




**CONTRA COSTA COUNTY
DEPARTMENT OF CONSERVATION AND DEVELOPMENT
COMMUNITY DEVELOPMENT DIVISION**

APPROVED PERMIT

APPLICANT:	Jason Bernstein-City Ventures 444 Spear Street, Suite 200 San Francisco, CA 94105	APPLICATION NO.:	SD18-9491 DP18-3022
		ASSESSOR'S PARCEL NO.:	403-202-011
		PROJECT LOCATION:	San Pablo Ave and O'Hatch Drive San Pablo, CA
OWNER:	David and Rosie Wong 2198 Granite Drive Alamo, CA 94507	ZONING DISTRICT:	P-1
		APPROVED DATE:	September 11, 2019
		EFFECTIVE DATE:	September 24, 2019

This matter having not been appealed within the period of time prescribed by law, a VESTING TENTATIVE MAP to subdivide a 2.78-acre property into 33 new residential parcels, and two common parcels, and a DEVELOPMENT PLAN PERMIT to develop 33 townhomes on the site along with associated site improvements in the San Pablo area is hereby APPROVED, subject to the attached conditions of approval.

By: 
Aruna M. Bhat
Deputy Director

Unless otherwise provided, THIS PERMIT WILL EXPIRE THREE (3) YEARS from the effective date if the action allowed by this permit is not undertaken within that time.

PLEASE NOTE THE EFFECTIVE DATE, as no further notification will be sent by this office.

FINDINGS AND CONDITIONS OF APPROVAL FOR JASON BERNSTEIN-CITY VENTURES (APPLICANT) & DAVID & ROSIE WONG (OWNERS); COUNTY FILES #SD18-9491 & DP18-3022 AS APPROVED BY THE COUNTY PLANNING COMMISSION ON SEPTEMBER 11, 2019

I. FINDINGS

A. Growth Management Findings

1. Traffic: Policy 4-c of the Growth Management Element of the General Plan requires a traffic impact analysis of any project that is estimated to generate 100 or more additional AM or PM peak-hour trips. The proposed project consisting of a 33-lot subdivision and the construction of 33 townhomes would generate an estimated 33 AM and 33 PM peak-hour trips, and therefore, is not required to have a project-specific traffic impact analysis. Since the project would yield less than 100 peak hour AM or PM trips, the proposed project would not conflict with the circulation system in the Montalvin Manor area. Additionally, according to Figure 5-3 of the Transportation and Circulation Element, the subject property is located within a Transit Corridor and within Local Transit Service Area. Alternative modes of transportation are within close proximity to the property and are accessible for the proposed housing units. The project is located at the southwest corner of San Pablo Avenue and O'Hatch Drive, between O'Hatch Drive and Tara Hills Drive, in Montalvin Manor. Sidewalk exists along the San Pablo Avenue property frontage, and San Pablo Avenue has protected bike lanes in both directions. Furthermore, there are bus stops on the northwest and southwest sides of San Pablo Avenue where it intersects with Tara Hills Drive.
2. Water: The project site currently receives water service from the East Bay Municipal Utility District (EBMUD). EBMUD has reviewed the project application documents and has indicated that a new main will be required to accommodate the project, that all EBMUD water efficient measures shall be observed, and that they should be contacted regarding the provision of new water service pursuant to EMBUD water service regulations. Accordingly, the impact of providing water service to the project would be less than significant.
3. Sanitary Sewer: Wastewater generated by the project would originate from the 33 new townhomes that would be constructed within the new subdivision. The project site is served by the West County Wastewater District (WCWD). WCWD has received the project application comment request and has stated that wastewater services is available for the project, subject to the submittal, review and approval of WCWD. By meeting the development standards of WCWD,

the project is expected to be accommodated by existing WCWD facilities without expansion of the wastewater treatment system. By following this process, impacts of the project on WCWD facilities would be less than significant.

4. Fire Protection: Fire protection and emergency medical response services for the project vicinity are provided by the Contra Costa County Fire Protection District (CCCYPD). The CCCYPD submitted comments on the project application detailing requirements for fire lane delineation, water supply, fire hydrants, and CCCYPD review of building permit submittals, amongst other items. Prior to construction of the project, the revised plans would be reviewed and approved by the CCCYPD. As a result, potential impacts of the project on fire protection services would be less than significant.
5. Public Protection: Police protection services in the project vicinity are provided by the Contra Costa County Sheriff's Office, through the Bay Station, located approximately 2.5 miles driving distance to the west of the project site. Public protection standards under Policy 4-c of the Growth Management Program (GMP) of the County General Plan require a Sheriff facility standard of 155 square feet of station area and support facilities per 1,000 in population shall be maintained within the unincorporated area of the County. The project would not induce a significant population increase within the County that would equal or exceed 1,000 persons. The project would construct 33 new townhomes subsequent to subdividing the subject property, which would directly increase the Montalvin Manor area population by an estimated 91 people, based on the Census 2010 estimate of 2.77 people per household for Contra Costa County. As the project will add to the County's population, Condition of Approval (COA) #12 requires that, prior to the recording of the Final Map, the owner of the property shall participate in establishing a special tax for the parcels created by this subdivision. The collected tax money will be used to augment existing police services to accommodate for the incremental increase in population as a result of the subdivision.
6. Parks and Recreation: Parks and recreation standards under the GMP require three acres of neighborhood park area per 1,000 in population. The project would not induce a significant population increase within the County that would equal or exceed 1,000 persons. The project would construct 33 new townhomes subsequent to subdividing the subject property, which would directly increase the Montalvin Manor population by an estimated 91 people, based on the Census 2010 estimate of 2.77 people per household for Contra

Costa County. Furthermore, the applicant would be required to pay a Park Impact Fee for each new residence, which is used to acquire parkland and develop parks and recreation facilities to serve new residential development in the unincorporated areas of the County. Thus, there would be no impact from this project on the use of the local public parks and recreational facilities by residents of the Montalvin Manor area.

7. Flood Control and Drainage: Portions of the project lie within the Special Flood Hazard Area as designated on the Federal Emergency Management Agency Flood Insurance Rate Maps. The applicant shall be aware of the requirements of the National Flood Insurance Program and the County Floodplain Management Ordinance as they pertain to future construction of any structures on this property. There are three separate flood zones affecting this property. One is a Zone AO, indicating shallow flooding (1-foot depth), Zone AE with specified floodplain elevations, and a "Regulatory Floodway." Construction or other encroachments into the floodway, including grading, are generally prohibited.

A Stormwater Control Plan (SWCP) is required for applications that will create and/or redevelop impervious surface area exceeding 10,000 square feet in compliance with the County's Stormwater Management and Discharge Control Ordinance (§1014) and the County's Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit. The revised SWCP received on October 25, 2018 prepared by Kimley Horn has been deemed preliminarily complete for the purposes of this approval. A final SWCP and a Stormwater Control Operation and Maintenance Plan consistent with the County's Stormwater Management and Discharge Control Ordinance shall be required prior to filing of the Final Map. Provision C.10, Trash Load Reduction, of the County's NPDES permits requires control of trash in local waterways. To prevent or remove trash loads from municipal storm drain systems, trash capture devices shall be installed in catch basins (excludes those located within a bioretention/stormwater treatment facility). Devices must meet the County's NPDES permits and approved by Public Works Department. Location must be approved by Public Works Department.

The project would not substantially alter the drainage pattern of the site or area or result in substantial erosion or siltation. Division 914 of the County Ordinance Code requires that all storm water entering and/or originating on this property to be collected and conveyed, without diversion and within an adequate storm drainage system, to an adequate natural watercourse having

a definable bed and banks or to an existing adequate public storm drainage system which conveys the storm water to an adequate natural watercourse. The property is generally level but slopes upward approximately 30 feet from northwest to southeast towards the rear of the property. The site currently drains to drainage infrastructure within San Pablo Avenue or directly into the existing Garry Creek drainage channel. The project will improve the existing general drainage pattern, as it includes stormwater control facilities for the control of stormwaters entering the property. The applicant has submitted a preliminary Storm Water Control Plan that provides an underground storm drain system with bioretention facilities. The development has been entirely located on the flat, higher area of the site. In doing so, the site can continue to drain similarly to its existing condition while creating an opportune location for improvements and not creating any disturbance to Garry Creek. The SWCP includes a large bioretention area along San Pablo Avenue, which would filter the storm water as it leads to other existing and new drainage facilities. The bioretention basins would be designed to intercept storm water collected in the storm drains or surface areas, remove pollutants from storm water, and allow for percolation into the ground or into the drainage facilities.

Division 914 of the County Ordinance Code requires that all storm water entering and/or originating on this property to be collected and conveyed, without diversion and within an adequate storm drainage system, to an adequate natural watercourse having a definable bed and banks or to an existing adequate public storm drainage system which conveys the storm water to an adequate natural watercourse. A preliminary SWCP has been reviewed and deemed sufficient by the Public Works Department (PWD), who has recommended conditions of approval regarding storm water management. PWD has stated that review of the final SWCP is required prior to construction of improvements. Conformance of the project with this PWD requirement would reduce the impact of the project on San Pablo Creek to a less than significant level and there would not be any significant risk due to an increase in the project-related volume of runoff that would result in onsite or off-site flooding.

B. Tentative Map Findings

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

Project Finding: The project involves a subdivision of the 2.78-acre property into 33 residential lots, with two common area parcels for the private access roads, open and recreational spaces for the residences and guest parking. The project is consistent with the Montalvin Manor Mixed Use (M-9) General Plan land use designation. As a general guide, the permitted density for multiple-family residential development on this site should be within the range of 7.3 to 11.9 units per net acre, comparable to the Multiple-Family Residential-Low Density (ML) land use designation. The 33-unit subdivision of the 2.78-acre property would result in a density of 11.87 units per net acre, which falls within the density range for the M-9 designation. Furthermore, the project involves the construction of a new multi-family development including 33 new residences, which is consistent with the uses allowed in M-9 and ML. Furthermore, the 2005-2020 Contra Costa County General Plan contains policies related to providing an adequate supply of housing and encouraging infill development on under-utilized sites within urbanized areas where necessary utilities already are installed. Thus, the project is consistent with the M-9 land use designation and the applicable policies contained in the General Plan.

The subject property is located within the Montalvin Manor Planned Unit District (P-1). Overall, the project is in compliance with the Montalvin Manor P-1, but it includes requests for deviations to certain aspects of the development standards due to physical constraints on the property. Building 2 includes a front setback of 6 feet, 11 inches from O'Hatch Drive, where 10 feet is required. Building 4 includes a setback of 9 feet, 7 inches from O'Hatch Drive, where 10 feet is required. As such, deviations to the Montalvin Manor P-1 are included for these front setbacks. A variance is also included to allow these two front, highway setbacks, where 10 feet is required pursuant to Section 82-12.402(a). Additionally, Buildings 1, 2, 3 and 4 include a maximum height of 37 feet, 6 inches, where 30 feet is the maximum height allowed, and Buildings 5 and 6 include a maximum height of 37 feet, 6 inches, where 20 feet is allowed within 50 feet of a single-family residential district. Finally, off-street guest parking spaces #1 and #5 include a five-foot setback from O'Hatch Drive, where 10 feet is required. In reviewing these deviations, staff determined that, although approval of the included deviations and variance would not conform to the minimum requirements of the Montalvin Manor P-1 Development Standards or Section 82-18.002, the construction of these residential buildings and parking spaces does not constitute a grant of special privilege due to special circumstances applicable to the subject property.

The subject property is divided into two separate areas by Garrity Creek, which runs through the property from the southern corner through to the northwestern corner. As a result, the property is divided into a 2.02-acre area on the east side of the creek and a 0.76-acre area on the west side. The townhome project is located on the 2.02-acre eastern side, as it is the larger portion and generally more feasible for development. Contrarily, the western side of the creek is approximately 10-15 feet lower in elevation and within the FEMA flood zone AE and AO. As a result, this portion of the parcel becomes physically disconnected from the eastern side by the creek and large elevation difference, and it is limited in development potential due to the flood zone designations. With the western side of the property essentially becoming undevelopable, the developable area of the property is reduced to the 2.02-acre side of Garrity Creek. Allowing the reduced setbacks would allow the project proponent to maximize the development potential for the property without creating a significant impact on the environment or surrounding community.

Furthermore, the deviations to allow increased heights above the allowed 20- and 30-foot height maximums is a direct result of this developable space limitation created by Garrity Creek. The subject site is located in an established community that consists of various types of commercial and high-density single-family and multi-family residential uses. In order to accommodate both the 33 units, as allowed by the M-9 designation, and the required number of parking spaces in the limited developable space, it is necessary for the buildings to grow vertically where they are limited in horizontal area. The 33 new townhomes, although taller overall than the neighboring residences to the north, would provide a residential use that would help transition to the commercial land uses to the south. Additionally, the single-family residential community to the east is situated at a ground-level elevation at least 30 feet higher than that of the project. As such, the building heights would rise only slightly higher than the ground level of these properties and would not pose a significant impact.

The Montalvin Manor P-1 requires two off-street parking spaces and 0.25 guest parking spaces for units that contain two or more bedrooms. The project includes two-car garages at the ground floor of each townhome, resulting in 66 off-street parking spaces for the 33 units. The project will include over 12 guest parking spaces throughout the site, which exceeds the guest parking requirement. In addition to the project exceeding the minimum parking requirements, there are additional alternative transit factors to consider in

reviewing this project. According to Figure 5-3 of the Transportation and Circulation Element, the subject property is located within a Transit Corridor and within Local Transit Service Area, and there are two bus stops adjacent to the property that provides access to public transit, such as other bus lines and BART. Therefore, staff finds that the project provides sufficient off-street parking for the 33 new residential units.

Overall, the establishment of the 33 new residential units at the subject site for multiple-family residential development is substantially consistent with the M-9 General Plan land use designation, as it is a permitted use in this designation and is consistent with the surrounding area that consists of a variety of commercial and both single-family and multi-family residential uses. The project will substantially comply with the Montalvin Manor P-1, even with the included deviations to the development standards driven by physical constraints on the property. Furthermore, the project will provide additional housing to the area in support of the County's General Plan Housing Element.

2. Required Finding: The advisory agency shall not approve a tentative map unless it shall find that the proposed subdivision fulfills construction requirements.

Project Finding: The project will comply with the collect and convey regulations, storm drainage facilities, and design standards for private roads. Additionally, compliance with the California Building Code and all applicable County Ordinances is required for grading of the property and construction of residential buildings.

C. Housing Element (SB 166) Finding

1. Required Finding: Pursuant to Government Code Section 65863, (a) Each city, county, or city and county shall ensure that its housing element inventory described in paragraph (3) of subdivision (a) of Section 65583 or its housing element program to make sites available pursuant to paragraph (1) of subdivision (c) of Section 65583 can accommodate, at all times throughout the planning period, its remaining unmet share of the regional housing need allocated pursuant to Section 65584, except as provided in paragraph (2) of subdivision (c). At no time, except as provided in paragraph (2) of subdivision (c), shall a city, county, or city and county by administrative, quasi-judicial, legislative, or other action permit or cause its inventory of sites identified in

the housing element to be insufficient to meet its remaining unmet share of the regional housing need for lower and moderate-income households.

Project Finding: A component of preparing the County's Housing Element for the General Plan is the identification of vacant and underutilized sites suitable for residential development, and an evaluation of the housing development potential of these sites in fulfilling the County's share of the regional housing needs as determined by the Association of Bay Area Governments. This property is identified in the County's 2015-2023 Housing Element Sites Inventory (the "Inventory") with a unit potential of 19 moderate income units and 1 low income unit, however, the project does not include any moderate or low income units.

This project includes 33 market-rate townhome units with two and three-bedrooms. These unit types will increase housing opportunities for larger households, and the project proposes to maximize the housing density and development of the site despite the presence of a creek that bisects the property. The existing zoning and general plan designation allows 7.3 to 11.9 units per net acre and the project is maximizing the density allowed on the site.

The Inventory currently has a surplus of approximately 266 low-income units and 614 moderate-income units. Although this project will result in a reduction of both low and moderate-income units identified for the site, there is sufficient capacity on other identified sites in the Inventory that can accommodate the County's unmet share of the regional housing need for the remainder of this cycle of the Housing Element.

D. Findings for Granting an Exception to the Subdivision Ordinance (Title 9) Requirements

On behalf of the applicant, the project's engineer, Kimley-Horn and Associates, submitted exception request letters dated August 6, 2018, January 21, 2019, February 1, 2019, and February 8, 2019, requesting exceptions from the following provisions of the County Ordinance Code:

- a) 96-10 – Underground utilities
- b) 96-12.406 – Private road turnaround
- c) 98-6.008 – Streets entering intersections
- d) 914-14.012 – Structure setback lines for unimproved earth channels

Pursuant to Section 92.6002, minor exceptions can be granted when the required findings can be made.

1. Exception #1: An exception request to Section 96-10 regarding the undergrounding of overhead utility lines on Tara Hills Drive.

a. Required Finding: That there are unusual circumstances or conditions affecting the property.

Project Finding: Garrity Creek enters the site on Tara Hills Drive through a culvert. Undergrounding the overhead lines across the culvert could undermine the culvert, the adjacent road, and the area around the culvert. This would then impact the creek in violation of state and/or federal regulations which govern the regulatory waterway of Garrity Creek. Additionally, the utility pole located at this culvert cannot be shifted in any direction due to its reliance on tension from overhead lines connected to other utility poles to the west, east and south. As such, there are unusual circumstances or conditions affecting the property.

b. Required Finding: That the exception is necessary for the preservation and enjoyment of a substantial property right of the applicant.

Project Finding: The applicant has worked closely with the County to develop a project that will bring much needed housing to this area of Contra Costa County. The applicant has worked with County staff to avoid work within Garrity Creek to allow the project to move forward. The project will not be viable if Garrity Creek is impacted, which would be the result if the applicant is required to underground overhead lines on Tara Hills Drive. Furthermore, any work under the culvert could damage the adjacent road creating traffic impacts and other unintended consequences. We do not recommend any work that would impact the culvert and find that this exemption is necessary for the development of the property. As such, the exception is necessary for the preservation and enjoyment of a substantial property right of the applicant.

c. Required Finding: That the granting of the exception will not be materially detrimental to the public welfare or injurious to other

property in the territory in which the property is situated. As such, the exception is necessary for the preservation and enjoyment of a substantial property right of the applicant.

Project Finding: The applicant is requesting to maintain the current overhead utility lines. As there is no history of this setup creating negative impacts, there would be no detriment to public welfare or other property in the territory. As such, the granting of the exception will not be materially detrimental to the public welfare or injurious to other property in the territory in which the property is situated.

2. Exception #2: An exception request to Section 96-12.406, which requires the construction of a turnaround at the terminus of private roads.

- a. Required Finding: That there are unusual circumstances or conditions affecting the property.

Project Finding: Garrity Creek bisects the property, resulting in a portion of the property being located in the flood plain. In order to achieve maximum density for the site, development must occur on the northern side of the creek to avoid building within the flood plain. Since all of the buildings must be on the northern side of the creek, the project cannot accommodate a 70-foot diameter turnaround at the end of the most northerly private road. As such, there are unusual circumstances or conditions affecting the property.

- b. Required Finding: That the exception is necessary for the preservation and enjoyment of a substantial property right of the applicant.

Project Finding: In order to prevent construction within the flood plain and to allow for the site's allowed density to be maximized, all development is located on the northern side of Garrity Creek. Since all of the buildings must be on the northern side of the creek, the project cannot accommodate a 70-foot diameter turnaround at the end of the most northerly private road. As such, the exception is necessary for the preservation and enjoyment of a substantial property right of the applicant.

- c. Required Finding: That the granting of the exception will not be materially detrimental to the public welfare or injurious to other

property in the territory in which the property is situated. As such, the exception is necessary for the preservation and enjoyment of a substantial property right of the applicant.

Project Finding: The southern private road has a short, side branch from the main road that can function as a hammerhead turnaround for larger vehicles, such as fire trucks, refuse collection vehicles, etc. The northern private road, which serves 13 of the 33 units, has a parking stall sized restricted area similar to what is required in "dead end" parking lot aisles to facilitate turnarounds. As such, the granting of the exception will not be materially detrimental to the public welfare or injurious to other property in the territory in which the property is situated.

3. Exception #3: An exception request to Section 98-6.008, regarding the street gradient within 30 feet of the intersection of the private roads and O'Hatch Drive exceeding the maximum of 6%.

- a. Required Finding: That there are unusual circumstances or conditions affecting the property.

Project Finding: There is significant variation to the existing topography within the site. To balance the site to the extent practical, the common driveways need to be raised as much as possible to allow the finished floors within the buildings to be consistent. Since the units are served with short, three-foot driveway aprons, the longitudinal slope of the common driveways need to remain as flat as possible to prevent driveway aprons to unit garages from becoming excessively steep, which would cause scraping concerns. Balancing all of the varying slopes requires the exception, as it presents an unusual circumstance or condition affecting the property.

- b. Required Finding: That the exception is necessary for the preservation and enjoyment of a substantial property right of the applicant.

Project Finding: It is necessary to maximize grade where there are no driveway aprons to garages, such as at the intersections with O'Hatch Drive and at the internal intersection, in order to preserve the ability to maximize the allowed density of the site. As such, the exception is

necessary for the preservation and enjoyment of a substantial property right of the applicant.

- c. Required Finding: That the granting of the exception will not be materially detrimental to the public welfare or injurious to other property in the territory in which the property is situated.

Project Finding: The increased grade is limited to just over 1% above the maximum allowed by Code and occurs outside of the pedestrian crossings at the intersections. The centerline gradient will still meet the Americans with Disabilities Act (ADA) standards for access. As such, the granting of the exception will not be materially detrimental to the public welfare or injurious to other property in the territory in which the property is situated.

4. Exception #4: An exception request to Section 914-14.012 regarding creek structure setback lines relative to Garrity Creek.

- a. Required Finding: That there are unusual circumstances or conditions affecting the property.

Project Finding: Garrity Creek bisects the southern half of the site, which significantly reduces buildable area. The top of bank of the creek is higher on the northern side than the southern side, and according to FEMA the southern side of the creek overtops and floods approximately one foot deep during the 1% storm, which further reduces buildable area. As such, there are unusual circumstances or conditions affecting the property.

- b. Required Finding: That the exception is necessary for the preservation and enjoyment of a substantial property right of the applicant.

Project Finding: In order to prevent construction within the flood plain and to allow for the site's allowed density to be maximized, all development is located on the northern side of Garrity Creek, and the new buildings would not be able to meet the required creek structure setbacks. As such, the exception is necessary for the preservation and enjoyment of a substantial property right of the applicant.

- c. Required Finding: That the granting of the exception will not be materially detrimental to the public welfare or injurious to other property in the territory in which the property is situated.

Project Finding: The project's geotechnical engineer has evaluated the existing creek bank and soil profile along the creek and has determined that the setbacks from the physical top of bank, as shown on the Vesting Tentative Map, are sufficient to protect the new residences. In addition, as there is no development on the southern side of the creek, the flood plain will not be developed, which would eliminate the potential that this project could increase downstream flooding. As such, the granting of the exception will not be materially detrimental to the public welfare or injurious to other property in the territory in which the property is situated.

E. Variance Findings

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

Project Finding: The project requires a variance to allow for reduced highway setbacks pursuant to Section 82-18.002. Building 2 includes a front setback of 6 feet, 11 inches from O'Hatch Drive, where 10 feet is required, Building 4 includes a setback of 9 feet, 7 inches from O'Hatch Drive, where 10 feet is required, and off-street guest parking spaces #1 and #5 include a five-foot setback from O'Hatch Drive, where 10 feet is required. The subject property is divided into two separate areas by Garrity Creek, which runs through the property from the southern corner through to the northwestern corner. As a result, the property is divided into a 2.02-acre area on the east side of the creek and a 0.76-acre area on the west side. The townhome project is located on the 2.02-acre eastern side, as it is the larger portion and generally more feasible for development. Contrarily, the western side of the creek is approximately 10-15 feet lower in elevation and within the FEMA flood zone AE and AO. As a result, this portion of the parcel becomes physically disconnected from the eastern side by the creek and large elevation difference, and it is limited in development potential due to the flood zone designations. With the western side of the property essentially becoming undevelopable, the developable area of the property is reduced to the 2.02-acre eastern side of Garrity Creek. Allowing the reduced setbacks would allow the project proponent to maximize

the development potential for the property without creating a significant impact on the environment. As such, granting a variance for reduced highway setbacks would not be a granting of special privilege.

2. Required Finding: That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.

Project Finding: Although approval of these reduced highway setbacks (where 10 feet is required) does not conform to the minimum requirements of Section 82-18.002, the construction of these buildings and parking spaces does not constitute a grant of special privilege due to special circumstances applicable to the subject property. The subject property is divided into two separate areas by Garrity Creek, which runs through the property from the southern corner through to the northwestern corner. As a result, the property is divided into a 2.02-acre area on the east side of the creek and a 0.76-acre area on the west side. The townhome project is located on the 2.02-acre eastern side, as it is the larger portion and generally more feasible for development. Contrarily, the western side of the creek is approximately 10-15 feet lower in elevation and within the FEMA flood zone AE and AO. As a result, this portion of the parcel becomes physically disconnected from the eastern side by the creek and large elevation difference, and it is limited in development potential due to the flood zone designations. With the western side of the property essentially becoming undevelopable, the developable area of the property is reduced to the 2.02-acre side of Garrity Creek. Allowing the reduced setbacks would allow the project proponent to maximize the development potential for the property without creating a significant impact on the environment.

Allowing this variance would also not result in a negative impact to the surrounding community. The subject property is situated in an established community that consists of various types of commercial and high-density single-family and multi-family residential uses. The 33 new townhomes, although taller overall than the neighboring residences to the north, would provide a residential use that would help transition to the commercial land uses to the south.

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

Project Finding: The property is within the Montalvin Manor Planned Unit District (P-1), which establishes land use consistency based on the subject property's General Plan land use designation. The subject property is located in the Montalvin Manor Mixed-Use (M-9) General Plan land use designation. The M-9 designation applies to two sites located at the intersection of Tara Hills Drive and San Pablo Avenue: a site consisting of one parcel at the north corner of the intersection and a site consisting of two parcels at the east corner of the intersection. A range of neighborhood retail, residential, and office uses are permitted in this designation to stimulate the upgrade and redevelopment of the properties. The mixed-use designation is intended to encourage the mix of both residential and neighborhood retail uses on this site. Although approval of reduced highway setbacks for multiple buildings (where 10 feet is required) does not conform to the minimum requirements of Section 82-18.002, the construction of the buildings with these reduced setbacks would allow for the construction of residential units in accordance with the M-9 designation and the General Plan Housing Element. Finally, the reduced highway setbacks, as part of the overall subdivision and townhome development plan, is consistent with the residential mixed-use nature of the two-parcel M-9 site and would substantially meet the intent and purpose of the M-9 land use designation. As such, approval of the requested variance would allow for the construction of a permitted use without negatively impacting the appearance or character of the neighborhood in any way and would allow the property owner to enjoy the same rights as nearby neighbors to further develop the property.

II. CONDITIONS OF APPROVAL FOR COUNTY FILES #SD18-9491 & DP18-3022

1. The Vesting Tentative Map and Final Development Plan for the 33 Residential-Lot and Two Common-Area-Lot Subdivision is APPROVED, as generally shown and based on the following documents:
 - A. Application and materials submitted to the Department of Conservation and Development, Community Development Division (CDD) on June 15, 2018;

- B. Revised Vesting Tentative Map, Final Development Plan, and Landscaping Plan for Subdivision 9491, dated received on October 25, 2018;
 - C. Revised site plan received June 4, 2019; with a height maximum of 27'-6" on the southwest unit and 37'6" in maximum height for the other units within the development;
 - D. Biological Resource Analysis Report, prepared by Johnson Marigot Consulting, LLC, received January 18, 2019;
 - E. Geotechnical Investigation Report, prepared by Quantum Geotechnical, Inc., dated June 11, 2018, and Response to Contra Costa County Flood Control Comments addendum received August 6, 2018;
 - F. Noise Assessment Study, Prepared by Edward L. Pack Associates, Inc., received June 15, 2018;
 - G. Stormwater Control Plan, prepared by Kimley-Horn and Associates, Inc., received October 25, 2018;
 - H. Traffic Impact Study, prepared by Advanced Mobility Group, received June 15, 2018.
 - I. Arborist Report, prepared by Horticultural Associates, received January 18, 2019.
2. Approval is granted to allow for the following variances that meet the requirements of Section 26-2.2006 of the County Ordinance Code:
- A. A highway setback of 6 feet, 11 inches from O'Hatch Drive for Building 2, where 10 feet is required pursuant to Section 82-18.002;
 - B. A highway setback of 9 feet, 7 inches from O'Hatch Drive for Building 4, where 10 feet is required pursuant to Section 82-18.002;
 - C. A highway setback of five feet from O'Hatch Drive for off-street guest parking spaces #1 and #5, where 10 feet is required pursuant to Section 82-18.002.

Application Fees

3. This application is subject to an initial application deposit of \$3,850.00, which was paid with the application submittal, plus time and materials costs if the application review expenses exceed 100% of the initial deposit. Any additional costs due must be paid within 60 days of the permit effective date or prior to use of the permit, whichever occurs first. The applicant may obtain current costs by contacting the project planner. If you owe additional fees, a bill will be sent to you shortly after permit issuance.

Indemnification

4. Pursuant to Government Code Section 66474.9, the applicant (including the subdivider or any agent thereof) shall defend, indemnify, and hold harmless the County, its agents, officers, and employees from any claim, action, or proceeding against the Agency (the County) or its agents, officers, or employees, to attack, set aside, void, or annul, the Agency's approval concerning this subdivision map application, which action is brought within the time period provided in Section 66499.37. The County will promptly notify the subdivider of any such claim, action, or proceeding and cooperate fully in the defense.

Prior to recordation of the Final Map, or issuance of grading or building permits, whichever occurs first, the applicant shall submit the indemnification agreement between the applicant and Contra Costa County for the review and approval of CDD.

Compliance Report

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

The permit compliance review is subject to staff time and materials charges, with an initial deposit of \$1,500, which shall be paid at the time of submittal of the compliance report.

6. This Final Development Plan Permit includes approval of the design for the residences. Any changes to the approved plans stated above must be submitted for review and approval of CDD, and may require the submittal of an application, if deemed necessary.

Inclusionary Housing Ordinance

The following conditions of approval are for the purpose of compliance with Chapter 822-4 (Inclusionary Housing Ordinance) of the County Ordinance Code. Terms and definitions used in the following conditions of approval may be found in the above-referenced County Ordinance Code.

7. This project is subject to the Inclusionary Housing Ordinance (IHO). Pursuant to Section 822-4.402 of the County Ordinance Code, a residential development of 33 for-sale units shall require at least fifteen percent of the for-sale units to be developed and sold as inclusionary units (units that are required to be sold at an affordable sales price to lower and moderate income households). The applicant is required to construct 4.95 inclusionary housing units for the project. (Required inclusionary units: 33 for-sale units x 15% = 4.95 inclusionary units)

As an alternative to the requirement to construct inclusionary housing, the applicant has proposed the payment of a For-Sale Housing In-Lieu Fee. This alternative to collect an in-lieu fee, as established in DCD's fee schedule, has been accepted.

Prior to the recordation of the Final Map or the filing of a building permit for the development, whichever occurs first, the applicant must pay to the County the full amount of the IHO For-Sale Housing In-Lieu fee of \$127,871.37. This amount is calculated as: \$3,874.89/unit x 33 market rate units = \$127,871.37 total in-lieu fee. This in-lieu fee is non-refundable.

8. Should the applicant choose not to pay the in-lieu fee in full prior to the recordation of the Final Map or the filing of a building permit, whichever occurs first, then the applicant shall construct the required number of inclusionary units on-site, off-site, or a combination of both on-site and off-site.

Park Impact Fee

9. **Prior to submittal of a building permit for a new residence**, the applicant shall pay the applicable park impact fee as established by the Board of Supervisors.

Park Dedication Fee

10. **Prior to submittal of a building permit for a new residence**, the applicant shall pay the applicable park dedication fee as established by the Board of Supervisors.

Child Care

11. **Prior to submittal of a building permit for each new residence**, the applicant shall pay a fee of \$400.00 toward childcare facility needs in the area, as established by the Board of Supervisors.

Police Services District

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

Creation of Homeowners Association and CC&R's

13. Prior to filing the Final Map, a homeowners association (HOA) shall be created and the Covenants, Conditions and Restrictions (CC&R) shall be recorded concurrently with the final map. The CC&Rs shall be submitted for review and approval of the CDD. This document shall provide for the creation of a homeowners association that is responsible for maintenance of the private streets, scenic development/creek areas with required stormwater control measures (i.e. bio-retention basin), special road paving, drainage, and retaining walls, landscaping/park space/common areas/open space. During long-term operation of the storm drain system, the HOA shall be responsible for hiring a

contractor to complete regular maintenance activities, such as de-silting culverts and removing vegetation and debris from storm drain inlets, to assure that facilities are operating at their design capacities and to prevent on-site and downstream drainage/flooding problems. The HOA shall be responsible for maintenance of all common subdivision drainage devices and all stormwater treatment facilities required for compliance with Provision C.3 of the county's Municipal Regional Permit that regulates stormwater discharge.

Deed Restriction

14. At least 30 days prior to issuance of any permits (i.e. grading or building) a deed restriction must be prepared and recorded either prior to or concurrently with the filing and subsequent recordation of the vesting tentative map. The deed must notify all prospective Townhome Owners the garage must be used for each owners vehicle parking and will be enforced by the Homeowners Association.

CC&R's

15. Covenants, Conditions and Restrictions (CC&R's) shall be submitted for review with the final map, and shall be subject to review and approval by the CDD. This document shall provide for establishment, ownership and maintenance of the common open spaces, parking, fire protection, fencing, private streets, drainage maintenance, and establishment of signs.
16. Townhome residents may not park in the designated guest parking spaces or in on-street parking along O'Hatch Drive between San Pablo Avenue and Brian Road. Guest parking spaces shall not be rented or leased and shall remain available as guest parking spaces. Recreational Vehicle (RV) or trailer parking in guest parking spaces is strictly prohibited.

Community Outreach

17. The project developer shall hold two (2) additional community outreach meetings as follows:
 - A. The first meeting must occur prior to the issuance of a building and/or grading permit for the project

- B. The second meeting must occur during the construction/building phase and prior to issuance of any final occupancy permits. The purpose and intent is to further discussion and reasonable suggestions in regards to general traffic flow between the developer and residents. At the conclusion of each meeting the project developer will submit meeting minutes and/or meeting notes as evidence the meetings occurred to the CDD.

Lighting

18. **At least 30 days prior to submittal of a building permit**, a lighting plan for proposed exterior lighting shall be submitted to the Department of Conservation and Development, Community Development Division (CDD) for review and approval. The proposed exterior lighting shall be directed down so that lights shine onto the subject property and away from adjacent properties and away from San Pablo Avenue, O'Hatch Drive, and Tara Hills Drive.

On-site Guest Parking

19. At least 30 days prior to issuance of building or grading permits, the project sponsor shall submit a revised parking plan that provides 12 guest parking spaces on-site, subject to the review and approval of the Zoning Administrator.

Restitution for Tree Removal

20. Required Restitution for Approved Tree Removal: The following measures are intended to provide restitution for the removal of 13 code-protected trees:
 - A. Tree Restitution Planting and Irrigation Plan: **Prior to the removal of trees or submittal of building permits (e.g. demolition, grading or building) for each lot, whichever occurs first**, the applicant shall submit a tree planting and irrigation plan prepared by a licensed arborist or landscape architect for the review and approval of CDD. The plan shall provide for the planting of a total of **three (3) California-native-species trees, no larger than 15 gallons in size**. The plan shall comply with the State's Model Water Efficient Landscape Ordinance or the County Ordinance, if one is adopted. The plan shall be accompanied by an estimate prepared by a licensed landscape architect or arborist of the materials and labor costs to complete the improvements on the plan. **The plan shall be implemented prior to final building inspection for the final lot.**

- B. Required Security to Assure Completion of Plan Improvements: **Prior to removal of the code-protected tree or submittal of building permits (e.g. demolition, grading or building) for each lot, whichever occurs first**, the applicant shall submit a security that is acceptable to the CDD. The bond shall include the amount of the approved cost estimate, *plus* a 20% inflation surcharge.
- C. Initial Deposit for Processing of Security: The County ordinance requires that the applicant pay fees to cover all staff time and material costs of staff for processing the landscape improvement security. At the time of submittal of the security, the applicant shall pay an initial deposit of \$100.
- D. Duration of Security: The security for each lot shall be retained by the County for a minimum of 12 months up to 24 months beyond the date of receipt of the security and from the time, the final inspection for the lot was approved. A prerequisite of releasing the bond between 12 and 24 months shall be to have the applicant arrange for the consulting arborist to inspect the trees and to prepare a report on the trees' health. In the event that CDD determines that the tree(s) intended to be protected has been damaged, and CDD determines that the applicant has not been diligent in providing reasonable restitution, then CDD may require that all part of the security be used to provide for mitigation of the damaged tree(s). Should one security be submitted for all lots, the security may be released upon complying with the requirements stated above and upon approval of a final inspection for the last lot constructed.

Tree Protection

- 21. Tree removal shall not occur until building permits are issued for construction.
- 22. The applicant shall adhere to all of the recommended tree preservation measures outlined within the arborist report prepared by prepared by Horticultural Associates, received January 18, 2019. All recommended tree protection measures shall be placed on the face of construction plans.
- 23. Prior to the start of any clearing, stockpiling, trenching, grading, compaction, paving or change in ground elevation on a site with trees to be preserved, the applicant shall install fencing at the dripline or other area as determined by an arborist report of all trees adjacent to or in the area to be altered. Prior to grading

or issuance of any permits, the fences may be inspected and the location thereof approved by appropriate County staff.

24. Common/Open Space areas must be suitably landscaped with a variety of California native plant material. All landscape plans shall be submitted for review prior to installation to the CDD.
25. No grading, compaction, stockpiling, trenching, paving or change in ground elevation shall be permitted within the dripline unless indicated on the grading plans approved by the County and addressed in any required report prepared by an arborist. If grading or construction is approved within the dripline, an arborist may be required to be present during grading and construction, an involved arborist shall prepare a report outlining further methods required for tree protection if any are required. All arborist expense shall be borne by the developer and applicant.
26. No parking or storing vehicles, equipment, machinery or construction materials, construction trailers and no dumping of oils or chemicals shall be permitted within the dripline within the dripline of any tree to be saved.

Landscaping

27. **Prior to issuance of a building permit**, a final landscaping and irrigation plan shall be submitted for the review and approval of CDD. The landscaping plan shall conform to the State's Model Water Efficient Landscape Ordinance or the County Ordinance, if one is adopted. The plan(s) must be prepared by a licensed Landscape Architect or licensed landscape contractor. **Prior to requesting a final inspection for the final lot of each phase**, the approved landscaping shall be installed and evidence of the installation (i.e. photos) shall be provided for the review and approval of CDD.

Air Quality

28. The following Bay Area Air Quality Management District, Basic Construction Mitigation Measures shall be implemented during project construction and shall be included on all construction plans (**MM AIR-1**):
 - A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.

- B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- G. All construction and operational equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
- H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

Biological Resources

29. The following general avoidance and minimization measures shall be implemented throughout the construction activities to avoid potential impacts to sensitive biological resources. **(MM BIO-1)**
- A. All staging, maintenance, and storage of construction equipment will be performed in a manner to preclude any direct or indirect discharge of fuel, oil, or other petroleum products into waters of the U.S./State. No other debris, rubbish, creosote-treated wood, soil, silt, sand, cement, concrete or washings thereof, or other construction-related materials or wastes will be allowed to enter into or be placed where they may be washed by rainfall or runoff into waters of the U.S./State. All such debris and waste shall be picked-up daily and properly disposed of at an appropriate site.

- B. All food-related trash items such as wrappers, cans, bottles, and food scraps will be disposed of in closed containers and removed at least once a day from the project site.
- C. No firearms will be allowed on the project site except for those carried by authorized security personnel, or local, State, or Federal law enforcement officials.
- D. Project personnel shall not have dogs or cats in the project area.
- E. Project personnel will not be permitted to smoke in the project area.
- F. No pesticides of any kind will be used on the project site at any time during project implementation.
- G. No equipment will be operated in areas of flowing or standing water. No fueling, cleaning, or maintenance of vehicles or equipment will take place within any areas where an accidental discharge to waters of the U.S./State waters may occur.
- H. All equipment including excavators, trucks, hand tools, etc., that may have come in contact with invasive plants or the seeds of these plants, will be carefully cleaned before arriving on the site and shall also be carefully cleaned before removal from the site to prevent spread of these plants.
- I. Disturbance or removal of vegetation will not exceed the minimum necessary to complete construction.
- J. To minimize harassment, injury, death, and harm in the form of temporary habitat disturbances, all project-related vehicle traffic will be restricted to established roads, construction areas, equipment staging, parking, and stockpile areas.
- K. Along the length of the onsite portion of Garrity Creek, the work area will be delineated with orange silt fencing in order to minimize impacts to habitat beyond the work limit. This fencing will remain in place until all ground moving operations have ceased. Orange cyclone fencing, or other materials that can entrap small amphibians and reptiles and other small

wildlife species, will not be used.

- L. For each onsite tree proposed for preservation, a root protection zone will be established, extending from the trunk to the dripline (the outer extent of the tree canopy). This root protection zone will be fenced off from the work area with construction fencing in order to protect the preserved trees from inadvertent damage due to ground moving, compaction, and/or limb removal within the footprint of the dripline.
30. If vegetation removal or ground disturbance are scheduled to occur between February 15 and August 31, a preconstruction nesting bird survey of all suitable nesting habitat on the project site and within the zone of influence (the area immediately surrounding the project site that supports suitable nesting habitat that could be impacted by the project due to visual or auditory disturbance associated with the removal of vegetation and construction activities scheduled to occur during the nesting season) will be conducted by a qualified biologist within 14 days prior to commencement of vegetation removal or ground disturbance. If no nesting birds are observed during the survey, the vegetation removal and/or ground disturbance may commence as planned. If nesting birds are observed during the survey, a non-disturbance buffer of 50 feet for passerine birds and 250 feet for raptors will be established. This buffer will remain in place until such a time as the young have been determined (by a qualified biologist) to have fledged. **(MM BIO-2)**

Cultural Resources

31. If deposits of prehistoric or historical archaeological materials are encountered during ground disturbance activities, all work within 30 yards of these materials shall be stopped until a professional archaeologist who is certified by the Society for California Archaeology (SCA) and/or the Society of Professional Archaeology (SOPA), and the Native American tribe that has requested consultation and/or demonstrated interest in the project site, have had an opportunity to evaluate the significance of the find and suggest appropriate mitigation(s) if deemed necessary. **(MM CUL-1)**
32. If the deposits are not eligible, avoidance is not necessary. If the deposits are eligible, they will need to be avoided by impacts or such impacts must be mitigated. Upon completion of the archaeological assessment, a report should be prepared documenting the methods, results, and recommendations. The report should be submitted to the Northwest Information Center and appropriate Contra

Costa County agencies.

Prehistoric materials can include flake-stone tools (e.g., projectile points, knives, choppers) or obsidian, chert, or quartzite tool-making debris; culturally darkened soil (i.e., midden soil often containing heat-affected rock, ash and charcoal, shellfish remains, and cultural materials); and stone milling equipment (e.g., mortars, pestles, handstones). Historical materials can include wood, stone, concrete, or adobe footings, walls and other structural remains; debris-filled wells or privies; and deposits of wood, glass ceramics, and other refuse. **(MM CUL-2)**

33. If human remains are encountered, work within 50 feet of the discovery should be redirected and the County Coroner notified immediately. At the same time, an archaeologist should be contacted to assess the situation. If the human remains are of a Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Most Likely Descendant (MLD) to inspect the property and provide recommendations for the proper treatment of the remains and associated grave goods.

Upon completion of the assessment, the archaeologist should prepare a report documenting the methods and results, and provide recommendations for the treatment of the human remains and any associated cultural materials, as appropriate and in coordination with the recommendations of the MLD. The report should be submitted to the Northwest Information Center and appropriate Contra Costa agencies. **(MM CUL-3)**

Geology

34. **Prior to recordation of the Final Map**, the project sponsor shall provide an updated geotechnical report for technical review by the County Peer Review Geologist, and for review and approval by CDD. The updated geotechnical report shall include the following: (i) detailed slope stability analysis for Garrity Creek, (ii) review of project grading and drainage plans, including the siting and design of C.3 bio-retention facilities, (iii) present California Building Code Seismic Design Parameters, (iv) provide geotechnical recommendations pertaining to site clearing, grading, foundation designs, slabs-on-grade, pavement, flat work, and drainage, and (v) outline of details of the proposed observation, monitoring, and testing services recommended during construction. The geotechnical monitoring during construction shall commence with clearing, and extending through

grading, installation of drainage facilities, and foundation-related work. **(MM GEO-1)**

35. The gradient of this slope be restricted to 2½:1 (or flatter), with the top of the cut rounded to provide a smooth transition to natural topography. Consideration shall be given to use of special engineering (e.g. reinforced earth, retaining walls or combination of retaining wall and cut slope). If the updated geotechnical report deems the retreat of the top-of-bank to be a substantial risk, implementation of a deeper foundation system (e.g. pier and grade beam) and/or improvements to the creek bank shall be warranted to achieve long-term stability of the residential units nearest the creek corridor. **(MM GEO-2)**
36. The updated geotechnical report shall include additional corrosivity testing to determine if special precautions shall be required to avoid damage to improvements that are in contact with the ground (concrete or steel). **Following rough grading, but prior to commencement of foundation-related work,** additional testing of each building pad may be required by the County, if deemed to be necessary. **(MM GEO-3)**

Noise

37. To reduce potential construction noise impacts, the following multi-part mitigation measure shall be implemented for the project, and shall be stated on the face of all construction plans **(MM Noise-1)**:
- A. The applicant shall make a good faith effort to minimize project-related disruptions to adjacent properties, and to uses on the site. This shall be communicated to all project-related contractors.
 - B. The applicant shall require their contractors and subcontractors to fit all internal combustion engines with mufflers which are in good condition and shall locate stationary noise-generating equipment such as air compressors as far away from existing residences as possible.
 - C. Large trucks and heavy equipment are subject to the same restrictions that are imposed on construction activities, except that the hours are limited to 9:00 AM to 4:00 PM.
 - D. All construction activities shall be limited to the hours of 8:00 A.M. to 5:00 P.M., Monday through Friday, and are prohibited on state and federal

holidays on the calendar dates that these holidays are observed by the state or federal government as listed below:

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

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

Federal: http://www.opm.gov/Operating_Status_Schedules/fedhol/2019.asp

California: <http://www.ftb.ca.gov/aboutFTB/holidays.shtml>

38. To achieve compliance with the 65 dB DNL noise standard at the noise-impacted patios of the building closest to San Pablo Avenue, the following exterior noise reduction measures shall be implemented during project construction and shall be included on all construction plans. **(MM Noise-2)**
- A. Construct six-foot acoustically-effective front patio fences at the units closest to, and directly facing, San Pablo Avenue. The patio fence height is in reference to the nearest patio pad elevation.
 - B. In order for the six-foot noise control fences to provide adequate noise shielding, the patios shall be no closer than 55 feet from the centerline of San Pablo Avenue.
 - C. To achieve an acoustically-effective fence, it must be made air-tight (i.e. without cracks, gaps, or other openings) and must provide for long-term durability. The barriers shall be constructed of wood, concrete, stucco,

masonry, metal, or a combination thereof and must have a minimum surface weight 2.5 pounds per square foot. If wood fencing is used, homogenous sheet materials are preferable to conventional wood fencing, as the latter has a tendency to warp and form openings with age. However, high-quality, air-tight, tongue-and-groove, shiplap, or board and batten construction can be used, provided the minimum surface weight requirement is met and the construction is air-tight. The noise control barrier shall be constructed so that all joints, including connections with posts or pilasters, are sealed air-tight and no openings are permitted between the upper barrier components and the ground. Gates may be incorporated into the patio fences; however, the gates must be constructed air-tight and shall fit tightly to the fence when closed. Astragals shall be placed over the gaps at the stop and hinge jambs, and the gap under the gate shall be no more than one-inch high.

39. To achieve compliance with the 45 dB DNL noise standard of the Contra Costa County Noise Element and Title 24, the following exterior noise reduction measures shall be implemented during project construction and shall be included on all construction plans. **(MM Noise-3)**

- A. Maintain closed, at all times, all windows of living spaces of the first building closest to San Pablo Avenue. Install windows rated minimum Sound Transmission Class (STC) 32 at all living spaces on the east, north and west sides of the building. Install windows rated minimum STC 28 at all living spaces on the south side of the building.
- B. Maintain closed, at all times, all windows of living spaces of the second building from San Pablo Avenue facing east, north, west and the south facing spaces at the units on the east and west end of the building. Install windows rated minimum STC 28 at all living spaces with the closed window condition.
- C. Maintain closed, at all times, all windows of living spaces of the easterly three units and westerly two units of the third building from San Pablo Avenue that face north, east or west. Install windows rated minimum STC 28 at all living spaces on the east, north and west sides of the building. Install windows rated minimum STC 28 at all living spaces with the closed window condition.
- D. When windows are maintained closed at all times for noise control, mechanical ventilation shall be provided. The mechanical ventilation shall conform to the requirements of the California Mechanical Code and shall

not compromise the acoustical integrity of the building shell. All other windows of the development may be kept open as desired.

- E. When windows are kept closed for noise control, they shall be operable, as this mitigation does not imply a fixed or inoperable condition.
- F. In addition to the required STC ratings, the windows shall be installed in an acoustically-effective manner. To achieve an acoustically-effective window and door construction, the sliding window panels shall form an air-tight seal when in the closed position, and the window frames must be caulked to the wall opening around their entire perimeter with a non-hardening caulking compound to prevent sound infiltration.
- G. **Prior to issuance of building permits**, this report shall be submitted to CDD for review. The acoustical test report of all sound-rated windows and glass doors shall be reviewed by a qualified acoustician to ensure that the chosen windows and glass doors will adequately reduce interior noise exposure to acceptable levels.

Construction

- 40. Contractor and/or developer shall comply with the following construction, noise, dust and litter control requirements.
 - A. A dust and litter control program shall be submitted for the review and approval of the Community Development Division staff. Any violation of the approved program or applicable ordinances shall require an immediate work stoppage. Construction work shall not be allowed to resume until, if necessary, an appropriate construction bond has been posted.
 - B. The site shall be maintained in an orderly fashion. Following the cessation of construction activity, all construction debris shall be removed from the site.

Debris Recovery

- 41. **Prior to issuance of building permits**, the applicant shall submit Construction Waste Management Plan, which identifies approved methods to meet 65% recycling requirement of construction and demolition waste materials generated at jobsite.

42. **Prior to final inspection**, the applicant shall submit Construction Waste Management Final Report containing information and supporting documentation that demonstrates compliance with 65% recycling requirement of construction and demolition waste materials generated at jobsite.

Transportation Demand Management

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

Street Names

44. **Prior to the recordation of the Final Map**, proposed names shall be submitted for review by the Department of Conservation and Development, GIS/Mapping Section. Alternate street names should be submitted. The Final Map cannot be certified by CDD without the approved street names.

PUBLIC WORKS CONDITIONS OF APPROVAL FOR SUBDIVISION SD18-9491/DP18-3022

Applicant shall comply with the requirements of Title 8, Title 9 and Title 10 of the Ordinance Code. Any exception(s) must be stipulated in these Conditions of Approval. Conditions of Approval are based on the vesting tentative map submitted to the Department of Conservation and Development on October 25, 2018.

UNLESS OTHERWISE SPECIFIED, COMPLY WITH THE FOLLOWING CONDITIONS OF APPROVAL PRIOR TO FILING OF THE FINAL MAP.

General Requirements

45. In accordance with Section 92-2.006 of the Ordinance Code, this subdivision shall conform to all applicable provisions of the Subdivision Ordinance (Title 9). Any exceptions therefrom must be specifically listed in this conditional approval statement. The drainage, road and utility improvements outlined below shall require the review and approval of the Public Works Department and are based

on the Vesting Tentative Map received by the Department of Conservation and Development, Community Development Division, on October 25, 2018.

46. Applicant shall submit improvement plans prepared by a registered civil engineer to the Public Works Department and pay appropriate fees in accordance with the County Ordinance and these conditions of approval. The below conditions of approval are subject to the review and approval of the Public Works Department.

Roadway Improvements (San Pablo Avenue, Tara Hills Drive and O'Hatch Drive)

47. Applicant shall construct sidewalk, necessary longitudinal and transverse drainage, street lighting, and transitions along the frontages of San Pablo Avenue, Tara Hills Drive and O'Hatch Drive. Sidewalk widths along Tara Hills Drive and O'Hatch Drives shall generally be 6.5 feet (including curb width) and 10 feet along San Pablo Avenue. The sidewalk width along the transition zone near the Garrity Creek crossing of Tara Hills Drive may be reduced to 4-feet to conform with adjacent improvements to the east. In addition, the curb along O'Hatch Drive shall be removed and reconstructed such that the face of curb is at least 16 feet from the centerline of the existing right of way.
48. Any cracked and displaced curb, gutter, and sidewalk shall be removed and replaced along the project frontages of San Pablo Avenue and Tara Hills Drive. Concrete shall be saw cut prior to removal. Existing lines and grade shall be maintained. New curb and gutter shall be doveled into existing improvements.
49. Applicant shall construct a street-type connection with 20-foot radii curb returns and pedestrian ramps in lieu of standard driveway depressions at the intersections with the proposed private streets serving the site.
50. The existing pedestrian ramp at the intersection of O'Hatch Drive and San Pablo Avenue shall be reconstructed to meet current design standards.

Access to Adjoining Property

Proof of Access

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

Encroachment Permit

52. Applicant shall obtain an encroachment permit from the Application and Permit Center, if necessary, for construction of driveways or other improvements within the rights-of-way of San Pablo Avenue, Tara Hills Drive and O'Hatch Drive.

Abutter's Rights

53. Applicant shall relinquish abutter's rights of access along San Pablo Avenue, Tara Hills Drive and O'Hatch Drive with the exception of the proposed private road intersections.

Intersection Design/Sight Distance

Sight Distance

54. Applicant shall provide sight distance at the on-site driveways and O'Hatch Drive for a design speed of 30 miles per hour. The applicant shall trim vegetation, as necessary, to provide sight distance at these driveways. Any new landscaping, signs, fencing, retaining walls, or other obstructions proposed at the driveways shall be setback to ensure that the sight lines are clear.

Private Roads

55. Applicant shall construct an on-site roadway system to current County private road standards.

Exceptions

- A. Applicant shall be granted an exception from County Code §98-6.008, Streets Entering Intersection, provided that the centerline gradient does not exceed Americans with Disabilities Act (ADA) standards.
- B. Applicant shall be granted an exception from County Code Section 96-12.406, Private Road Turnaround, provided the applicant obtains approval from the Fire District and constructs the proposed parking restricted reserve adjacent to Unit 6 as shown on the Vesting Tentative Map.

Road Dedications

56. Property Owner shall convey to the County, by Offer of Dedication, the right-of-way necessary to encumber the new pedestrian ramps and path of travel at the private street intersections along O'Hatch Drive.

Bicycle - Pedestrian Facilities

Pedestrian Access

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

Parking

58. "No Parking" signs shall be installed along all or portions of San Pablo Avenue, Tara Hills Drive and O'Hatch Drive subject to the review of the Public Works Department and the review and approval of the Board of Supervisors.
59. Parking shall be prohibited on one side of on-site roadways where the curb-to-curb width is less than 36 feet and on both sides of on-site roadways where the curb-to-curb width is less than 28 feet. "No Parking" signs shall be installed along these portions of the roads subject to the review and approval of the Public Works Department.

Utilities/Undergrounding

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

Exception

An exception from the undergrounding of overhead utilities is allowed relative to the existing single joint pole located along the property's Tara Hills Drive frontage.

Maintenance of Facilities

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

Drainage Improvements

Collect and Convey

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

63. The nearest public drainage facility is Garrity Creek traversing the project site.

Miscellaneous Drainage Requirements

64. The applicant shall design and construct all storm drainage facilities in compliance with the Ordinance Code and Public Works Department design standards.
65. Applicant shall prevent storm drainage from draining across the sidewalk(s) and driveway(s) in a concentrated manner.

Floodplain Management

66. The project is located in a Special Flood Hazard Area (100-year flood boundary) as designated on the Federal Emergency Management Agency's Flood Insurance Rate Maps. The applicant shall be aware of the requirements of the National Flood

Insurance Program (Federal) and the County Floodplain Management Ordinance (Ordinance No. 2000-33) as they pertain to construction of any structures on this property.

Creek Structure Setbacks

67. The applicant shall relinquish "development rights" over that portion of the site that is within the structure setback area of Garrity Creek. The structure setback area shall be determined by using the criteria outlined in Chapter 914-14, "Rights of Way and Setbacks," of the Subdivision Ordinance. "Development rights" shall be conveyed to the County by grant deed.

Exception

- A. The structure setback area may be reduced subject to the review of the Public Works Department based on a hydrology and hydraulic study and geotechnical analysis of the soil which shows that the creek banks will be stable and non-erosive with the anticipated creek flows and velocities. The hydrology and hydraulic study shall be based upon the ultimate development of the watershed.
- B. The property owner shall be aware that the creek banks on the site are potentially unstable. The property owner shall execute a recordable agreement with the County which states that the developer and the property owner and the future property owner(s) will hold harmless Contra Costa County and the Contra Costa County Flood Control and Water Conservation District in the event of damage to the on-site and off-site improvements as a result of creek-bank failure or erosion.
- C. The applicant shall design the foundation for this residential addition based on a soils and geotechnical report. The soils and geotechnical report shall address potential soils and bank instability resulting from potential erosive creek flows, potential creek bank erosion and instability, and shall be submitted to the Building Inspection Department for review. The foundation design may incorporate conservative design analysis rather than rigorous geotechnical analysis if acceptable to the Building Inspection.

National Pollutant Discharge Elimination System (NPDES)

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

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

- A. Minimize the amount of directly connected impervious surface area.
- B. Install approved full trash capture devices on all catch basins (excluding catch basins within bioretention basins) as reviewed and approved by Public Works Department. Trash capture devices shall meet the requirements of the County's NPDES permits.
- C. Place advisory warnings on all catch basins and storm drains using current storm drain markers.
- D. Distribute public information items regarding the Clean Water Program and lot specific IMPs to buyers.
- E. Other alternatives comparable to the above as approved by the Public Works Department.

Stormwater Management and Discharge Control Ordinance

69. The applicant shall submit a FINAL Storm Water Control Plan (SWCP) and a Stormwater Control Operation and Maintenance Plan (O+M Plan) to the Public Works Department, which shall be reviewed for compliance with the County's National Pollutant Discharge Elimination System (NPDES) Permit and shall be deemed consistent with the County's Stormwater Management and Discharge Control Ordinance (§1014) prior to filing of the final map. To the extent required by the NPDES Permit, the Final Stormwater Control Plan and the O+M Plan will be required to comply with NPDES Permit requirements that have recently become

effective that may not be reflected in the preliminary SWCP and O+M Plan. All time and materials costs for review and preparation of the SWCP and the O+M Plan shall be borne by the applicant.

70. Improvement Plans shall be reviewed to verify consistency with the final SWCP and compliance with Provision C.3 of the County's NPDES Permit and the County's Stormwater Management and Discharge Control Ordinance (§1014).
71. Stormwater management facilities shall be subject to inspection by the Public Works Department staff; all time and materials costs for inspection of stormwater management facilities shall be borne by the applicant.
72. Prior to filing of the Final Map, the property owner(s) shall enter into a Stormwater Management Facility Operation and Maintenance Agreement with Contra Costa County, in which the property owner(s) shall accept responsibility for and related to operation and maintenance of the stormwater facilities, and grant access to relevant public agencies for inspection of stormwater management facilities.
73. Prior to filing of the Final Map, the property owner(s) shall annex the subject property into Community Facilities District (CFD) No. 2007-1 (Stormwater Management Facilities), which funds responsibilities of Contra Costa County under its NPDES Permit to oversee the ongoing operation and maintenance of stormwater facilities by property owners.
74. Any proposed water quality features that are designed to retain water for longer than 72 hours shall be subject to the review of the Contra Costa Mosquito & Vector Control District.

ADVISORY NOTES

ADVISORY NOTES ARE ATTACHED TO THE CONDITIONS OF APPROVAL, BUT ARE NOT CONDITIONS OF APPROVAL. ADVISORY NOTES ARE PROVIDED IN ORDER TO INFORM THE APPLICANT OF ADDITIONAL REGULATIONS, ORDINANCES, AND REQUIREMENTS THAT MAY BE APPLICABLE TO THE PROPOSED PROJECT.

- A. NOTICE OF 90-DAY OPPORTUNITY TO PROTEST FEES, DEDICATIONS, RESERVATIONS, OR OTHER EXACTIONS PERTAINING TO THE APPROVAL OF THIS PERMIT.**

This notice is intended to advise the applicant that pursuant to Government Code Section 66000, et seq., the applicant has the opportunity to protest fees, dedications, reservations, and/or exactions required as part of this project approval. The opportunity to protest is limited to a 90-day period after the project is approved.

The ninety (90) day period, in which you may protest the amount of any fee or the imposition of any dedication, reservation, or other exaction required by this approved permit, begins on the date this permit was approved. To be valid, a protest must be in writing pursuant to Government Code Section 66020 and delivered to the Department of Conservation and Development within 90 days of the approval date of this permit.

- B. The applicant will be required to comply with the requirements of the Bridge/Thoroughfare Fee Ordinance for the West Contra Costa (WCC) Transit/Pedestrian, WCCTAC Bridge/Road, and West County Areas of Benefit as adopted by the Board of Supervisors.
- C. This project may be subject to the requirements of the Department of Fish and Wildlife. It is the applicant's responsibility to notify the Department of Fish and Wildlife, P.O. Box 47, Yountville, California 94599, of any proposed construction within this development that may affect any fish and wildlife resources, per the Fish and Wildlife Code.
- D. This project may be subject to the requirements of the Army Corps of Engineers. It is the applicant's responsibility to notify the appropriate district of the Corps of Engineers to determine if a permit is required, and if it can be obtained.
- E. This project is subject to the development fees in effect under County Ordinance as of October 8, 2018, the date the vesting tentative map application was accepted as complete by the Department of Conservation and Development. These fees are in addition to any other development fees which may specified in the conditions of approval.
- F. The applicant shall comply with the requirements of the following agencies:
 - Contra Costa County Building Inspection Division
 - Contra Costa County Public Works Department
 - Contra Costa Environmental Health Division
 - Contra Costa County Fire Protection District

- West County Wastewater District
- East Bay Municipal Utility District