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**SUBJECT:** Application for Vesting Tentative Subdivision Map and Design Review approval for the Lone Tree Way residential project

**DEPARTMENT:** Community Development Department

**STAFF:** Alexis Morris, Director of Community Development  
Miguel Contreras, Associate Planner

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### **TITLE/RECOMMENDATION**

The Planning Commission recommends that the City Council approve the project by adopting three separate resolutions: one adopting a Mitigated Negative Declaration for the project (SCH#20231003390); one approving a Vesting Tentative Subdivision Map (VTSM 9597) for the subdivision of a 16.32-acre parcel into 37 single-family residential lots; and one approving a Design Review application (DR 22-005), subject to certain findings and conditions.

The Planning Commission's recommendation includes approval of a subdivision map to create 37 single-family residential lots, including two sets of duets, a public park, a new private internal roadway system, and other related on-site and off-site improvements. The project qualifies for a density bonus pursuant to the [State Density Bonus Law \(SDBL\)](#), but the project will not exceed the density allowed by the General Plan. Rather, the project will utilize waivers/reductions from certain City standards, as allowed by the SDBL. The project also includes a design review application (DR 22-005) for the homes to be constructed on the lots. The project is located at 7590/7650 Lone Tree Way, just east of O'Hara Avenue (APN 018-060-006 and -007).

As noted below, the project that the Planning Commission recommended approving is slightly modified from what the applicant proposed. The applicant subsequently suggested further modifications to the project for the City Council's consideration.

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 not addressed by the standard conditions of approval are included as individual conditions of



approval where appropriate. The MND analysis covers all iterations of the project discussed in this report.

### **FISCAL IMPACT**

The project proponent, Seecon Financial & Construction Co., Inc., has paid a total of \$117,125.07 to process the application. These fees have fully covered staff's time spent processing the application.

### **BACKGROUND AND PROJECT DESCRIPTION**

This project has evolved throughout its processing. In order to provide the City Council and the public with a clear understanding of the project, this staff report addresses (1) the Applicant's original project (the "Original Project"), (2) the version of the project considered by the Planning Commission ("Revised Project #1"); (3) the version of the project the Planning Commission ultimately recommended for approval (the "PC Recommended Project"), and (4) the Applicant's revised project, as submitted on January 23, 2024 ("Revised Project #2") (see attached Comparison Matrix).

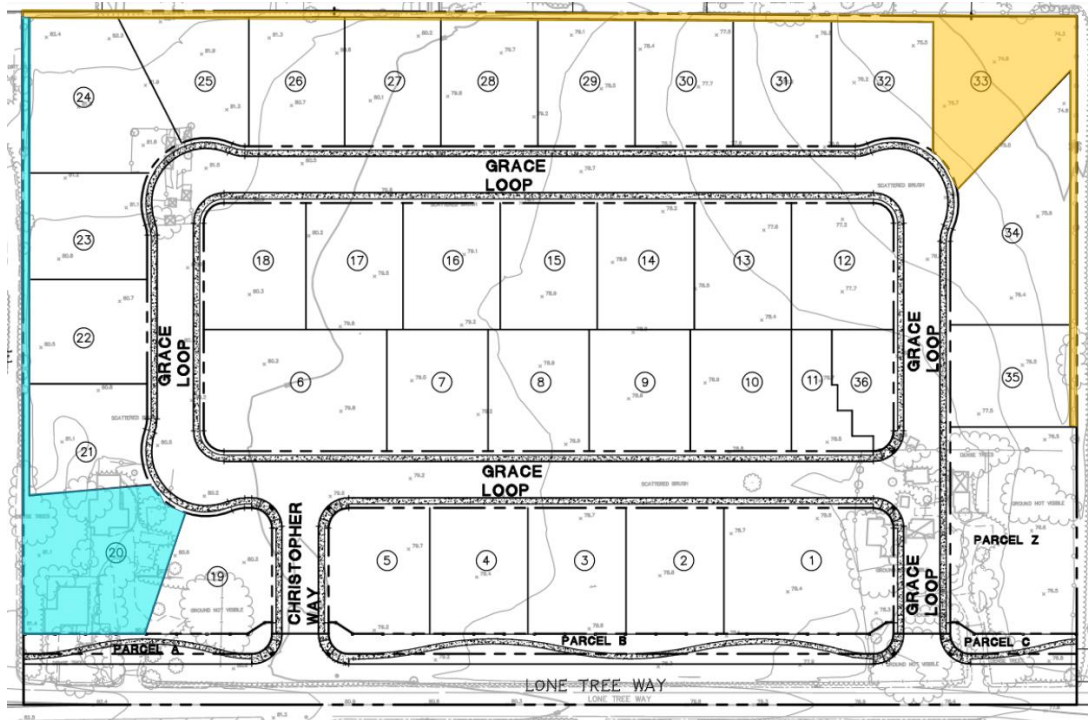
### **THE ORIGINAL PROJECT**

#### **ORIGINAL PROJECT DESCRIPTION**

In April 2022, Seecon Financial submitted applications VTSM 9597 and DR 22-005 requesting that the City approve a subdivision consisting of 34 single-family homes and a set of duet units, for a total of 36 single-family homes on 36 lots. Under this Original Project application, the project would have included two lots with long, narrow sections located behind other parcels, i.e. "wings." This unusual formation was suggested by the applicant to satisfy the City's density transition policy. This policy requires that any new lots facing or abutting existing residential lots of one acre or more to generally have a minimum lot size of 20,000 square feet. Since the project site is surrounded on three sides by lots that are larger than one acre, the project would have to provide 20,000 square foot lots immediately adjacent to those large neighboring lots.

While this requirement is objective in nature and can be enforced, the City's land use regulations do not include any objective standards as to required lot shape or configuration. Thus, the applicant proposed to meet the letter of the policy by adding "wings" to two of the project's lots, thus technically meeting the 20,000 square foot buffer requirement, as shown on the following map:

**Figure 1: Subdivision map with “wings”**

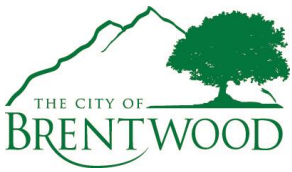


**REVISED PROJECT #1**

**REVISED PROJECT #1 DESCRIPTION**

In addition to the Original Project, the applicant also indicated that they would be willing to build a revised version of the project, one that did away with the “wings” shown above. In order to avoid providing 20,000 square foot lots in compliance with the City’s density transition policy, the applicant proposed to waive that policy by using the State Density Bonus Law (SDBL). While this law is often used to increase the density of a given project, the applicant here was proposing to use it to employ the waiver of local development standards (i.e., the density transition policy that would otherwise require 20,000 square foot lots on three sides).

Under this version of the project, the applicant needed to increase the amount of affordable housing being offered, so as to qualify for the SDBL and its benefits. The applicant proposed to meet the affordable housing obligations of Revised Project #1 as follows:



- **Affordable Housing**

This project is vested under the provisions of SB 330, and therefore, is subject to the regulations that were in place in April 2022, when the applicant submitted the preliminary application. As such, the project is only required to meet the 10% inclusionary housing requirements in effect at the time the application was submitted, rather than the current 13% requirement (the applicable Affordable Housing Ordinance is attached). With the Revised Project #1, the City's Affordable Housing Ordinance ("Ordinance") would be met via one moderate income detached single-family home, one very-low income duet unit, and one duet unit offered to the City for dedication, which (if accepted by the City) would count as two low income units, per the Ordinance.

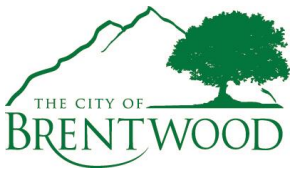
- **Density Bonus**

In addition to the above, the applicant was also seeking relief from the City's density transition policy through waivers offered by the provisions of the State Density Bonus Law (SDBL). In order to qualify for these waivers, an applicant must provide a certain percentage of affordable units. In this case, the applicant proposes to meet this requirement by providing 5% very-low income units through a "shared housing building" that provides five housing units in the bedrooms of the home with common areas for cooking and gathering, as allowed through the SDBL. Shared housing is "...a residential or mixed-use structure, with five or more shared housing units and one or more common kitchens and dining areas designed for permanent residence of more than 30 days by its tenants. The kitchens and dining areas within the shared housing building shall be able to adequately accommodate all residents." ([Government Code Section 65915\(o\)\(7\)\(A\)\(i\).](#)) Lastly, the applicant proposed that this shared housing building be contained in one of the duet units offered for dedication to the City.

All of the above is explained in further detail in the attached December 5, 2023, Planning Commission staff report.

**PLANNING COMMISSION DECEMBER 5, 2023 RECOMMENDATION**

The applicant's Revised Project #1 was heavily dependent on the assumption that the City would accept the proposed dedication of the one duet unit containing five shared housing units. In the event that the City did not accept this dedication, then the project would be out of compliance with the City's affordable housing requirements, in that there would be a deficit of one low income unit proposed.



While a shared housing building is allowed through the SDBL, the Planning Commission expressed concern that the units would be out of character with the greater city fabric and other units in the affordable housing program. The Planning Commission therefore recommended that the City Council approve yet another version of the project ("PC Recommended Project") that included the elimination of the shared housing building and the inclusion of an additional set of duet units. This alternative would create 37 lots, instead of 36, and two sets of duet units, instead of one. This alternative would still meet the City's affordable housing requirements (minimum 10% affordable units) and qualify for waivers under the SDBL (in order to waive the density transition requirement) without substantially redrawing the proposed map or architectural plans. This is further detailed below.

At the public hearing, the applicant indicated a willingness to consider the Planning Commission's recommendation, but did not commit to a willingness to replace their project proposals with the Planning Commission's.

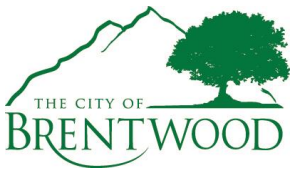
### **SUMMARY OF PLANNING COMMISSION DISCUSSION**

On December 5, 2023, the Planning Commission held a public hearing to consider the project. The City did not receive any public comments regarding this project prior to the Planning Commission hearing or during the circulation period of the Mitigated Negative Declaration (MND).

### **Planning Commission Questions**

After staff's presentation, the Planning Commission asked a few clarifying questions on the following topics:

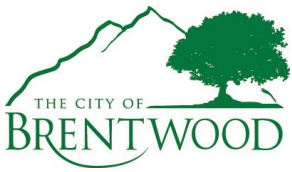
1. Self-retaining water facilities (pervious surface) versus traditional retaining facilities (bio swales). Revised Project #1 proposed pervious surfaces on all road segments and driveways, as well as water retention areas on all side yards. While this is not common, it is also not inferior. The City Engineer cited a few places in the bay area, including San Jose, where these have been utilized. Essentially, it is a different type of engineering that achieves the same result and is a treatment method approved by the County's C.3 policy that governs stormwater quality requirements. Maintenance of these facilities would be the responsibility of the project's home owners' association.
2. Dedication of an affordable unit. The Commission asked staff to explain the applicant's proposed dedication of an affordable unit. Staff clarified that, under the City's Affordable Housing Ordinance, an applicant may either



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build the required number of affordable units or propose an “alternative equivalent” to constructing those affordable units. One of the potential “alternative equivalents” listed in the Ordinance is the dedication (or transfer of ownership) of affordable units to the City for inclusion in the City’s rental housing program. In the event the City accepts such an offer of dedication, “each unit dedicated to the city shall equate to the construction of two affordable units that would otherwise be required...” ([BMC Section 17.725.004.D.](#)) Staff noted that the City has not previously accepted any offers of dedication of affordable units, nor is the City required to do so.

3. Vehicle Miles Traveled (VMT). Prior to July 2020, the CEQA analysis of development projects studied transportation impacts by measuring vehicle delay or congestion through a reporting system known as ‘Level of Service’ (LOS). Projects that increased automobile delay or congestion beyond certain thresholds were required to mitigate those impacts. Beginning in July of 2020, the State mandated that the LOS metric would no longer be permissible for CEQA purposes. Vehicle Miles Traveled (‘VMT’) has replaced LOS as the relevant measuring system for CEQA transportation impacts. In the public hearing on this project, the Commission asked if the VMT analysis correlates to the “real world.” The CEQA consultant, De Novo Consulting, explained that VMT analysis is used as a model to predict the impacts to traffic by the development. While impossible to predict the future, these models offer a likely outcome based on the surrounding land uses, zoning, planned projects (schools, CIP, etc.) and trends and projections. Moreover, these models offer mitigation measures that would reduce or eliminate potential impacts. In the case of the VMT analysis, the identified mitigation measure (payment of school fees) is sufficient for the purposes of CEQA.
4. Calculation used for the park acreage. The Commission wanted to know how staff concluded that each home would yield 3.2 persons for the purposes of calculating the required park acreage. The City’s Parks Maintenance Manager answered that this is the prescribed figure per the General Plan. Staff also clarified that the proposed park location was the preferred location, as the Brentwood PD prefers parks to be located in highly visible areas for patrolling.
5. Shared housing building affiliation and parking requirements. The Commission asked if the shared housing building would be affiliated with a higher education institution or shelters. Staff clarified that the proposed

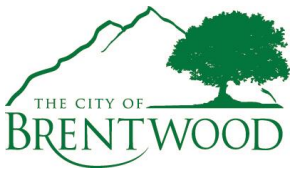


shared housing units would not be associated with either. The SDBL defines these units as units for non-transient occupancy that would function similar to an apartment rental. Additionally, the Commission asked if there were different parking requirements for the shared housing building. Staff clarified that the SDBL only requires those parking spaces that the zoning code would require; in this case, it would only be two parking spaces.

After discussion, the Commission opened the hearing and took testimony from the applicant, represented by Jaqueline Seeno. In her presentation, Ms. Seeno gave a general overview of the Revised Project #1 and emphasized that her proposal was purposefully seeking to provide larger lots (at least 12,000 square feet) to maintain the character of the area, even though the applicant could use density bonus to create up to 74 smaller lots. Therefore, the applicant's density bonus request only sought waivers to offer flexibility with the project site plan. Additionally, the applicant explained that the proposal of the park was a request from staff and they would rather pay an in-lieu fee and eliminate the park from the plans, given that the development is less than 50 units. The applicant also pointed out that their proposal also includes four junior accessory dwelling units (JADU's) as extra units that could be counted towards the City's RHNA obligations.

After her presentation, the Commission had questions for the applicant on topics including:

1. Whether the applicant built other developments that employ the same bio retention areas as the Revised Project #1. The applicant stated that they have in other jurisdictions and that no issues have arisen with those projects. The Commission further asked why the applicant did not use the same technique in their Inez Estates development. The applicant responded that the project was too small to use this type of engineering.
2. Whether the applicant would be opposed to alternate options, such as a duplex or triplex concept. The applicant stated that they were willing to entertain other options, except for a triplex, provided that the engineering worked out. However, the applicant clarified that they would like to retain the five-unit shared housing building in order to qualify for the SDBL. (As noted above, the configuration of the project that the Commission ultimately recommended does not include the five-unit shared housing building, but would still allow the applicant to qualify for the SDBL.)



3. Opposition to moving the park to another location within the development. The applicant stated that they would be open to a discussion of not building a park and paying the in-lieu fee instead, but they were not amenable to moving the park to another location within the proposed development. The applicant presented a slide that demonstrated that there would be four parks within a quarter mile radius from the proposed development.
4. The purpose of proposing the JADUs. The applicant explained that these do not count towards density bonus or the City's affordable housing ordinance. However, they can be counted towards the City's Regional Housing Needs Allocation (RHNA), provided certain conditions are met, and therefore, the applicant is providing these as a bonus to the City.

The Commission further asked if the JADUs count towards the park acreage requirement. Staff clarified that neither JADU nor ADUs count towards the required acreage for parks, since the State treats these differently than non-accessory units.

5. The vision for the five unit shared housing building. The applicant stated that the vision is to provide different housing alternatives for those who are not ready to live in a full-sized home, adding that, since this building is offered for dedication, it would be up to the City to determine the vision and provide oversight in terms of establishing a vetting process and offering these to income eligible households.

The Commission pointed out that this could only happen *if* the City were to accept the dedication. The Commission further asked what the vision is if the City opts to not accept the dedication.

The applicant suggested that, merely by offering the units for dedication to the City, they had fulfilled their affordable housing obligation to provide one unit – whether or not the City accepted such offer. Moreover, the applicant stated that the City's decision as to whether or not to accept the offer of dedication need not be made until after the project was approved, and should be done in conjunction with the City Council's consideration of the affordable housing agreement for the project.

City staff clarified that this is not correct, and that if the City Council does not accept the dedication of the five unit shared housing building, then the applicant would not be able to use the two-for-one provision in the affordable





housing ordinance. Therefore, the tentative map could not be approved because the project would be out of compliance with the BMC for being deficient in affordable housing units. The applicant could not fulfill the affordable housing obligation by simply offering a unit for dedication. Rather, the City would have to determine that it wanted to accept that dedication for the project to meet the requirements.

### **Public Comments**

Three comments were received during public comment. The first comment was from a neighbor (to the north) who had concerns regarding his property, which houses a dog training facility, abutting the new development. His concerns were the safety of new neighbors who might have children or animals that venture onto his property. The speaker claimed that the proposed six-foot wooden fence might not be sufficient to keep animals and children off his property, which could lead to an accident.

To this concern, staff clarified that one of the mitigation measures would be that the portions of the new development abutting the dog training facility will be improved with an eight-foot tall concrete masonry (CMU) wall.

The second comment was a neighbor whose property abuts the eastern portion of the project site. She expressed a desire that the entire eastern portion of the project be improved with an eight-foot tall CMU wall. She also expressed a concern regarding the height of the proposed homes (60% of them being two stories) obstructing her view of Mount Diablo. Her final concern was what mechanism would be used to keep people from wandering from the proposed park onto her property.

Staff clarified that the park would be improved with an eight-foot tall CMU wall preventing people from having access to her property. Further, staff clarified that the homes abutting her lot have at least a 20-foot setback from her property line, and this would mitigate against obstruction of views of Mount Diablo.

The final commenter had questions regarding the proposed drainage and the five-unit shared housing building. The caller asked who would be required to maintain these water retention areas on the side yards, if these could lead to flooding issues, and what would keep a homeowner from putting down a concrete slab that would impede the drainage these areas were designed to facilitate.

The future HOA would be responsible for the maintenance of these areas and CC&Rs would be established prohibiting future homeowners from building or disturbing these



water retention areas. Furthermore, these areas have been engineered to prevent flooding issues.

The caller's last question was how was it that the Planning Department even allowed this type of development (shared housing building) to get this far into the process, if the low density designation is intended for detached single family homes.

To this, staff explained that the Planning Division has an obligation to move proposed projects through the process. In this case, the applicant is utilizing provisions of the SDBL, which supersede local zoning and general plan regulations. Through the SDBL, a shared housing building, with at least five shared housing units, can be constructed in any zone that allows for residential uses, including mixed-use zones. Furthermore, if the applicant meets the SDBL affordability, room size and amenity (kitchenette, bathroom, etc.) requirements, then the local jurisdiction has very few permissible grounds for denying the proposal. Here, the applicant is meeting the requirements set by the SDBL, and therefore the Planning Division must process the project.

### **Planning Commission Deliberation**

During deliberation, the Commission expressed a desire to keep the park on site. They questioned what would happen to the land if the City accepted a fee in-lieu of constructing it. Staff clarified that the applicant has indicated that this land would become an additional single family detached home. The Commission also questioned how the public would have access to this park if the project's roads are private. Staff clarified that the Council can require, as a condition of approval, a method (such as an easement) to allow the public to access the park.

The Commission also expressed a concern regarding a waiver requesting a zero lot side yard. While they understood that this waiver was intended for the duet lot, they had an issue with a zero lot side yard being used by other non-duet lots. With this, the Commission asked staff to clarify the language of the waiver being sought to be only applicable for the side yards of any duet units.

### **PC RECOMMENDED PROJECT**

After substantial deliberation, the Planning Commission ultimately recommended that the project be modified to provide 37 units, including two sets of duets, with no shared housing building. This would cause minimal modifications to the Revised Project #1, as shown below:



**Table 1: Comparison of Revised Project #1 and PC Recommended Project**

<b>Items to remain the same</b>	<b>Items that would change</b>
<ul style="list-style-type: none"> <li>• MND and MMRP (the project’s CEQA initially contemplated 38 units and thus covers a lesser unit count as well)</li> <li>• Architecture</li> <li>• Landscape plan</li> <li>• Park location</li> <li>• Bio-retention locations and methods</li> <li>• Fencing/wallplan</li> <li>• Off-site improvements</li> <li>• Ingress/egress and circulation</li> <li>• Density transition waiver request</li> </ul>	<ul style="list-style-type: none"> <li>• Eliminate 5 unit shared housing building</li> <li>• No longer offer a unit for dedication</li> <li>• Adds set of duets for a total of four units in duets (thus increasing total lots from 36 to 37)</li> <li>• Reduces number of units from 40 to 37</li> <li>• Reduces park size from 0.64 acres to 0.59 acres due to the reduction of the total number of units</li> <li>• Modifies requested waivers to allow certain waivers to apply to the duet units only</li> </ul>

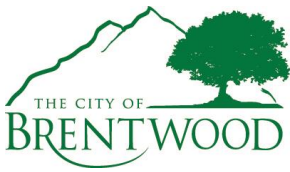
The applicant provided the City with a plotting plan of what the 37 lot concept would look like (attached). The additional duet units would be located on lot 18 and a new lot 37 and would be the same floor plans as the previously proposed set of duets. If the City Council adopts the attached resolution, staff recommends that the Council add a condition of approval requiring that each set of duets be of different architectural styles to create greater variety within the project (condition of approval #30 in DR resolution).

**Consistency with the Affordable Housing Ordinance**

The Commission’s recommendation to include a second set of duets and remove the shared housing building would still be in compliance with the City’s affordable housing ordinance as follows:

**Table 2: Local Affordable Housing Ordinance Requirements**

<b>Affordability Level</b>	<b>Required (for ownership projects)</b>	<b>Proposed</b>	<b>Does PC Recommended Project meet requirement?</b>
Very-low	3% (1.1 units rounded to 1 unit)	2/37 = 5.4% (duet on Lot 36 and 11)	Yes
Low	4% (1.4 units rounded to 1 units)	1/37 = 2.7% (duet unit on Lot 18)	Yes



Moderate	3% (1.1 units rounded to 1 units)	1/37 = 2.7% (single-family home on Lot 37)	Yes
<b>Total</b>	<b>10% (4 units)</b>	<b>4/37 = 11%</b>	<b>Yes</b>

As seen above, the applicant would be in compliance with the 10% affordability required by the applicable ordinance. In addition to this, the applicant’s revised plotting plan exhibit shows that the duets would not be located near each other, which is consistent with the requirements of the City’s Affordable Housing Ordinance.

**State Density Bonus Law Request**

The applicant still sought to qualify for waivers under the SDBL in order to gain relief from the City’s density transition policy. In order to qualify for waivers, the applicant must include at least 5% of the proposed units as affordable to very-low income households. The applicant meets this requirement as follows:

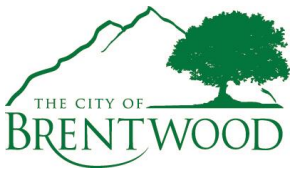
**Table 3: State Density Bonus Law**

<b>Affordability Level</b>	<b>Minimum number of units required</b>	<b>Proposed</b>	<b>Does the project PC recommended project meet minimum qualifications for SDBL eligibility?</b>
Very-low	5% (1.8 units rounded to 2 units)	2/37 = 5.4%	Yes

As noted above, the applicant would still qualify for the SDBL waivers by providing two very-low income units. The requested waivers are as follows:

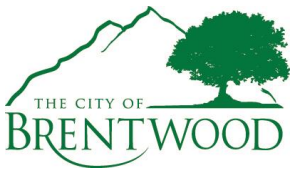
**Table 4: Waivers Requested**

	<b>Standard</b>	<b>Waiver Requested</b>	<b>Analysis</b>
1	Transition Lots: Lots facing or abutting existing residential lots of one acre or more have a minimum size of 20,000 square feet	Elimination of the transition lot requirement for lots along the perimeter of the project.	Providing 20,000 sf transition lots would physically preclude construction of 6 of the proposed units. This would reduce the overall density of the project as proposed.



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	<b>Standard</b>	<b>Waiver Requested</b>	<b>Analysis</b>
			Staff recommends granting this waiver.
2	Lot Width: Minimum lot width is 90 feet	Narrowest width of a duet lot is 40 feet and would be out of compliance with the 90 foot lot width requirement.	Adherence to this standard would prevent the duet lots from being constructed in the proposed layout. Staff thus recommends granting this waiver.
3	Lot depth: Maximum 150 feet.	Waiver of the maximum lot depth to accommodate lots #33, lot #20 and lot #24	The project could not be constructed at the proposed density in the proposed layout if the maximum lot depth requirements are applied to these lots. Staff thus recommends granting this waiver.
4	Front Setbacks: Minimum 20 feet	Waiver for the minimum setback to be 10 feet to accommodate duet units and for encroachments of front porches on 24 detached home lots.	<p>Duet lot #11 is proposed with a 15 foot setback, and the project could not be constructed at the proposed density if the 20-foot standard is applied to this lot. Staff thus recommends granting the requested waiver as to this lot.</p> <p>Additionally, there are 24 detached homes that are proposed with front porches with a 15 foot setback. The project can be constructed at the proposed density even if it complies with this standard for the 24 detached homes without reducing the requested density or unit count. Staff therefore recommends that the requested waiver only be granted as to the duet lots. A draft condition of approval is included in the</p>



	<b>Standard</b>	<b>Waiver Requested</b>	<b>Analysis</b>
			attached resolution requiring all non-duet lots to meet the 20' front setback standard.
5	Side yards and rear yards.  Side yard: 12 feet with an average of 30 Rear Yard: 20 feet	Waiver for the duet lots to be at 0' side yard and 0' rear yard only where the duet units share a common wall. Setbacks along the perimeter of the duet lots shall be as otherwise required or waived in this approval.	The project could not be constructed at the proposed density if these standards are required, as construction of the duet units would be impossible. Staff thus recommends granting this waiver.

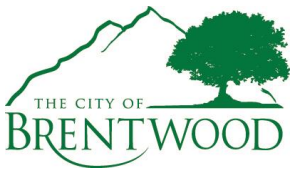
Aside from the first three waivers, the Planning Commission recommended that the Council only waive those standards that apply and affect the constructability of the duet units. These waivers would be only those that were necessary in order to construct the duets since the Ordinance allows them to be built on smaller lots.

**Park Acreage**

Due to the Planning Commission recommendation changing the unit count from 40 units (35 units plus the 5 shared housing units) to 37 units, there would be a slight reduction to the required park acreage calculation. In accordance with laws allowing cities to require the dedication of parkland (or payment of fees in-lieu thereof) in conjunction with new residential subdivisions, General Plan Policy CSF 2-2 directs the City to “[a]chieve and maintain a minimum overall citywide ratio of 5 acres of park land per 1,000 residents.” Consistent with the General Plan, the Parks and Recreation Department uses 3.2 as the average number of persons per dwelling unit for this calculation.

$$\begin{aligned} \text{Average Number of Persons/unit (3.2) X .0050} &= .0160 \text{ acres per unit} \\ 37 \text{ units x .0160 acre} &= 0.59 \text{ acres} \end{aligned}$$

Based on this, the project would be required to pay a fee in-lieu of dedication equivalent to the value of 0.59 acres or to construct a 0.59 acres park. The application currently proposes a single parcel totaling 0.58-acres that would be dedicated to the City for park purposes and, therefore, this application would be required to increase the park area by 0.01-acre as reflected in the VTSM resolution.



Throughout the hearing, the Commission’s biggest concern regarding the project was the proposed shared housing building and how this would fit into the fabric of the City, and what it would mean for the project if the Council did not accept the dedication. Due to this, the Commission recommended that the City Council approve the PC Recommended Project, which features two sets of duet units and eliminates the shared housing building. The Commission called for a ten minute recess to allow staff to bring back resolutions that reflected these changes. Thereafter, the Commission unanimously voted to adopt Resolution No. 23-038, recommending that the City Council adopt the MND and MMRP for the project; Resolution No. 23-038 recommending that the City Council approve a VTSM with 37 units including two sets of duet units; and Resolution No. 23-040 recommending that the City Council approve the Design Review application with two sets of duets.

The PC Recommended Project accomplishes many of the applicant’s goals, but if the applicant does not agree to this version of the project, state law does not empower the City to require them to accept it.

**CITY COUNCIL MEETING OF JANUARY 23, 2024, AND CONTINUANCE**

This project was agendized and duly noticed for the January 23, 2024, City Council meeting. However, early that afternoon, the applicant submitted a letter (attached) to the Council requesting the consideration of a new alternative (Revised Project #2) to the PC Recommended Project. Because consideration of Revised Project #2 would require revisions to the resolutions, staff requested a continuance in order to analyze the new proposal to ensure that it is consistent with all applicable laws and the IS/MND. The City Council unanimously voted to continue the hearing to February 27, 2024.

**REVISED PROJECT #2**

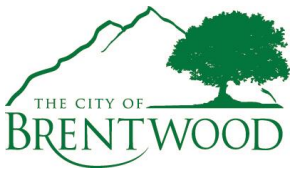
This new alternative (attached) proposes 40 units on 40 lots, which includes two sets of duet units and 36 market rate detached units.

**Project Description**

The following highlights the differences between the new 40-lot proposal (Revised Project #2) compared to the original 36-lot, 5 shared housing unit, proposal (Revised Project #1):

**Table 5: Comparison of Revised Project #1 and #2**

<b>Items to remain the same</b>	<b>Items that would change</b>
<ul style="list-style-type: none"> <li>• MND and MMRP: De Novo consultants issued a memorandum (attached)</li> </ul>	<ul style="list-style-type: none"> <li>• Eliminates five unit shared housing building</li> </ul>



<p>indicating that there are negligible changes between a 40-unit project and a 36-unit project.</p> <ul style="list-style-type: none"> <li>• Architecture</li> <li>• Landscape plan</li> <li>• Park location and size</li> <li>• Bio-retention locations and methods</li> <li>• Fencing/wall plan</li> <li>• Off-site improvements</li> <li>• Ingress/egress and circulation</li> </ul>	<ul style="list-style-type: none"> <li>• No longer offers a unit for dedication</li> <li>• Adds a set of duets for a total of four units in duets</li> <li>• Increases number of market rate homes (33 to 36)</li> <li>• Increases in number of lots (36 to 40)</li> <li>• 30 lots under 12,000 square feet (including duet lots) instead of only 2 lots (duets)</li> <li>• Modifies requested waivers to include reduced lot sizes for market rate lots</li> </ul>
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**Development Standards**

The proposed project, with waivers, would be consistent with the requirements of the R-1-12 zoning district as follows:

**Table 6: R-1-12 development standards (Revised Project #2)**

	<b>R-1-12 Development Standards</b>	<b>Proposed</b>	<b>Revised Project #2 Complies?</b>
<b>Minimum Lot Area</b>	Detached lots: 12,000 sf	26 lots between 10,000 sf – 11,558 sf  10 lots at least 12,000 sf	No, waiver requested
	Duet lots: 3,000 sf	Duet lots between 5,979 sf – 6,460 sf	Yes
<b>Minimum Lot Width</b>	90 ft + 90 feet measured 30 feet from front property lines for lots on the “bulb” of curvilinear street.	23 lots <90 ft  17 lots >90 ft	No, waiver requested
<b>Maximum Lot Depth</b>	150 ft	210 ft on lots #20, 24 and 33. All other lots meet this requirement.	No, waiver requested
<b>Minimum Front Yard Setback</b>	20 ft	10 ft	No, waiver requested





	<b>R-1-12 Development Standards</b>	<b>Proposed</b>	<b>Revised Project #2 Complies?</b>
<b>Minimum Side Yard Setback</b>	12 ft, sum of both sides 30 ft	All detached lots: 12 feet, sum of both sides 30 ft  Duet lots: 0 ft	Detached lots comply  Waiver requested for duet lots
<b>Minimum Rear Yard Setbacks</b>	20 ft	All detached lots: 20 ft minimum  Duet lots: 0 ft	Detached lots comply  Waiver requested for duet lots
<b>Minimum Off-Street Parking Spaces</b>	2	2	Yes
<b>Maximum Building Height</b>	30 ft	28 ft, seven inches	Yes
<b>Density</b>	1.1-3.0 dwelling units per acre	2.45 dwelling units per acre	Yes

**Consistency with the Affordable Housing Ordinance**

The applicant’s alternative proposal would be in compliance with the City’s affordable housing ordinance as follows:

**Table 7: Local Affordable Housing Ordinance Requirements  
(Revised Project #2)**

<b>Affordability Level</b>	<b>Required (for ownership projects)</b>	<b>Proposed</b>	<b>Does Revised Project #2 meet requirement?</b>
Very-low	3% (1.2 units rounded to 1 unit)	2/40 = 5% (duet on Lot 36 and 11)	Yes
Low	4% (1.6 units rounded to 2 units)	1/40 = 2.5% (duet unit on Lot 18)	Yes
Moderate	3% (1.2 units rounded to 1 units)	1/40 = 2.5% (single-family home on Lot 37)	Yes
<b>Total</b>	<b>10% (4 units)</b>	<b>4/40 = 10%</b>	<b>Yes</b>



As seen above, the applicant would be in compliance with the 10% affordability required and defined by the Ordinance that was vested pursuant to the April 2022 SB 330 application. In addition to this, the applicant’s revised plotting plan exhibit shows that the duet units would not be located near each other, which is consistent with the requirements of the City’s Affordable Housing Ordinance.

**State Density Bonus Law Request**

The applicant is still seeking to qualify for waivers under the SDBL in order to gain relief from the City’s density transition policy. In order to qualify for waivers, the applicant must include at least 5% of the proposed units as affordable to very-low income households. The applicant meets this requirement as follows:

**Table 8: State Density Bonus Law (Revised Project #2)**

<b>Affordability Level</b>	<b>Minimum number of units required</b>	<b>Proposed</b>	<b>Does Revised Project #2 meet minimum qualifications for SDBL eligibility?</b>
Very-low	5% (1.8 units rounded to 2 units)	2/40 = 5%	Yes

As noted above, the applicant would still qualify for the SDBL waivers by providing two very-low income units. The requested waivers are as follows:

**Table 9: Waivers Requested (Revised Project #2)**

	<b>Standard</b>	<b>Waiver Requested</b>	<b>Analysis</b>
1	Transition Lots: Lots facing or abutting existing residential lots of one acre or more have a minimum size of 20,000 square feet	Elimination of the transition lot requirement for lots along the perimeter of the project.	Providing 20,000 sf transition lots would physically preclude construction of 6 of the proposed units. This would reduce the overall density of the project as proposed. Staff recommends granting this waiver.
2	Lot Size	Waiver for 26 lots to be below the minimum lot size of 12,000 sq. ft. The proposed range is	Adherence to this standard would prevent the project from being constructed in the proposed layout. Staff

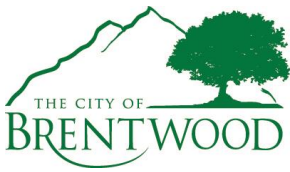


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	<b>Standard</b>	<b>Waiver Requested</b>	<b>Analysis</b>
		between 10,000 sq. ft. and 11,558 sq. ft.	thus recommends granting this waiver.
3	Lot Width: Minimum lot width is 90 feet	23 lots would be less than 90' wide.	Adherence to this standard would prevent the project from being constructed in the proposed layout. Staff thus recommends granting this waiver.
4	Lot depth: Maximum 150 feet.	Waiver of the maximum lot depth to accommodate lots #33, lot #20 and lot #24	The project could not be constructed at the proposed density in the proposed layout if the maximum lot depth requirements are applied to these lots. Staff thus recommends granting this waiver.
5	Front Setbacks: Minimum 20 feet	Waiver for the minimum setback to be 10 feet to accommodate duet units and for encroachments of front porches on detached home lots.	Adherence to this standard would prevent the project from being constructed in the proposed layout. Staff thus recommends granting this waiver.
6	Side yards and rear yards.  Side yard: 12 feet with an average of 30 Rear Yard:20 feet	Waiver for the duet lots to be at 0' side yard and 0' rear yard only where the duet units share a common wall. Setbacks along the perimeter of the duet lots shall be as otherwise required or waived in this approval.	The project could not be constructed at the proposed density if these standards are required, as construction of the duet units would be impossible. Staff thus recommends granting this waiver.

**Park Acreage**

The proposed alternative of 40 units would require the payment of a fee in-lieu of dedication of 0.64 acres or the construction of a 0.64 acre park. The application currently proposes a single parcel totaling 0.58-acre that would be dedicated to the City for park purposes and, therefore, this application would be required to increase



the in lieu fee payment by the monetary equivalent of 0.06-acre or the construction of a 0.64 acre park, as reflected in the attached draft VTSM resolution.

**Public Comment**

Prior to the City Council meeting, a comment was submitted by Leanne Alfaro (attached), a neighboring property owner who is concerned about two, two-story homes that would abut her property. She requests that the Council consider requiring the applicant to improve the property with a 10-foot wall around the entire development or at least the portions that abut her property. Staff does not recommend that a wall, especially one with a height of 10-feet, be required since this would not be consistent with typical single family residential development.

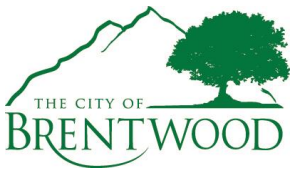
**CITY COUNCIL MEETING OF FEBRUARY 27, 2024, AND CONTINUANCE**

This project was agendaized and duly noticed for the February 27, 2024, City Council meeting. A few hours before the meeting, however, the City received two letters. The first letter is from Leigh Prince of Fox Rothschild LLP, on behalf of Discovery Builders, Inc., alleging that the project's MND and Density Bonus were inadequate. The second letter is from Louis Parsons of Discovery Builders, Inc., alleging that the project's architectural drawings were prepared by Discovery Design Group (DDG) and that the Project Applicant did not have express authorization to use the drawings (both letters attached). Due to this, the project was again continued to a date uncertain.

Since then, De Novo Planning Group (CEQA consultant for the City) reviewed the MND and determined that it is adequate (see attached memorandum). In addition, City staff has reviewed the density bonus proposal and found it to be in conformance with the State Density Bonus Law. Finally, the applicant submitted revised architectural plans drawn by RRM Design Group; they are part of the attached project plans.

**CONCLUSION**

As mentioned above, the project has evolved through the entitlement process. The revised original project that the Planning Commission considered was dependent on the City Council accepting a unit for dedication. Due to this, the Planning Commission recommended to the Council to adopt an alternative to the applicant's project (as described above). Prior to the public hearing for City Council's consideration, the applicant submitted a fourth alternative. Staff reviewed the applicant's fourth submittal, and determined, as outlined above, that the alternative is substantially similar to the PC's recommendation in that it would meet the affordable housing requirements, qualify for Density Bonus waivers and would be in conformance with



the CEQA requirements. A few noteworthy changes are the addition of two market rate units and smaller lots sized throughout the project. The below table provides a comparison of the evolution of the project:

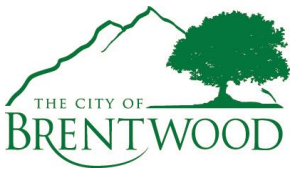
**Table 10: Comparison of Project Proposals**

<b>Plan 1 "Original Project"</b>	<b>Plan 2 "Revised Project 1"</b>	<b>Plan 3 "PC Recommended Project"</b>	<b>Plan 4 "Revised Project 2"</b>
<ul style="list-style-type: none"> <li>• 35 detached units</li> <li>• Wing lots</li> </ul>	<ul style="list-style-type: none"> <li>• 40 total units</li> <li>• 34 detached units</li> <li>• 1 set of duet units</li> <li>• Shared housing building (5 units)</li> <li>• 1 duet unit offered for dedication</li> <li>• No wing lots</li> </ul>	<ul style="list-style-type: none"> <li>• 37 total units</li> <li>• 33 detached units</li> <li>• 2 sets of duets</li> <li>• No wing lots</li> <li>• No shared housing building</li> <li>• No unit offered for dedication</li> </ul>	<ul style="list-style-type: none"> <li>• 40 total units</li> <li>• 36 detached units</li> <li>• 2 sets of duets</li> <li>• No wing lots</li> <li>• No unit offered for dedication</li> <li>• No shared housing building</li> </ul>
Density Bonus <ul style="list-style-type: none"> <li>• None requested</li> </ul>	Density Bonus <ul style="list-style-type: none"> <li>• Seeking waivers</li> </ul>	Density Bonus <ul style="list-style-type: none"> <li>• Seeking waivers</li> </ul>	Density Bonus <ul style="list-style-type: none"> <li>• Seeking waivers</li> </ul>
CEQA <ul style="list-style-type: none"> <li>• In compliance</li> </ul>	CEQA <ul style="list-style-type: none"> <li>• In compliance</li> </ul>	CEQA <ul style="list-style-type: none"> <li>• In compliance</li> </ul>	CEQA <ul style="list-style-type: none"> <li>• In compliance</li> </ul>
Park Size Required: 0.56 acres	Park Size Required: 0.64 acres	Park Size Required: 0.59 acres	Park Size Required: 0.64 acres

The options that City Council can pursue are summarized below. It should be noted that the June 11, City Council meeting will be the fourth hearing held on the project. Under SB 330, cities are prohibited from conducting more than five hearings in connection with a housing project approval if the project complies with the applicable objective general plan and zoning standards in effect at the time an application is deemed complete.

**OPTIONS**

1. Consider and take action on the PC Recommended Project, reflected in the attached resolutions. However, as discussed above, if the applicant does not agree to this version of the project, state law does not empower the City to require them to accept it.
2. Consider Revised Project #2 and direct staff to revise the resolutions to document the City Council’s direction. The changes to the attached resolutions required in order to approve the Revised Project #2, as proposed, would be relatively minor and could be made at the Council meeting.



### **CITY COUNCIL STRATEGIC INITIATIVE**

Not Applicable.

### **PREVIOUS ACTION**

Previous Action by the City Council is included on Attachment 1.

### **DATE OF NOTICE**

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 May 31, 2024. The applicant also posted the project site with the required signage.

### **ENVIRONMENTAL DETERMINATION**

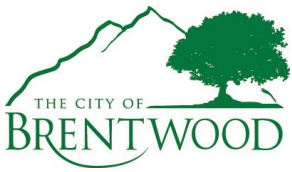
The City prepared a mitigated negative declaration (SCH# 2023100339) for this project in accordance with the requirements of the California Environmental Quality Act (CEQA, codified at Public Resources Code 21000, et seq., and as further governed by the State CEQA Guidelines, found at 14 CCR 15000, et seq.). Several potentially significant impacts were identified; however, mitigation measures are incorporated to reduce those impacts to less than significant levels. The public review period for the proposed IS/MND began October 13, 2023 and ended November 2, 2023. Staff did not receive any comment letters during this public review period.

The IS/MND may be reviewed by clicking on the link below and scrolling to "Lone Tree Residential Project:"

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

### **ATTACHMENT(S)**

1. Previous Action
2. CC resolution to adopt MND and MMRP
3. CC resolution for VTSM 9597
4. CC resolution for DR 22-005
5. Project Plans (Revised Project #1 Plans)
6. PC Staff Report
7. PC Recommended Project Master Plotting Plan
8. Original Project Master Plotting Plan
9. Public Comment, Leanne Alfaro



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10. Applicable Version of Affordable Housing Ordinance
11. Letter and Memorandum to the Council from Applicant
12. Revised Project #2 Plans
13. Comparison Matrix
14. CEQA Memorandum
15. Louis Parsons Letter
16. Fox Rothschild Letter
17. CEQA Memo Responding to the Fox Rothschild Letter