

**CITY COUNCIL RESOLUTION NO. 2024-XXX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD APPROVING A VESTING TENTATIVE SUBDIVISION MAP (VTSM 9649) TO SUBDIVIDE ONE 9.6-ACRE PARCEL TO CREATE 34 SINGLE-FAMILY RESIDENTIAL LOTS, A REMAINDER 0.4-ACRE PARCEL, ONE BIO-RETENTION BASIN, AND OTHER RELATED IMPROVEMENTS, INCLUDING A DENSITY BONUS RESULTING IN AN OVERALL PROJECT DENSITY OF 3.54 UNITS PER GROSS ACRE AND ASSOCIATED WAIVERS INCLUDING A DENSITY TRANSITION WAIVER FOR ORCHARD GROVE NORTH, LOCATED EAST OF ADAMS LANE, DIRECTLY SOUTH OF THE ROCK CHURCH AND VINEYARD ACADEMY (APN 016-040-004).**

**WHEREAS**, Shea Homes (the "Applicant"), submitted an application to the City of Brentwood for certain permits and approvals, including a Vesting Tentative Subdivision Map (VTSM 9649) and Design Review (DR 23-012), to develop its proposed Orchard Grove North Project, a residential subdivision project proposed to be developed on a 9.6-acre site located east of Adams Lane, directly south of The Rock Church and Vineyard Academy (APN 016-040-004) (the "Project Site"); and

**WHEREAS**, collectively, Vesting Tentative Subdivision Map (VTSM 9649), which includes a request for a density bonus and associated waivers under the State Density Bonus Law, and Design Review (DR 23-012) constitute the "Project;" and

**WHEREAS**, the Project application has been referred to various public utility companies, public districts, and pertinent departments for review and recommendations; 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 May 3, 2024 in accordance with City policies and Government Code Section 65090, and a public hearing notice sign was posted on the site during the same timeframe; and

**WHEREAS**, at the June 4, 2024 Planning Commission meeting, staff was granted a request that the item be continued to the July 2, 2024 meeting due to a clerical error in the MND; and

**WHEREAS**, the Planning Commission held a public hearing on this project at its regular meeting of July 2, 2024, and considered, among other things, the staff report, supporting documents, public testimony, and all appropriate information submitted with the proposed Project; and

**WHEREAS**, on July 2, 2024 the Planning Commission voted to approve Planning Commission Resolution No. 24-029, recommending the City Council approve Vesting Tentative Subdivision Map (VTSM 9649); 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 July 12, 2024 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**, on July 22, 2024, prior to the start of the City Council meeting, the applicant requested a continuance, to a date uncertain, in order to resolve an undisclosed item with the existing property owner; and

**WHEREAS**, on July 23, 2024, the City Council voted to continue consideration of this matter to a date uncertain; and

**WHEREAS**, on August 2, 2024, the City re-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 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 held a public hearing on this project at its regular meeting of August 13, 2024, and considered, among other things, the staff report, supporting documents, public testimony, and all appropriate information submitted with the proposed Project; and

**WHEREAS**, the City prepared an Initial Study and Mitigated Negative Declaration (IS/MND) SCH#2024050112 for this project in accordance with the CEQA Guidelines, and at its August 13, 2024 meeting, the City Council adopted said IS/MND, including its accompanying Mitigation Monitoring and Reporting Plan and Errata Sheet, through adoption of Resolution No. 2024- \_\_\_\_.

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

- A. Hereby finds that with respect to Brentwood Municipal Code Section 16.050.040.B and Government Code section 66474:
  1. *That the proposed map is consistent with the community development plan and any applicable specific plans.*

The City's 2014 General Plan and 2023 Housing Element include goals and policies to ensure that adequate housing needs are met and that adequate housing opportunities are available and affordable to all residents of Brentwood. The proposed project meets the intent of the goals and policies established by the General Plan and Housing Element as follows:

- a. Goal LU 1. ("Establish a land use pattern in Brentwood that provides for a diverse, self-sufficient community that offers a

broad spectrum of job opportunities, housing types, community facilities, and commercial services.”) The project proposes a land use pattern that provides for a diverse and self-sufficient community that offers a broad spectrum of housing by providing 30 detached single-family market rate homes and four attached affordable duet units.

- b. Goal H-1. (“Facilitate a diversity of housing opportunities to enhance the City's living environment and to satisfy the shelter needs of all Brentwood residents.”) The project provides a diversity of housing opportunities by providing 30 detached single-family market rate homes and four attached affordable duet units. The four affordable units include a variety of affordability levels. Two of the units are affordable to households qualifying as Very Low Income and two of the units affordable to households qualifying as Moderate Income.
- c. Goal H-2 (“Encourage housing that is affordable to all socio-economic segments of Brentwood’s population.”) The project includes four affordable units with varying levels of affordability. Two units are affordable to moderate income households and two for very low income households for the Brentwood population.
- d. Action H 2a (“Compliance with Affordable Housing Ordinance: All new residential projects, shall provide affordable housing units in accordance with the City’s adopted affordable housing ordinance Chapter 17.725. The City will continue to review and monitor the ongoing effectiveness of the City’s affordable housing ordinance to ensure developers provide a certain percentage of new homes to qualifying households at an affordable cost for the longest feasible time. The ordinance shall also continue to include a list of automatically available development incentives to encourage the construction of the inclusionary units as well as provide the details for available alternatives to satisfy inclusionary housing obligations.”) 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.

- e. Action H 2i (“Density Bonus Ordinance: Assembly Bill 2345, Chapter 197 Statutes 2020 requires a density bonus of up to 50 percent when a qualifying percentage of Below Market Rate (BMR) units are proposed.”) The project site is within the General Plan Residential Very Low Density (R-VLD) land use designation, which provides for a density range from 1.1 to 3.0 dwelling units per acre. Pursuant to the State Density Bonus law, an applicant may obtain additional density without requiring a rezone or General Plan land use designation change, 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 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 base density bonus (Government Code § 65915(f)(2)(B)(1)(b)). The State’s sliding scale allows for a 22.5% density bonus for projects that offer 6% very low income units. Here, the applicant is proposing a 17.2% density bonus. The 34 units proposed units results in an overall density of 3.54 dwelling units per acre.
- f. Goal H3 (“Equitable Distribution of affordable housing: Encourage an equitable distribution of housing for all economic groups throughout the community.”) By providing a mixture of market rate, moderate, and very low income units, the project achieves and maintains an equitable distribution of housing types available to all economic groups. The Regional Housing Needs Allocation (RHNA) for Brentwood for the 6th Cycle requires planning for the development of 1,522 new affordable housing units, including 402 units for extremely low/very low-income households and 641 for above moderate-income for the next 2023-2031 housing element cycle. The proposed project would contribute 4 affordable units and 30 above moderate units that are all anticipated to be counted toward the 2023-2031 cycle consistent with the provisions in the Housing Element. Additionally, the two sets of duet units will be spread throughout the proposed subdivision.
- g. Action H 3a (“Affordable Housing Design and Distribution: All affordable units within a mixed-income subdivision shall be harmonious and comparable to the market-rate units in exterior design, quality of materials and architectural elements, and overall construction quality. Affordable units may have different interior amenities and/or slightly different dimension than market rate units in a residential development. Affordable units in a mixed-income development shall be dispersed throughout the residential development so as to prevent the concentration of affordable units.”) The duet housing product proposed for the

affordable units provides for a four-bedroom, two-story home with a two-car garage. This home design is comparable in bedroom and bathroom count, garage configuration, and floor plan layout with the market rate homes, although of smaller total square footage as is allowed under Brentwood affordable housing ordinance. The design and distribution of the affordable units are comparable to the market rate units in exterior design, materials, architectural elements, and overall construction quality, as well as the number of bedroom and proportion of bedroom types. The affordable units are also dispersed throughout the residential development.

- h. Goal H 4 (“Housing Opportunities: Promote equal housing opportunities for all residents of Brentwood.”) The project provides 30 market rate homes and 4 affordable units; two affordable to very low-income households and two affordable to moderate-income households. The proposed project would be anticipated to contribute four affordable units to the 2023-2031 allocation cycle consistent with the provisions in the Housing Element.

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

The Project Site is not within any adopted or proposed specific plan area. The design and improvements of the proposed subdivision are consistent with the General Plan, including with those goals and actions set forth above, as well as the following:

- a. Policy CIR 1-2. (“Ensure that the City’s circulation network is a well-connected system of streets, roads, highways, sidewalks, and paths that effectively accommodates vehicular and non-vehicular traffic in a manner that considers the context of surrounding land uses and the needs of all roadway users.”) Access to the site would be via two existing (currently under construction) access points off Adams Lane, which borders the property to the west, and the subdivision will tie into the public loop street that is also under construction for the Orchard Grove project (first phase). The two projects will connect for an overall design of one continuous project. This design ensures the subdivision is consistent with the community and its development and provides well-connected streets within the development. The project’s internal street is approximately 56 feet in width with sidewalks connecting to the existing sidewalk on Adams Lane. Adams Lane will be widened along the project frontage to accommodate through traffic and new turning movements into and out of the proposed project. Full right-of way improvements

would be constructed within the street, including utilities, curb, gutter, and a separated sidewalk with a landscape strip.

- b. Policy LU 1-4 (“Require new development to occur in a logical and orderly manner, focusing growth on infill locations and areas designated for urbanization on the Land Use Map and be subject to the ability to provide urban services, including paying for any needed extension of services.”) The proposed project will connect with the previously approved Orchard Grove project located directly to the south, for an overall design of one continuous project ensuring that development occurs in a logical and orderly manner. The proposed project is considered an infill site as it is within the City limits, in a developed area, and will connect to adjacent existing infrastructure. The project involves the construction of the necessary infrastructure to serve the proposed neighborhood and would include plans to connect to existing City infrastructure to provide water and sewer to the site. Storm water quality for the site will be achieved with a bio-retention basin constructed at the northeast corner of the site pursuant to Contra Costa County and State Water Resources Control Board regulations.
- c. Policy LU 1-5 (“Encourage new development to be contiguous to existing development, whenever possible.”) Full right-of-way improvements would be constructed within the street, including utilities, curb, gutter, and a separated sidewalk with a landscape strip. The subdivision would tie into the previously approved Orchard Grove subdivision directly to the south and would be oriented and designed to match and be consistent to appear as one contiguous subdivision, thus creating a fabric of viable and interrelated neighborhoods.
- d. Finally, the project complies with other applicable elements of the General Plan as described in finding A(1) above.

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

The site is physically suitable for the type of development proposed by VTSM No. 9649 inasmuch as the discharge of waste from the proposed subdivision will not result in violation of existing requirements prescribed by the California Regional Water Quality Control Board because the Permittee will be required to make the necessary improvements to tie in to the City’s stormwater and sewer facilities, as well as treat all stormwater runoff, and the design of the subdivision and the associated improvements is not likely to cause serious public health problems due to the fact that this project will be required to construct all of the necessary improvements needed to ensure a safe and healthy development, including all Federal, State, and local regulations.

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

The site is physically suitable for the density of development proposed, in that it complies with the density allowed per the State Density Bonus Law. The project site is zoned R-1-E, which allows for up to 3.0 units per acre and the General Plan land use designation is R-VLD which allows for 1.1 to 3.0 units per acre. Therefore, the proposed 9.6-acre project is allowed to build up to the base density of 29 dwelling units (§ 65915 (o)(4)). The applicant is invoking the State Density Bonus Law, a state mandate which allows for a “density bonus”, an amount over and above the allowable residential density when a project includes an affordability component. Pursuant to the State Density Bonus Law, 34 units are proposed, which will result in a density of 3.54 dwelling units per acre.

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 was prepared with respect to the project and a finding was made pursuant to subdivision (c) of Section 21081 of the Public Resources Code that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the Environmental Impact Report.*

The design of the subdivision and the associated improvements have been analyzed for their impacts on the environment through the preparation of an initial study/mitigated negative declaration (IS/MND) and a Mitigation Monitoring and Reporting Program, which includes feasible mitigation measures to ensure that any impacts identified as potentially significant in the IS/MND will be reduced to a less than significant level.

6. *That the design of the subdivision or type of improvements is not likely to cause serious public health problems.*

The design of the subdivision and the type of improvements proposed are not likely to cause serious public health problems due to the fact that this Project includes proposed improvements necessary to ensure a safe and healthy development, including adequate wastewater and potable water infrastructure, streets that meet the City’s specifications, street lighting, and compliance with Federal, State, and local regulations designed to protect public health.

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.*

The design of the subdivision and the associated improvements will not conflict with any easements acquired by the public at large for access

through or use of property within the proposed subdivision as alternative access, utility, and irrigation facilities will be constructed, enabling continued service to properties serviced by existing easements. In addition, no easements have been acquired by the public at large across this site.

B. Hereby finds that with respect to the density bonus requested by the Permittee pursuant to Brentwood Municipal Code Chapter 17.720 and Government Code §§ 65915-65918 (the "Density Bonus law"):

1. *Qualification.* The proposed project is proposing to provide at least six percent (6%) of the units for very-low income households, which meets the State's Density Bonus Law threshold for a base density bonus (Government Code § 65915 (f)(2)(B)(1)(b)). The Project site is subject to a maximum density of 3.0 units per acre per the zoning requirements, and General Plan land use designation with a density range of 1.1-3.0 units per gross acre. The 9.6-acre Project proposes to include 30 market rate units, 2 units affordable to very-low income households, and 2 units affordable to moderate-income households. The Planning Commission reviewed the project's eligibility and recommended the City Council grant the requested 17.2% increase in density, resulting in a total Project density of 3.54 units per gross acre. The City Council has reviewed the project's eligibility for the requested waivers and finds that the Project qualifies for such waivers.
2. *Satisfaction of requirements.* The Project shall, by incorporation of the conditions set forth herein, comply with all requirements of Brentwood Municipal Code Chapter 17.720 and the Density Bonus law.
3. *Requested concession.* The provision of six percent (6%) of the units for very-low income households, meets the State's Density Bonus Law threshold for a base density bonus (Government Code § 65915 (f)(2)(B)(1)(b)). The applicant has not requested any concessions.
4. *Requested waivers.* The Project has requested the following waivers. Having determined that there are no grounds under the law for denying these requested waivers, the City Council hereby grants them for the reasons stated below:

	<b>General Plan Transition Policy</b>	<b>Waiver/Reduction Request</b>	<b>Analysis</b>
1	General Plan Density Transition Policy (LU-2a) requires minimum of 20,000 square foot lot sizes for certain lots along the exterior of the project.	Waive the General Plan Density Transition Policy requirements for lots on the northern & eastern edge of the site to instead range from 3,867 sq. ft. for the duet lots and between 10,429 sq. ft. to 13,389	The proposed development is subject to the General Plan Transition Policy LU-2a requiring 20,000 sf minimum lot sizes on the northern and eastern borders of the property. Requiring those lots to strictly adhere to this policy would physically preclude



		square feet for the detached single-family lots.	construction at the proposed density because it would result in elimination of multiple lots from the land plan.
	<b>R-1-E Zoning Standard</b>	<b>Waiver/Reduction Request</b>	<b>Analysis</b>
2	Minimum lot size is 14,500 sf; minimum lot size can be reduced to 10,000 sf for conditionally permitted uses; 3,000 sf for affordable units.	Minimum lot sizes for the market rate units reduced to 8,000 sf.	Larger lot sizes would physically preclude construction of the project at the proposed density. The applicant ran a sample land plan scenario showing the constraints of 10,000 sf minimum lot sizes on the project as a whole, the 20,000 sf minimum on the lots adjacent to existing large lot residential, and the various other land use controls. The maximum number of units possible on this site under those conditions would be 28 units, including the four affordable unit required per the City's Affordable Housing ordinance. The reduction to 8,000 sf minimum lot sizes for the market rate units is necessary to allow for construction of the 34-unit project.
3		Minimum lot sizes for the affordable units reduced to 3,750 sf.	The duet housing product proposed for the affordable units provides for a four-bedroom, two story home with a two car garage. This design is consistent with the bedroom and bathroom count, garage configuration, and floor plan layout with the market rate homes, with the exception of total square footage, as allowed under the City's Affordable Housing ordinance. A larger lot size requirement than what is proposed would impact the setbacks of the remaining homes on the block.

			<p>Without this waiver, the proposed project would be physically precluded from being constructed at the proposed density, even with the requested waivers for the market rate units.</p>
<p>4</p>	<p>Minimum lot width is 100 feet</p>	<p>Minimum lot width for the market rate units reduced from 100 feet wide to 80 feet wide as, measured at the rear lot line.</p>	<p>Increased lot widths would physically preclude construction of the project as larger lot widths would therefore lend to larger lot sizes and further would reduce the overall number of units possible on the site. The reduction in the minimum lot dimensions is necessary to allow for construction of the 34-unit project, while also allowing for a housing product consistent with the surrounding neighborhoods and economically feasible in the marketplace.</p>
<p>5</p>		<p>Minimum lot dimensions for duet units shall be reduced from 100 feet wide to 40 feet, wide as measured at the rear lot line.</p>	<p>The duet housing product proposed for the affordable units provides for a four bedroom, two story home with a two car garage. This home design is comparable in bedroom and bathroom count, garage configuration, and floor plan layout with the market rate homes, although of smaller total square footage, as is allowed under Brentwood affordable housing ordinance. The lot dimensions proposed are appropriate to the proposed architecture and provide for comfortable and livable setbacks. Lot dimensions any larger than what is proposed would not materially improve the duet homes and would significantly impact the lot sizes and setbacks of the remaining lots and homes in the</p>

			subdivision. Without this waiver, the proposed density project would be physically precluded from building the 34 units allowed, even with the other requested waivers for setbacks and lot sizes.
6	Minimum front yard setback is 20 feet.	Minimum front yard setbacks include an allowance to decrease the front setback to 15 feet to living space, yet maintain the existing 20 feet to the garage.	The requested waiver is to allow for a 15-foot front setback to any living space that may project forward of the garage. This waiver is necessary to support the proposed architecture as described above while preserving reasonable rear yard setbacks. Without this waiver, lot depths would have to increase, resulting in the reduction of the total number of units proposed for the project, and physically precluding the proposed 34-unit density bonus project.
7	Minimum side yard setback is 10 feet, the sum of both sides is 25 feet.	Minimum side yard setback reduced from 10 feet minimum to 7 feet minimum and reduced from 25 feet in aggregate to 20 feet in aggregate.	The requested waiver is to allow for a setback reduction of 3 feet on the minimum and 5 feet on the aggregate side yard setback. This is necessary to support the proposed architecture as described above and accommodating lot widths necessary to achieve the densities allowed under the density bonus. Without this waiver, the project could not be physically constructed at the proposed density because increased lot widths would reduce the total number of units proposed for the project.
8	Side yard setback for duet units.	Side yard setbacks shall include a provision for a zero setback on the lot line defining the common wall between duets.	Because the duet units are proposed to be fee simple ownership, individual legal lots must be mapped. A zero setback is required on the lot line that splits the building.

			Without this waiver, the proposed duets could not be physically constructed and thus the project could not be physically constructed at the proposed density.
9	Minimum rear yard setback is 30 feet.	Minimum rear yard setback shall be reduced from 30 feet to 15 feet.	A 15-foot minimum rear yard setback is necessary to support the proposed architecture while preserving the minimum front yard setbacks. Without this waiver, the project could not be physically constructed at the proposed density because increased lot depths would reduce the total number of units.
	<b>Objective Design Standards*</b>	<b>Waiver Request</b>	<b>Analysis</b>
1.1 (D)	Minimum setback of 30 feet between sound walls and bordering arterial and collector streets.	Minimum setback shall be 15 feet.	Compliance with the 30-foot setback would physically preclude the project from constructing the proposed number of units because an increased setback would reduce the number of units. Staff also notes that this development standard is not consistent with existing sound walls on Adams Lane or any other minor arterial in Brentwood.
2.2 (E)1	A minimum of one unit on each lot must have the front entry door facing the street.	Allow eight lots to have entry doors not facing the street.	The proposed subdivision has some lots that gain access via a shared access drive aisle off of the public street and therefore these homes are not oriented facing the public street. Some of the entrance doors for the duet units are located on the side in order to match the rest of the subdivision. The requirement to have these lots face the street would physically preclude construction of the number of proposed lots as there is not enough room for all

			lots to fit with frontage on the street.
2.2 (E)2 & 3	Where the housing development comprises two side-by-side detached units positioned along the street frontage, each unit must have the front entry door facing the street. Where two units are proposed to be attached and are located on an interior lot, one of the two units must have its front entry door facing the street, and the other unit must have its front entry door on the building side or rear.	Allow the duet units to have front doors both facing the same street.	Some of the entrance doors for both of the duet units are located on the front in order to match the rest of the subdivision and appear as one single-family home. The duets cannot be physically constructed to comply with this requirement and thus without the waiver, the project could not be constructed at the proposed density.

5. *Requested Interim Objective Design Standard Exceptions.* The applicant has requested the following exceptions from three of the IODS. The City Council hereby grants the following for the reasons stated below:

**Interim Objective Design Standard Exceptions**

IODS	Standard	Exception Request	Analysis
2(E)7	Street-facing doors must provide 6 sq. ft. of glazing.	Allow some architectural styles a reduction in the required glazing square footage.	The elevation styles that are appropriate for glazing will have at least six square feet such as the Craftsman style. Other styles where this is not appropriate architecturally are requesting an exception. Applicant is requesting a modification from the ODS.
2.2(J)2	Exterior wall planes exceeding 250 square feet in area must provide glazing for 30% of the total wall area.	Allow some areas of the home a reduction in glazing due to location.	This requirement is not possible to achieve on certain areas of the homes, such as attic space gables, garages, utility walls, etc., therefore a waiver is being requested. Applicant is requesting a modification from the ODS in this regard.
2.2(k)2c	When stucco is used, it must be used in combination with a least one other wall material, which must comprise of at least 20% of the building frontage, excluding windows and railings.	Allow Spanish elevations a reduction in the 20% requirement of a secondary material.	The Spanish elevation has introduced mosaic tile accents on the front elevation. While this does not result in 20% of the frontage being a different material, it does introduce a second material, different than stucco, that is appropriate to the style. All other elevations comply. Applicant is requesting a modification from the ODS in this regard.

C. Hereby approves Vesting Tentative Subdivision Map (VSTM 9649), including the requested density bonus and density bonus waivers identified above, subject to the conditions of approval listed in Exhibit 'A', attached hereto and made a part of this resolution, and all City standards applicable to this project.

D. 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. The City Clerk is the custodian of records for the record of proceedings.

**ADOPTED** by the City Council of the City of Brentwood at its regular meeting of August 13, 2024, by the following vote:

- AYES:
- NOES:
- ABESENT:

RECUSE:

APPROVED

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Joel R. Bryant  
Mayor

ATTEST:

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Margaret Wimberly, MMC  
City Clerk

**EXHIBIT 'A' TO  
CITY COUNCIL RESOLUTION NO. 2024-\_\_\_\_\_  
CONDITIONS OF APPROVAL FOR  
VESTING TENTATIVE SUBDIVISION MAP (VTSM 9649)**

1. The Applicant and Permittees, including all successors in interest (collectively, "Permittee") shall comply with each and every condition set forth in the Permit. Vesting Tentative Subdivision Map No. 9649 (the "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. The Permittee shall develop the site in accordance with all applicable laws and regulations and the approved attachments and as modified by these Conditions of Approval.
2. All applicable Standard Conditions of Approval for Tentative Subdivision Maps, dated May 2005, are hereby incorporated by reference and shall be complied with by the Permittee, unless modified by any of the conditions below.
3. The final map shall be substantially in conformance with Vesting Tentative Subdivision Map No. 9649 prepared by CBG Civil Engineers dated "Received February 19, 2024" unless otherwise amended by the conditions of approval contained herein.
4. The approval of Vesting Tentative Subdivision Map No. 9649 is effective only after adoption of the MND prepared to analyze the Project.
5. Permittee shall comply with and perform each and every mitigation measure set forth in the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Project, as adopted by City Council Resolution No. \_\_\_\_\_.
6. 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 VTSM 9649, and DR 23-012, and any environmental determination made with regard thereto, save and except to the extent caused solely by the City's sole or active negligence, or willful misconduct. 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, causes 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. To the extent the above indemnification is limited by Government Code Section 66474.9, any limitations shall only apply to VTSM 9649, and the remainder of this obligation shall be unaffected by said Government Code section.



7. Permittee shall comply with all requirements of Brentwood Municipal Code Chapter 17.720 ("Density Bonus Program") and Government Code 65915-65918 (the State Density Bonus law). Permittee's eligibility for development subject to these laws is contingent upon Permittee's construction of two (2) housing units that shall be made available for sale to households of very-low incomes for the term proscribed in the law.
8. Permittee shall comply with all requirements of Brentwood Municipal Code Chapter 17.725 ("Affordable Housing") as codified on the date upon which Permittee's application was deemed complete. In this regard, Permittee shall construct two (2) housing unit that shall be made available to very-low income households and two (2) housing units that shall be made available to moderate-income households.
9. Lot 31 shall be plotted with a single-story home.
10. No two elevation styles/plans for the homes may be located adjacent or directly across the street from one another.
11. Prior to each building permit issuance, the Permittee shall comply with all applicable requirements of the Uniform Fire Code and the adopted policies of the Contra Costa County Fire Protection District (CCCYPD). The City's Building Division shall review the building plans to ensure compliance.
12. Prior to building permit issuance, the Permittee shall provide an adequate and reliable water supply for fire protection with a minimum fire flow to the satisfaction of CCCYPD and the City of Brentwood.
13. Permittee shall install maximum masonry wall at a maximum height of seven feet along the northern boundary of the project site, and a split face block concrete perimeter wall along Adams Lane. Additionally, Permittee shall install residential wood good neighbor fences for all lots at a maximum height of seven feet. Fence details shall be included in the final landscape plans to the satisfaction of the Community Development Director.
14. Residential wood fences shall meet the minimum requirement of the City's Enhanced Residential Good Neighbor Fence detail (ST-22).
15. The Permittee shall submit detailed landscape and irrigation plans of front yard typical, open space areas, and bio retentions areas for review and approval prior to issuance of a building permit to ensure compliance with the City's Water Efficient Landscape Ordinance subject to review and approval of the Planning Department.
16. The Permittee shall comply with all applicable NPDES requirements, including C.3, per the current Contra Costa County Stormwater C.3 Guidebook, to the satisfaction of the Director of Public Works/City Engineer.
17. The Permittee shall comply with the Public Art Program as approved by the City by paying the in-lieu fees consistent with Brentwood Municipal Code Chapter 2.44.

18. Permittee shall be subject to and shall pay in full all park in-lieu fees per BMC 16.150.030 and the City's 2019 Parks, Trails and Recreation Master Plan to the satisfaction of the Director of Parks and Recreation.
19. The Project shall be consistent with all applicable City's General Plan Goals, Policies, and Actions.
20. 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.
21. Permittee and all construction plans and maps shall comply with Brentwood Municipal Code Title 8 "Health and Safety," Title 9 "Public Peace and Welfare," Title 12 "Streets, Sidewalks and Public Places," Title 13 "Sewers," Title 14 "Water," Title 15 "Building and Construction," and Title 16 "Subdivision and Land Development." In particular:
  - a. Solid waste service shall comply with Brentwood Municipal Code Chapter 8.16 "Solid Waste."
  - b. Construction and demolition work shall comply with Brentwood Municipal Code Chapter 8.40 "Construction and Demolition Debris Recycling."
  - c. Permittee shall comply with Brentwood Municipal Code Chapter 9.32 "Noise Regulations."
  - d. Permittee shall dedicate and improve any thoroughfare and/or collector street pursuant to Brentwood Municipal Code Chapter 12.04 "Street Widths."
  - e. Permittee shall comply with the encroachment permit requirements pursuant to Brentwood Municipal Code Chapter 12.08 "Street Encroachments."
  - f. Sewer backflow prevention, interceptors, and other health and safety requirements shall be incorporated into the project pursuant to Brentwood Municipal Code Chapter 13.04 "Sewer System – Rules and Regulations."
  - g. Brine-discharging self-regenerating water softener systems are prohibited pursuant to Brentwood Municipal Code Section 13.04.022.B.
  - h. Recycled water services shall comply with Brentwood Municipal Code Chapter 13.06 "Recycled Water Regulations."

- i. Water service shall comply with Brentwood Municipal Code Chapters 14.01 "Municipal Water System" and Chapter 14.10 "Cross-Connection Control." In addition and to comply with both health and safety requirements as well as the City's Engineering Design Standards, all projects serving more than 25 units shall design and construct at least two independent points of potable water supply to the Project.
- j. Contractors requiring construction water shall obtain a temporary water permit and shall only take water metered at a location specified by the City Engineer pursuant to Brentwood Municipal Code Section 14.01.340 "Contractors."
- k. Permittee shall comply with the Federal Clean Water Act, the Municipal Regional NPDES Permit, and Brentwood Municipal Code Chapter 14.20 "Stormwater Management and Discharge Control."
- l. Fire access and aerial apparatus access shall comply with the requirements of the Fire District and Brentwood Municipal Code Chapter 15.06 "Fire Code."
- m. Grading shall comply with Brentwood Municipal Code Chapter 15.52 "Grading, Erosion and Sediment Control."
- n. All grading and noise generating activities shall be limited to the days and hours defined in Brentwood Municipal Code Section 15.52.060 "Grading Regulations."
- o. In addition to the indemnification obligation set forth above, Permittee shall indemnify the City pursuant to Brentwood Municipal Code Section 15.52.160 "City Held Harmless."
- p. Pursuant to Brentwood Municipal Code Section 16.070.030.B, review of a Final Map, certification and approval shall not proceed until the Improvement Plans (onsite and offsite) have been submitted and reviewed by and approved by the City Engineer.
- q. Permittee shall obtain all required permits including, but are not limited to: buildings; sewer connections; encroachment; grading; use; business license; water connection; Army Corps of Engineers; Contra Costa County Flood Control; California Department of Fish and Wildlife pursuant to Brentwood Municipal Code Section 16.120.050 "Procedures."
- r. All public facilities shall be constructed and any existing deficiencies shall be corrected. This includes both required on- and off-site public facilities and any deficiencies on-site, abutting the parcel or parcels involved or required off-site to provide service to the proposed development or for the continued safety, health and well-being of the public upon

completion of the development pursuant to Brentwood Municipal Code Section 16.120.090 "Public Facilities Installation."

- s. Utilities shall be installed underground pursuant to Brentwood Municipal Code Section 16.120.120 "Undergrounding – Electric, Communication, Street Lighting and Advanced Technology Systems."
  - t. All landscaping installed by the project shall be from trees and plants selected from the City Approved Drought Tolerant and Native Plant List with the exception of bioretention facilities which shall conform to Appendix B of the Contra Costa Clean Water Program C.3 Guidelines, to the satisfaction of the Director of Parks and Recreation and City Engineer.
  - u. Permittee shall make all land dedications pursuant to Brentwood Municipal Code Sections 16.140 and 16.150.
22. Prior to issuance of grading permit:
- a. The height and location of all existing and proposed retaining walls shall be shown on the Grading Plans. Retaining walls over three feet in height shall be structurally engineered, and shall require separate building permits. All retaining walls shall include a sub-drain system to the satisfaction of the City Engineer.
  - b. Construction Plans shall demonstrate with plans, analysis, or other documentation signed and stamped by a licensed Civil Engineer that there is adequate overland drainage release to an adequate public drainage facility to the satisfaction of the City Engineer. Permittee shall acquire drainage easements, if necessary.
  - c. Grading Plans shall include a sufficient number of cross-sections adjacent to creeks, floodplains, and wetland areas showing the proximity of these features to proposed grading and building foundations to the satisfaction of the City Engineer.
  - d. Pursuant to Brentwood Municipal Code 15.070.320, Grading Plans shall identify any special flood hazard area and the elevation of the base flood.
  - e. Permittee shall provide approved hydrology and hydraulic calculations signed by a licensed engineer demonstrating that the Project will adequately collect and convey all runoff within the Project as well as the entire developed watershed upstream of the Project pursuant to Brentwood Municipal Code 16.120.080C. The analysis shall include conveyance capacity of the existing onsite creek, if any.
23. Prior to issuance of an encroachment permit or approval of Improvement Plans:

- a. Permittee shall design improvements to accommodate a travel lane and bike lane in each direction, painted median/turning lane, curb and gutter, sidewalk, landscaping and street lighting along Adams Lane project frontage to the satisfaction of the City Engineer as shown on the proposed Vesting Tentative Map.
- b. Permittee shall design improvements along the Lone Oak Road project frontages that will include curb, storm drain, landscaping and irrigation to the satisfaction of the City Engineer as shown on the proposed Vesting Tentative Map.
- c. Permittee shall design improvements to connect to the non-potable water system and provide non-potable irrigation to Parcel A (bioretention basin).
- d. Construction Plans shall include all utilities, including, but not limited to, meters, hydrants, poles, signs, clean-outs and boxes to be located clear of all trails, sidewalks and driveways or as determined by the City Engineer.
- e. Construction Plans shall include all utilities designed with seismic considerations to the satisfaction of the City Engineer.
- f. Permittee shall submit a colored Composite Site Exhibit showing the location of all existing and proposed utilities, utility boxes, landscaping, monuments, street improvements, lights, signs, driveways, house envelopes, fencing, grading contours, walls, easements, property lines, and other improvements as required at a sufficient scale to allow a comprehensive review of proposed improvements.
- g. Construction Plans shall note that construction of all gravity utilities (i.e. storm drain, sewer) to always commence at the downstream connection and proceed to the upstream terminus.
- h. Construction Plans shall demonstrate that all gravity utilities (i.e. storm drain, sewer) are designed to positively and completely drain by gravity without relying on any electro-mechanical means (i.e. pumps, lift stations and siphons) to the satisfaction of the City Engineer.
- i. Construction Plans shall include cathodic protection measures for all buried metallic infrastructure pursuant to City Standards or as approved by the City Engineer.
- j. Construction Plans shall include all proposed storm drain inlets to include and update existing storm drain inlets along the project frontage with "No Dumping - Drains to Creek" thermoplastic stencils to the satisfaction of the City Engineer.

- k. Permittee shall obtain approval from the City Engineer on the Project Operation and Maintenance Manual for all stormwater control systems. Said Manual shall comply with all applicable Municipal Regional NPDES Permit requirements including, but not limited to, maintenance, sediment removal, weed and trash abatement, and the use of chemicals.
  - l. Construction Plans shall include all landscaping with adequate root barriers to protect all City facilities, including but not limited to sidewalks, utilities, meters, ramps, and driveways.
  - m. Permittee shall have a licensed Land Surveyor locate all existing survey monuments on or adjacent to the project, and show said monuments as protected on all construction plans.
  - n. Construction Plans shall include a Traffic Control Plan in conformance with the latest edition of the Manual of Uniform Traffic Control Devices issued by Caltrans and as required by the City Engineer.
  - o. Construction Plans shall include Emergency Vehicle Access areas to comply with the requirements of the Fire District, and that ingress and egress is provided to all neighboring properties during construction.
  - p. Construction Plans shall incorporate roadways and driveways that provide adequate sight distance pursuant to City and Caltrans design requirements. All landscape areas required to have restrictions to comply with sight distance requirements shall be shown on applicable Construction and Plot Plans.
  - q. Construction Plans shall incorporate all-weather vehicular access from a public road to all proposed and existing public storm drain, sewer, water, and non-potable water mains, appurtenances, and easements subject to approval of the City Engineer.
24. Prior to approving the Final Map:
- a. Final Map shall comply with the current Subdivision Map Act.
  - b. Final map shall include street right of way dedications along Lone Oak Road and will not be accepted until Lone Oak Road within said dedication is improved to City Standards, subject to City Engineer approval.
  - c. Final Map shall show the relinquishment of abutter's rights of access along Adams Lane, Lone Oak Road and adjacent to all accessible ramp locations to the satisfaction of the City Engineer.
  - d. 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.

- e. The Project shall annex into the most current Emergency Medical and Fire Protection Service Funding Community Facilities District as required by the Contra Costa County Fire Protection District and Brentwood Municipal Code Chapter 17.635.
  - f. Final Map shall include approved street names by the Fire District and Community Development Department. All public streets shall be irrevocably offered for dedication.
  - g. 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.
25. Prior to issuance of any Building Permits:
- a. Permittee shall underground existing overhead utilities along the project frontage of Lone Oak Road to the satisfaction of the City Engineer.
  - b. All on-site improvements and Trellis Circle shall be constructed prior to the issuance of any building permit in each phase (excluding model homes). The improvements shall include, but is not limited to pavement, curb, gutter, sidewalk, street lights, utilities and walls to the satisfaction of the City Engineer.
  - c. Permittee shall provide an approval signed and sealed by a geotechnical or structural engineer of the location, nature and proximity of stormwater features near or adjacent to buildings as determined by the City Engineer. Locations and design of any mitigating structural design feature (i.e. foundations) shall be shown on the appropriate construction plans.
  - d. Permittee shall provide an approval signed and sealed by a geotechnical or structural engineer that there is adequate clearance between building foundations and creeks.
  - e. Permittee shall pay all Development Impact Fees pursuant to, or otherwise comply with the latest City of Brentwood Development Impact Fee Program.
  - f. Permittee shall provide documents signed by a licensed engineer on building pad elevation, compaction, and appropriate remediation from unsuitable soils.
  - g. Permittee shall demonstrate that all acoustic mitigations have been incorporated into applicable plans.

26. Prior to issuance of the 21<sup>st</sup> building permit, the landscaping improvements on the basin parcel (Parcel A), along the project's Adams Lane frontage, and along the Lone Oak Road frontage shall be completed to the satisfaction of the Director of the Parks and Recreation Department and the Director of Community Development Department and in the 90-day maintenance period prior to acceptance.
27. East Contra Costa Habitat Conservation Plan/Natural Community Conservation Plan requirements:

Preconstruction surveys are required and shall be conducted in accordance with the requirements set forth in section 6.4.3, Species-Level Measures, and Table 6-1 of the ECCC HCP/NCCP. Detailed descriptions of preconstruction surveys, avoidance and minimization, and construction monitoring applicable to each of the wildlife species is below.

The below conditions must be satisfied PRIOR to any construction or improvement of the site" or "Conditions of approval that must be satisfied PRIOR to or in conjunction with grading permit issuance."

- A. The project is receiving permit coverage under the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan ("ECCC HCP/NCCP" or "the Plan"). All applicable avoidance, minimization and mitigation measures of the ECCC HCP/NCCP will be imposed on the project. The project will receive take authorization under the City's incidental take permit from the United States Fish and Wildlife Service (USFWS) issued pursuant to Section 10(a)(1)(B) of the Federal Endangered Species Act (permit number: TE 160958-0) and the City's incidental take permit from the California Department of Fish and Wildlife (CDFW) issued pursuant to California Fish and Wildlife Code Section 2835 (permit number 2835-2007-01-03).
- B. Prior to the issuance of grading or construction permits for the project site and in accordance with the final ECCC HCP/NCCP Planning Survey Report application dated August 2023, the applicant shall pay the required ECCC HCP/NCCP Development Fee of \$184,544.40 for 9.41-acres of impact (the fee is subject to annual adjustments, in accordance with Chapter 9.3.1 of the ECCC HCP/NCCP) and receive a Certificate of Coverage from the City of Brentwood. The Certificate of Coverage will confirm that 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.
- C. Prior to the issuance of grading or construction permits for the project site and in accordance with the final ECCC HCP/NCCP Planning Survey Report application dated August 2023 the applicant shall submit a construction monitoring plan to the East Contra Costa County Habitat Conservancy (the Plan's Implementing Entity) for review and approval.



1. Western Burrowing Owl:
  - a. 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).
  - b. On the parcel where the activity is proposed, the biologist will 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 should take place near sunrise or sunset in accordance with CDFW guidelines. All burrows or burrowing owls will be identified and mapped. Surveys will take place no more than 30 days prior to construction. During the breeding season (February 1– August 31), surveys will document whether burrowing owls are nesting in or directly adjacent to disturbance areas. During the nonbreeding season (September 1–January 31), surveys will document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results will 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.
  - c. If burrowing owls are found during the breeding season (February 1–August 31), the project proponent will 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 will include establishment of a non- disturbance buffer zone (described below). Construction may 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 should avoid the owls and the burrows they are using, if possible. Avoidance will include the establishment of a buffer zone (described below).
  - d. During the breeding season, buffer zones of at least 250 feet in which no construction activities can occur will be established around each occupied burrow (nest site). Buffer zones of 160 feet will be established around each burrow being used during the nonbreeding season. The buffers will be delineated by highly visible, temporary construction fencing.
  - e. If occupied burrows for burrowing owls are not avoided, passive relocation will be implemented. Owls should 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 should be in place for 48 hours prior to excavation. The project area

should be monitored daily for a week to confirm that the owl has abandoned the burrow. Whenever possible burrows should be excavated using hand tools and refilled to prevent reoccupation (California Department of Fish and Game 1995). Plastic tubing or a similar structure should be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.

2. Swainson's Hawk

- a. Prior to any ground disturbance related to covered activities that occurs during the nesting season (March 15–September 15), a qualified biologist will 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 will 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 (see below). A copy of the preconstruction survey shall be submitted to the ECCC Habitat Conservancy and the City for review and approval.
- b. During the Swainson's hawk nesting season (March 15–September 15), covered activities within 1,000 feet of occupied nests or nests under construction will 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 will 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 applicant 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 will be removed during project construction.
- c. All active nest trees will be preserved on site, if feasible. Nest trees, including non-native trees, lost to covered activities will be mitigated by the project proponent according to the requirements below.
- d. The loss of non-riparian Swainson's hawk nest trees will be mitigated by the project proponent by:
  - i. 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.
  - a. The following requirements will be met for all planting options:
    - i. 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.
    - ii. Irrigation and fencing to protect from deer and other herbivores may be needed for the first several years to ensure maximum tree survival.
    - iii. 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.
    - iv. 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.
    - v. 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).

- vi. Whenever feasible, plantings on the site should occur closest to suitable foraging habitat outside the UDA.
- vii. 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.

### 3. Golden Eagle

- a. Prior to implementation of covered activities, a qualified biologist will conduct a preconstruction survey to establish whether nests of golden eagles are occupied. If nests are occupied, minimization requirements and construction monitoring will be required.
- b. Covered activities will be prohibited within 0.5 mile of active nests. Nests can be built and active at almost any time of the year, although mating and egg incubation occurs late January through August, with peak activity in March through July. 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 appropriate or that a larger buffer should be implemented, the ECCC Habitat Conservancy and the City will coordinate with CDFW/USFWS to determine the appropriate buffer size.
- c. Construction monitoring will focus on ensuring that no covered activities occur within the buffer zone established around an active nest. Although no known golden eagle nest sites occur within or near the ULL, covered activities inside and outside of the Preserve System have the potential to disturb golden eagle nest sites. Construction monitoring will ensure that direct effects to golden eagles are minimized.
- d. Conservation Measure 3.10 Plant Salvage when Impacts are Unavoidable
- e. If implementation of the project cannot feasibly avoid impacts on covered plants, the project applicant shall notify the ECCC Habitat Conservancy of their construction schedule to allow the ECCC Habitat Conservancy the option to salvage plant populations. See HCP pages 6-48 to 6-50.

- D. HCP/NCCP Conservation Measure 1.11. Avoid Direct Impacts on Extremely Rare Plants, Fully Protected Wildlife Species, or Migratory Birds. The project applicant shall avoid all impacts on extremely rare plants and fully protected species listed in Table 6-5 of the ECCC

HCP/NCCP in accordance with ECCC HCP/NCCP protocol. See ECCC HCP/NCCP pages 6-23 to 6-25, and Table 6-5.

- E. HCP/NCCP Conservation Measure 1.10. Maintain Hydrologic Conditions and Minimize Erosion. The project applicant shall avoid or minimize direct and indirect impacts on local hydrological conditions and erosion by incorporating the applicable Provision C.3 Amendments of the Contra Costa County Clean Water Program's (CCCCWP's) amended NPDES Permit (order no. R2-2003-0022; permit no. CAS002912). See ECCC HCP/NCCP pages 6-21 to 6-22.
28. Prior to issuance of a grading permit or improvement plans the applicant shall comply with all Department of Toxic Substances Control (DTSC) requirements as follows:
- a. If buildings or other structures are to be demolished on any project sites included in the proposed project, surveys should be conducted for the presence of lead-based paints or products, mercury, asbestos containing materials, and polychlorinated biphenyl caulk. Removal, demolition, and disposal of any of the above-mentioned chemicals should be conducted in compliance with California environmental regulations and policies. In addition, sampling near current and/or former buildings should be conducted in accordance with DTSC Preliminary Endangerment Assessment (PEA) Guidance Manual.
  - b. DTSC recommend that all imported soil and infill material should be tested to ensure any contaminants of concern are within DTSC's and U.S. Environmental Protection Agency (USEPA) Regional Screen Levels (RSLs) for the intended land use. to minimize the possibility of introducing contaminated soil and fill materials there should be documentation of the origins of the soil or fill material and, if applicable, sampling be conducted to ensure that the imported soil or fill material and, if applicable, sampling be conducted to ensure that the imported soil and fill material meets screening levels outline in the PEA for the intended land use. The soil sampling should include analysis based on the source of the infill and knowledge of the prior land use.
  - c. When agricultural crops and/or uses are rezoned for residential uses, a number of contaminants of concern can be present. The Lead Agency shall identify the amounts of Pesticides and Organochlorine Pesticides (OCPs) historically used on the property. If present, OCPs requiring further analysis are Dichlorodiphenyltrichloroethane (DDT), toxaphene, and dieldrin. Additionally, any level of arsenic present would require further analysis and sampling and must meet Human Health Risk Assessment Note Number 3 approved thresholds outlined in the PEA Guidance Manual. If they do not, remedial action must take place to mitigate them below those thresholds. For boring and analyses recommendations under 50 acres, refer to the DTSC Interim Guidance for Sampling Agricultural Properties; otherwise contact DTSC for approval over 50 acres.

Additional chemicals of concern may be found in mixing/loading/storage area, drainage ditches, farmhouses, or any other outbuildings and should be sampled and analyzed. If smudge pots had been routinely utilized, additional sampling for Polycyclic Aromatic Hydrocarbons (TPHs) and may be required.