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September 26, 2022

VIA ELECTRONIC MAIL ONLY planning@brentwoodca.gov

Erik Nolthenius
Planning Manager
City of Brentwood
150 City Park Way
Brentwood, CA 94513

Re: Comments on Public Review Draft of the 2023-2031 (6th Cycle) Housing Element

Dear Mr. Nolthenius:

As you know, our law office represents Discovery Builders, Inc. and WCHB Development, LLC (collectively referred to herein as "Discovery Builders") in connection with the housing development project in the City of Brentwood (the "City") commonly known as the Bridle Gate Project Subdivision 9586 ("Bridle Gate" project). The Bridle Gate project, as currently proposed, consists of 286 single-family residences, including 29 units set aside for below-market-rate households.

We write to comment on the Public Review Draft of the 2023-2031 (6th Cycle) Housing Element. In particular, we wish to comment on the City's decision to exclude the Bridle Gate project site (Assessor Parcel Nos. 019-082-009 and 019-082-010) from Table B-8 of the Brentwood 6th Cycle Site Inventory (the "Suitable Sites Inventory").

The Bridle Gate project site is conspicuously absent from the City's Suitable Sites Inventory, despite its inclusion in the City's suitable sites inventory for the Housing Element during previous cycles. The City's decision to exclude the Bridle Gate site from its Suitable Sites Inventory undermines the City's mandate to provide diverse housing inventory, including sufficient single-family homes, for moderate-income households throughout the entirety of the 6th Cycle. This exclusion also highlights the fact that there are insufficient realistic, alternative housing proposals on the City's planning horizon that would provide enough moderate-income units to satisfy the City's assigned Regional Housing Needs Allocation ("RHNA"). Pursuant to Government Code section 65580, the City must prepare a realistic inventory of sites within the City that can accommodate future housing development to meet its RHNA requirement.

In the absence of any explanation as to why the City would purposefully exclude a site it knows is positioned to accommodate residential development in the near future, it appears the City is attempting to avoid Government Code section 65583.2(c). That code section mandates that any vacant site that remains undeveloped after being listed on two prior suitable sites inventories must allow residential use by right for housing developments in which at least 20 percent of the units are affordable to lower income households. It also mandates upzoning to allow at least 30 units per acre. We understand the City and our client are currently entangled in two litigations,

and we hope City staff has not excluded the Bridle Gate site to further frustrate and illegally delay development of housing on the site. If the City is in fact attempting to avoid the mandates under Government Code section 65583.2(c), it is also undermining state efforts to ensure availability of housing, which the legislature has determined is of "vital statewide importance." (Gov. Code, § 65580).

Bridle Gate project background.

For more than 20 years, Discovery Builders had worked collaboratively with the City to entitle a residential project on a largely undeveloped 137-acre property located west of Highway 4 (known as Assessor Parcel Nos. 019-082-009 and 019-082-010). The City Council first approved a previous iteration of the Bridle Gate project in 2006; however, no portion of the 2006 iteration underwent development because necessary utility and roadway infrastructure was stubbed to the property. The City and Discovery Builders elected to not proceed with the 2006 iteration of the Bridle Gate project, and Discovery Builders spent the next decade refining, in concert with City staff a mixed-use residential and commercial project, incorporating community feedback.

In 2015, the City of Brentwood's 5th Cycle included the Bridle Gate site on its "Inventory of Single Family Sites." In 2017, Discovery Builders submitted a new application for a project consisting of parkland, a future school site with a residential overlay, 252 single-family residences, a 258-unit apartment complex, and 20 acres of commercial development.

In late 2020 and early 2021, Discovery Builders met with senior City staff, including the City Manager and Planning Manager, in an attempt to obtain a favorable staff recommendation at the City Council hearings for the project. Staff ultimately agreed to support the project, but only on the condition that Discovery Builders remove multi-family residential development in the northern portion of the project site and replace them with commercial uses. Accordingly, Discovery Builders proposed an alternative where commercial uses would replace multi-family uses in the project plans. This revision halved the total number of housing units proposed, from 510 to 252. Despite this change and even with City staff support, the City Council ultimately unjustifiably denied the 2017 application at two March 2021 hearings.

As the City knows, Discovery Builders then filed a Petition for Writ of Mandate and Complaint for Violation of Civil Rights and Declaratory Relief against the City. The lawsuit is based, in part, on allegations that two City Councilmembers who voted against the project should have recused themselves for reasons of bias, given they had campaigned for office based on derogatory statements against the proposed development.

On October 21, 2021, Discovery Builders submitted a preliminary application under SB 330 for a revised iteration of the Bridle Gate project, consisting of 292-unit residential units. Discovery Builders later revised the application to include 286 single-family residences to accommodate more park land. Of the 286 proposed single-family residences, 29 units will be set aside for below-market-rate households, specifically moderate-income households. This Bridle Gate project application is currently pending before the City. However, due to the City's continued attempts to frustrate and delay the Bridle Gate project application, including insistence that the project must comply with non-existent and non-objective zoning provisions in violation of the Housing Accountability Act, Discovery Builders had no choice but to file a Petition of Alternative

Writ of Mandate and Peremptory Writ of Mandate against the City for failing to comply with State law.

It appears the City is taking multiple, coordinated steps to prevent development at the Bridle Gate property for reasons unrelated to sound planning principles.

The City's exclusion of the Bridle Gate site from the Suitable Sites Inventory threatens its compliance with State law.

Pursuant to the RHNA requirements approved by the California Department of Housing and Community Development ("HCD"), the City must construct 1,522¹ housing units during the 6th (2023-2031) Housing Element Cycle. (See Gov. Code, § 65580, et seq.) Of these 1,522 units, 402 must be for very low-income households, 232 must be for low-income households, 247 must be for moderate-income households, and 641 must be for above-moderate income households.

Under state law, the City's Suitable Sites Inventory must be sufficient to satisfy the City's RHNA requirement for all income levels. In fact, the City of Brentwood is prohibited from allowing its inventory to fall below its remaining unmet share of the regional housing need for lower and moderate-income households. (Gov. Code, § 65863(a)). If the City finds that its remaining sites are insufficient to accommodate its remaining housing needs at any time during the 6th Cycle planning period, the City must take immediate action to correct the shortfall by amending its housing element sites inventory to increase capacity by either adding previously unidentified sites or rezoning remaining sites to correct for the shortfall. (Gov. Code, § 65863(b)).

For this reason, HCD guidance recommends that a suitable sites inventory contain at least 15-30% more capacity than is strictly required, to ensure that jurisdictions do not inadvertently violate state law if housing developments anticipated under a housing element do not come to fruition.²

Critically, a city has the burden of producing a realistic site inventory — not a theoretical list that simply pencils out on paper. State law provides that a city must identify "vacant sites and sites having *realistic and demonstrated potential* for redevelopment during the planning period to meet the locality's housing need for a designated income level" (Gov. Code, § 65583(a)(3), *emph. added.*) As evidenced below, the City here has failed to demonstrate its list of residential housing sites is in fact realistic.

Currently, the City's Public Review Draft 6th Cycle (2023-2031) Housing Element, or "Draft Housing Element," lists 968 units that are currently approved or under construction, the vast majority of which are for above moderate-income units (i.e., the "Pipeline Projects"). The Draft

¹ While the majority of the Public Review Draft of the 2023-2031 (6th Cycle) Housing Element correctly states that the City's RHNA obligation is 1,522 units, several tables in the Public Review Draft and its appendices appear to erroneously states that the City's RHNA requirement is 1,552 units, including Table B-1.

² California Department of Housing and Community Development, Division of Housing Policy Development, "Memorandum regarding No Net Loss Law Government Code Section 65863", October 2, 2019 at p. 5 (available at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb-166-final.pdf>).

Housing Element lists *zero Pipeline Projects for moderate-income households*, despite the fact that the Bridle Gate project, which has a pending development application, could position the City to meet its RHNA requirement with far more certainty. (Draft Housing Element, p. B-6, Table B-1; B-4). None of the units relied on by the City are even subject of any current development application before the City, as documented by the City of Brentwood's List of Active Development Projects.³

Instead, the Draft Housing Element relies entirely on projected future development to satisfy the City's moderate-income RHNA requirements. This future development is a combination of: (1) estimated future development of accessory dwelling units ("ADUs") based on a three-year average of past production, and (2) available capacity in specific plan areas or existing residentially zoned sites with no currently approved residential projects. Using a combination of these predicted actions, none of which are guaranteed to happen and some of which are not reasonably foreseeable, the City concludes that it will have the capacity to construct 337 moderate-income units, in excess of the 247 required. (Draft Housing Element, p. B-3, Table B-1). There is substantial evidence the City's Suitable Sites Inventory violates Government Code section 65583(a)(3) insofar as it does not include "vacant sites and sites *having realistic and demonstrated potential for redevelopment* during the planning period to meet the locality's housing need for a designated income level" and must include "an analysis of the relationship of zoning and public facilities and services to these sites." (Emph. added.)

The City's optimistic projections of future construction assume that, or the 337 moderate-income units contemplated, 41 units will consist of ADUs, 228 units will be built in the Priority Area One ("PA-1") Specific Plan area, and 68 units will be built on existing residentially zoned parcels, specifically within sub-area B of the Planned Development 49 ("PD-49") zone. (*Id.*)

First, there is a potentially significant timing issue, in that the PA-1 Specific Plan, which would include the lion's share of moderate-income units, likely will not undergo complete buildout until at least 2038, which is eight years after expiration of the Draft Housing Element's planning horizon. This issue is explored in greater detail below.

Another significant issue is that the City assumes the foregoing numbers based on an estimation that developers of all of these sites will reserve 15% of units for moderate-income households. The City, however, does not attempt to explain or support this assumption. (Draft Housing Element, p. B-10). The City's affordability requirement is 13%, and only 6% of units must be allocated to moderate-income households. (Brentwood Municipal Code § 17.725.003(B)&(D), as amended by Ord. 1041.) Assuming that 15% of future development will include moderate-income units appears unreasonable, especially given that developers also must, per City ordinance, additionally make available 4% of units to low-income households and 3% of units to very low-income households. (*See id.*)

The recent history of approved and constructed residential projects within the City confirms the assumption of 15% moderate-income units is far too high. As documented in Appendix B, Table B-4 of the Draft Housing Element, the eight projects currently in the Project Pipeline each include 0% of units for moderate-income households. In the current RHNA cycle (2015-2023), a total of 3,3031 housing units have been built, with 59 units for moderate-income household.

³ City of Brentwood's List of Active Development Projects (available at <https://www.brentwoodca.gov/government/community-development/planning/development-projects>).

(April 14, 2022 Staff Report for Joint Workshop Agenda Item Number 2, Table 1). This data demonstrates that over the last cycle, about 1.8% of constructed units have been reserved for moderate-income households. While the City acknowledges it historically did not enforce a high inclusionary requirement, there has been no substantive uptick in moderate-income housing proposals since the City updated its inclusionary housing ordinance in 2020. In fact, its historical approval of 1.8 percent has flattened to zero percent, judging by the present Project Pipeline.⁴ Overall, City provides no justification or explanation as to why it expects the rate of moderate-income housing to rise so drastically in coming years.

The City also neglects to account for its preference for commercial development over necessary housing units – an important factor under applicable, analytical methodologies.

As a corollary to the rule that a city must identify realistic capacity, HCD provides that a "capacity calculation *must be adjusted* to reflect the realistic potential for residential development capacity on the sites in the inventory." (HCD Site Inventory Guidebook, p. 20 (May 2020), *emph. added.*) Where a site has "the potential to be developed with nonresidential uses ... these capacity limits must be reflected in the housing element ... For example, if past production trends indicate that two out of three similar sites were developed for commercial use, an initial estimate of the proportion of new development which is expected to be residential would be two-thirds, i.e., 0.67." (*Id.* at 20-21; *see also* November 22, 2021 HCD letter to City of Lake Forest re: City of Lake Forest's 6th Cycle (2021-2029) Draft Housing Element, Appendix A, page 3⁵ ["To demonstrate realistic capacity on [sites where zoning allows for non-residential uses], the element must analyze and account for the likelihood of residential development in the zones that allow 100 percent nonresidential uses. The analysis should be based on factors such as development trends, performance standards or other relevant factors."]).

On this point, the history of the Bridle Gate project serves as important data point. As discussed above, the Bridle Gate project originally proposed 258 multi-family units, but senior City staff, presumably with the input of elected leaders, told our client that obtaining a favorable staff recommendation would require that our client replace multi-family uses with commercial uses, even though the Bridle Gate site is ideally located for residential land uses, due to its proximity to existing services and job centers (within 0.3 miles). The City has prioritized establishing uses that create more jobs and tax revenue — e.g., commercial and other nonresidential development — which had material effects on Discovery Builder's own residential development plans. (See September 1, 2020 Staff Report, Item No. 2, Packet Pg. 12, attached hereto as Exhibit 1, and most pertinent City determinations included in footnote 6, below.)⁶ This very real

⁴ Further, section 17.725.004 of the City's municipal code authorizes a developer to satisfy inclusionary requirements with "alternative equivalents," including via the dedication of vacant developable land or construction of affordable units on another site. Certainly some developers will elect these alternative equivalents—a viable possibility that has not been factored into the calculus.

⁵ Letter available at: <https://www.hcd.ca.gov/community-development/housing-element/docs/oraLakeforestdraftOUT112221.pdf>.

⁶ In cautioning against allowance of 258 multi-family units on the Bridle Gate site, the City's report provided as follows: "While it would enable the development of multi-family housing, it would also result in the loss of limited commercially zoned land in the city, and the attendant loss of sales tax revenue that helps maintain the quality of life that Brentwood residents and visitors enjoy. It would likewise preclude the development of that land for employment purposes, another City priority, given the percentage of residents who commute to their work outside city limits each day." The City further concluded that

preference could similarly influence the future buildout of other sites the City has identified as suitable for moderate-income housing. For instance, sub-area B of PD-49 permits, as a matter of right, commercial and employment uses that include general retail sales, services uses, and professional and business offices. (Brentwood Municipal Code § 17.499.003(A)&(C).) The City has failed, too, to account for this variable in identifying sites.

There are other issues with the City's analysis of the suitability of sites identified for provision of moderate-income housing:

- It is unclear whether the City evaluated site viability based on factors that include proximity to transit, access to schools, access to job centers, access to amenities (such as parks and community centers), access to services (such as grocery stores, shopping, and restaurants), access to health care facilities, and other factors identified by HCD. (See HCD Site Inventory Guidebook, pp. 9-10 (May 2020).) Sites might be suitable in light of such factors, but the City has not shown its work in these respects.
- It does not appear the unit yield on selected sites is accurate or in line with methodologies accepted by HCD. For instance, yield counts for the three sites in sub-area B of PD-49 are calculated by multiplying the total gross acreage by the maximum density permitted under the zoning code. (Draft Housing Element, p. B-13, Table B-8, at rows 8-10). However, the yield count for each PA-1 Specific Plan site is calculated by multiplying the total amount of "buildable acreage" (which in most cases is equivalent to total gross acreage for the site) by the midpoint density between the maximum and minimum densities permitted under the PA-1 Specific Plan. (*Id.* at B-13, Table B-8 at rows 1-7.) The City's Draft Housing Element lacks the facts required to support the City's selection of expected densities. HCD recommends determining unit yield by multiplying expected density by site acreage only if the expected density matches a given site's *minimum* density requirement, as determined in its zoning. (HCD Site Inventory Guidebook, p. 19 (May 2020).) Further, "to meet this standard on a zone that allows for multiple uses, the general plan or zoning must require the specified minimum number of residential units on the identified sites regardless of overlay zones, zoning allowing nonresidential uses, or other factors potentially impacting minimum densities." (*Id.*) Otherwise, a city must use a more thoughtful methodology set forth by HCD, and which includes an analysis of factors such as maximum lot coverage, height, open space, parking, on-site improvements required, and floor-area ratios. (*Id.* at pp. 19-20.) By contrast, if a city assumes a certain percentage of a site's maximum allowable density will be achieved for the Housing Element's calculation of residential capacity, it must demonstrate what specific trends, factors, and other evidence lead to its assumptions.⁷ (See, e.g., January 14, 2022 HCD letter to City of West Covina re: City of

establishing residential uses instead of commercial "could be found to be inconsistent with [General Plan Policy eED-25] ... and that the "city's land use plan skews heavily residential. The further loss of commercial land to additional residential use could be found to be inconsistent with maintaining a balanced land use plan and a diversified, stable, and self-sustaining revenue base in order to generate the resources necessary to sustain essential and desired City services, as the loss of commercial use here would result in the attendant loss of associated sales tax revenue."

⁷ The City's selection of sites also seems to assume placement of High and Very High Density land uses adjacent to Residential Low and Very Low Density land uses, without discussing or analyzing the potential for public or political opposition to such projects that could lead to unit count reductions. While

West Covina's 6th Cycle (2021-2029) Draft Housing Element, Appendix A, pages 2-3.)⁸ The City has provided no evidence to support its decision to assume maximum densities in calculating property yields.

- It is unclear the City has evaluated environmental and other constraints on all of the sites identified. For instance, the City does not appear to have consistently accounted for the impact of wetlands and other jurisdictional waters in calculating buildable acreage among the various sites. Other constraints that the City has not appeared to account for include, without limitation, right of way necessities, and stormwater detention, and biotreatment requirements. The City must identify and account for portions of otherwise buildable area needed to support these necessary site improvements. (See, e.g. December 3, 2021 HCD letter to City of West Hollywood re: City of West Hollywood's 6th Cycle (2021-2029) Draft Housing Element, Appendix A, page 5.)⁹ To this end, our client's planning team has conducted a preliminary analysis of various sites considered through the Draft housing Element process as suitable for moderate-income housing by the City, and identified the following constraints that would materially affect buildable area on those sites and in turn reduce the total unit counts:
 - With respect to PD-49:
 - Sub-area B sits adjacent to a streambed with intermittent water flows that likely qualify as federal or state jurisdictional waters, and are identified as such on the National Wetlands Inventory. (See Screenshot of National Wetlands Inventory, attached hereto as Exhibit 2.) The presence of jurisdictional waters often limits the developable area in light of setbacks, environmental protection regulations, and mitigation requirements (see, e.g., East Contra Costa County Habitat Conservation Plan & Natural Community Conservation Plan, Table 6-2.). The City appears to have appreciated this constraint in calculating some site inventories,¹⁰ and so it is unclear why this factor was not accounted for in reviewing PD-49.

such land use compatibility issues are not "objective" standards under the Housing Accountability Act, to the extent residential units are proposed in a mixed use configuration, a given project might not qualify for such protections, allowing the City to reject a proposal on these grounds.

⁸ Letter available at: <https://www.hcd.ca.gov/community-development/housing-element/docs/LanWestCovinaDraftOut011422.pdf>.

⁹ Letter available at: <https://www.hcd.ca.gov/community-development/housing-element/docs/LanWestHollywoodDraftallfindings120321.pdf>.

¹⁰ For instance, the property designated as Very High Density (APN# 019092046, Id. at B-13, Table B-8 at rows 6 and 7) within the PA-1 Specific Plan is adjacent to Sand Creek (a streambed with intermittent water flows that likely qualify as federal or state jurisdictional waters, and are identified on the National Wetlands Inventory). It appears that the City assumed a reduction in buildable acreage for this site, insofar as it acknowledged that only 10 acres of the 32.63-acre parcel was buildable, but other sites do not appear to be analyzed with an eye towards similar constraints.

- The three sites within sub-area B of PD-49 also have site drainage constraints, as there appears to be no stormwater infrastructure bordering the site, including along the site's eastern border along John Muir Parkway. (See COB Map, attached hereto as Exhibit 3). The three sites may require land for biotreatment areas, which are not discussed by the City and would reduce the buildable area.
- The PA-1 Specific Plan (APN# 019092046, 2483 Old Sand Creek Road) presents potentially significant scheduling issues, and the site has drainage constraints and biotreatment requirements which are not discussed by the City, as follows:
 - It is unclear that this development's units will be built within the Draft Housing Element's planning horizon, which sunsets in year 2031. Per the PA-1 Specific Plan EIR, buildout of the property will entail at least 6,200 days, which is equivalent to almost 17 years. (See, e.g., PA-1 Specific Plan Draft EIR, p. 3.7-30 [Table 3.7-4], where all environmental review for the project is incorporated herein by this reference.), The Draft Housing Element should address how a project with a construction schedule that concludes no earlier than 2039 will provide sufficient housing with a housing cycle that ends eight years earlier, in 2031.
 - The site has a high potential flood risks given its proximity to special flood hazard areas pursuant to the National Flood Insurance Program. Furthermore, the entirety of the PA-1 site is adjacent to a streambed with intermittent water flows that likely qualify as federal or state jurisdictional waters, and are identified on the National Wetlands Inventory. Accordingly, any project at the site would likely require dedication of land for Sand Creek and most likely a stormwater detention basin to protect against flood risks. The City's calculation of residential capacity assumes a reduced buildable area on-site, but without further detail, it is not possible to determine whether the City's assumptions are sufficient to accommodate the above constraints.

To the extent the City revisits other sites it previously determined were eligible to accommodate moderate-income housing,¹¹ these properties also involve complications that would materially affect density and reduce buildable area (and might explain why such sites did not appear in the latest iteration of the Draft Housing Element):

- APN # 019040031 (2401 Empire Avenue) would require right of way dedications, possible tree protection easements, a shared private drive easement, and require land to provide for biotreatment of stormwater .

¹¹ See City's initial Draft Site Inventory Excel Sheet presented at the July 21, 2022 City Council Housing Element Update Workshop (Agenda Item A). None of the constraints listed hereafter were discussed in the Staff Report for the July 21, 2022 City Council Housing Element Update Workshop.

- APN # 019040033 (2391 Empire Avenue) would require possible tree protection easements, a shared private drive easement, and would require land to provide for biotreatment of stormwater.
- APN # 018190018 (Sunset Rd.) would require right of way dedications, a possible detention basin to address insufficient drainage capacity, and would require land to provide for biotreatment of stormwater.
- APN # 01870003 (Brentwood Blvd.) would require land to provide for biotreatment of stormwater. The site would also require three points of public road access to support the assumed number of units pursuant to the City of Brentwood Engineering Procedure Manual, which would be challenging giving the buried nature of the site, and may necessitate a reduction in the total number of units the site could support.
- APN# 016120024 (Brentwood Blvd.) would require a possible detention basin to address insufficient drainage capacity, and would require land to provide for biotreatment of stormwater. It also appears to have limited points of access reducing permitted unit count pursuant to the City of Brentwood Engineering Procedure Manual.
- APN # 016150114 (Brentwood Blvd.) would require right of way dedications, a possible detention basin to address insufficient drainage capacity, would require land to provide for biotreatment of stormwater have potential water quality issues, and has cross access and park easements on approximately half the site.

The assumed densities for all sites also fail to analyze how developments would satisfy Quimby Act requirements for park dedications, which could further reduce buildable area on the sites.

In addition to the City failing to demonstrate the Suitable Sites Inventory contains sufficient capacity for moderate-income housing, the City has failed to show that its list of sites could accommodate a diversity of housing product, as favored by State policy and as called for in the City's own Draft Housing Element.

The Bridle Gate site remains one of the City's only viable option for single-family, affordable housing units. Both the PA-1 and sub-area B of PD-49 are particularly ill-suited to provide for any moderate-income single-family housing. For instance, sub-area B of PD-49 is only permitted to contain "medium to high to very high density multifamily residential" units on site. (Brentwood Municipal Code § 17.499.003(D)). Of the three districts within the PA-1 Specific Plan Area that the City notes allow residential units, only one district (the High Density Residential District) permits single-family housing.

It is important for any City to ensure that below-market-rate units consist of a diversity of housing types, and not just multi-family apartments or condos. Having a diverse housing stock helps reduce or remove the stigma traditionally associated with affordable housing. Per HCD's guidelines, a city should take "meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns ..." (HCD Site Inventory Guidebook, p. 8 (May

2020.) As the City notes in its Draft Housing Element, "providing a *variety* of housing units at all affordability levels is critical in ensuring all community members have their needs met." (Draft Housing Element, p. 2-4) (emph. added). As currently constituted, the Suitable Sites Inventory cannot achieve this critical goal for moderate-income households. It envisions affordable housing existing almost entirely in the form of multi-family housing, which does not result in integrated and balanced living patterns as envisioned.

Overall, the City has work to do, to meet its legal burdens. Its Suitable Sites Inventory does not include a single moderate-income housing unit under current consideration in the Project Pipeline, and the assumptions underlying its capacity analysis of other sites are plagued by practical obstacles and unrealistic expectations. Given these problems, it is puzzling that the City would fail to include the Bridle Gate proposal — a project with an SB 330 application currently pending before the City — in its Suitable Sites Inventory. Furthermore, as currently constituted, the City's Suitable Sites Inventory has extremely limited capacity for moderate-income single-family housing. The Bridle Gate project's 29 units set aside for moderate-income single-family units are much closer to approval and construction than many of the other moderate-income household projects in the City's Suitable Sites Inventory, and Bridle Gate should be included in the City's 2023-2031 Housing Element to give the City the greatest chance of satisfying its share of RHNA.

The City should not exclude the Bridle Gate project solely to avoid a by-right residential project or upzoning of the Bridle Gate site.

It is unclear why the City has failed to include the Bridle Gate property on the Suitable Sites Inventory, given that inclusion of the project would aid the City in satisfying its obligation to prepare a legally-compliant Housing Element.

However, it is possible that City's intent is to avoid upzoning the Bridle Gate site, as required by State law. Under Government Code section 65583.2(c), if a particular site has been listed in two or more consecutive planning periods and that site was not approved for development, then the site cannot be listed as suitable site to accommodate any portion of the City's low-income or very low-income unit requirements unless the site is "subject to a program in the housing element requiring rezoning within three years of the beginning of the planning period to allow residential use by right for housing developments in which at least 20 percent of the units are affordable to lower income households." Further, any such site must be zoned at an allowable density of at least 30 units per acre, an increase over the density currently permitted on the Bridle Gate site. (Gov. Code, § 65583.2 (c)(3)(B)(iv)).

The City's unwillingness to upzone the Bridle Gate site is not an appropriate basis for the City purposefully avoid listing it in the Suitable Sites Inventory. The project would assist the City in meeting its share of RHNA, which is the stated purpose of the City's 2023-2031 Housing Element. (Draft Housing Element, p. 1-2).

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The 2023-2031 Housing Element, as currently constituted, risks failing to accommodate the City's share of RHNA. The City's plan to provide moderate-income housing relies almost entirely on the hope of future production of multi-family developments and ADUs, where the capacity identified is not realistic. The Bridle Gate project, meanwhile, has already submitted a complete

SB 330 application to the City, which includes 29 moderate-income units, over 10% of the City's required share of moderate-income units. The City's decision to exclude the Bridle Gate site only serves to hurt its efforts to satisfy its RHNA obligations, and in turn hurts the statewide efforts to provide sufficient housing for all California residents. Accordingly, we urge the City to revise the 2023-2031 Housing Element to include Bridle Gate property in the Suitable Sites Inventory.

Sincerely,



Ellis Raskin
Attorney



Niran S. Somasundaram
Attorney

cc: Katherine Wisinski, Assistant City Attorney, City of Brentwood
Alex Contreras, Policy Analyst, HCD
Lisa Frank, Housing and Community Dev. Specialist, HCD
Sean Marciniak, Esq., Hanson Bridgett LLP
Clients

EXHIBIT 1

STAFF REPORT
PLANNING COMMISSION REGULAR MEETING OF
SEPTEMBER 1, 2020

PREPARED BY: Debbie Hill, Senior Planner
dhill@brentwoodca.gov

PROJECT DESCRIPTION: Item No. 2, A development agreement (DA 19-001) setting forth specific terms for development of the Bridle Gate project, a General Plan amendment (GPA 17-001) to change the land use designation for 13.98 acres of the 137.3-acre project site from Regional Commercial to Planned Development for up to 256 multi-family residential units and designating two separate areas as Park, along with an amendment to the Circulation Element for the extension of San Jose Avenue, a rezone (RZ 17-004) amending the Planned Development No. 36 (PD-36) Zone to accommodate the General Plan amendment and amend the development standards, a vesting tentative subdivision map (VTSM 8506) to create 252 single-family residential lots, two parks, two parcel for bio-retention, one 11.35-acre school site with an additional 63-lot overlay should the school site not be developed, one 13.98 acre multi-family site, and one 18.72-acre regional commercial site, a design review (DR 17-007) for the architecture for five home plans, utilities, landscaping, and related improvements for the low-density residential lots, and a design review (DR 17-008) for the architecture for the multi-family portion of the site. The project site is located west of State Highway 4, south of Old Sand Creek Road, and north of San Jose Avenue (APNs 019-082-007 and 019-110-076)

GENERAL PLAN: R-LD (Residential-Low Density), RC (Regional Commercial, P-OS (Permanent Open Space), and P (Park)

ZONING: Planned Development No. 36

OWNER/APPLICANT: WCHB Development, LLC; Discovery Builders, Inc.

PREVIOUS ACTIONS:

- At its meeting of April 19, 2005, the Planning Commission held a public hearing on a request for a General Plan Amendment (GPA 01-01), a Rezone (RZ 05-04), a Development Agreement (DA 04-02), a Vesting Tentative Subdivision Map (VTSM 8606) for 166 residential lots, and a Design Review (DR 01-02) for the Bridle Gate project and continued the item to a date uncertain.
- On April 27, 2005, Discovery Builders appealed the Planning Commission continuance to the City Council.
- On May 24, 2005, the City Council continued a public hearing on the appeal to its meeting of June 14, 2005, due to noticing requirements.
- On June 14, 2005, the City Council held a public hearing on the appeal and referred the project back to the Planning Commission for additional consideration.
- On November 1, 2005, the Planning Commission held a public hearing on General Plan Amendment (GPA 01-01), a Rezone (RZ 05-04), a Development Agreement (DA 04-02), a Vesting Tentative Subdivision Map (VTSM 8606) for 166 residential lots, and a Design Review (DR 01-02) for the Bridle Gate project and requested staff to prepare the necessary resolution for denial of the general plan amendment and rezone.
- On November 15, 2005, the Planning Commission adopted Resolution No. 05-82 denying General Plan Amendment No. 01-01 and Rezone No. 05-04.
- On January 10, 2006, the City Council held a public hearing to consider the appeal by Discovery Builders and directed staff to prepare the necessary resolutions for approval of the appeal.
- On May 23, 2006, the City Council held a continued public hearing on the appeal and approved the mitigated negative declaration, General Plan amendment, and introduced and waived the first reading of the ordinance for the Rezone, by Resolution Nos. 2006-124 and 2006-125 and Ordinance No. 827, respectively, and referred the development agreement, vesting tentative subdivision map, and design review application back to the Planning Commission for action.
- On June 6, 2006, the Planning Commission held a public hearing and approved Development Agreement No. 04-02, Vesting Tentative Subdivision Map No. 8506, and Design Review No. 01-12 by Resolution Nos. 06-47, 06-48, and 06-49, respectively for the Bridle Gate 166-lot residential project.
- On August 18, 2020, the Planning Commission voted unanimously to continue the public hearing to its meeting of September 1, 2020, for a Final Environmental Impact Report, General Plan Amendment No. 17-001, Rezone No. 17-004, Development Agreement No. 19-001, Vesting Tentative Subdivision Map No. 8506, Design Review No. 17-007, and Design Review No. 17-008 for the Bridle Gate project.

BACKGROUND:

The Bridle Gate project in its previous form was originally submitted to the City in March of 2001 and was subsequently approved in June of 2006. At that time, the project sought approval for 166 residential lots, and included a General Plan amendment, rezone, vesting tentative

subdivision map, and design review. The map and design review approvals expired in 2013, leaving the General Plan amendment and rezone in place.

After entertaining other project concepts, the developer officially submitted a new application to the City in June of 2017 for a substantially revised version of the Bridle Gate project. Since that time, staff has been working with the applicant to move forward with a development project for the 137-acre project site.

As discussed below, the current version of the project increases the proposed number of homes threefold from what is currently allowed, including multi-family project units, reduces the commercial acreage of the site by approximately 14 acres, and allows for the development of a new elementary school site.

Detailed Project Description

The current iteration of the proposed project includes a request for the following entitlements:

- A Final Environmental Impact Report to disclose the environmental impacts of the project, in accordance with the California Environmental Quality Act;
- A development agreement (DA 19-001) setting forth the duration of the agreement, permitted uses and density of the project, requisite development standards, community benefits to be provided by the applicant, and additional terms and conditions regarding development of the project;
- A General Plan amendment (GPA 17-001) to change the land use designation on 13.98 acres of the project site from Regional Commercial (RC) to Planned Development (PD) with the intent of developing this acreage with up to 258 multi-family apartment units. In addition, the project site currently includes area designated 'Park' by the General Plan. This 'Park' area would be relocated and divided into two separate 'Park'-designated sites totaling 4.3 acres on the project site. Finally, an amendment to the General Plan's Circulation Element is needed to allow the proposed San Jose Avenue extension to terminate at a new intersection with Sand Creek Road;
- A rezone (RZ 17-004) to amend the development standards within Planned Development 36 to accommodate the residential, commercial, and open space uses of the project;
- A vesting tentative subdivision map (VTSM 8506) to subdivide the property into 252 single-family residential parcels, an 11.35-acre elementary school site (or, alternatively, a residential overlay that could accommodate an additional 63 single-family units if development of the school does not occur), two park parcels, four parcels for stormwater bio-retention, a multi-family parcel, a commercial parcel, and open space areas;
- A design review (DR 17-007) for the single-family homes to be constructed on the single-family parcels consisting of five models with three elevations each ranging in size from 2,251-3,416 square feet; and
- A design review (DR 17-008) for up to 258 apartment units to be constructed on the proposed new multi-family parcel, consisting of 11 three-story apartment buildings

containing between 12-36 units each, and consisting of 84 one-bedroom units and 174 two-bedroom units.

Surrounding Land Uses

- North – The Innovation Center @ Brentwood (formerly known as Priority Area One) zoned for Employment Center/Light Industrial
- East – State Highway 4 and The Streets of Brentwood and Sand Creek Crossing commercial developments beyond
- South – Brentwood Hills single-family residential subdivision (TSM 7882 and 8676)
- West – City of Antioch, designated as Open Space/Senior Housing in Antioch’s General Plan

The central and western portions of the project site contain moderately sloping hillsides along a northwesterly trending ridge. The northeastern and eastern portions of the site consist of gently easterly sloping topography ranging in elevation from approximately 120 feet above mean sea level (msl) to approximately 160 feet above msl. The highest elevation at the site is along the ridge in the southwestern portion of the site, at an approximate elevation of 230 feet above msl.

ANALYSIS:

General Plan Amendments

The General Plan is the City’s land use constitution. All land use projects seeking approval within the city must either be consistent with the City’s General Plan as proposed, or request approval for changes to the General Plan that would make the project consistent.

General Plan amendments. In order to approve the Project, three General Plan amendments would be needed:

- **Conversion of commercial to residential.** First, according to the General Plan, the Project site is currently designated with a mix of Open Space (primarily along the ridgelines), Park, Residential-Low Density, and Regional Commercial. In order to accommodate the proposed multi-family portion of the proposed development, a land use designation change is being requested for a 13.98-acre area at the northwest corner of the project site. This change would change the General Plan designation of this acreage from Regional Commercial to Planned Development in order to allow for up to 258 multi-family apartment units to be constructed. The remaining 18.72 acres designated as Regional Commercial are not proposed for any land use changes. (See Figures 1 and 2 below.)
- **Division and relocation of Park land.** Second, the area currently bearing a General Plan land use designation of ‘Park’ will be relocated and divided into two separate ‘Park’-designated sites, totaling 4.3 acres. (See Figures 1 and 2 below.)
- **Roadway reconfiguration.** Third and finally, the Circulation Element of the General Plan currently includes a figure (Fig. CIR-1) that establishes the required design of the City’s circulation system. Figure CIR-1 will need to be amended to allow the proposed San Jose Avenue extension to terminate at a new intersection with Sand Creek Road, which itself is being extended and will terminate at a temporary turnaround at the western project site boundary, ultimately to be extended westerly into Antioch by others in the future.

Figure 1

Current General Plan Land Use Map

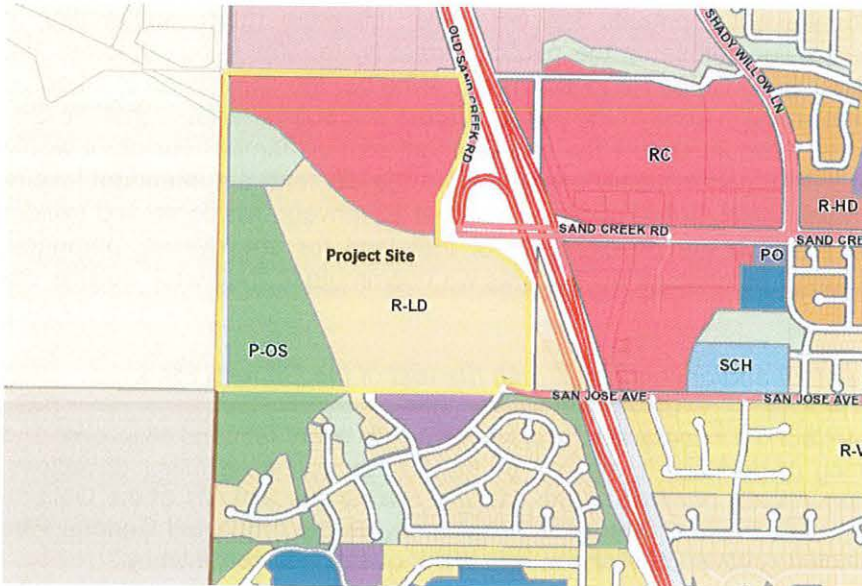


Figure 2
Proposed General Plan Amendments to
Convert Commercial to Residential and Divide and Relocate Park land



In order to approve any requested General Plan amendments, the City must be able to determine that the request meets the following four criteria:

1. *The amendment is deemed to be in the public interest;*

Division and relocation of the Park parcels could serve the public interest, as it would locate parks closer to the residential developments they will serve. Likewise, the reconfiguration of the San Jose Avenue extension will serve the public interest by facilitating travel across the project site to the proposed Sand Creek Road extension. Whether the conversion of 14 acres of commercial area to multi-family use is in the public interest is a policy decision that the City Council must weigh. While it would enable the development of multi-family housing, it would also result in the loss of limited commercially zoned land in the city, and the attendant loss of sales tax revenue that helps maintain the quality of life that Brentwood residents and visitors enjoy. It would likewise preclude the development of that land for employment purposes, another City priority, given the percentage of residents who commute to their work outside city limits each day.

2. *The amendment is consistent and/or compatible with the rest of the General Plan;*

While it is true that no project will necessarily be consistent with every General Plan goal and policy, and some weighing of priorities is allowed by the City in assessing minor deviations, amendments that are diametrically opposed to the existing, unchanged aspects of the General Plan are not supportable under the law. The table below analyzes the requested General Plan amendments against selected goals and policies in light of the question of consistency.

Table 1
General Plan amendment consistency analysis

	General Plan requirement	Consistent?
Conversion of commercial to residential	Policy ED 2-5: Ensure that an adequate inventory of vacant industrial, commercial, office, and business park land is designated, zoned, and maintained for targeted employment-generating uses.	Given that the proposed amendment would reduce the amount of commercial land in the city's inventory and convert it to residential use, such an action could be found to be inconsistent with this policy, unless the City believes that adequate commercial inventory exists even without this 14 acre parcel.
	Goal FI 1: Maintain a balanced land use plan and a diversified, stable, and self-sustaining revenue base in order to generate the resources necessary to sustain essential and desired City services.	The city's land use plan skews heavily residential. The further loss of commercial land to additional residential use could be found to be inconsistent with maintaining a balanced land use plan and a diversified, stable, and self-sustaining revenue base in order to generate the resources necessary to sustain essential and desired City services, as the loss of commercial use here would result in the attendant loss of associated sales tax revenue. However, the project would participate in community facilities districts and pay impact fees to assist in funding City services.
	Policy LU 1-1: Maintain a supply of developable commercial, business park, mixed use, and residential lands	While the city currently has a sufficient supply of land developable as residential to meet its growth

	General Plan requirement	Consistent?
	sufficient to meet desired growth and economic needs over the planning period.	projections, its commercial inventory is far less extensive. Approval of this general plan amendment would limit the supply of developable commercial land.
	Policy LU 2-8: Provide for a variety of residential products through the Zoning Ordinance in order to accommodate the housing needs of all segments of the city's population.	Conversion of this commercial acreage to multi-family use would allow for the provision of apartments, which would add to the variety of residential products available in the city in order to accommodate the housing needs of more segments of the community.
	POLICY H 2-1: Provide housing affordable and appropriate for a variety of Brentwood households at all economic levels throughout the City.	Converting this commercial site to multi-family use would allow for the development of apartment housing that would likely appeal to households at economic levels that cannot afford single-family homes. Applicant has requested to be allowed to pay a fee in lieu of constructing any affordable housing on site, so no deed restricted affordable housing would be constructed as part of this multi-family development. Those funds would be banked for future use of affordable housing opportunities.
Division and relocation of Park land	Policy LU 4-4: Site new park and recreation facilities where they will be accessible by the City's pedestrian and bicycle network and in close proximity to medium and higher density residential uses, where appropriate.	Allowing the existing areas designated as Park to be split and relocated across the Project site would facilitate this policy of siting new park facilities closer to users throughout the Project site.
Roadway reconfiguration	Policy CIR 1-2: Ensure that the City's circulation network is a well-connected system of streets, roads, highways, sidewalks, and paths that effectively accommodates vehicular and non-vehicular traffic in a manner that considers the context of surrounding land uses and the needs of all roadway users.	Allowing for the reconfiguration and improvement of San Jose Avenue, as proposed, would effectively accommodate vehicular and multi-modal traffic in a manner that reflected the context of the surrounding residential and (potentially) school land uses and the needs of operators of vehicles, pedestrians, and bicyclists.

3. *The potential impacts of the amendment have been assessed and have been determined not to be detrimental to the public health, safety, or welfare.*

The project is required to comply with the Noise Element in that construction activities will be regulated to the allowable hours, and noise sources will be required to mitigate sound. Compliance with the Safety Element would be achieved through seismically sound construction designs and practices, as well as the construction of building pads outside of the flood zone.

- 4. *The amendment has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA).*

A Final Environmental Impact Report was prepared for this project and all mitigation measures have been incorporated as conditions of approval of the development.

The City Council will need to determine whether the requested General Plan amendments meet the criteria set out above.

General Plan Consistency

For those elements of the project that do not require a General Plan amendment, the City must still determine whether the project is consistent with the General Plan. With regard to density, the General Plan identifies the allowable density (expressed as dwelling units/acre or 'du/a') for the single-family residential portions of the project site.

Table 2
General Plan density consistency analysis

	Density required by General Plan	Density proposed	Consistent?
Single-family homes (with school)	1.1-5.0 du/a, with a mid-range of 3.0 du/a	3.70 du/a	The proposed density exceeds the mid-range
Single-family homes (with overlay)	1.1-5.0 du/a, with a mid-range of 3.0 du/a	4.64 du/a	The proposed density exceeds the mid-range
Multi-family	N/A	18.45 du/a	N/A

Per the General Plan's mid-range density policy, densities above the mid-range can be permitted at the discretion of the City Council through the exercise of transferable agricultural credits or if a significant amount of amenities is incorporated into a project, extensive off-site public improvements are installed, or other significant improvements of community-wide benefit are provided.

In this case, the applicant is proposing to provide certain amenities, as listed in the Development Agreement (DA), as improvements of community-wide benefit. As listed in the DA discussion below, these include contributions to the East Contra Costa Fire Protection District; potential sale of an 11.35 acre parcel within the project area for a school site or, alternatively, payment of \$1,575,000 to the City to fund a youth center or youth programming; and a trail connection across Sand Creek and from the project site to commercial developments to the east. (In return for these benefits, the applicant will stand to receive their own benefits, which are detailed in the DA discussion below.) The Council will ultimately need to determine whether these community benefits are sufficient to not only allow development above the mid-range, but also to justify the requested General Plan amendments.

The overall density for the multi-family portion of the project site is 18.45 dwelling units per acre. Since the General Plan amendment application includes changing the land use for 13.98 acres from Regional Commercial to Planned Development, the revised PD-36, Subarea B, zoning standards will govern the development of this acreage for up to a maximum of 258 units, or 18.45 dwelling units per acre.

Beyond density, the project's general consistency with the General Plan is analyzed in Table 3 below.

**Table 3
General Plan consistency analysis**

General Plan requirement	Consistent?
<p>Goal CIR 1: Provide a transportation system that facilitates the efficient movement of people and goods within and through the city of Brentwood and promotes the use of alternatives to the single-occupant vehicle</p>	<p>The project would include the extension of Sand Creek Road from its current termination west of SR 4 to the Antioch city limits. While the completion of an intersection with Heidorn Road would have to wait for future development, this would allow the final construction of Sand Creek Road, a major arterial, to city limits, thus facilitating the efficient movement of people and goods. The project would also provide bike lanes for bicycle use, and sidewalks and pedestrian paths, including a connection beneath SR 4 for multi-modal access to development west of the project site.</p>
<p>Action CSF 5a: Continue to coordinate with the school districts to ensure the adequate provision of school and related facilities to serve existing and future development and support the establishment of a School Facility Master Plan. The City should work with the local school districts to develop criteria for the designation of school sites and consider a range of opportunities available to reduce the cost of land for school facilities. Such opportunities may include, but are not limited to, designating lands as School (SCH) on the General Plan Land Use map when future school sites are identified in the adopted School Facility Master Plan. The City shall encourage the local school districts to comply with City standards in the design and landscaping of school facilities.</p>	<p>The project includes a DA that requires the applicant to have entered into an agreement with the School District to transfer an 11.35-acre parcel to the School District for the construction of a school site. If built, this school would assist in providing adequate school facilities to serve existing and future development. However, the City has no way of guaranteeing that the site will ultimately be transferred to the School District or that a school will be built if it is transferred.</p>
<p>Policy CSF 4-1: Encourage and support the East Contra Costa Fire Protection District and providers of emergency medical services to maintain adequate staff and equipment to provide high quality and responsive fire protection and emergency medical services to existing and future growth in Brentwood.</p>	<p>The project DA likewise would require the applicant to pay fire impact fees for the project. These fees may be used by ECCFPD for fire facilities and equipment. However, the applicant has indicated that it believes the fire impact fee recently adopted by the City is flawed. Therefore, the fees may be paid under protest. Under the DA, the applicant would also participate in a Community Facilities District, a mechanism that would assess the lots on the project site and use those assessments to fund fire services, a considerable benefit to ECCFPD.</p>

General Plan requirement	Consistent?
Goal COS 1: Ensure the provision and preservation of diverse and accessible open spaces throughout the Brentwood Planning Area	The project proposes to maintain some 28.35 acres of permanent open space on the site, thus ensuring the preservation of accessible open space within this portion of the Brentwood Planning Area.
POLICY H 1-1: Provide adequate residential sites with densities distributed throughout the City for the production of new for-sale and rental residential units, emergency shelters, and transitional and supportive housing sites for existing and future residents.	The project would provide up to 573 new homes (without development of the school; 510 with the school), at both low and high densities, and offer the option of for-sale and rental options, thus facilitating this policy.
Policy ED 5-1: Ensure that public, residential, and non-residential developments locating along local creeks, waterways, and open space are designed to include these natural features as an attraction and amenity, while also providing for their conservation where appropriate.	The project would include the development of a trail along the north side of Sand Creek, thus including this natural feature as an attraction and amenity.

Zoning Ordinance Amendment

As with the General Plan, proposed projects must also either be consistent with the City's Zoning Ordinance as proposed, or request approval for changes to the Zoning Ordinance that would render the project consistent. The project site is currently zoned Planned Development No. 36. The PD-36 text identifies development standards for mixed-use business park, regional commercial, single-family residential, and open space and recreation uses. In order to accommodate the project as proposed and be consistent with the proposed General Plan amendment, certain zoning uses and development standards would need to be revised. Therefore, a rezone is necessary to establish site-specific development standards for the proposed uses.

The proposed rezone includes a subarea map identifying each separate land use category and sets forth development standards for each subarea. The proposed development standards are fairly typical for the individual land uses. The single-family subarea sets forth a minimum lot size of 4,500 square feet (which is consistent with the General Plan designation of Residential – Low Density), and includes typical minimum lot dimensions and setbacks associated with the lot area. The tentative map is in keeping with these proposed regulations and each of the residential homes is required to meet the minimum setback dimensions. Therefore, the project would be consistent with the proposed zoning designation should the rezone be approved as requested. The following table summarizes the development standards proposed for the residential of the project and compares them with the current residential zoning for the site:

Table 4
Proposed zoning development standards for residential uses and comparison with existing standards

	Existing standard (Single-family Subarea C)	Existing standard (Single-family Subarea D)	Proposed single-family standard	Proposed multi-family standard
Minimum lot area	5,000 sq. ft.	10,000 sq. ft.	4,500 sq. ft.	2,000 sq. ft.
Minimum lot width	55'	90'	45'	-
Minimum lot frontage for lots on cul-de-sacs, knuckles, or curvilinear streets	35' at the front property line	45' at the front property line	30' at the front property line	-
Minimum front yard setback	20' for front-facing garages; 15' for building walls and porches	20' for front-facing garages; 15' for building walls and porches	20' for front-facing garages; 10' for building walls and porches	10'
Minimum side yard setback	5', with the sum of both sides 12'; corner lots shall maintain a minimum setback of 10' on the street side yard	5', with the sum of both sides 15'; corner lots shall maintain a minimum setback of 10' on the street side yard	5'; corner lots shall maintain a minimum setback of 10' on the street side yard	10'
Minimum rear yard setback	15', with an average of 20'	15', with an average of 20'	15'	10'
Maximum building height	2 stories, not to exceed 30'	2 stories, not to exceed 30', except that the 10 lots referenced on the approved residential site plan with Model 11 shall not exceed 33.5'	Two stories, not to exceed 34'	40'
Corner lot fence setback	5' from the street side property line; all other fence regulations shall adhere to the requirements of BMC Chapter 17.660	5' from the street side property line; all other fence regulations shall adhere to the requirements of BMC Chapter 17.660	5 feet from the street side property line; all other fence regulations shall adhere to the requirements of BMC Chapter 17.660	-
Open space fencing	Lots adjacent to open space shall utilize a 6' high open space fence along the common	Lots adjacent to open space shall utilize a 6' high open space fence along the common	-	-

	Existing standard (Single-family Subarea C)	Existing standard (Single-family Subarea D)	Proposed single-family standard	Proposed multi-family standard
	property line(s), as approved through the tentative map	property line(s), as approved through the tentative map		
Accessory structures	Prohibited in side or rear yards for areas exceeding a 3:1 slope	Prohibited in side or rear yards for areas exceeding a 3:1 slope	-	-
Maximum lot coverage	40% for 2-story homes and 45% for 1-story	40% for 2-story homes and 45% for 1-story	50%	-
Common open space	-	-	-	15% of the total site area
Minimum usable common open space	-	-	-	10% of the total site area
Minimum private open space	-	-	-	100 sq. ft. immediately adjacent to each unit (including balconies)
Maximum number of primary dwelling units	124	42	252 (with school) or 315 (without school)	258
Total possible residential development	166 units		510 units (with school) 573 units (without school)	

The existing uses and development standards governing the commercial portion of the project site would not change with the rezone, with the exception of applicant's request to add gas stations as a conditionally permitted use. With minimal exception, no changes are requested for the open space uses or standards.

In determining whether to grant a requested rezone, under BMC § 17.870.008, the City will need to determine whether the request is:

1. Consistent with the General Plan; and
2. Inappropriate or otherwise contrary to the public interest.

The City Council will need to determine whether the requested rezoning conforms to the General Plan and if it is inappropriate or otherwise contrary to the public interest.

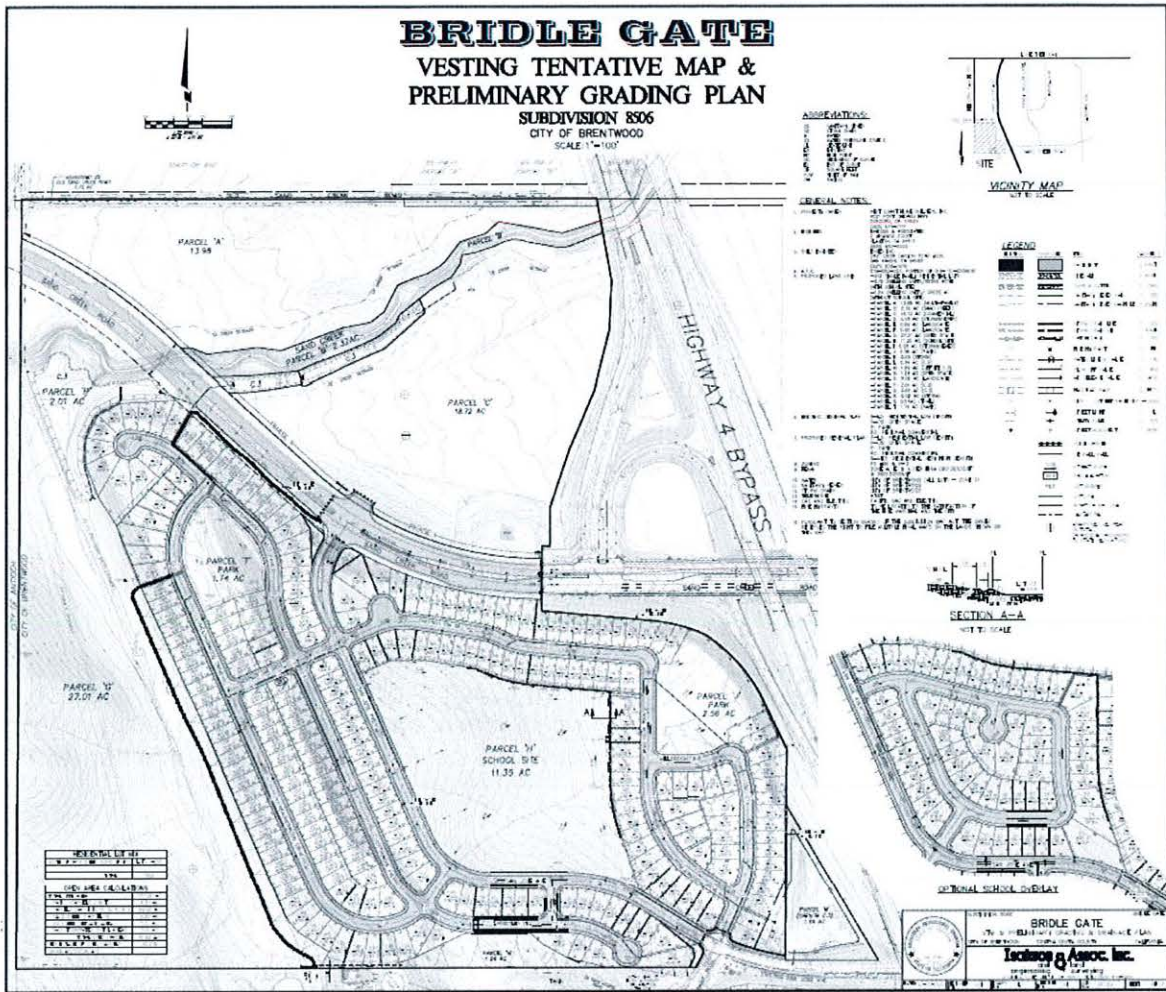
Vesting Tentative Subdivision Map

The project site consists of a total of 137.3 acres. Of this acreage, 28.25 acres (Parcels G and N) are preserved as open space, the majority of which is located along the western property line corresponding to hillside ridge lines. Along the northern property line and north of Sand Creek, Parcel A, totaling 13.98 acres, will accommodate the multi-family apartment project. Parcel C consisting of 18.72 acres and located just south of Sand Creek, remains dedicated to future regional commercial uses, and no development of this site is anticipated with this project at this time. The remaining acreage located south of Sand Creek Road includes the 11.35-acre potential school site (Parcel H), two park locations (1.74 acre Parcel T and 2.56 acre Parcel J), a ten-foot trail connection (Parcel S) to the Brentwood Hills subdivision to the south, and the 252 single-family residential lots. The single-family lot sizes would range from 4,500 square feet to 16,912 square feet. The remaining parcels are to be utilized for bio-retention areas for stormwater treatment. Access to the single-family development would be through two main access points, one along Sand Creek Road and the other via the extension of San Jose Avenue from the south.

The proposed map also includes an overlay for 63 additional single-family lots should the anticipated school site not materialize. The terms for how this could develop are outlined in the development agreement.

Brentwood Municipal Code §16.060.040(B) identifies seven findings applicable to a decision to approve or deny a subdivision map. In the interest of space, each of these findings is analyzed in the resolution attached hereto. Proposed conditions of approval are also attached to the proposed resolution.

Figure 3
Proposed VTSM 8506



Design Review

The applicant seeks design review approval for both the single- and multi-family portions of the site. Each is considered separately below. Both are subject to the same approval criteria set out in Brentwood Municipal Code §§ 17.820.007.

Design Review No. 17-007 – Single-Family Residential

Architecture

This single-family community has proposed five distinct floor plans with three alternative elevations per plan. All plans are two-story homes with a two-car front-on garage. Due to the relatively small minimum lot size, alternative garage configurations are difficult to accomplish, however, the homes are designed to minimize the garage by setting it back from the front plane of the living spaces, thereby minimizing their prominence in the front elevation, and all of the plans show decorative garage doors to match the architectural style of the home.

As mentioned, each plan has three distinct architectural styles, including Tuscan, Craftsman, and French Cottage. Exterior materials, massing, roof shapes and pitches, trim shapes and

material, and colors vary by these elevation styles. The rear elevations vary by elevation style as well, with accent gable and hip roofs, accent trim, and a variety of roof pitches and massing styles. The trim around the windows is shown as being carried around all windows at the sides and rears facing street to matches the style of the window trim on the front elevation. This means that the window trim at the side and rear elevations is different by elevation style, but only if it can be viewed from an adjacent street.

- **Tuscan.** The Tuscan style elevations include a combination of stucco and stone exteriors with decorative wrought iron trim elements. The rooflines feature both modified hip and gable end and are finished with curved villa concrete tile roofing material.
- **French Cottage.** The French Cottage style elevations include stucco body and trim elements with mock shutters. Stone veneer trim elements are included along the front elevations. Also included are simulated wood siding and trim elements at various locations along the front elevation. The gable roofs are finished with flat concrete tile roofing materials.
- **Craftsman.** The Craftsman elevations are a combination of horizontal siding and stucco. In addition, there are stone trim elements either at the front or on the column bases on the porch posts. Front elevations feature a full grid pattern for the window fenestration, which is unique to this style. The gable roofs are accented with corbels and have flat concrete tile roofing.

Exterior materials, massing, roof shapes and pitches, trim shapes and material, and colors vary by these elevation styles. The rear elevations vary by elevation style as well, with accent gable and hip roofs, accent trim, and a variety of roof pitches and massing styles. The accent trim and around the windows and the varied window grid patterns are only proposed to be carried around to windows at the sides and rears that abut streets. A draft condition of approval on the project would require that these trim elements be included on all the homes, not just those that abut streets. The color schemes assist in further differentiating the styles. For each plan, the developer has proposed two different color schemes that represent traditional color choices for the style, for a total of 14 color schemes for the entire development.

Building Design and Massing

A summary of the proposed home models is included below:

Table 5
Single-family home models

Plan #	Home Size	Bed/Bath	Garage Spaces	Stories	Max. Height
1	2,251	4 / 3	2	2	27'0"
2	2,564	4 / 3	2	2	25'9"
3	2,798	4* / 3	2	2	29'5"
4	3,158	5 / 4	2	2	29'7"
5	3,416	5 / 3	2	2	28'0"

*Optional 5th bedroom

Preliminary/Master Plotting Plan

The master plotting plan depicts which home plans would be constructed on each particular lot. Each plan would be plotted between 15.9% and 22.6% within the subdivision. The streetscape varies these five plans fairly evenly throughout the subdivision.

See discussion below under the Residential Design Guidelines section regarding compliance with the guidelines and proposed conditions of approval.

Landscaping

The proposed subdivision includes two designated park parcels. Parcel T, located west of the main access at Sand Creek Road, is 1.74 acres and will be designed as a neighborhood park. The larger park is Parcel J, which encompasses 2.56 acres and will also be designed as a neighborhood park. The landscape plans submitted with this application for a VTSM are preliminary only and pursuant to Brentwood Municipal Code Section 2.46.020G, a conceptual park plan will be submitted to the Parks and Recreation Commission for review and final approval of the park design, programming and amenities. The Parks and Recreation Commission's approval will ensure conformance with all aspects of the Parks, Trails and Recreation Master Plan for Neighborhood Parks. As with all new projects, the final landscape plans will be reviewed against the City's Water Efficient Landscape Ordinance to ensure conformance with these regulations.

The project includes a conceptual wall design for the required soundwall locations identified in the acoustical analysis done for the Environment Impact Report. These locations are adjacent to Sand Creek Road and State Route 4. As conditioned, walls will also be required adjacent to City park parcels. The wall design shall be masonry block units with wall cap, columns spaced appropriately and column caps. In order to insure that the wall is designed and installed in a manner acceptable to the City, a draft condition of approval is included that requires the developer to submit a modified design of the wall for review and approval by the Community Development Director and the Director of Public Works prior to construction. The intent is to have a hand-laid block wall with a cap, and columns approximately every 50 feet. All other fencing for the project would need to adhere to the City's standard for good-neighbor fencing between lots, and enhanced good neighbor between lots and City owned open space where trails or trail connections are adjacent. Open tube steel or wire fencing will be installed between City open space parcels and lots elsewhere.

A draft condition of approval for Parcel J will require dedication to the City for open space and trail purposes, and a 10-foot wide asphalt multi-use trail from the southern boundary of the project at the existing terminus of Black Gold Trail to the extension of Sand Creek Road or a portion of the Sand Creek Trail constructed with this project. This is consistent with the Parks, Trails and Recreation Master Plan and will provide trail connections called for therein. In addition, the project is conditioned to construct the Sand Creek Trail from the western boundary of the project to the eastern boundary of the project. Construction of the Sand Creek Trail is also called for in the Parks, Trails and Recreation Master Plan. Additionally, per the Development Agreement, the developer will assist in the construction of a trail connection to the east side of State Route 4.

Design Review No. 17-008 – Multi-Family Apartments

Access to the multi-family site, Parcel A, will be from one ingress/egress point at Sand Creek Road, which will provide right-in/right-out only. A secondary 20-foot wide emergency vehicle access point is provided at the northeast corner of the site out to Old Sand Creek Road. The

multi-family development consists of a total of 258 units clustered into 11, three-story, apartment buildings, with each building containing between 12 and 36 units. The project is anticipated to include 84 one-bedroom units, and 174 two-bedroom units. In addition to the units themselves, an approximately 7,873 square foot clubhouse, with a pool and barbeque area is also included on the site. The multi-family development would include a total of 508 parking spaces comprised of 262 carport spaces, 36 garage spaces, 37 compact spaces, and 173 standard spaces.

The architectural style for the apartment buildings is a modernized mission and includes arched canopies over many of the outdoor patio areas, stucco siding, belly banding to break up the planes between the three stories, and hip roofs with corbels constructed with concrete tile roofing materials. The garage buildings and the clubhouse are proposed as one-story structures and utilize the same materials and architecture as the apartment buildings.

The on-site amenities for the apartment complex include an outdoor pool and barbeque area. A gazebo and pet park are included with the project plans, but their location is not identified on the site plan. Since this is a rather large apartment complex, facilities such as electric vehicle charging stations, a car wash area, and a tot lot should also be made available to the residents. Accordingly, a draft condition of approval is included requiring these amenities to be included in the project building and landscaping plans. The developer is proposing to utilize a tubular steel fence design with columns and caps. A draft condition of approval requires approval of a fencing plan.

Design Guidelines

The City adopted a set of Residential Design Guidelines in 2006. These address all aspects of residential design, including project layout and composition, as well architectural design and features for a wide range of residential unit types, including single-family and multi-family.

The guidelines for building design for single-family residential include the provision of one distinct plan with four unique elevations for every 25 units in the project. This 252-unit single-family project has proposed a total of five models, with three elevation styles. This falls well short of the guidelines, which would require a minimum of ten different elevation styles. Accordingly, a condition of approval has been included requiring approval of another elevation style for the five plans provided along with another five distinct plans with four elevations each, including two single-story plans.

Another guideline that needs to be addressed is the lack of incorporating an alternative garage configuration. As this project is a low-density development on relatively small lot sizes, incorporating an alternative garage configuration could be problematic; however, there are a number of lots of sufficient width to accommodate an alternative garage design. Therefore, a condition of approval on the project requires the inclusion of at least one elevation that incorporates an alternative garage style. It should be noted that the proposed plans do push the garages past the front plane of the homes, making them less prominent. In addition, the garages are conditioned to include decorative doors with windows on at least 60% of the lots.

Additionally, the project does not adhere to the residential guideline of having 50% of the corner lots within the neighborhood plotted with single-story homes. This guideline is particularly important as it reducing the massing of a project, particularly along ridge lines and abutting arterial streets and State Route 4. Therefore, a condition of approval has been included that

concurrent with the submittal of the new plans and elevations, that the master plotting plan be submitted for approval that addresses this issue.

The design guidelines specify lot coverage ratios of 45% for single-story homes and 40% for two-story homes, while the lot coverage ratio proposed for this development includes 50% for single-story homes. Given some of the proposed lot sizes and to accommodate the different floor plans proposed, staff is comfortable with a 50% lot coverage for single-story homes. This is reflected in the draft resolution for the rezone that would establish the various development standards for the project.

Other features identified in the design guidelines are carried through onto the proposed plans; including maintenance of architectural integrity with window wrapping treatment carried around to the side and rear elevations; inclusion of various roof heights and forms; the visual emphasis of front doors from the street, and the avoidance of exposed and unarticulated second-floor walls. Roof forms and pitch angles vary slightly, but are generally consistent throughout each architectural elevation style. Taken together, these elements reflect attention to detail and general compliance with the City's design guidelines.

Last, architectural integrity is maintained in that the architectural style of each elevation type remains consistent with the traditional examples on which the style is based and the elements evident on the front façade are conditioned to be carried around to the less-prominent side and rear elevations.

Development Agreement

Finally, one of the entitlements sought for this project is a development agreement (DA). Development agreements are contracts between a land use approval body (such as the City) and a developer that are typically used to govern the timing, development, and community benefits of a project. These contracts allow the City and an applicant to enter into an agreement that will assure the City that a proposed project will provide the benefits identified in the agreement and to guarantee the applicant that the project will be subject the rules and regulations in effect at the time of project approval.

The key deal points of the DA proposed here are as follows:

- **School site.** By the time the DA is approved, the applicant must have entered into an agreement with Brentwood Union School District (the "School District") to transfer an 11.35-acre portion of the Project site (the "School Site") to the School District for the development of a school. The existence of any such agreement does not guarantee that a school will be built here, but it is a necessary first step.

The School District Board met on August 19 to consider this agreement and voted unanimously to approve the purchase and sale agreement. Securing the ability of the School District to develop a school at this location has been a primary concern in processing this application.

- **Residential overlay in lieu of school.** If the School District decides not to acquire the School Site within the time identified in the agreement with the applicant, then (1) the applicant will be allowed to develop an additional 63 single-family homes on the School Site, and (2) the applicant will pay the City \$25,000 per each of these additional single-family homes (for a total of some \$1,575,000), with such funds to be used for a youth

center or youth programming. The City Council will need to determine whether such funds for a youth center or programming constitute a sufficient community benefit should a school site not be realized.

- **Fire contributions.** As with the siting of a future school, securing fire contributions for the East Contra Costa Fire Protection District (ECCFPD) has likewise been a high priority in processing this application. To this end, under the DA, applicant will pay all impact fees adopted by the City as of the effective date of the DA to fund fire and medical support facilities operated by ECCFPD (subject to their right to challenge such fees) and will also annex the Project into or otherwise participate in any Community Facilities District established by ECCFPD prior to the Project's first building permit being issued.

It must be noted that the applicant has contested the basis of the fire impact fee recently adopted by the Council. The DA includes language requested by the applicant to acknowledge the ability of the applicant to protest and challenge the fees.

- **Sand Creek Road right-of-way.** In order to obtain the land necessary to develop the full extension of Sand Creek Road from its present termination point west of State Route 4 to the Antioch city limits, the City will sell applicant a small parcel of land, along with an otherwise unusable SR 4 remnant parcel, and provide applicant with development credits or payment of approximately \$150,000.
- **Affordable housing compliance.** In order to satisfy City's affordable housing requirement to construct two percent of the residential units in the Project as affordable units or provide an alternative equivalent therefore, as required by the City's affordable housing ordinance, the applicant requested to pay a fee in lieu of constructing any deed-restricted affordable housing onsite. This method of compliance with the affordable housing ordinance is thus included in the DA.
- **Design and Construction of an off-site trail connection.** The applicant would design and construct an off-site trail connection along Sand Creek from the eastern boundary of the Project beneath State Route 4 to the Old Sand Creek right-of-way and provide funding in the amount of \$500,000 for a pedestrian bridge, if a bridge is ultimately determined to be required. If construction of the pedestrian bridge has not begun by the time the DA expires, this payment for the pedestrian bridge would be returned to Developer.
- **Term.** The DA would have an initial term of 15 years, with one potential 5-year extension. This would mean that the rules, regulations, and policies that govern development of the Project would essentially be fixed for the life of the DA.

The Planning Commission and City Council will need to decide whether the benefits to the community offered through the DA are sufficient to justify (1) the requested General Plan amendment, (2) development of the single-family portion of the site at a density above the mid-range, (3) the vesting of applicant's rights to develop the site per the rules and regulations in place now for a period of up to 15-20 years, and (4) the potential that the site identified for the school may instead be developed with 63 additional single-family homes.

Planning Commission Meeting of August 18, 2020

The Planning Commission agenda for the meeting of August 18, 2020, included the public hearing for the Bridle Gate project. Prior to the meeting, City staff had been advised by PG&E of the possibility of a power outage that may be required by the California Independent System Operator due to the strain on the electrical system caused by the excessive temperatures across the state and attendant demands on the electrical grid. According to the notice from PG&E, if such a blackout were to occur in Brentwood, it would be conducted between the hours of 7:00 pm to 10:00 pm on August 18, which could potentially disrupt the Planning Commission meeting. After discussions with the applicant, it was agreed that staff would recommend that the Planning Commission continue the item to its meeting of September 1, 2020. At the August 18 meeting, the Planning Commission considered the continuance and voted unanimously to approve the continuance of the public hearing for the project to its meeting of September 1.

Since that time, as noted above, the Brentwood Union School District Board held a meeting on August 19, 2020, and approved the purchase and sale agreement for the 11.35-acre school site within the project. The agreement includes a number of conditions that need to be met before the sale would go through.

Staff has also added one additional condition of approval to VTSM 8506 to reflect a late request from Tri-Delta Transit for the provision of bus stops within the project. The new draft condition of approval reads as follows:

“The Developer shall install bus turnouts on both eastbound and westbound Sand Creek Road at the intersection of Sand Creek Road and San Jose Avenue and Sand Creek Road and the entrance to the multi-family apartment site on Parcel “A” in coordination with Tri Delta Transit to the satisfaction of the Director of Public Works concurrent with Sand Creek Road extension improvements. These bus turnout locations shall also include bus shelters to the satisfaction of the Director of Public Works.”

Other than the above, no other changes to the project have been included.

DATE OF NOTICE:

The City published a public hearing notice in the Brentwood Press and mailed it to property owners within 300 feet of the site on August 7, 2020, noticing the public hearing for this project. In addition, the project site is posted with the required signage along Sand Creek Road. During the processing of the application, staff did not receive any comments from neighboring property owners or members of the public at large.

Notice of the Planning Commission’s action to continue the public hearing for the project to its meeting of September 1, 2020, was also provided on the City’s Facebook page and on the Nextdoor app.

ENVIRONMENTAL DETERMINATION:

The City prepared a Draft Environmental Impact Report (SCH# 2019080071) for this project in accordance with the requirements of the California Environmental Quality Act (CEQA). Several potentially significant impacts are identified; however, mitigation measures are incorporated to reduce those impacts to less than significant levels, except that certain air quality and traffic impacts remain significant and unavoidable as set forth in the Draft EIR. All mitigation measures not addressed by the standard conditions of approval are included as recommended

conditions of approval. The Draft Environmental Impact Report was available for review and comment from June 1, 2020, to July 15, 2020. Several comments were received and addressed in the Final Environmental Impact Report. The Draft EIR may be reviewed by clicking on the link below and scrolling to "Bridle Gate:"

<https://www.brentwoodca.gov/gov/cd/planning/ceqa.asp>

CONCLUSION:

The Bridle Gate project has a lengthy history, dating back to an initial submittal in 2001 and a prior approval in 2006 that established General Plan land use designations and zoning standards that remain in effect. It is a large site with a number of unique attributes and constraints to consider. It has also generated interest in the surrounding and overall community, with several residents expressing significant concerns about the project through e-mails as well as during public comment at both Planning Commission and City Council meetings. The General Plan Update adopted in 2014 established the vision for the community, which for Bridle Gate (among other things) includes approximately 35 acres of Regional Commercial development and single-family development at a density of approximately three dwelling units per acre.

There are concerning aspects of the project, including the loss of 13.98 acres of Regional Commercial land, the density of single-family development exceeding the mid-range identified in the General Plan, and the development of at least portions of the existing hill forms and ridgelines. However, there are also some positive benefits provided by the project through the Development Agreement. These include the possible provision of a future elementary school site (or funding for youth programming of up to \$1.575 million over time if the School District does not purchase the site), a trail connection beneath State Route 4, and provisions to address fire impacts.

To facilitate the Planning Commission's review and consideration of the project, as well as to facilitate making a recommendation at its meeting on September 1, staff has prepared resolutions to allow the Commission to recommend that the City Council approve the various actions associated with development of this project, as well as a resolution whereby the Commission could recommend that the City Council deny the project. The Planning Commission should therefore consider the discussion above, the findings set forth in each of the resolutions, public comment given at the meeting, and the record of the proceedings in making its final determination to recommend denial or approval of the project to the City Council. The Planning Commission's recommendation will be presented to the City Council in a special meeting on September 15, 2020.

RECOMMENDATION:

As set forth in the conclusion below, staff recommends that the Planning Commission proceed with one of the following actions:

1. Recommend that the City Council deny the project by adopting the following resolution:
 - a. A Resolution Denying the General Plan Amendment, Rezone, Development Agreement, Vesting Tentative Subdivision Map, and Design Review for the Single-Family Residential Parcels and the Multi-Family Residential Parcels; or

2. Recommend that the City Council approve the project by adopting the following resolutions:
 - a. A Resolution Recommending the City Council Certify the Final EIR, and Adopt CEQA Findings, Statement of Overriding Consideration and Mitigation and Monitoring;
 - b. A Resolution Recommending that the City Council approve General Plan Amendment No. 17-001;
 - c. A Resolution Recommending that the City Council approve Rezone No. 17-004;
 - d. A Resolution Recommending the City Council approve Development Agreement No. 19-001;
 - e. A Resolution Recommending the City Council approve Vesting Tentative Subdivision Map No. 8506;
 - f. A Resolution Recommending the City Council approve Design Review No. 17-007 for the single-family residential parcels; and
 - g. A Resolution Recommending the City Council approve Design Review No. 17-008 for the multi-family residential parcel.

Attachments:

- 1 Planning Commission Resolution No. 20-026 - Final Environment Impact Report
- 2 Planning Commission Resolution No. 20-027 - Development Agreement
- 3 Planning Commission Resolution No. 20-028 - General Plan Amendment
- 4 Planning Commission Resolution No. 20-029 - Rezone
- 5 Planning Commission Resolution No. 20-030 - Vesting Tentative Subdivision Map
- 6 Planning Commission Resolution No. 20-031 - Design Review Single Family
- 7 Planning Commission Resolution No. 20-032 - Design Review Multi Family
- 8 Planning Commission Resolution No. 20-033 - Denial
- 9 Vesting Tentative Subdivision Map No. 8506
- 10 Design Review Booklet - DR 17-007
- 11 Design Review Booklet - DR 17-008
- 12 Bridle Gate Final Environmental Impact Report (with appendix)
- 13 BUSD Purchase and Sale Agreement

EXHIBIT 2



National Wetlands Inventory

surface waters and wetlands

ABOUT

GET DATA

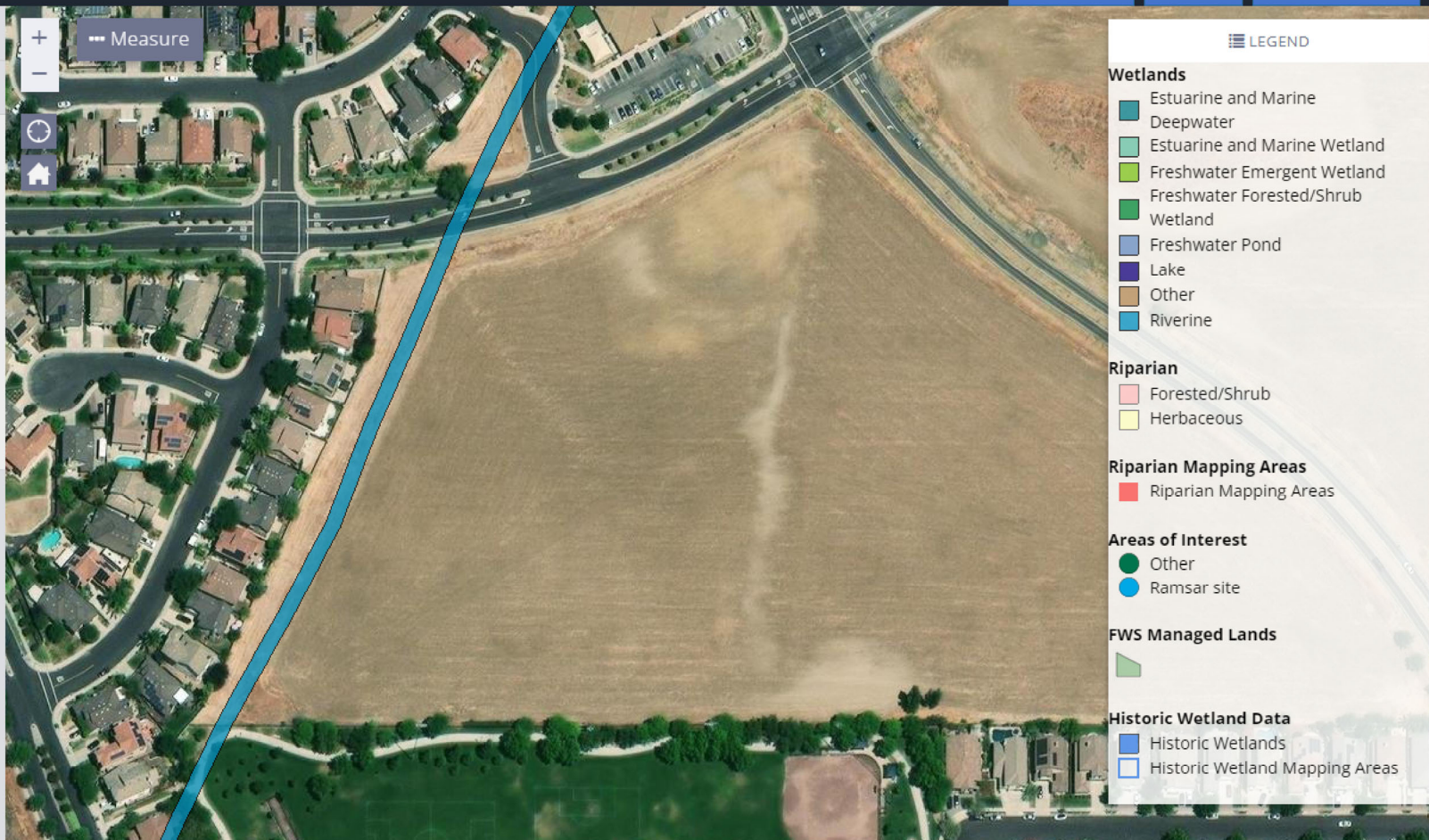
PRINT

FIND LOCATION

BASEMAPS >

MAP LAYERS >

- Wetlands
- Riparian
- Riparian Mapping Areas
- Data Source
 - Source Type
 - Image Scale
 - Image Year
- Areas of Interest
- FWS Managed Lands
- Historic Wetland Data



LEGEND

Wetlands

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine

Riparian

- Forested/Shrub
- Herbaceous

Riparian Mapping Areas

- Riparian Mapping Areas

Areas of Interest

- Other
- Ramsar site

FWS Managed Lands



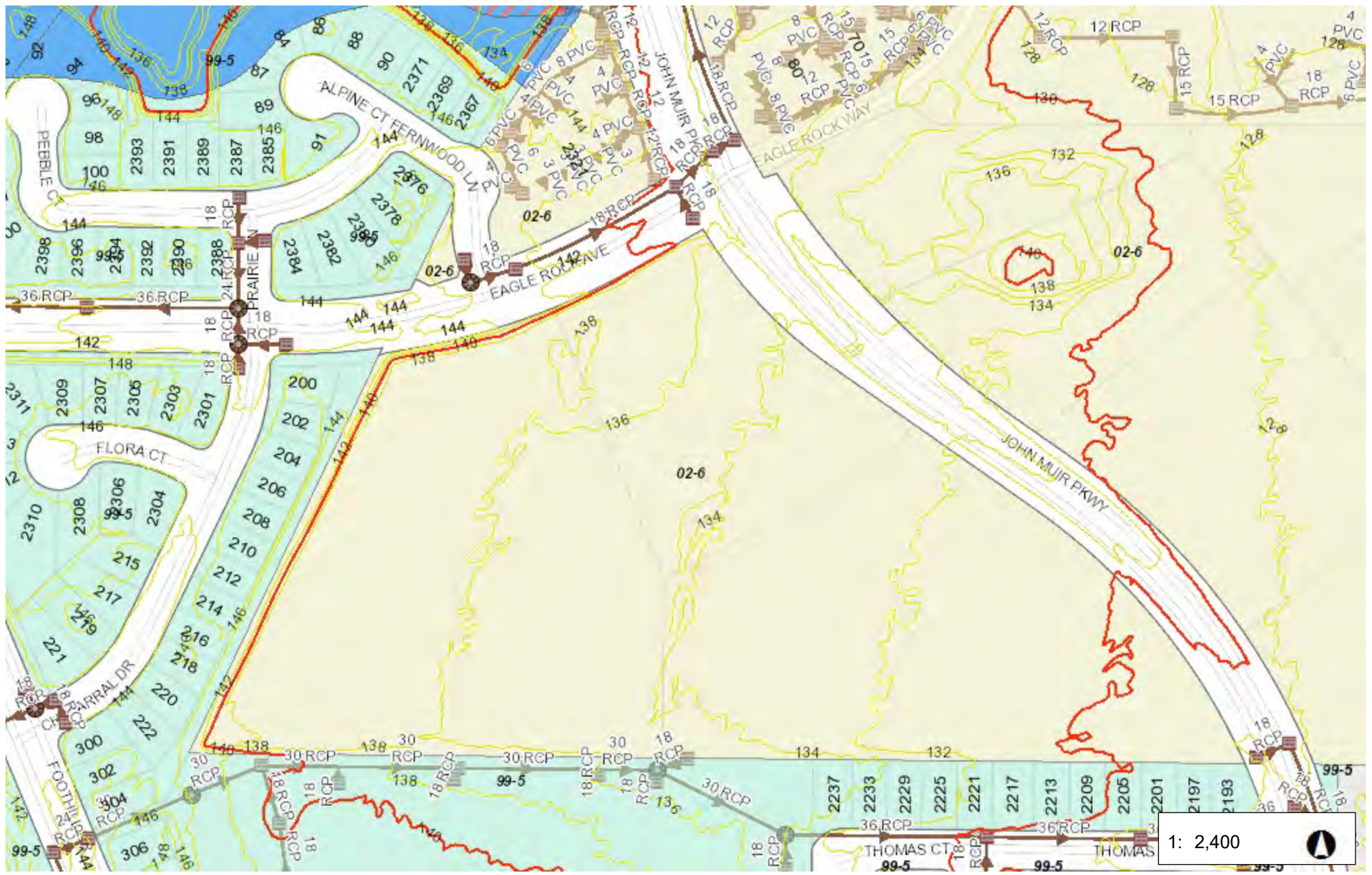
Historic Wetland Data

- Historic Wetlands
- Historic Wetland Mapping Areas

EXHIBIT 3



City of Brentwood - COB MAP



400.0 0 200.00 400.0 Feet

NAD_1983_StatePlane_California_III_FIPS_0403_Feet

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes:

1: 2,400



From: [Ogden, Tim](#)
To: [=yCouncil Members](#)
Cc: [=yDepartment Directors](#)
Subject: Agenda Item C.1. Response
Date: Monday, September 26, 2022 4:55:26 PM

Mayor & Council,

Council Member Meyer inquired about the following statement in agenda item C.1., and asked how we are exempt from State law:

“Affordable rental programs, such as the City’s affordable rental program are exempt and may evict tenants for non-payment of rent or other non-conforming issues. The City’s affordable rental program is also exempt from State law, which states guidelines for rent increases.”

Response:

California [AB1482](#), the [Tenant Protection Act of 2019](#), made it illegal for residential landlords to raise rent more than 5%, plus the local rate of inflation, in one year. However, according to [Section 1947.12](#) of California’s civil code, the law does not apply to “an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income. (AB1482 references Section 1947.12 of the California Civil Code for exemptions).

The following is an excerpt from California Civil Code 1947.12:

“(d) This section shall not apply to the following residential real properties:

(1) Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code or comparable federal statutes.”

The City’s affordable housing program units are deed restricted for very low, low, and moderate income families as defined in the Health and Safety Code.

Thanks,

Tim



Tim Ogden, City Manager
City Manager's Office
150 City Park Way
Brentwood, CA 94513
Phone: 925.516.5174
Fax: 925.516.5441
togden@brentwoodca.gov



From: [Morris, Alexis](#)
To: [=yCouncil Members](#)
Cc: [=yDepartment Directors](#); [Wisinski, Katherine](#)
Subject: Supplemental Memo for 9/27 Housing Element Workshop
Date: Monday, September 26, 2022 10:16:07 AM
Attachments: [CC Meeting Memo 9.26.pdf](#)

Honorable Mayor and City Council,

Good morning and happy Monday. Attached is a supplemental memo for the Draft Housing Element workshop at 5:30 tomorrow. The purpose of this memo is to provide a summary of all public outreach done and Housing Element comments received as of Monday morning, September 26, and a summary of the Planning Commission meeting of September 20. This information could not be provided in the published agenda report due to the timing requirements for publication.

Thank you and Jennifer I look forward to discussing the Draft Housing Element Update with you tomorrow.



Alexis Morris, Director of Community Development
Community Development
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Phone: 925.516.5195
Fax: 925.516.5407
amorris@brentwoodca.gov





MEMORANDUM

DATE: September 26, 2022

TO: Honorable Mayor and City Council

FROM: Jennifer Hagen, Senior Planner
Alexis Morris, Community Development Director











SUBJECT: September 27, 2022 Special City Council Meeting
2023-2031 Housing Element Update Public Review Draft Supplemental Memo

The Draft Housing Element has been available for review since August 25th, and will continue to be available through September 27th. The purpose of this memo is to provide a summary of all public outreach done, as well as all comments received as of Monday, September 26, 2022, that was unable to be provided in the published agenda report due to the timing requirements for publication. In addition, a summary of the September 20th Planning Commission meeting is also included. Any additional comments received after the publication of this memo will be presented to the City Council on September 27th by noon.

Public Outreach

Public outreach began on August 25, 2022, through a variety of media outlets including targeted emails to an interested parties list, a City press release, and social media messaging. The City's press release was picked up by a number of local media outlets who provided follow up articles including the *Brentwood Press* and *East County Today*. The City also followed up with a half page ad in the *Brentwood Press* published on September 2, 2022 (attached for reference). All of the targeted outreach included upcoming meeting dates at which the public could provide comments and links and/or QR codes directly linking the public to the Housing Element website where they could review and comment on the draft document.

Since August 25th, the Housing Element website (<https://brentwoodhousingelement.com/>) has had over 1,100 page views, with approximately 80% of the views being their first time to the page and 20% as returning visitors. In addition, approximately 49% of those visited from a desktop, 48% from a mobile device, and 3% from a tablet. The majority of the page views have originated in the United States (approx. 1,089 views).

Top 10 Countries			📄
1.	 United States	1,089	
2.	 Netherlands	97	
3.	 France	5	
4.	 Austria	3	
5.	 Finland	3	
6.	 Australia	2	
7.	 Sweden	2	
8.	 Canada	1	
9.	 Germany	1	
10.	 United Kingdom	1	

Outside of the Planning Commission hearing on September 20, three comments have been submitted to date – two responses were submitted through the online feedback form and one response was submitted through email. A summary of the comments received, as well as responses to these comments, have been provided in Attachment 2.

September 20, 2022 Planning Commission Meeting

On September 20, 2022, the Planning Commission was presented with an introduction of the 2023-2031 Housing Element Update Public Review Draft and requested to provide comments. At the hearing, a total of three residents spoke on the item:

- One speaker requested clarification on whether the State Density Bonus Law had been taken into consideration in the City's Draft Site Inventory. As noted at the meeting, the commenter was citing to pages 28-29 of the HCD's Housing Element Sites Inventory Guidebook, which require that Housing Elements include a program requiring developers to replace lost affordable units when the Density Bonus Law is used on nonvacant sites. The City's Draft Housing Element does indeed include such a program (Action H.1p). Separately, staff did not apply the State Density Bonus Law or the City's Density Bonus Ordinance in the Draft Housing Inventory since only recent single family developments within the City have utilized these guidelines. These single family projects do not meet the minimum default density of 30 dwelling units per acre and analyzing the States Density Bonus Law would therefore provide little benefit in the analysis. The two current multi-family residential developments currently under construction did not utilize Density Bonus provisions.
- The other two speakers stated concerns related to PA-1 and with focusing sites within the City's Site Inventory in PA-1.

Overall, the Planning Commission discussed the Draft Housing Element process and how staff came to the current Draft recommendations and ultimately had no additional comments or concerns.

In addition to reviewing the Draft Housing Element, the Planning Commission was also presented with modifications to PA-1 during a separate agenda item. At the conclusion of the hearing, one of the recommendations that the Planning Commission made to City Council was to reduce the acreage within the TV/MU zoning designation. These recommendations will be considered by City Council likely in October. Because proposed amendments to the PA-1 Specific Plan are not finalized, staff recommended since mid-July that the City Council move forward with the current Draft Site Inventory that includes select sites currently designated residential in the 2018 adopted PA-1 Specific plan in order to meet State deadlines for adoption and certification of the City's Housing Element. Although potential changes to PA-1 will be considered by the City Council at a future date, staff is confident that future changes will be able to be incorporated into the Draft Housing Element between reviews by HCD with few modifications needed, as discussed below.

For informational purposes, staff has included the table below to show how the current Site Inventory acreage using the 2018 Specific Plan designations compares with what the Planning Commission has recommended.

Zoning	Density	Mid-Point	Draft Inventory Acreage	Draft Inventory Units	PC Recom. Acreage	PC Recom. Units ¹	Acreage Difference	Unit Difference
PA-1 (MFVHDR)	15-35	25	29.44	736	30	750	0.56	14
PA-1 (TV)	25-40	32.5	24.46	636	24.3	632	-0.16	-4
PA-1 (HDR)	10-20	15	10	150	13.3	200	3.3	50
Totals			63.9	1,522	67.6	1,581	3.7	59

Based on the Table above, the current draft inventory includes less total units and less total acreage in PA-1 than is being recommended by the Planning Commission for the PA-1 Specific Plan amendments; therefore, the Draft Housing Element would not be in conflict with the Planning Commission's recommendation and would not be overestimating units or acreage in PA-1. It should be noted that while the Draft Inventory only includes a total of 63.9 acres and 1,522 units from PA-1, the current 2018 PA-1 Specific Plan includes a total of 91.24 acres and 2,189 units which allows for approximately 27.23 acres and 667 unit buffer that is not currently accounted for or shown but that may be utilized in the future if needed as a buffer. However, under the current Planning Commission recommendation, all units within PA-1 would be needed to meet RHNA with no additional buffer outside what is shown.

Attachments

1. Brentwood Press Ad published September 2, 2022
2. Public Review Draft Feedback through September 22, 2022

¹ In order to provide consistent analysis, both the current Draft Inventory and the PC recommendation have been calculated using the same formula based on the mid-point density and 80% residential capacity with the TV/MU designations.



2023 - 2031

Housing Element Update

The City is pleased to announce the release of the Public Review Draft of the 2023 - 2031 Housing Element.



For more information or to review the Draft Housing Element visit:

[BrentwoodHousingElement.com/Resources](https://brentwood.com/Resources)



Community members are invited to participate and provide feedback through September 27, 2022.



By Attending Public Meetings:
Planning Commission Hearing
September 20, 2022
City Council Hearing
September 27, 2022



By Mail: Attention Planning
City Hall, 150 City Park Way



By E-mail:
planning@brentwoodca.gov



By Digital Form:
https://brentwood.info/HE_form

6th Cycle Housing Element – Public Review Draft

On August 25, 2022, the City released the Public Review Draft of the 6th Cycle Housing Element for a required 30-day public review period. The Document was made available on the project website as a complete document and in individual sections. The community had the opportunity to provide feedback and suggestions on the Draft via a Feedback Form, email, mail, or public comment through September 27, 2022.

A total of two responses were submit through the Feedback Form and one through email – they are provided below. The City has also included responses as to how the feedback was addressed in the Housing Element. All participants noted in the Feedback Form that they are Brentwood residents and one reported also owning property in the City.

Sections	Public Comments	Responses
Section 1 - Introduction	Can the city go as high as 10 stories, instead of 6? I think it will benefit the city to go higher so we can put more housing or office space rather than building out horizontal or out, besides other cities have taller buildings and their on the earthquake fault such as San Andres & The Hayward Fault, here in Brentwood theirs not really any earthquake faults.	Table 3-5 provides the maximum heights for developments in each zoning district. The current maximum is 40 feet in the Brentwood Boulevard (BB) district. Increased maximum building height incentives are available to residential developments proposing affordable units through the Density Bonus Program detailed in Section 3: Housing Constraints, Resources, and Fair Housing.
Section 4 – Housing Plan	I understand Brentwood has to comply with the state and federal mandates in providing more housing for the current and anticipated growth we'll surely see in the coming years. What I don't see is the requirement or rather mandate to provide adequate infrastructure BEFORE a new development breaks ground. For example, a new apartment/condo development is near completion at the corners of Shady Willow and Amber Lane directly across from Pioneer Elementary. The traffic at this and the surrounding intersections and streets are already impacted early in the morning and mid-afternoon with pickups and drop-offs. I only see one way in	Multi-family residential developments are subject to CEQA review, which analyzes potential impacts and proposes mitigation measures if impacts are identified. Traffic concerns have been noted.

Brentwood 2023-2031 Housing Element

Sections	Public Comments	Responses
	and out of the apartment/condo complex. With over 500 residents (best guess) in this complex coupled with the current school traffic, it can only lead to a much bigger nightmare scenario with a child getting hurt or killed. I urge the planning commission and City Council to build judiciously and not accept builder's promises to expand roads or add safety measures after the fact.	
Section 3	On Page 3-14, Under maps, why does it say, "Source: City of Dublin Zoning Map"?	Noted, this will be corrected.
Section 3	On Page 3-16, Tri Delta Transit discontinued the Dimes a Ride program in 2012 (see https://www.eastbaytimes.com/2012/01/04/e-views-151/ and https://www.mercurynews.com/2011/08/30/east-contra-costa-bus-district-plans-route-and-service-cuts-fare-increases/).	Noted, this will be corrected.
Section 3	On Pages 3-16 & 3-86, I looked up the bonus ride included in the purchase of a 20-ride pass, as well as a free \$20 clipper card for trying out commuting and couldn't find either one of those as promotional offers on the Tri Delta Transit site (as with the Dimes a Ride program, I believe this is old information). Is there a source for these offers?	Noted, this will be corrected.
Section 3	On Pages 3-16 & 3-86, Back in 2011/2012 Tri Delta Transit cut the bus routes to Byron and Discovery Bay (see 8-30-11 article above & TDT source below) and it only has 20 routes, not the 21 listed (15 weekday routes and 5 weekend/holiday routes).	Noted, this will be corrected.
Section 3	On Page 3-25, Table 3-7 is incorrect. It has very low income at 6%; low income at 4%; and moderate-income at 3%. It should read: very low income at 3%; low income at 4%; and moderate-income at 6%. It also states the BMC as its source, but the online BMC still shows the 10% Affordable Housing ratios (there is an ordinance alert, but that ordinance doesn't list the new amounts either).	Noted, this will be corrected.

Brentwood 2023-2031 Housing Element

Sections	Public Comments	Responses
Appendix B	<p>On Page B-13, under ID 6, Parcel: 019092046 2482 OLD SAND CREEK RD (2482 Old Sand Creek Rd is located west of Hwy. 4)</p> <p>Q: As this address is currently zoned ECLI, how can we include this address in the 6th Cycle Sites Inventory as HDR ?</p> <p>If it is the parcel number, that parcel has an address of 2483 Old Sand Creek Rd. According to GIS there is no address for that parcel and the acreage is only 3.0 acres, not the 34.39 acres listed, with 15 buildable acres</p>	Noted, this will be corrected.
Section 4	Correct grammar in Action H.4e “Encourage constructions [sic] of”.	Noted, this will be corrected.
Section 4	Miscellaneous updates to represent changes per Contra Costa County Fire Protection District	Noted, these will be corrected.

From: [Ogden, Tim](#)
To: [=yCouncil Members](#)
Cc: [=yDepartment Directors](#)
Subject: Agenda Item Response - C-1
Date: Tuesday, September 27, 2022 8:50:18 AM

Mayor & Council,

Council Member Mendoza inquired about the Cost Allocation Plan agenda item potential signage if the EV charging fees are approved, and how we'll alert users of the parking fee starting.

Response:

We are proposing that the EV charging be effective 24-hour, 7 days per week. Anyone using the EV station will know the costs since users must utilize the ChargePoint app and the app will provide the cost info, as well as serve as the enforcement of users staying longer as they'll be charged more after the 4 hour timeframe as proposed.

Signage will be general and directing users to the station display for rates. Prior to implementing this fee, we will put up temporary and highly visible signs notifying users that the City will be starting to charge on a date certain, and provide a press release to the media about it.

Thanks,

Tim



Tim Ogden, City Manager
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Fax: 925.516.5441
togden@brentwoodca.gov



From: [Morris, Alexis](#)
To: [=yCouncil Members](#)
Cc: [=yDepartment Directors](#)
Subject: Excel version of Packet Page 363
Date: Monday, September 26, 2022 2:05:30 PM
Attachments: [Draft Inventory 7.21.22 - Attachment 3.xlsx](#)

Honorable Mayor and City Council,

Good afternoon. Council Member Mendoza requested an Excel version of the spreadsheet on page 363 of the City Council's agenda packet. The requested excel sheet is attached.

This table was included as part of Appendix C: Summary of Community Engagement which provides a summary of the public outreach that has been undertaken since the start of the Housing Element update process, including all previous agenda reports and attachments. The Table on Page 363 was originally included as part of the City Council agenda packet for the July 21st Housing Element Special City Council meeting (originally published on July 7th) and includes acreages from amendments to the PA-1 Specific Plan that were originally recommended for approval by the Planning Commission at their meeting on June 21, 2022. These acreages were then presented to the City Council on July 12th (after publication of the Special Meeting report) at which time the City Council voted to not support the recommended amendments to the PA-1 Specific Plan and requested changes.

Based on City Council action on the 12th, staff provided a supplemental memo on July 15th that reverted the Housing Element Site Inventory assumptions back to the adopted 2018 PA-1 data since it was unknown how PA-1 would move forward at that time.

It should be noted that the attached table has acreages based on an Alternative that the City Council chose not to move forward with.

Thank you.



Alexis Morris, Director of Community Development

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2023-2031 (6th Cycle) Housing Element Update Draft Site Inventory

Map ID	APN_T	Address	Zoning	GPLU	Buildable Acreage	Density	Assumed Density	Residential Propensity	Estimated Units	Inventory Category	Assumed Affordability
Specific Plan Parcels											
1	019032010	2251 Shady Willow Ln	PA-1 (MFVHDR)	MFVHDR	4.80	15-35	25	100%	120	Innovation Center	Low and Very Low
2	019032011	2201 Shady Willow Ln	PA-1 (MFVHDR)	MFVHDR	4.75	15-35	25	100%	118	Innovation Center	Low and Very Low
3	019032029	2301 Shady Willow Ln	PA-1 (MFVHDR)	MFVHDR	4.88	15-35	25	100%	122	Innovation Center	Low and Very Low
4	019020059	5225 Heidorn Ranch Rd	PA-1 (MFVHDR)	MFVHDR	5.41	15-35	25	100%	135	Innovation Center	Low and Very Low
5	019020076	5305 Heidorn Ranch Rd	PA-1 (MFVHDR)	MFVHDR	4.78	15-35	25	100%	119	Innovation Center	Low and Very Low
6	019081022	None - Sand Creek Rd	PA-1 (MFVHDR)	MFVHDR	11.00	15-35	25	100%	275	Innovation Center	Low and Very Low
7	019020055	None - Heidorn Ranch Rd	PA-1 (TV)	TV	4.02	25-40	32.5	80%	104	Innovation Center	Low and Very Low
8	019020083	5315 Heidorn Ranch Rd	PA-1 (TV)	TV	5.15	25-40	32.5	80%	133.6	Innovation Center	Low and Very Low
9	019081020	None - Sand Creek Rd	PA-1 (MFVHDR)	MFVHDR	17.08	15-35	25	100%	427	Innovation Center	Low and Very Low
10	019081021	None - Sand Creek Rd	PA-1 (TV)	TV	9.23	25-40	32.5	80%	239.2	Innovation Center	Low and Very Low
11	019092046	2483 Sand Creek Rd	PA-1 (HDR)	HDR	28.60	10-20	15	100%	429	Innovation Center	Moderate
Specific Plan Parcel Sub Total									2,222		

Vacant/Underutilized Residential Parcels											
12	010840010	None - John Muir Pkwy	PD (R-VHD)	R-VHD	3.39	20.1-30	25	100%	84	Vacant Land	Low and Very Low
13	010840011	None - John Muir Pkwy	PD (R-VHD)	R-VHD	6.81	20.1-30	25	100%	170	Vacant Land	Low and Very Low
14	010840012	None - John Muir Pkwy	PD (R-VHD)	R-VHD	7.70	20.1-30	25	100%	192	Vacant Land	Low and Very Low
18	010010039	2200 Ventura Dr	PD-20	R-LD	4.26	1.1 - 5.0	3	100%	12	Vacant Land	Above Moderate
19	007440018	None - Foothill Dr	PD-20	R-LD	4.55	1.1 - 5.0	3	100%	13	Vacant Land	Above Moderate
21	007100126	None - Spyglass Dr	PD-20	R-VLD	8.21	1.1 - 3	2	100%	16	Vacant Land	Above Moderate
29	019092013	None - Sand Creek Rd	PD-35	R-LD	11.48	1.1 - 5.0	3	100%	34	Vacant Land	Above Moderate
30	019092034	1777 Apricot Way	PD-35	R-LD	9.35	1.1 - 5.0	3	100%	28	Vacant Land	Above Moderate
55	019040031	2401 Empire Ave	R-3	R-HD	1.14	11.1 - 20	15.5	100%	17	Vacant Land	Moderate
56	019040033	2391 Empire Ave	R-3	R-HD	1.00	11.1 - 20	15.5	100%	15	Vacant Land	Moderate
58	018190018	None - Sunset Rd	BBSP	BBSP (COIR)	9.83	11-20	15.5	100%	152	Vacant Land	Moderate
59	018170003	None - Brentwood Blvd	BBSP	BBSP (COIR)	6.17	11-20	15.5	100%	95	Vacant Land	Moderate
61	016120024	None - Brentwood Blvd	BBSP	BBSP (COIR)	5.06	11-20	15.5	100%	78	Vacant Land	Moderate
62	016150114	None - Brentwood Blvd	BBSP	BBSP (COIR)	1.58	11-20	15.5	100%	24	Vacant Land	Moderate
68	018230034	251 Hanson Lane	PD-71	R-LD	20.13	1.1 - 5.0	3	100%	60	Vacant Land	Above Moderate
72	017110012	760, 780, 800 Minnesota Ave	R-1-10	R-LD	11.10	1.1 - 5.0	3	100%	33	Vacant Land	Above Moderate
73	016040005	Adams Lane and Gracie Lane	R-1-E	R-VLD	16.82	1.1 - 3	2	100%	33	Vacant Land	Above Moderate
74	018060040	7770 Lone Tree Way	PD-29	R-VLD	5.32	1.1 - 3	2	100%	10	Vacant Land	Above Moderate
78	016040004	1901 Lone Oak Rd	R-1-E	R-VLD	10.00	1.1 - 3	2	100%	20	Vacant Land	Above Moderate
81	016120020	None - Brentwood Blvd	BBSP	BBSP (COIR)	10.00	11-20	15.5	100%	155	Vacant Land	Above Moderate
82	016130006	None - Brentwood Blvd	BBSP	BBSP (COIR)	10.00	11-20	15.5	100%	155	Vacant Land	Above Moderate
83	016130007	None - Sycamore Ave	BBSP	BBSP (COIR)	10.00	11-20	15.5	100%	155	Vacant Land	Above Moderate
84	018060006	7650 Lone Tree Way	R-1-12	R-VLD	10.00	1.1 - 3	2	100%	20	Vacant Land	Above Moderate
88	018090020	7451 Lone Tree Way	R-1-10	R-LD	5.06	1.1 - 5.0	3	100%	15	Vacant Land	Above Moderate
89	018100047	None - Lone Tree Way	R-1-10	R-LD	8.64	1.1 - 5.0	3	100%	25	Vacant Land	Above Moderate
90	019050026	2313 Windy Springs Lane	PD-35	R-LD	3.26	1.1 - 5.0	3	100%	9	Vacant Land	Above Moderate
91	019050038	2305 Windy Springs Lane	PD-35	R-LD	0.98	1.1 - 5.0	3	100%	2	Vacant Land	Above Moderate
Vacant/Underutilized Residential Parcels Sub Total									1,622		

Map ID	APN_T	Address	Zoning	GPLU	Buildable Acreage	Density	Assumed Density	Residential Propensity	Estimated Units	Inventory Category	Assumed Affordability
Pipeline Projects											
93 and 105	007380002	Marsh Creek Road	PD-64		28			100%	140	Pipeline	Above Moderate
94	019092032	1925 Apricot Way	PD-35		10.76			100%	37	Pipeline	Above Moderate
96 and 97	019031006	South of Amber Lane and west of Shady Willow Lane	PA-1		14.531			100%	288	Pipeline	Above Moderate
98	018740116	2800 Empire Avenue	PD-38		0			100%	160	Pipeline	Above Moderate
99	010440152	131 Summerset Drive	PD-21		0			100%	86	Pipeline	Above Moderate
100	016300138	South of Contiente Avenue and west of Walnut Boulevard	PD-42		0			100%	77	Pipeline	Low and Very Low
101	016120025	South of Sand Creek Road and east of O'Hara Avenue	BBSP		8.313			100%	166	Pipeline	Above Moderate
104	018570039	3405 O'Hara Avenue			N/A			100%	14	Pipeline	Above Moderate
Pipeline Projects Sub Total									968		

From: [Ogden, Tim](#)
To: [=yCouncil Members](#)
Cc: [=yDepartment Directors](#)
Subject: Agenda Item Response - C.1.
Date: Tuesday, September 27, 2022 2:56:18 PM

Mayor & Council,

Council Member Mendoza asked about the Cost Allocation Plan (“CAP”), regarding any Parks & Recreation fee changes, and if we offer any senior scholarships.

Response:

The CAP for Parks and Recreation fees was brought forward in June 2022. Any adjusted/new fee will be for new programs or contractors that have increased their prices.

The Brentwood Senior Citizen’s Club does have scholarships available for their members. The City does not offer scholarships for seniors but could with additional funding allocations from the General Fund, or local fundraising programming.

Thanks,

Tim



Tim Ogden, City Manager

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From: [Breen, Kerry](#)
To: [=yCouncil Members](#)
Cc: [=yDepartment Directors](#)
Subject: Response to Councilmember Questions - Agenda Item C.1 (Cost Allocation Plan/Fees)
Date: Tuesday, September 27, 2022 2:58:14 PM

Good Afternoon Honorable Mayor and Councilmembers,
Councilmember Mendoza asked what percentage of Utility Billing payments are processed via credit card. Approximately 50% of utility bill payments are from credit cards.

Please note that the City receives a special discounted "Government Utilities" credit card fee rate of about 1% for Utility payments. The City can only receive this discounted rate if we do not charge a recovery fee to the customers. If the City were to implement a credit card recovery fee for Utility Billing we would see a City cost savings of \$260,000 (we would pass the savings on to the ratepayers), but the downside would be that the residents who pay by credit card would incur new costs of \$780,000 per year.

Additionally, we would like to note that both of the CAP fee items before you tonight (EV fees and credit card fees) can be modified at the discretion of the City Council, so long as we do not establish fees that exceed the cost of service.

If you have any additional questions please do not hesitate to contact me directly.

Thanks,
Kerry



Kerry Breen, Director of Finance & Information Systems
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McVey, Amanda

From: Keith Diggs <keith@yesinmybackyard.org>
Sent: Tuesday, September 27, 2022 9:05 PM
To: webCityClerk
Cc: HousingElements@hcd.ca.gov
Subject: YIMBY Law comment on Brentwood housing element
Attachments: 220927 CFHE_YL Letter to Brentwood.pdf

CAUTION – EXTERNAL SENDER

Hello,

Please find attached YIMBY Law's comments on Brentwood's draft housing element. Please contact me with questions.

Keith Diggs 
Housing Elements Advocacy Manager
703-409-5198





The City of Brentwood

Via email: cityclerk@brentwoodca.gov

Cc: HousingElements@hcd.ca.gov

September 27, 2022

Re: **Brentwood's Draft Housing Element**

To the City of Brentwood:

YIMBY Law proposes reimagining the City's uninspired [housing element](#). Brentwood faces unique challenges. Eighty-three percent of homes in Brentwood were built after 1990, which shows that the City is relatively innocent of mid-20th century forms of housing discrimination such as redlining. Yet "[\[t\]he State faces a serious housing crisis,](#)" and **60-80% of Brentwood residents are paying too much for housing.** (Gov. Code § 65584.08(a)(1); Draft, p.3-99.) We ask the City to reassess its priorities.

The problem is this: the City plans "[a]nnual[] meet[ings]" to tell people how the homes they build should look, but pauses only "biennial[ly]" to ask how City law makes homes more expensive. (Compare Draft p.4-6 with *id.* p.4-4.) The draft misses low-hanging fruit. For example, just one of the City's base densities meets State requirements for affordable housing. (See *id.* p.3-7 [only one zone allows 30 homes/acre].) The City proposes to rezone nothing. (*Id.* p.B-3.) Passively, the City recites that its yard requirements,¹ lot-coverage and FAR requirements,² maximum building heights,³ and parking standards⁴ "are not considered a constraint."⁵ (*Id.* p.3-20.) And "case-by-case" review is the opposite of "greater certainty." (*Id.* p.4-14.)

¹ Lawns waste water, and don't house people.

² Lot-coverage and FAR requirements make it illegal to build homes on most of the subject land.

³ Height limits deprive small, local businesses of the neighbors they need to compete with Amazon.

⁴ Parking minimums are social housing for idle appliances, when we don't have social housing for people. Parking minimums also make walking to work unaffordable, and biking to work dangerous.

⁵ Assuredly, they are so considered.

Brentwood faces real problems that require real planning, such as coordinating infrastructure. But the draft omits figures for such problems, like flood and fire risk (*id.* pp.3-45 to -46). Worse, it shrugs that infrastructure costs are “borne by developers” and “passed on” to Brentwood residents (*id.* p.3-41) while failing to consider why the City’s sprawl-enforcing development standards (*id.* p.3-19) tack a \$29,000–83,000 down payment (see *id.* p.3-37 [\$29–83K]) onto every new Brentwood home. (See *id.* pp.3-35 to -37.) Surely these costs would fall if the missing-middle “infill” Brentwood says it wants (*id.* p.4-16 [Policy H.3-2]) were legal throughout the City.

We are also tracking the City’s yearslong opposition to a formerly (and we hope once again) multifamily proposal at the western stub of Sand Creek Road. Why is this not an opportunity site (see *id.* p.B-12) when, we are informed, it was so listed in the fourth and fifth cycles? (Letter from HansonBridgett to HCD, Aug. 24, 2022, on file.)

Making missing middle ministerial—everywhere—is “appropriate and legally possible.” (Gov. Code § 65583(c)(3).) We regret that the City’s draft does not come close. Please contact me with questions.

Sincerely,



Keith Diggs

Housing Elements Advocacy Manager, YIMBY Law

keith@yimbylaw.org

