

**FINDINGS AND CONDITIONS OF APPROVAL FOR COUNTY FILE CDMS23-00003  
CDDP23-03046, MICHAEL MCGHEE (APPLICANT AND OWNER)**

**FINDINGS**

A. Growth Management Performance Standards

1. Traffic: The project will result in four new parcels, each of which will be developed with a single-family residence in the future. Based on Contra Costa County transportation guidelines, a project resulting in fewer than 100 daily peak hour trips would not result in significant transportation impacts. The small scale of the residential project, resulting in four new homes on the project site, has no potential to exceed the 100 daily peak trip threshold. Therefore, the project will not have a substantial impact on traffic on 2<sup>nd</sup> Street or other nearby public roadways.
2. Water: The project site is within the service boundaries of the East Bay Municipal Utility District (EBMUD). The project will require a new service connection for future residential development on Parcels A, B, C, and D. The applicant's compliance with applicable EBMUD requirements for establishing service to the subdivision will ensure that the project has reliable access to clean potable water.
3. Sanitary Sewer: The project site is within the service boundaries of the Rodeo Sanitary District (RSD). RSD staff have advised sanitary sewer service is available to the subdivision. The project will require a new service connection for Parcels A, B, C, and D. The applicant's compliance with applicable RSD requirements for establishing wastewater service for new residential parcels will ensure that the project has reliable access to sanitary sewer services.
4. Fire Protection: The subject property is located within the service area of the Rodeo-Hercules Fire Protection District. The Public Facilities/Services Element of the County General Plan requires fire stations to be located within 1.5 miles of developments in urban areas. The project site is located approximately 0.2 miles northwest of the Rodeo Hercules Fire Protection District Station #75, located at 326 3<sup>rd</sup> Street in Rodeo. The project was referred to the Fire Protection District for comment, and staff did not receive a response from the district indicating that the project will adversely affect fire protection services. The residential development on site will be subject to the current Fire Code at the time development is proposed. Plans for each future single-family residence will be reviewed by the Fire Protection District for compliance with its requirements for residential buildings.

The project's compliance with all applicable requirements of the California Fire Code will ensure that the project does not adversely affect the provision of fire protection services for the project, or to the area in general.

5. Public Protection: Police protection services in the project vicinity are provided by the Contra Costa County Sheriff's Office, which provides patrol service to the unincorporated Lafayette area. The development of a single-family residence on each resultant parcel (Parcels A, B, C, and D) will not significantly increase population on the subject property or in the neighborhood. Additionally, the project is required to provide a per-parcel fee in the amount of \$1,000 to mitigate for police services provided to the project. Therefore, the project will not substantially increase the demand for police service facilities or personnel.
6. Parks and Recreation: The expected development of four single-family residences will not significantly increase the population in the area, and therefore, will result in a marginal increase in demand for parks or recreational facilities in the area. All new residential developments in unincorporated Contra Costa County are subject to Park Dedication/Park Impact fees, which are required prior to the issuance of building permits for new residences on Parcels A, B, C, and D. The fees will be used to purchase land and develop parks within this area of the County. Thus, payment of applicable park impact fees will offset any potential deterioration of existing parks and recreation facilities resulting from increased usage associated with the marginal increase in demand.
7. Flood Control and Drainage: The project is not located within a flood-prone area as determined by the Federal Emergency Management Agency. Installation of the project drainage improvements and the addition of storm water runoff from future development on Parcels A, B, C, and D will be subject to the requirements of the County Ordinance Code and the Public Works Department design standards, as well as the regulations of the national Pollutant Discharge Elimination System and Provision C.3 of the County Stormwater Management and Discharge Control Ordinance. A preliminary grading and drainage plan has been submitted with this application and reviewed by the Department of Public Works Engineering Services Division which demonstrates that the site drainage is designed to accommodate the new impervious surfaces resulting from the residential development by managing storm water discharge from the subject property through the use of on-site detention and controlled discharge into existing 2<sup>nd</sup> street gutter. Thus, the project, including the new single-family residences on Parcels A, B, C, & D will not significantly alter the existing drainage pattern in a manner that may result in any

significant risk due to an increase in the volume of runoff.

B. Vesting Tentative Map Findings

The following are required findings for the approval of a vesting tentative map.

1. *The proposed subdivision, together with the provisions for its design and improvement, is consistent with applicable general and specific plans.*

Project Finding: The minor subdivision is consistent with the SH, Single Family Residential – High Density General Plan land use designation for the area, which allows a residential density of between 5.0 and 7.2 dwellings per net acre. The subject property is presently vacant. The project would result in four dwelling units on  $\pm 0.6$  net acres of land area, resulting in a residential density of 6.7 units per net acre, which brings the presently-vacant property into conformance with the appropriate density range for the property, consistent with the SH General Plan designation. The project site is located just outside of the Rodeo Waterfront Specific Plan. There is no specific plan adopted for this area of the County. Therefore, the project is consistent with applicable general/specific plans.

2. *The proposed subdivision fulfills construction requirements.*

Project Finding: The subject property is in the Rodeo area-wide P-1 Zoning District, which allows single-family and multi-family residential uses. The minor subdivision maintains the residential character of the established neighborhood as it results in four new vacant parcels, each of which will be developed with a single-family residence and associated ancillary structures. The future residences will have access to 2<sup>nd</sup> Street via private access and utility easement extending northward from 2<sup>nd</sup> Street through the approximate center of the project site. The minor subdivision is required to comply with all requirements for access and drainage improvements that have been provided by the Public Works Department as conditions of approval for the project. Additionally, the new residences will need to comply with any construction/development requirements imposed by the Contra Costa Fire Protection District, the Building Inspection Division, and applicable building and fire codes at the time of building permit issuance.

C. Planned Unit District (P-1) Findings:

Pursuant to section 84-66-1804(b) of the County Ordinance Code, the Zoning

Administrator may approve the development plan upon making each of the findings below:

1. *The project is consistent with the intent and purpose of the P-1 district.*

*Project Finding:* The project consists of a four-lot minor subdivision of a 0.6-acre legal lot that is presently vacant, and the development of a new residence on each resultant parcel. The Rodeo area-wide Planned Unit district is intended to facilitate the orderly development of various land uses within the Rodeo area. Appropriate land uses within this P-1 district are determined by the underlying General Plan designation. The project site is within an SH residential General Plan land use designation and results in a residential density that is within the appropriate range for this designation, as specified by the 2005-2020 Contra Costa County General Plan. Thus, the residential nature of the project and resulting density range is consistent with the intent and purpose of the P-1 district.

2. *The project is compatible with other uses in the vicinity, both inside and outside of the district.*

*Project Finding:* The applicant is subdividing and developing an existing legal lot, in a manner that is substantially consistent with the applicable development standards for the Rodeo area-wide P-1 Planned Unit District. The project site will be developed at an appropriate density as determined by the SH General Plan designation.

#### Setback/Yard Deviations

The project includes deviations from the minimum front setbacks for Parcel A and Parcel B (5' to home and 15' to garage, where 10' and 15' are the respective minima). Parcels A & B are each 5,175 square feet in area, meeting the minimum parcel size for the P-1 district. However, both of these parcels are only 90 feet deep, and include a 15-foot-wide portion of the private access easement located along the eastern end of these parcels. Since the front setback would be measured from the edge of the easement (as opposed to the eastern property line), full compliance with the applicable front and rear setbacks would restrict development across a combined 40-50 feet (or roughly half) of these parcels. The homesites on Parcel A and Parcel B would appear consistent with the conforming front setback for Parcel C, located opposite the private access roadway, due to the fact that the easement is 5' wider on the west side (i.e. the side fronting Parcel A and B).

Additionally, the garages on these parcels are stepped back 10' further than the home, consistent with the requirements of development standards and with surrounding development. Thus, the project, including granting of the front setback deviations, would appear substantially consistent and compatible with existing development in the surrounding area. Therefore, staff considers the granting of these deviations to be reasonable considering the dimensional constraints of Parcel A & Parcel B.

The minimum side yard and minimum aggregate side yard requirements for parcels within the Rodeo area-wide P-1 district is determined based on lot width. Parcel C is a dual frontage lot, having a 115' width along the private access easement to the west, and a 70' width along Second Street to the south. Based on the 115' wide primary frontage, a 10' minimum side yard and 20' aggregate side yard is required for Parcel C. This equates to a 10' minimum side yard measured from the northern and eastern property lines. Considering the dual frontage configuration of the lot, and the discrepancy between the north-south width (115 feet) versus the east-to-west width (70 feet) of Parcel C, CDD staff believes it would be more appropriate to apply the 5' minimum for the eastern side yard, which corresponds to the Rodeo P-1 side-yard for the 70' east-west width of Parcel C. The 10' minimum side yard measured from the northern property line would still apply to that side of the property. Neighboring parcels in the vicinity generally include long narrow configurations and 5' minimum side-yards between existing homes are prevalent in the area. Thus, the development of Parcel C, including the reduced eastern side yard would not appear out of place within the developed residential neighborhood. Therefore, staff recommends approval of the side yard deviation for Parcel C.

The project also includes side yard deviation for Parcel D (10' side yard where 20' is required). Parcel D is a 200'-wide rectangular parcel consisting of the northernmost portions of the project site. Based on parcel width, a 20' minimum side yard is required for Parcel D. The project maintains the minimum 20' side yard measured from the eastern and western property boundaries. The 20' minimum side yard also applies to the southern property line, except for those portions forming the northern terminus of the access easement. The granting of southern side yard relief is reasonable considering that Parcel D has a north-south depth of only 65 feet. When combined with the 15' rear yard applicable to the northern property line, the strict application of a 20' southern side yard would be overly burdensome for the site, restricting development over more than half of its' north-south width. The deviation will still allow for 10' minimum side yards along the

southern property line, consistent with the 10' side yards provided for the adjoining parcels C and D. As mentioned previously, neighboring parcels in the vicinity are generally long and narrow, and side yards as little as 5' are typical of the area. A wide lot requiring a 20' minimum side yard is unusual relative to existing development in the immediate vicinity. Thus, the reduction of the southern side yard would not appear inconsistent with the surrounding neighborhood. Further, the southerly portions of the home at deviation would be obscured from public views by the development on Parcels A through C. The homesite on Parcel D otherwise complies with front setback and yard requirements. Therefore, considering the established development pattern and dimensional constraints on Parcel D, the granting of the deviation authorizing a 10' southerly side yard for Parcel D is justified.

#### Building Height Deviations

The homes depicted on Parcel C and Parcel D each depict utility rooms, portions of which are located directly below two-stories of living area. Both utility rooms appear to provide at least 6' in ceiling height, thereby constituting a "story" of the home. The three-story configuration exceeds the maximum of 2.5 stories permissible within the Rodeo area-wide P-1 district. Staff is not in support of granting a deviation to the maximum building height because there are no special circumstances applicable to the subject property which necessitate special consideration for increased building height. In staff's view the utility room can easily be modified or relocated to eliminate the three-story condition with minimal effect on the design for the rest of the home. The surrounding neighborhood consists of one- and two-story homes. Thus, the granting of deviations authorizing three-story configurations for the project would not be compatible with the surrounding neighborhood. Therefore, the project is conditioned to require development on all Parcels to adhere to the maximum permissible building height of 2.5-story and 35 feet.

#### Floor Area Ratio Deviations

The revised residential development plans include floor area ratios (FAR) of 0.66, 0.63 and 0.63 respectively for Parcels A, B, and D – where 0.60 is the maximum permissible FAR on each. The development plans depict an Accessory Dwelling Unit (ADU) in the area of Parcel C, in addition to a single-family residence. However, since ADU permitting for the site would be subject to a separate ministerial review, and is not included in the discretionary review of this

subdivision/development plan project, CDD staff has not included the ADU square-footage when calculating the FAR for Parcel C.

The FAR for parcels A, B, and D each slightly exceed the maximum FAR, with each parcel exceeding the maximum by 100 to 300 square feet. In each case, the conditioned living area of the homes conforms to the maximum permissible FAR, but the overages occur when including the first and second level covered patios included in the designs for each home. Even though the project FAR is comparable to the maximum permissible, staff does not believe there to be any special circumstances justifying the granting of this deviation. In staff's view, the enforcement of the FAR maximum will not result in a restrictively small building envelope, and would still allow for a generously sized home (between 2,759 and 4,634 s.f.) on each resultant parcel. Therefore, the project is conditioned to require all homes to adhere to the FAR limitations for the Rodeo areawide P-1 district.

The project otherwise meets all development standards for the P-1 district. The effects of the reduced setback would not be prominently perceptible from the project's 2nd Street frontage, as homes on Parcels A & B will appear to have equivalent setbacks from the paved roadway due to the fact that a five-foot-wide sidewalk is to be constructed on this side of the private roadway. Similarly, the reduced side yards for Parcels C & D will be obscured from view outside of the project site (i.e. from publicly accessible vantage points) and will be comparable to the side yards on the other parcels resulting from this subdivision. Thus, the project, including setback deviations, is considered substantially consistent and compatible with residential development within the Rodeo area, and within the County in general.

#### D. Tree Permit Findings

County Code Section 816-6.8010 lists a number of factors to be considered in granting or denying a tree permit. The Zoning Administrator is satisfied that the following factors have been satisfied.

1. *Reasonable development of the property would require the alteration and removal of code-protected trees, and the development could not be reasonably accommodated elsewhere on the property.*

Project Finding: The project involves grading activities encroaching within the driplines of two (2) Coast Live Oak trees located off site, adjacent to the northern

boundary of the project site. The grading activities are not expected to be detrimental to the health of nearby trees, according to the consulting project arborist. Given the topographical conditions affecting much of the site, the project could not be feasibly accomplished without grading in proximity of existing trees. Therefore, the reasonable development of the subject property would require alteration of these two trees. Additionally, the project includes retroactive permit approval for the prior removal of two additional code protected trees without tree permit approval. Since the trees previously removed were located near the center of the lot corresponding with the location of private roadway and homesites included with this project, the reasonable development of the subject property would have necessitated their removal to accommodate the project. The project is conditioned to require the planting of trees on site as restitution for this prior removal.

E. Environmental Findings

Following are the findings required pursuant to the California Environmental Quality Act (CEQA) to adopt a Mitigated Negative Declaration/Initial Study for the project, prior to the approval of a project.

1. A draft Mitigated Negative Declaration/Initial Study (MND), State Clearinghouse Number SCH 2025010220, was prepared for Minor Subdivision CDMS23-00003 on January 13, 2025. The public review period for the draft MND started on January 13, 2025, and ended on February 3, 2025. Five comment letters/emails were received during the public review period for the draft MND.
2. A final MND has been prepared that includes the written comments received on the draft MND, responses to the comments received, and staff-initiated text changes of the draft MND.
3. The comments received and the staff responses to the comments do not affect any impacts, mitigation measures, or findings in the draft MND.
4. The text changes are not the result of any new significant adverse environmental impact, do not result in any mitigation added to the pertinent section, and do not alter the findings in the section.
5. On the basis of the whole record before it, including the draft and final MND, the Zoning Administrator finds that:



- There is no substantial evidence that the project with the identified mitigation measures will have a significant effect on the environment;
  - MND SCH 2025010220, consisting of the draft MND and final MND, reflects the County's independent judgement and analysis;
  - The MND is adequate and complete; and
  - The MND has been prepared in compliance with the California Environmental Quality Act and the State and County CEQA guidelines.
6. A Mitigation Monitoring and Reporting Program has been prepared, based on the identified significant environmental impacts and mitigation measures in MND SCH 2025010220. The mitigation measures in the Mitigation Monitoring Program are included in the project Conditions of Approval.

### **CONDITIONS OF APPROVAL FOR COUNTY FILE CDMS23-00003**

#### Project Approvals

1. The Rodeo 2<sup>nd</sup> Street Drive Four-lot Minor Subdivision, including the Tentative Map, is APPROVED for the subdivision of the 28,800-square-foot lot into four parcels, including a 5,175-square-foot Parcel A, a 5,175-square-foot Parcel B, a 8,050-square-foot Parcel C, and a 10,400-square-foot Parcel D.
2. A Development Plan for the construction of four single-family residences, one each on Parcel A, Parcel B, Parcel C, and Parcel D, as well as associated private roadway, utility connections, driveway, and sidewalk improvements is APPROVED.
3. Deviations for Parcel A & Parcel B, authorizing 5' minimum living area front setbacks (where 10' is the minimum required) and 15' minimum garage front setbacks (where 20' is the minimum required) are APPROVED.
4. Deviation for Parcel C authorizing a 5' minimum (eastern) side yard (where 10' is the minimum required) .
5. Deviation for Parcel D authorizing a 10' minimum (southern) side yard (where 20' is the minimum required) .
6. A Tree Permit for the prior removal of two (2) code protected trees, and dripline encroachment for an additional two (2) Coast Live Oak trees for grading activities

associated with installation of private access roadway and residential improvements, is APPROVED.

7. The project approvals described above are granted based on, or as generally shown on the following documents.
  - Application and materials accepted by the Department of Conservation and Development, Community Development Division (CDD) on April 19, 2023;
  - Revised Tentative Map prepared by Bay Area Land Surveying Inc., submitted on December 4, 2024;
  - Civil Plan Set, Prepared by Upright Engineering, submitted on December 4, 2024;
  - Revised Architectural Plans by Nick Sowers Architecture, submitted June 23, 2025
  - Arborist Report by Sherri McEllistrim, ISA Certified Arborist #WE-12441AT, dated June 8, 2023;
  - *Biological Resource Assessment for 2<sup>nd</sup> and Sharon, Rodeo, CA*, by Coast Ridge Ecology, dated June 2024;
  - Geotechnical Investigation by Friar Associates, Incorporated, dated January 23, 2023.
  - Environmental Noise Study by Resonance Acoustics, dated June 3, 2024;
  - Phase I Environmental Site Assessment by Korbmacher Engineering Inc., submitted April 3, 2025.
8. All residential development within the subdivision shall adhere to a maximum building height of 35 feet and 2.5 stories. Prior to CDD stamp approval of construction plans for residential development on Parcel C or Parcel D, the applicant shall submit revised architectural plans for CDD staff review and approval. The revised plans shall demonstrate that the three-story condition depicted on the plan set submitted June 23, 2025 has been eliminated.
9. All residential development shall adhere to a maximum floor area ratio (FAR) of 0.6:1. Prior to CDD stamp approval of construction plans for residential development on Parcel A, B, or D, the applicant shall submit revised architectural plans for CDD staff review and approval. The revised plans shall demonstrate compliance with the

maximum FAR for the approved residential development.

10. Any modification to the project approved under this permit that is not required by a Condition of Approval herein shall be subject to the review and approval of the CDD.
11. The Tentative Map approval described above is granted for a period of three years. Map time extensions may be granted subject to proper request for extension and review and approval of the CDD.

#### Application Costs

12. The Minor Subdivision application was subject to an initial deposit of \$7,500 that was paid with the application submittal, plus time and material costs if the application review expenses exceed the initial deposit. Any additional fee due must be paid prior to issuance of a building permit, or 60 days of the effective date of this permit, whichever occurs first. The fees include costs through permit issuance and final file preparation. Pursuant to Contra Costa County Board of Supervisors Resolution Number 2019/553, where a fee payment is over 60 days past due, the application shall be charged interest at a rate of ten percent (10%) from the date of approval. The applicant may obtain current costs by contacting the project planner. A bill will be mailed to the applicant shortly after permit issuance in the event that additional fees are due.

#### Indemnification

13. 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 full in the defense.

#### Compliance Report

14. At least 45 days prior to filing a Parcel Map, the applicant shall submit an application for COA Compliance Review and provide a report on compliance with the conditions of approval for the review and approval by the CDD. The fee for this application is a

deposit of \$1,500.00 that is subject to time and material costs. Should staff costs exceed the deposit, additional fees will be required.

Except for those conditions administered by the Public Works Department, the report shall list each conditions followed by a description of what the applicant has provided as evidence of compliance with that condition. A copy of the permit conditions of approval may be obtained from the CDD.

#### Grading and Building Permits

15. This approval does not constitute a grading or building permit. Please contact the Department of Conservation and Development, Building Inspection Division for information on how to apply for a grading or building permit.

#### Landscaping

16. Construction plans submitted for the purpose of obtaining building permits for the development of a single-family residence on Parcels A, B, C, and D shall include a landscaping plan. Landscaping plans for Parcels A, B & C shall include vegetative screening along westerly property boundaries. Vegetative screening may include trees, vines, or shrubs, or any combination thereof, designed to reach a mature height of at least 10 feet. The plan shall comply with the County's Water Efficient Landscape Ordinance, and verification of such shall accompany the plan.

#### Child Care

17. Prior to CDD-stamp approval of construction plans for the issuance of a building permit for residential development, the applicant is required to pay a per parcel fee toward childcare facility needs in the area as established by the Board of Supervisors.

#### Police Services

18. Prior to CDD stamp approval of construction plans for a building permit for residential development on any parcel that is not occupied by a legal residence, the applicant shall contribute \$1,000.00 to the County for police services mitigation. The fee shall be paid to the CDD.

#### Park Impact / Park Dedication Fee

19. Prior to CDD stamp approval of construction plans for a building permit for residential development, the applicant shall pay a Park Impact and Park Dedication fee for park and recreation improvements in the area as established by the Board of Supervisors.

Deed Disclosure

20. Prior to filing a parcel map, the applicant shall submit two copies of a proposed disclosure statement for the review and approval of CDD staff. The approved statement shall be used to disclose fee requirements to prospective buyers of parcels which are not occupied by existing legally-established residences at time of filing the tentative map application. The disclosure statement shall advise prospective buyers of affected parcels that prior to issuance of a building permit, they will be required to pay Child Care, Police Services Mitigation, Park Impact, and Park Dedication fees to the County in the amounts specified by applicable conditions of approval herein. The fee may be paid to the Contra Costa County Application & Permit Center.

Tree Removal and/or Alteration

21. *Compliance With Arborist Recommendations:* All project-related construction activity occurring beneath the driplines of code-protected trees shall occur under the supervision of a consulting licensed arborist. The applicant shall implement all arborists recommendations for the preservation of code-protected trees throughout all phases of project construction.
22. *Arborist Expense:* The applicant shall be responsible for all arborist expenses related to the work authorized by this permit.

Required Restitution for Tree Removal

23. The following measures are intended to provide restitution for the prior removal of two (2) code-protected trees:
  - a. *Planting and Irrigation Plan:* Prior to CDD stamp-approval of plans for the issuance of a building or grading permit, the applicant shall submit a tree planting and irrigation plan prepared by a licensed arborist or landscape architect for the review and approval of the CDD. The plan shall provide for the planting of four (4) trees, minimum 15-gallon size of a native species at a location deemed appropriate by the licensed professional preparing the plan. The plan shall comply with the County's Water Efficient Landscape Ordinance, and verification of such shall

accompany the plan.

- b. **Required Security to Assure Completion of Plan Improvements:** A security shall be provided to ensure that the approved planting and irrigation plan is implemented. The applicant shall submit an estimate prepared by a licensed landscape architect, arborist, or landscape contractor, for the materials and labor costs to complete the improvements (accounting for supply, delivery, and installation of trees and irrigation). Upon approval of the estimate by the CDD, the applicant shall submit a security to the CDD in 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 for processing the required security. At the time of submittal of the security, the applicant shall pay a nonrefundable bond maintenance fee of \$200.00.
- d. **Duration of Security:** When the replacement trees and irrigation have been installed, the applicant shall submit a letter to the CDD, composed by a licensed landscape architect, landscape contractor, or arborist, verifying that the installation has been done in accordance with the approved planting and irrigation plan. The CDD will retain the security for a minimum of 12 months and up to 24 months beyond the date of receipt of this letter.

As a prerequisite of releasing the bond between 12- and 24-months following completion of the installation, the applicant shall arrange for the consulting arborist to inspect the replacement trees and to prepare a report on the trees' health. The report shall be submitted for the review of the CDD and shall include any additional measures necessary for preserving the health of the trees. These measures shall be implemented by the applicant.

Any replacement tree that dies within the first year of being planted shall be replaced by another tree of the same species and size. If the CDD determines that the applicant has not been diligent in ensuring the health of the replacement trees, then all or part of the security may be used by the County to ensure that the approved restitution plan is successfully implemented.

#### Security for Possible Damage to Trees Intended for Preservation

24. Pursuant to the requirements of Section 816.6-1204 of the Tree Protection and

Preservation Ordinance, to address the possibility that construction activity damages trees that are to be preserved, the applicant shall provide the County with a security to allow for replacement of trees that are significantly damaged or destroyed by construction activity. Prior to CDD stamp approval of plans for issuance of building or grading permits, whichever comes first, the applicant shall provide a cash or surety bond that is acceptable to the CDD.

- a. *Amount of Security:* The security shall be an amount sufficient to cover:
  - i. Preparation of a landscaping and irrigation plan by a licensed landscape architect, arborist, or landscape contractor for the review and approval of the CDD. The plan shall provide for the planting of up to four (4) Coast Live Oak Trees, minimum 15-gallons in size. The plan shall comply with the County's Water Efficient Landscape Ordinance. If deemed necessary by the CDD, the plan shall be implemented prior to final building inspection.
  - ii. The estimated materials and labor costs to complete the improvements shown on the approved planting and irrigation plan (accounting for supply, delivery, and installation of trees and irrigation).
  - iii. An additional 20% above the costs described in section a.i and a.ii above to account for potential inflation.
- b. *Fee for the Processing of Security:* The County Ordinance requires that the applicant pay fees to cover all staff time and material costs for processing the required security. At the time of submittal of the security, the applicant shall pay a non-refundable \$200 fee.
- c. *Duration of Security:* After construction activities are complete and prior to final inspection for building or grading permits, the applicant shall submit a letter to the CDD, composed by a consulting arborist, describing any construction impacts to trees intended for preservation. The security shall be retained by the County for a minimum of 12 months and up to 24 months beyond the date of receipt of this letter. As a prerequisite of releasing the bond between 12 and 24 months, the applicant shall arrange a report on the trees' health. The report shall be submitted to the CDD for review, and it shall include any additional measures necessary for preserving the health of the trees. These measures shall be implemented by the applicant. If the CDD determines that trees intended for preservation have been damaged by development activity, and that the applicant has not been diligent in

providing reasonable restitution of the damaged trees, then the CDD may require that all or part of the security be used to provide for mitigation of the trees damaged, including replacement of any trees that have died.

MITIGATION MEASURES FROM THE MITIGATION MONITORING PROGRAM APPLIED AS CONDITIONS OF APPROVAL FOR COUNTY FILE CDMS23-00003

Biological Resources

25. No more than seven (7) days prior to ground disturbing activities occurring during the nesting period for birds (approximately February 1 – August 31), a nesting bird survey shall be performed by a CDFW qualified biologist to ensure that the project avoids impacting any active nests. If active bird nests are detected, a suitable nest buffer should be installed (typically 100 feet for passerines, and up to 500 feet for raptors, depending on species). Preconstruction surveys are not necessary prior to project activities occurring outside of nesting bird season. **(Mitigation Measure BIO-1)**

Cultural Resources

26. Should archaeological materials be uncovered during grading, trenching, or other on-site excavation(s), all earthwork within 30 yards of the materials shall be stopped until a professional archeologist who is certified by the Society for California Archaeology (SCA) and/or the Society of Professional Archaeology (SOPA) and any Native American tribe(s) that have requested consultation and/or demonstrated interest in the project site has had an opportunity to evaluate the significance of the find, and, if deemed necessary, suggest appropriate mitigation(s). **(Mitigation Measure CUL-1)**

27. If any significant cultural materials such as artifacts, human burials, or the like are encountered during construction operations, such operations shall cease within 10 feet of the find, the Community Development Division (CDD) shall be notified within 24 hours, and a qualified archaeologist contacted and retained for further recommendations. Significant cultural materials include, but are not limited to, aboriginal human remains, chipped stone, groundstone, shell and bone artifacts, concentrations of fire cracked rock, ash, charcoal, and historic features such as privies or walls and other structural remains. **(Mitigation Measure CUL-2)**

28. Should human remains be uncovered during grading, trenching, or other on-site excavation(s), earthwork within 30 yards of these materials shall be stopped until the



County coroner has had an opportunity to evaluate the significance of the human remains and determine the proper treatment and disposition of the remains. Pursuant to California Health and Safety Code Section 7050.5, if the coroner determines the remains may be those of a Native American, the coroner is responsible for contacting the Native American Heritage Commission (NAHC) by telephone within 24 hours. Pursuant to California Public Resources Code Section 5097.98, the NAHC will then determine a Most Likely Descendant (MLD) tribe and contact them. The MLD tribe has 48 hours from the time they are given access to the site to make recommendations to the land owner for treatment and disposition of the ancestor's remains. The land owner shall follow the requirements of Public Resources Code Section 5097.98 for the remains. **(Mitigation Measure CUL-3)**

29. Appropriate mitigation of any discovered cultural resources may include monitoring of further construction and/or systematic excavation of the resources. Any artifacts or samples collected as part of the initial discovery, monitoring, or mitigation phases shall be properly conserved, catalogued, evaluated, and curated, and a report shall be prepared documenting the methods, results, and recommendations. The report shall be submitted to the Northwest Information Center and appropriate Contra Costa County agencies. **(Mitigation Measure CUL-4)**

#### Construction Restrictions

All construction activity shall comply with the following restrictions, which shall be included on the construction drawings.

30. 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: **(Mitigation Measure NOI-1)**

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)

Cesar Chavez Day (State)

Memorial Day (State and Federal)

Juneteenth National Independence Holiday (Federal)

Independence Day (State and Federal)

Labor Day (State and Federal)

Columbus Day (Federal)

Veterans Day (State and Federal)

Thanksgiving Day (State and Federal)

Day after Thanksgiving (State)

Christmas Day (State and Federal)

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

Federal Holidays: [www.federalreserve.gov/aboutthefed/k8.htm](http://www.federalreserve.gov/aboutthefed/k8.htm)

California Holidays: [www.sos.ca.gov/holidays.htm](http://www.sos.ca.gov/holidays.htm)

31. Transportation of heavy equipment (e.g., graders, cranes, excavators, etc.) and trucks to and from the site shall be limited to weekdays between the hours of 9:00 AM and 4:00 PM and prohibited on Federal and State holidays. This restriction does not apply to typical material and equipment delivery or grading activities. **(Mitigation Measure NOI-2)**
32. 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. **(Mitigation Measure NOI-3)**
33. The applicant shall notify neighbors within 300 feet of the subject property at least one week in advance of grading and construction activities. **(Mitigation Measure NOI-4)**
34. The applicant shall designate a construction noise coordinator who will be responsible for implementing the noise control measures and responding to complaints. This person's name and contact information shall be posted clearly on a sign at the project site and shall also be included in the notification to properties within 300 feet of the project site. The construction noise coordinator shall be available during all construction activities and shall maintain a log of complaints, which shall be available for review by County staff upon request. **(Mitigation Measure NOI-5)**

35. Prior to the issuance of building permits, a preconstruction meeting shall be held with the job inspectors, designated construction noise coordinator, and the general contractor/onsite manager in attendance. The purpose of the meeting is to confirm that all noise mitigation measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed and in place prior to beginning grading or construction activities. The applicant shall provide written confirmation to CDD staff verifying the time and date that the meeting took place and identifying those in attendance. **(Mitigation Measure NOI-6)**

PUBLIC WORKS CONDITIONS OF APPROVAL FOR SUBDIVISION CDMS23-00003

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 June 28, 2023.

The applicant shall comply with the following conditions of approval prior to filing of the Parcel Map:

General Requirements:

36. Improvement plans prepared by a registered civil engineer shall be submitted, if necessary, to the Public Works Department, Engineering Services Division, along with review and inspection fees, and security for all improvements required by the Ordinance Code for the conditions of approval of this subdivision. Any necessary traffic signing and striping shall be included in the improvement plans for review by the Transportation Engineering Division of the Public Works Department

Roadway Improvements (2<sup>nd</sup> Street):

37. Applicant shall construct sidewalk matching the dimensions of the adjacent sidewalk to the east, necessary longitudinal and transverse drainage, and street lighting along the frontage of 2<sup>nd</sup> Street.

Access to Adjoining Property:

*Proof of Access*

38. Applicant shall provide 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*

39. Applicant shall obtain an encroachment permit from the Public Works Department, if necessary, for construction of driveways or other improvements within the right-of-way of 2<sup>nd</sup> Street.

Abutters Rights:

40. Applicant shall relinquish abutter's rights of access along 2<sup>nd</sup> Street with the exception of the proposed private road intersection.

Road Alignment/Intersection Design/Sight Distance:

41. Applicant shall provide sight distance at the intersection of the private driveway with 2<sup>nd</sup> Street in accordance with Chapter 82-18 "Sight Obstructions at Intersections" of the County Ordinance Code. The applicant shall trim vegetation, as necessary, to provide sight distance at this intersection, and any new signage, landscaping, fencing, retaining walls, or other obstructions proposed at this intersection shall be setback to ensure that the sight line is clear of any obstructions.

Private Roads:

42. Applicant shall construct paved turnaround at the end of the proposed private road subject to review and approval of the Fire Marshal.
43. Applicant shall construct an on-site roadway system to current County private road standards with a minimum traveled width of 20 feet within a minimum 25-foot access easement. A 4-foot-wide sidewalk (exclusive of curb width) is required along one side of the road.
44. Any proposed roadway over 15.9% in grade shall be surfaced with grooved concrete

or open-graded asphalt.

Parking:

45. 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. Signs and labels prohibiting parking shall be installed along these portions of the roads subject to the review and approval of the Public Works Department.

Drainage Improvements:

*Collect and Convey*

46. 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 stormwaters to an adequate natural watercourse, in accordance with Division 914 of the Ordinance Code.

Miscellaneous Drainage Requirements:

47. Applicant shall design and construct all storm drainage facilities in compliance with the Ordinance Code and Public Works Department design standards.
48. Applicant shall prevent storm drainage from draining across the sidewalk(s) and driveway(s) in a concentrated manner.
49. A private storm drain easement, easement, conforming to the width specified in Section 914-14.004 of the County Ordinance Code, shall be dedicated over the proposed storm drain line traversing the site.

National Pollutant Discharge Elimination System (NPDES):

50. 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 storm 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 storm water drainage:

- Minimize the amount of directly connected impervious surface area.
- Install approved full trash capture devices on all catch basins (excluding catch basins within bioretention area) as reviewed and approved by the Public Works Department. Trash capture devices shall meet the requirements of the County's NPDES permit.
- Place advisory warnings on all catch basins and storm drains using current storm drain markers.
- Construct concrete driveway weakened plane joints at angles to assist in directing run-off to landscaped/pervious areas prior to entering the street curb and gutter.
- Other alternatives comparable to the above as approved by Public Works Department.

Stormwater Management and Discharge Control Ordinance:

51. 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 Parcel Map. All time and materials costs for review and preparation of the SWCP and the O+M Plan shall be borne by the applicant.
52. 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).
53. Stormwater management facilities shall be subject to inspection by the Public Works Department; all time and materials costs for inspection of stormwater management facilities shall be borne by the applicant.

54. Prior to the filing of the Parcel 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 the operation and maintenance of the stormwater facilities, and grant access to relevant public agencies for inspection of stormwater management facilities.
55. Prior to the filing of the Parcel 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.
56. 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**

**PLEASE NOTE ADVISORY NOTES ARE ATTACHED TO THE CONDITIONS OF APPROVAL BUT ARE NOT A PART OF THE CONDITIONS OF APPROVAL. ADVISORY NOTES ARE PROVIDED FOR THE PURPOSE OF INFORMING THE APPLICANT OF ADDITIONAL ORDINANCE AND OTHER LEGAL REQUIREMENTS THAT MUST BE MET IN ORDER TO PROCEED WITH DEVELOPMENT.**

**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 ninety-day (90) period after the project is approved.

The 90-day period in which you may protest the amount of any fee or 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 CDD within 90 days

of the approval date of this permit.

- B. The applicant shall submit grading and building plans to the Building Inspection Division and comply with Division requirements. It is advisable to check with the Division prior to requesting a grading or building permit or otherwise proceeding with the project.
- C. The Project shall comply with the requirements for construction debris disposal/recycling, water well, and septic systems of the Contra Costa Health Services Department, Environmental Health Division. The applicant is responsible for contacting the Environmental Health Division regarding applicable requirements and permits.
- D. The applicant must submit site access and building plans to the Rodeo Hercules Fire Protection District and comply with its requirements. The applicant is advised that plans submitted for a building permit must receive prior approval and be stamped by the Fire Protection District.
- E. The applicant must submit building plans to the Rodeo Sanitary District and comply with its requirements. The applicant is advised that plans submitted for a building permit must receive prior approval and be stamped by the Sanitary District.
- F. The applicant must comply with applicable requirements of the East Bay Municipal Utility District.
- G. The applicant is responsible for contacting the Contra Costa Mosquito & Vector Control District regarding its requirements and permits.
- H. The applicant will be required to comply with the requirements of the Bridge/Thoroughfare Fee Ordinance for the Hercules/Rodeo/Crocket, West Contra Costa Transportation Advisory Committee (WCCTAC) Transit/Pedestrian, and WCCTAC Bridges/Roads Areas of Benefit as adopted by the Board of Supervisors. Payment is required prior to issuance of a building permit.
- I. 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 of any proposed construction within this development that may affect any fish and wildlife resources, per the Fish and Game Code.



- J. Further development of the parcel may need to comply with the latest Stormwater Management and Discharge Control Ordinance (§1014) and Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit. This compliance may require a Stormwater Control Plan and an Operations and Maintenance Plan prepared in accordance with the latest edition of the *Stormwater C.3 Guidebook*. Compliance may also require annexation of the subject property into the Community Facilities District 2007-1 (Stormwater Management Facilities) and entering into a standard Stormwater Management Facilities Operation and Maintenance Agreement with Contra Costa County.