

SUBJECT: An application for a Vesting Tentative Subdivision Map, Design Review, Density Bonus request, and request for associated waivers including the City’s General Plan Density Transition Policy

DEPARTMENT: Community Development

STAFF: Alexis Morris, Community Development Director
Sarah Yuwiler, Associated Planner

TITLE/RECOMMENDATION

Adopt three separate resolutions: (1) approving a Mitigated Negative Declaration (SCH# 20240501112) and Mitigation Monitoring and Reporting Program and Errata Sheet; (2) approving the Vesting Tentative Subdivision Map No. 9649 (VTSM 9649) for the subdivision of 9.6-acres in 34 single-family residential lots; and (3) approving Design Review No 23-012 (DR 23-012) for the Orchard Grove North project, as conditioned.

The project includes a Vesting Tentative Subdivision Map (VTSM 9649) for the subdivision of 9.6-acres into 34 parcels (including 30 single-family detached homes and four affordable duets), one on-site bioretention parcel, and a designated 0.4-acre remainder parcel. The project also includes a density bonus application to allow for a 17.2% increase in density (3.54 units per acre) pursuant to the [State Density Bonus Law \(SDBL\)](#) and waivers including the General Plan density transition policy, as well as a design review application (DR 23-012) for the homes to be constructed on the 34 lots. The project is located at 1901 Lone Oak Road, just south of Grant Street and directly east of Adams Lane (APN 016-040-004).

The City prepared a mitigated negative declaration and Errata Sheet for this project in accordance with the requirements of the California Environmental Quality Act (CEQA, codified at Public Resources Code §§ 21000, et seq., and as further governed by the State CEQA Guidelines, found at 14 CCR §§ 15000, et seq.). Several potentially significant impacts are identified; however, mitigation measures are incorporated to reduce those impacts to less than significant levels. All mitigation measures are included by reference as conditions of approval.



FISCAL IMPACT

The applicant, Shea Homes, has paid a total of \$82,089.67 to process the application. These fees fully cover staff's time spent processing the application, including preparation of the IS/MND.

BACKGROUND

The 9.6-acre project site is located at 1901 Lone Oak Road (APN 016-040-004) on the east side of Adams Lane. The site is currently developed with one single-family home at the southeast corner of the property, in which the property owner currently resides, and will remain as a 0.4-acre remainder parcel with this subdivision. The applicant, Shea Homes, is requesting the approval of an Initial Study/Mitigated Negative Declaration (IS/MND) and Errata Sheet, a Mitigation Monitoring and Reporting Plan (MMRP), a Vesting Tentative Subdivision Map (VTSM 9649), and Design Review (DR 23-012) for a new 34-unit single-family development including four (4) affordable duet units, one on-site bioretention parcel, and a designated 0.4-acre remainder parcel.

The project also includes a density bonus application to allow for a 17.2% increase in density pursuant to the [State Density Bonus Law \(SDBL\)](#). The affordable units include two units affordable to Very Low Income households and two units affordable to Moderate Income households. Two of the duets have lot sizes of 3,867 square feet and the other two duets are located on 4,532 square foot lots. The remaining 30 lots range in size, with a majority of the lots being approximately 8,000 square feet and the lots around the perimeter of the project being slightly larger (up to 13,389 square feet).

The project was scheduled to be heard on the City Council's July 23, 2024 meeting date; however, the day of the meeting, the applicant requested a continuance to a date uncertain in order to resolve an undisclosed item with the existing property owner. The applicant has completed these discussions and has indicated that the project is ready to move forward. These communications did not result in any changes to the project.



2023 Aerial Photo of Project Site

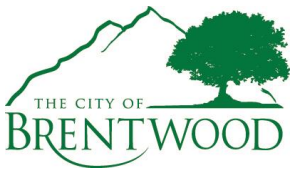
APPLICABLE STATE HOUSING LAW

The State has passed numerous housing laws to address the housing shortage and limit local governments' ability to deny housing projects that comply with the General Plan and/or zoning regulations. Several laws apply to the project that affect the City's processing of the application in that they limit the City's ability to respond to issues about density, development standards, and design standards. Although there are a variety of housing laws that apply to this project, the most relevant is the [\(Government Code §§ 65915-65918\)](#).

State Density Bonus Law (SDBL)

The State Density Bonus Law was enacted in 1979 to address the shortage of affordable housing in California. Under the SDBL, an applicant may obtain additional density, as well as a relaxation or elimination of applicable development standards (i.e., concessions and waivers) in exchange for providing certain levels of affordable housing. The density bonus is set on a sliding scale, based on the percentage of affordable units provided.

The project site is within the General Plan Residential - Very Low Density (R-VLD) land use designation, which allows for a density range from 1.1 to 3.0 dwelling units



per acre. The base density for the project is 3 units/acre on 9.6 acres, which would allow a total of 29 units. Here, the applicant is proposing to provide six percent (6%) of the units for very-low income households, which meets the State’s Density Bonus Law threshold for a density bonus ([Government Code § 65915 \(f\)\(2\)\(B\)\(1\)\(b\)](#)), which requires a minimum of 5% very-low income units. The State’s sliding scale allows for a 22.5% density bonus for projects that offer 6% very low income units, which would allow the project to construct a total of 36 units. However, the applicant is not proposing to seek the full bonus allowed by law and is proposing a 17.2% density bonus (3.54 units per acre for a total of 34 units), as illustrated in the table below.

Table 1: Density Bonus

Density	Units
Base Density	9.6 acres x 3 units= 29 units
Proposed Density Bonus	29 units x 17.2%= 4.98 + 29 units= <u>34 units</u>
Max Allowed Density Bonus	29 units x 22.5%=6.52 + 29 units= <u>36 units</u>

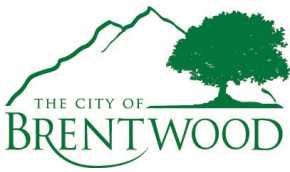
*Density calculations resulting in fractional units are required to be rounded up to the next whole number

When a developer sets aside a qualifying percentage of units in a housing development for affordable units, the City has no discretion with regard to the density bonus award; as long as the project provides the requisite affordability, the formulaic bonus must be awarded. The applicant may also request:

1. **Incentives/concessions.** The SDBL treats the terms ‘incentives’ and ‘concessions’ interchangeably and defines these as:
 - a reduction in site development standards or a modification of zoning code or architectural design requirements, such as a reduction in setback or minimum square footage requirements; or
 - approval of mixed use zoning; or
 - other regulatory incentives or concessions which actually result in identifiable and actual cost reductions.

Though the project would qualify for one such concession, none have been requested.

2. **Waivers or reduction.** The applicant may request waiver or reduction of development standards that would preclude development of the project as designed at the increased density. In addition to other waivers/reductions requested through the density bonus provisions, and outlined in further detail in the attached Planning Commission staff report and in the attached VTSM resolution, the applicant is requesting a waiver of the City’s General Plan



Density Transition Policy. Under the SDBL, the City may only deny a requested waiver/reduction if doing so would waive or reduce development standards that would cause a public health or safety problem, cause an environmental problem, harm historical property, or would be contrary to law. Cities bear the burden of proof for the denial of any requested incentive, concession, or waiver/reduction not given.

3. **Parking reductions.** Finally, the applicant may request the reduction of parking standards.

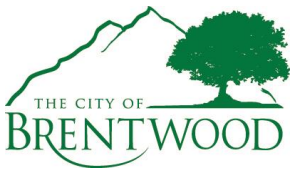
Typically, the Planning Commission would be the legislative body approving or denying a project of this type. However, the City's General Plan specifically requires approval by the City Council for modifications/waivers of the Density Transition Policy. As such, the applicant can waive the Density Transition Policy under SDBL but cannot waive the process. Therefore, according to the required process, the City Council will review the entirety of the project, including the, MND, vesting tentative map, density bonus, density transition and design review. The City Council's action will be final. A detailed analysis of the project can be found starting on page 4 of the July 2, 2024, Planning Commission staff report, which is attached as Attachment 11 for reference.

SUMMARY

General Plan & Zoning Consistency

Overall, the project is consistent with the General Plan, with the exception of the Density Transition Policy, and will help to provide a broad spectrum of housing types. The proposed affordable housing complies with the requirements of the City's Affordable Housing Ordinance and helps to achieve multiple Housing Element goals and policies and assists in meeting the City's overall Regional Housing Needs Assessment (RHNA). The project complies with the Affordable Ordinance by providing affordable units in accordance with the City's adopted affordable housing ordinance that was in effect at the time the project was deemed complete and per the Brentwood Municipal Code (BMC 17.725.003D), projects of twenty-seven to thirty-four units shall contain one low-income unit, two moderate-income units, and one very low-income unit. Pursuant to the City's ordinance and consistent with definitions of the state law, a very low-income unit qualifies as a low income unit and therefore the project complies by providing two very low-income units and two moderate-income units. In addition, the project developer would be required to enter into an Affordable Housing Agreement with the City prior to final map approval.

A detailed analysis of the project's General Plan and Housing Element consistency can be found starting on page 3 in the attached Planning Commission staff report (Attachment 11).

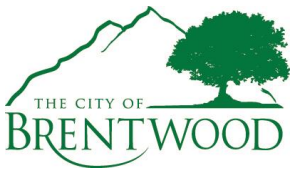


**CITY COUNCIL AGENDA ITEM NO. G.3
08/13/2024**

The project includes a number of requested waivers of the development standards for the R-1-E zoning district. These are summarized in the table below and are explained more in detail in the Planning Commission staff report.

Table 2: Waivers/Reductions Requested

	R-1-E Development Standards	Proposed	Complies?
Minimum Lot Size	14,500 sf 10,000 sf (w/ CUP) 3,000 sf (affordable unit)	8,000 sf 3,750 sf (affordable units)	No, reduction requested.
Minimum Lot Width	100 ft	80 ft 40 ft (affordable units)	No, reduction requested.
Minimum Front Yard Setback	20 ft	15 ft to living space 20 ft to garage	No, reduction requested.
Minimum Side Yard Setback	10 ft, sum of both sides 25 ft	7 ft, sum of both sides 20 ft, 0 ft minimum for duet on lot line that splits the building	No, reduction requested.
Minimum Street Side for Corner Lots	15 ft	15 ft	Yes
Minimum Rear Yard Setback	30 ft	15 ft	No, reduction requested.
Minimum Off-Street Parking Spaces	2 spaces	2 spaces	Yes
Maximum Building Height	30 ft	27 ft 7 in (affordable unit)	Yes



	R-1-E Development Standards	Proposed	Complies?
		29 ft 7 in	
Density	2.0 units /acre (permitted) 3.0 units/acre (conditionally permitted)	3.54 units / acre	SDBL allows for an increase in density.

Vesting Tentative Subdivision Map

The subdivision consists of a rectangular-shaped 9.6-acre parcel, excluding the 0.4-acre remainder parcel at the southeast corner of the project site. The proposed vesting tentative subdivision map includes 34 single-family lots, a bioretention lot (Parcel A), and ties in to the previously approved looped public street for the original Orchard Grove subdivision just to the south of the parcel, with access via two points along Adams Lane. Full right-of-way improvements would be constructed within the proposed new street, including utilities, curb, gutter, and a separated sidewalk with a landscape strip. A more detailed explanation can be found on page 18 in the attached Planning Commission staff report (Attachment 11).

Design Review

There are four home plans for the 30-market rate homes and two home plans for the 4- duet units. Each of the floor plans offer a unique configuration of massing, intended to create differentiation and variety on the streetscape, and provide buyers with distinct choices in lifestyle and use of space. In addition to the four floor plans, there are three distinctive elevation styles for each home plan, which include Early California/Spanish, Mediterranean Revival, and Craftsman. The master plotting plan shown below, depicts the variation of the different home plans and elevations to ensure that no two identical homes are located next to each other. A more detailed explanation can be found on page 19 in the attached Planning Commission staff report (Attachment 11) for more information.



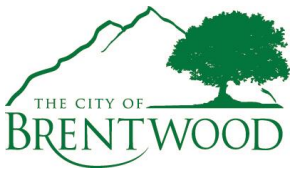
Master Plotting Plan

PLANNING COMMISSION MEETING OF JULY 2, 2024

On July 2, 2024, the Planning Commission held a public hearing on the proposed Orchard Grove North project. Staff did not receive any public comments on the project prior to the meeting. After presentation of the staff report and comments from the applicant, the Planning Commission opened public comment and took testimony from two members of the public who expressed concerns regarding the absence of a park within the proposed subdivision, as well as concerns about the location of the duet units and how vehicle miles traveled (VMT) is calculated.

After closing the public hearing, the Planning Commission discussed with staff the following topics:

1. **Park:** The Commission had concerns that a park is not proposed as part of the project. Staff explained that there is no park included or required for this project for three reasons: (1) the unit count of the project; at 34 units, the project is allowed to pay a fee in lieu of constructing a park, per [Brentwood Municipal Code § 16.150.030](#); (2) even if there were to be a park within the project, due to the project's size, the park would be approximately 0.54-acres, which would not provide a space large enough to accommodate usable amenities that are most important to parks; and (3) the project's proximity to nearby parks, including Blue Goose Loop Park, directly across Adams Lane, which does not warrant the need for a park within this development, per the considerations included in the City's Parks, Trails, and Recreation Master Plan Update (2019): "In implementing these policies when determining the park dedication requirements of new development, the Parks and Recreation Department will analyze and consider the following:



CITY COUNCIL AGENDA ITEM NO. G.3
08/13/2024

- Proximity of the new development to existing neighborhood parks (ie 1/4-mile or 1/2- mile) to potentially satisfy the neighborhood park needs of the residents of the new development with an existing neighborhood park” (page 117).

2. **Safety:** Another concern brought up by the Commission was whether residents could safely cross the street to get to the existing Blue Goose Park. The Commission discussed the 25 MPH speed limit on Adams Lane and concerns with pedestrians jaywalking across the street. Staff explained that the previously approved Orchard Grove subdivision to the south was conditioned to install a mid-block crosswalk with flashing beacons on Adams Lane to ensure pedestrian safety when crossing the street. Additionally, the intersection on O’Hara Avenue and Adams Lane, as well as the intersection of Grant Street and Adams Lane, are both signalized with crosswalks; therefore, there are three safe access points for pedestrians to cross the street to access the park.
3. **VMT/Traffic Concern:** The Commission discussed concerns regarding traffic and the methodology of VMT (vehicle miles traveled). The City’s Traffic Engineer and the CEQA consultant explained that the project was reviewed under the Contra Costa County Transportation Authority VMT model, which is required since the City does not have its own model. The project does not result in a significant impact in regards to VMT and therefore, does not trigger any further CEQA review. Additionally, the Commission asked if both Orchard Grove (the previously approved project on the adjacent parcel to the south) and Orchard Grove North would have come in as one combined project, whether a traffic study would have been required or if the VMT analysis would have yielded higher numbers. Staff and the CEQA consultant responded and explained that the threshold for a traffic study is 100 peak hour trips and would not have been reached and the number of units would not have changed the VMT impacts.
4. **Wall along the Northern Property Line:** The Commission broached the concept of replacing the proposed six-foot enhanced good-neighbor fence along the northern property line of the project with a six-foot masonry wall to provide additional privacy for the new homes, given that the Church and Vineyard Academy are the adjacent neighbors. The Commission discussed this concept with the applicant, and the applicant agreed that a wall would be a good addition and stated he would be comfortable with this modification, which was added as a condition of approval.



5. **Single-Story Home:** The Commission discussed requiring a single-story home to be adjacent to the existing home on Lone Oak Road. The proposed plotting plan currently depicts a single-story home in this location; however, the Commission added a condition of approval to ensure that through the final map process and plotting plan, the home on this lot remains single-story.

6. **Architecture:** The Commission discussed the architecture of the homes and had concerns; specifically, the 'large blank walls' of the two-story architecture on the right side of the Plan 4. The Commission further conditioned the project to provide a decorative trim element to break up the massing between the first and second floors.

7. **Landscape and Defensible Space:** A Commissioner raised concerns regarding defensible space around the homes. There was a concern that homes may not be able to obtain insurance if there is not sufficient defensible space around the homes, particularly related to the proposed front yard landscaping. The Commission ultimately wanted to ensure that homes would be able to procure insurance, and therefore added a condition of approval to require a minimum of five-feet of defensible space around the homes. Additionally, the Commission discussed the concern that the proposed trees may cause the sidewalks to buckle over time. The City's Parks Planner explained that the installation of root barriers mitigates the chances of this happening. The Commission also added this as a condition of approval.

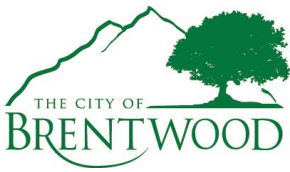
After deliberation, including the discussion mentioned above, the Planning Commission voted to recommend the City Council approve the vesting tentative subdivision map on a 3-1 vote and unanimously voted to recommend the City Council approve the resolutions for the MND and the Design Review applications with the following added conditions listed below.

Vesting Tentative Subdivision Map Added/Modified Conditions:

- COA #9: "Lot 31 shall be plotted with a single-story home."
- Modified COA #13: Added "Permittee shall install a masonry wall at a maximum height of seven feet along the northern boundary of the project site."

Design Review Added Conditions:

- COA #11: "Prior to building permit issuance, the applicant shall incorporate a decorative trim element to break up the first and second floor massing for the right elevation of Plan 4."



- COA #15: "The final landscape plans shall incorporate a minimum five-foot defensible space around the home (i.e. some form of hardscape), if feasible and not in conflict with any portion of the Brentwood Municipal Code."
- COA #16: "The final landscape plans shall incorporate root barrier protection for all trees to be installed."

CITY COUNCIL STRATEGIC INITIATIVE

Not applicable.

PREVIOUS ACTION

Previous Actions are included as Attachment 1.

DATE OF NOTICE

As the project was originally scheduled to be heard at the July 23, 2024 City Council meeting, the City of Brentwood published a public hearing notice in the Brentwood Press and mailed it to all property owners within 300 feet of the site on July 12, 2024.

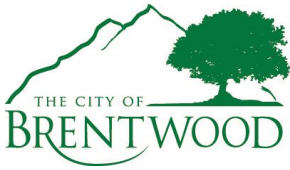
Given that the project was continued from the July 23, 2023 City Council meeting to a date uncertain, the City re-published a public hearing notice in the Brentwood Press and mailed it to all property owners within 300 feet of the site on August 2, 2024.

ENVIRONMENTAL DETERMINATION

The City prepared a mitigated negative declaration for this project in accordance with the requirements of the California Environmental Quality Act (CEQA, codified at Public Resources Code 21000, et seq., and as further governed by the State CEQA Guidelines, found at 14 CCR 15000, et seq.). Several potentially significant impacts are identified; however, mitigation measures are incorporated to reduce those impacts to less than significant levels. All mitigation measures are also included by reference in the conditions of approval.

The public review period for the proposed IS/MND began on May 3, 2024, and ended on June 3, 2024. During this review period, staff received two comment letters (Attachment 10): one from the California Department of Toxic Substances Control and one from the Central Valley Regional Water Quality Control Board. These comments have been incorporated as conditions of approval as applicable and a response has been provided by the CEQA consultant included as Attachment 10.

The IS/MND, Mitigation Monitoring and Reporting Program (MMRP) may be reviewed by clicking on the link below and scrolling to "Orchard Grove North:"



<https://www.brentwoodca.gov/government/community-development/planning/ceqa-documents>

The original publication of the IS/MND inadvertently included the Archaeological Assessment Report for Orchard Grove, the previously-approved project located directly south of the current project site. The report was cited in Section V. "Cultural Resources" of the IS/MND (pages 40 and 41). Therefore, errata changes were provided (Attachment 13) with corrected citations for the proper Archaeological Assessment Report, along with the report itself. These errata changes do not change any of the IS/MND significance determinations, nor otherwise impact other sections of the IS/MND. The changes are very minor and merely clarify the existing analysis in the IS/MND with references to the correct report. Recirculation of the IS/MND is therefore not warranted, as the documents have not been substantially revised per 14 CCR Section 15073.5(a).

ATTACHMENT(S)

1. Previous Action
2. MND Council Resolution
3. VTSM Council Resolution
4. Design Review Council Resolution
5. Architectural Project Plans
6. VTSM Plans
7. Landscape Plans
8. Project Description
9. Interim Objective Design Standards
10. MND Public Comments
11. CEQA Comment Letter Response
12. July 2, 2024 Planning Commission staff report (without attachments)
13. CEQA Errata Sheet