prior to the permanent occupancy of the site, the Permittee shall be responsible for executing

a Stormwater Management Facilities Operation and Maintenance Agreement and Right of Entry in the form provided by the City of Brentwood. The Permittee shall accept the responsibility for maintenance of stormwater management facilities until such responsibility is transferred to another entity.

The Permittee shall submit, with the application of building permits, a draft Stormwater Facilities and Maintenance Plan, including detailed maintenance requirements and a maintenance schedule for the review and approval by the Director of Public Works/City Engineer. Typical routine maintenance consists of the following:

- Limit the use of fertilizers and/or pesticides. Mosquito larvicides shall be applied only when absolutely necessary.
- Replace and amend plants and soils as necessary to insure the planters are effective and attractive. Plants must remain healthy and trimmed if overgrown. Soils must be maintained to efficiently filter the storm water.
- Visually inspect for ponding water to ensure that filtration is occurring.
- After all major storm events remove bubble-up risers for obstructions and replace if necessary.
- Continue general landscape maintenance, including pruning and cleanup throughout the year.
- Excavate, clean and or replace filter media (sand, gravel, topsoil) to insure adequate infiltration rate (annually or as needed).

Mitigation Measure HYD-3: Design of all on-site and/or downstream drainage facilities shall meet with the approval of both the Director of Public Works/City Engineer and the Contra Costa County Flood Control and Water Conservation District prior to the issuance of grading permits.

Mitigation Measure HYD-4: Contra Costa County Flood Control and Water Conservation District drainage fees for the Drainage Area shall be paid prior to issuance of grading permits to the satisfaction of the City Engineer.

Mitigation Measure HYD-5: The Permittee/Developer shall ensure that the project site shall drain into a street, public drain, or approved private drain, in such a manner that un-drained depressions shall not occur. Satisfaction of this measure shall be subject to the approval of the City Engineer.

Mitigation Measure HYD-6: The improvement plans shall indicate concentrated drainage flows not crossing sidewalks or roadways for the review and approval of the City Engineer prior to the issuance of grading permits.