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Subject: Comments on Third Draft Housing Element (3/14/23 City Council Meeting Agenda Item C.1.)
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Attachments: [3.13.2023 Letter HB to Brentwood City Council re Third Draft Housing Element \(Agenda Item C.1.\).pdf](#)

CAUTION – EXTERNAL SENDER

Hello Ms. Wimberly,

Please find attached our comment on the 3/14/23 City Council Meeting Agenda Item C.1. (the City's Third Draft Housing Element) regarding the Third Draft Housing Element's failure to address deficiencies identified by Discovery Builders and HCD in their comments on previous draft versions of the Element, and the City's ongoing failure to adequately explain or justify the City's exclusion of the Bridle Gate project site and associated 286-unit development with 29 below-market-rate units from the Housing Element's Suitable Sites Inventory.

Thank You,

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March 13, 2023

Brentwood City Council
c/o Margaret Wimberly
City Clerk
City of Brentwood
150 City Park Way
Brentwood, CA 94513

Re: Comment on Item Number C.1.

Dear City Council:

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 hereby submit comments on the City's third attempt to draft a Housing Element that complies with state law. While the adage "the third time's a charm" often rings true, such is not the case here.

By way of background, Discovery Builders submitted comments on the initial Public Review Draft of the 2023-2031 (6th Cycle) Housing Element ("First Draft Element") on September 26, 2022 (Attached hereto as **Attachment 1**, and incorporated into this comment). Discovery Builders specifically commented 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"), and concerns Discovery Builders had, and continues to have, about the City's failure to consider important site constraints and development realities when calculating available housing capacity and proportion of affordable units on other sites it included in its Suitable Sites inventory. These other sites included parcels in the PA-1 Specific Plan Area and parcels zoned PD-49.

An updated version of the First Draft Element (the "Second Draft Element") was sent to the California Department of Housing and Community Development ("HCD") for review on October 17, 2022. On January 13, 2023, HCD determined that there were deficiencies in the Second Draft Element requiring substantial revisions for compliance with State Housing Element Law. (HCD January 13, 2023 Letter RE: City of Brentwood's 6th Cycle (2023-2031) Draft Housing Element ("HCD Letter") at p. 1).

The City Council will now consider adopting a revised February 2023 Draft Housing Element (the "Third Draft Element"). While the City claims that its revisions are sufficient to bring its

housing element into compliance with State Housing Element law, the Third Draft Element has not been reviewed, let alone approved, by HCD. In reality, the Third Draft Element suffers from the same deficiencies identified by Discovery Builders and HCD, and again fails to adequately explain or justify its continued exclusion of the Bridle Gate project site, and its 29 below-market-rate units, from its Suitable Sites Inventory. The Third Draft Element does not comply with State Housing Element law, and should not be adopted by the City Council until it is revised to address the outstanding concerns raised by HCD and further detailed in this letter. , Ultimately, only HCD can certify that the City's third attempt complies with State Housing Element Law, and the City should not jump the gun by adopting a still-deficient Housing Element.

I. HCD's comments on the Draft Element echo many of the deficiencies identified by Discovery Builders.

The HCD Letter includes a 15-page appendix listing changes that are "necessary to bring the City's housing element into compliance" with State Housing Element Law. HCD identifies the following issues, which mirror concerns expressed in Discovery Builders' September 26, 2022 comments:

- The HCD Letter cautions that the City's estimates of unit capacity for sites on the Suitable Site Inventory must be adjusted to reflect land use controls and site improvements typical of residential developments in the City, and the accessibility and availability of site utilities including sewer, water, and dry utilities. (HCD Letter at Appendix, pp. 5, 6). The HCD Letter also notes that the Second Draft Element claims that capacity assumptions were based on "buildable acreage," which purportedly discounts the acreage of residential sites for environmental constraints, infrastructure, and necessary site improvements. However, HCD observes that the gross and buildable acreage for many sites on the Suitable Sites Inventory are identical, demonstrating that the City has failed to apply any discount for site constraints. (*Id.*).
- For sites in zones that allow non-residential uses, the HCD Letter states that the Second Draft Element must analyze the likelihood that residential units will actually be developed. In conducting this analysis, HCD reminds the City that it must consider the likelihood of nonresidential development. (HCD Letter at Appendix, p. 5).
- The HCD Letter also notes that the Second Draft Element acknowledges that past performance on affordable housing construction within the City is limited, and cautions that the Second Draft Element must demonstrate what specific criteria, trends, factors, and other evidence led to the assumptions regarding the proportion of affordable units in future projects. (HCD Letter at Appendix, p. 5).

Each of the above comments underscores the City's failure to produce a realistic site inventory — not a theoretical list that pencils out on paper in a vacuum. 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*). The City cannot credibly claim to have a Housing Element that complies with State Housing Element law without a Third Draft Element that implements the corrections identified by HCD. As discussed further below, the Third Draft Element fails to do so.

II. The Third Draft Element fails to correct key deficiencies identified by HCD.

The Third Draft Element continues to suffer from the shortcomings identified in both the HCD Letter and Discovery Builders' September 26, 2022 comments.

These deficiencies are especially apparent in the City's analysis of potential sites suitable for development of units affordable to moderate-income families. Pursuant to the City's Regional Housing Needs Allocation ("RHNA"), the City must provide 247 moderate income units in the 2023-2031 cycle. The Third Draft Element lists 336 moderate-income units in its Suitable Sites Inventory, consisting of 5 units from projects currently in the development pipeline, 34 units of projected ADU production, 68 units that the City assumes will be built on existing vacant parcels specifically within sub-area B of the Planned Development 49 ("PD-49"), and 229 units that the City assumes will be built in the Priority Area One ("PA-1") Specific Plan area. The City's calculation of units from parcels in PD-49 and PA-1, and the City's assumption that 15 percent of units built on these parcels will be affordable to moderate-income households, suffer from the exact deficiencies identified in the HCD Letter.

This blueprint is not a realistic plan for meeting the City's affordable housing quota, as is explained in detail below. Until these deficiencies are addressed, the City Council should not adopt the Third Draft Element.

A. The City once again fails to provide a realistic capacity for parcels within sub-area B of the PD-49 zone.

Discovery Builders' September 26, 2022 comments noted that calculated "buildable acreage" for the parcels with PD-49 failed to take into account right of way dedications, tree protection easements, water-related improvements, drainage capacity considerations, and other environmental site constraints. Specifically, Discovery Builders' September 26, 2022 comments cited issues with the presence of jurisdictional waters and site drainage constraints. HCD concurred in this analysis, noting that estimates of unit capacity for sites on the Suitable Site Inventory must be adjusted to reflect land use controls and site improvements typical of residential developments at similar densities or affordability levels, and the accessibility and availability of site utilities including sewer, water, and dry utilities. (HCD Letter at Appendix, pp. 5, 6). HCD specifically highlighted an analysis that listed identical gross and buildable acreage for certain sites as an example of the City failing to account for environmental constraints at potential residential sites. (*Id.*). In the Third Draft Element, the City continues to list a buildable acreage for the three PD-49 parcels that is identical to the listed gross-acreage for each parcel, meaning that the City once again does not account for the known environmental constraints on the PD-49 parcels. (Third Draft Element, Table B-8 at Rows 12-14). On this point, the City appears to have blatantly ignored HCD's comments.

Furthermore, as discussed in Discovery Builders' September 26, 2022 comments, 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 Third Draft Element contains no analysis of the likelihood that residential units will actually be developed on the site, as opposed to nonresidential development. The HCD Letter specifically notes that such analysis is required for the Third Draft Element to comply with State Housing Element law. (HCD Letter at Appendix, p. 5).

B. The City once again fails to provide a realistic capacity for parcels within the PA-1 sub-area B of the PD-49 Zone.

There are numerous issues with the City's calculation of capacity for the PA-1 site, which accounts for 1,526 of the 3,103 units included in the Suitable Sites Inventory, including 229 of the 336 moderate-income units.

First, the City appears to have increased the unit capacity estimate for the PA-1 site between the First Draft Element circulated for public comment in September 2022, and the Second Draft Element submitted to HCD in October 2022.

On Page B-7 of the First Draft Element, as attached to the August 30, 2022 Special City Council Meeting Agenda, the City states:

Total residential development included in the inventory [sic], across approximately 64 acres in the three land use designations identified in the [PA-1] Specific Plan, is projected to be 1,520 units.

However, on Page B-7 of the Second Draft Element submitted to HCD in October 2022, the City states:

Total residential development included in the inventory, across approximately 64 acres in the three land use designations identified in the [PA-1] Specific Plan, is projected to be 1,693 units.

The City provides no explanation for this increase.¹

This unexplained increase adds additional color to the so-called "revisions" the City made to its analysis of the capacity of the PA-1 Area. The Third Draft Element notes that the Transit Village zone of the PA-1 area requires ground floor commercial on all multi-family residential projects. In order to account for this, the Third Draft Element assigns a residential development capacity of 75 percent on these Transit Village Sites, as opposed to the 100 percent capacity used in the Second Draft Element. (Third Draft Element at B-10). However, even after applying this limitation, the City includes 1,526 units from PA-1 in its Suitable Sites Inventory, an increase of six units when compared to the 1,520 units included in the City's First Draft Element. (Third Draft Element at Table B-1). In other words, while the Third Draft Element purports to account for potential commercial development in the PA-1 zone, the "revision" that the City implements is entirely offset by the unexplained 100 unit increase in PA-1 units between the First Draft Element and the Second Draft Element submitted to HCD. One gets the sense these 100 unexplained units are a horde of straw dummies.

¹ The City adopted an amendment to PA-1 plan in October 2022, but that amendment did not increase maximum buildout units within the PA-1 area. In fact, the amendment decreased the number of maximum buildout units by one and reduced the amount of acreage designated for Multiple-Family Very-High Density Residential and Transit Village/Mixed Use. (See Addendum to the Environmental Impact Report (EIR) prepared for the Priority Area 1 (PA-1) Specific Plan Project (State Clearinghouse No. 2018042064) at p. 6).

Second, the City continues to ignore HCD's mandate to consider environmental constraints at potential residential sites. Similar to its analysis of parcels in PD-49, the City assumes that buildable acreage is identical to gross acreage for seven of the eleven PA-1 parcels included in the Suitable Sites Inventory. (Third Draft Element, Table B-8 at Rows 1-6; 10).

Lastly — and this point is both simple and critical— PA-1 will not complete construction until 2039, which is outside of the 2031 cycle deadline. The City has not addressed this point in the Third Draft Element, and continues to rely on full buildout of the PA-1 site to provide nearly half of the units included in its Suitable Sites Inventory.

C. The City once again fails to provide support for its assumptions of affordability.

The City continues to assume that 15 percent of all future units built in the City will be affordable to moderate-income families. (Third Draft Element at B-13). When combined with the assumption that 35 percent of units will be affordable to low-income households or very low-income, this becomes an assumption that 50 percent of units will be affordable. (Third Draft Element at B-10).

The Third Draft Element does not include any information supporting its assumption of 15 percent moderate-income housing for all future developments.

The City nominally includes further explanation for its low-income affordability assumption in the Third Draft Element, but this explanation does not support its 35 percent figure. The City points out that a 2022 ordinance increased affordability requirement from 10 to 13 percent, and states that it is proposing further programs that will assist in the development of affordable housing. (*Id.*). Neither support an assumption of 35 percent low-income and very low-income housing going forward.

The HCD Letter specifically asks that the City demonstrate what specific criteria, trends, factors, and other evidence led to the assumptions regarding the proportion of affordable units in future projects. (HCD Letter at Appendix, p. 5). The City has failed to do so, and cannot rely on an unsupported assumption that 50 percent of housing will be affordable, when only 13 percent affordability is required by law. History demonstrates that the City has been anemic in ensuring affordable units are built, and so reliance on a 50 percent contribution that has no local or regulatory backing asks reviewers to stretch their imaginations. State law prohibits this type of indulgence.

III. The City cannot justify leaving the Bridle Gate project site out of its Suitable Sites Inventory.

Given the City's continued failure to provide sufficient realistic capacity for moderate-income units in its Suitable Sites Inventory, The City's continued refusal to include the Bridge Gate project site in the Third Draft Element's Suitable Sites Inventory defies all logic. Unlike PD-49 and PA-1, the Bridle Gate project is not hypothetical - the City has already held a CEQA scoping meeting for the project, which will include 29 units affordable to moderate-income families. The developer wants to build this project, and all the City need do is say "yes."

The Revised Housing Element includes two explanations for the Bridle Gate project site's absence, but both explanations are factually inaccurate and fail to justify the City's decision.

The updated Housing Element includes a very cursory response to Discovery Builders' September 26, 2022 comments. The Third Draft Element characterizes the comments as a single question²: "Why was the site at the western stub of Sand Creek Road not included as an opportunity site?" The City responds: "The City did not include project [sic] currently in review. Only Projects that received approval were included. Table B-1 show [sic] the City has an appropriate buffer for its RHNA, and any additional residential projects to develop would still count toward the City's RHNA." (Third Draft Element at C-22). This statement is factually untrue as the Third Draft Element's Suitable Sites Inventory includes PA-1 parcels and PD-49 parcels, neither of which are "projects that received approval." Both are speculative projects which the City assumes, without any evidence, will be developed in the future, even though neither have a current project application.

The Third Draft Element also includes a chart of all sites that were included in the Fifth Cycle Suitable Sites Inventory, and analysis regarding the inclusion of such sites in the Sixth Cycle. (Third Draft Element at Attachment 6B (PDF p. 388)). This chart includes the Bridle Gate project site, but states: "Based on multiple General Plan land use designations and acreage uncertainty, this parcel is not being included in 6th Cycle." Again, the City's reasoning here is flawed. The Suitable Sites Inventory includes parcels within PA-1 and PD-49, both of which have land use or zoning designations allowing for commercial uses. As the City clearly recognizes, there is no rule that sites with designations allowing for uses other than residential cannot be included in the Suitable Site Inventory. Furthermore, there is no "acreage uncertainty" at the Bridle Gate project site. Numerous City-produced documents, including Environmental Impact Report SCH#2019080071, list the acreage of the Bridle Gate project site. The City's internal reasoning is inconsistent, and appears to violate constitutional guaranties of equal protection.

Again, in the absence of any other explanation, the only logical conclusion for Discovery Builders to reach is that the City's intent in excluding the Bridle Gate project site from the Suitable Sites Inventory is to avoid upzoning the Bridle Gate project site, as required by Government Code section 65583.2(c). The City's unwillingness to upzone the Bridle Gate project site is not an appropriate basis for the City to purposefully avoid listing it in the Suitable Sites Inventory. In fact, it constitutes bad faith. 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. (Third Draft Element, p. 1-2.)

² The City does not fully respond to Discovery Builders' September 26, 2022 comments, which included very detailed analysis and comment regarding the suitability of the PA-1 parcels and PD-49 parcels for development at the unit capacity assumed under the Draft. The City must provide a more detailed response to our comment, pursuant to HCD's mandate that City's final housing element must summarize all public comments and describe how they were considered and incorporated into the Final Element. (HCD Letter at Appendix, p. 15).

IV. The Third Draft Element fails to provide sufficient low-income housing.

The Third Draft Element incorporates a revised count of Suitable Sites for extremely low-income, very low-income, and low-income units. The City includes 689 total extremely low-income, very low-income, and low-income units in the Third Draft Element's Suitable Sites Inventory, 686 of which are on sites which are either projected ADUs or currently vacant land on that the City predicts can be developed in future years. (Third Draft Element at Table B-1). As the Third Draft Element notes, this gives the City a 9 percent buffer over its RHNA-required 634 extremely low-income, very low-income, and low-income units.

Given the uncertainty of future development, HCD guidance recommends that a Housing Element's suitable sites inventory contain at least 15-30 percent more capacity than strictly required, to ensure that jurisdictions do not inadvertently violate state law if housing developments anticipated under the housing element do not come to fruition.³ The Third Draft Element fails to provide sufficient capacity to meet HCD's recommended buffer, and on that ground alone, should not be adopted by the City Council.

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The City has a legal duty to adopt a Housing Element which complies with State Housing Element law. The HCD Letter provides specific guidance to the City on how its Housing Element may become compliant. However, the City continues to ignore to this guidance in the Third Draft Element, as demonstrated by its continued reliance on unrealistic capacity and affordability assumptions in the Third Draft Element's Suitable Sites Inventory in a misguided attempt to satisfy the City's moderate-income and low-income housing requirements.

The Bridle Gate project, meanwhile, has already submitted a complete SB 330 application to the City, which includes 29 moderate-income units — more than 10 percent of the City's required share of moderate-income units. Use of the Bridle Gate project in the Third Draft Element's Suitable Sites Inventory would not require any of the faulty capacity and affordability assumptions that rendered the Second Draft Element non-compliant with State law, and threaten to do the same to the Third Draft Element.

³ 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>).

The City should not adopt a Housing Element that fails to correct the specific issues that HCD has already identified in previous drafts. Accordingly, we urge the City Council to deny the amendment to the General Plan (GPA23-001) and direct City Staff to develop a Housing Element that addresses the deficiencies identified in these comments, Discovery Builders' September 26, 2022 comments, and HCD's January 13, 2023 letter.

Sincerely,



Niran S. Somasundaram



Sean R. Marciniak

CC: Clients

Katherine Wisinski, Assistant City Attorney, City of Brentwood

Mehrsa Imani, Housing Policy Analyst, HCD

Brian Heaton, Senior Housing Accountability Manager, HCD

ATTACHMENT 1

NIRAN S. SOMASUNDARAM
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ELLIS RASKIN
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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, of 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

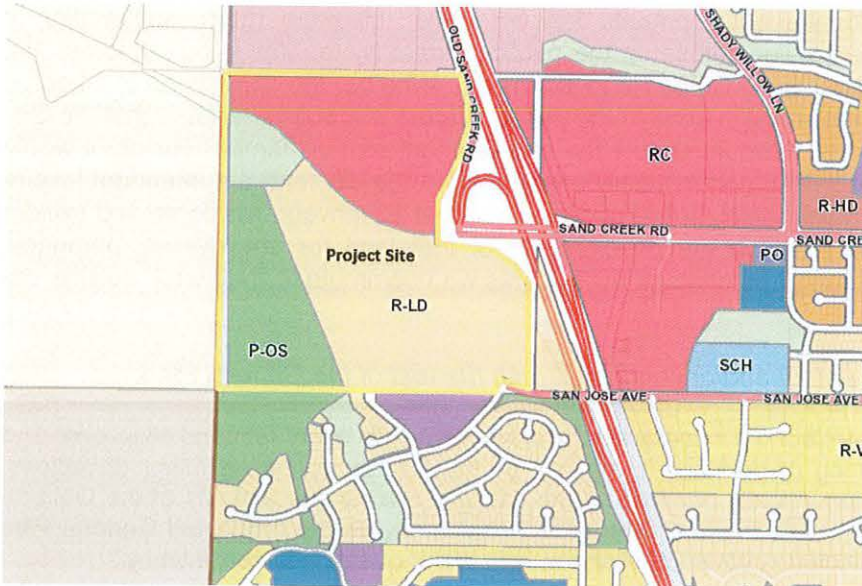
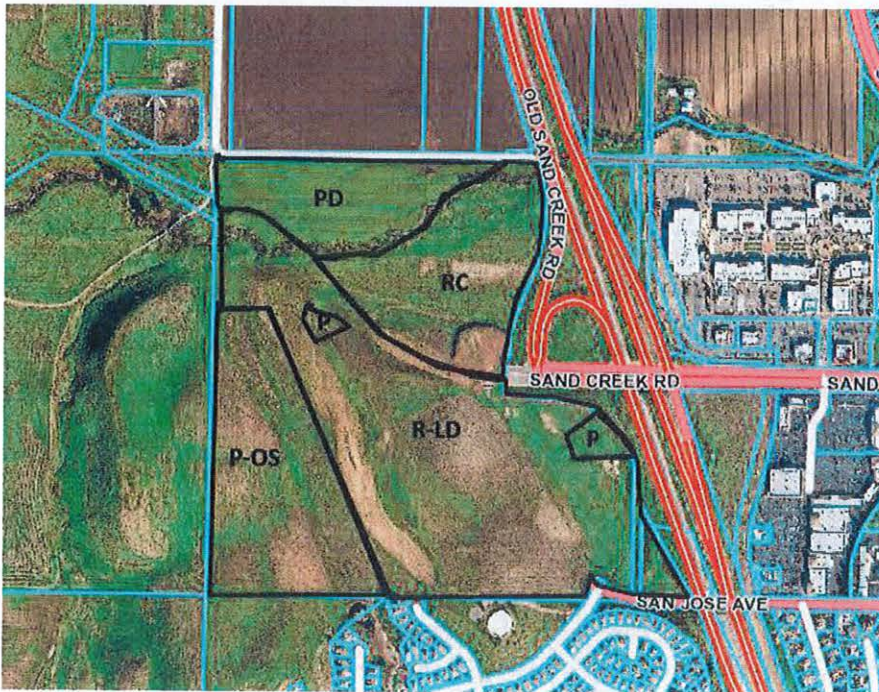


Figure 2
Proposed General Plan Amendments to
Convert Commercial to Residential and Divide and Relocate Park land



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.

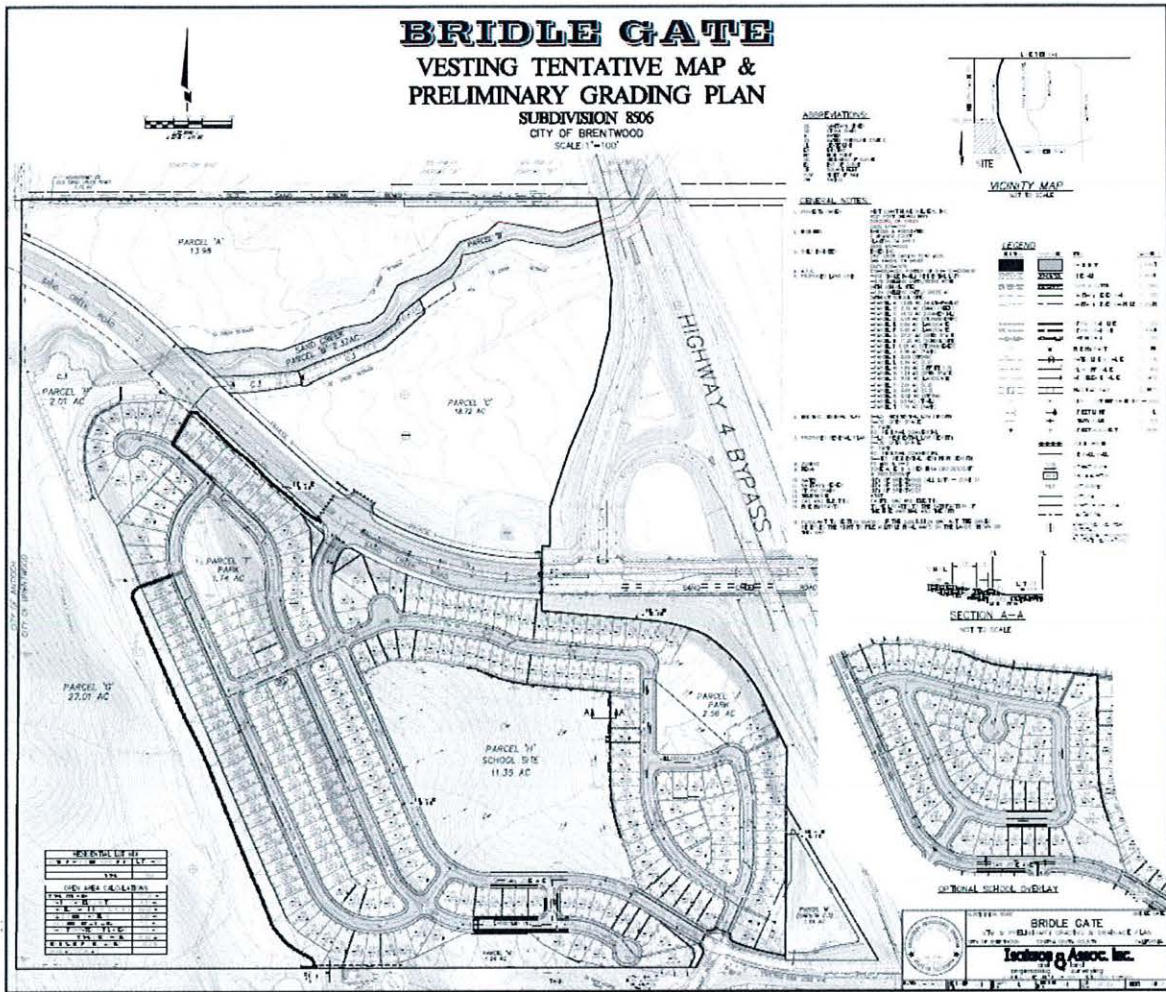
Vesting Tentative Subdivision Map

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

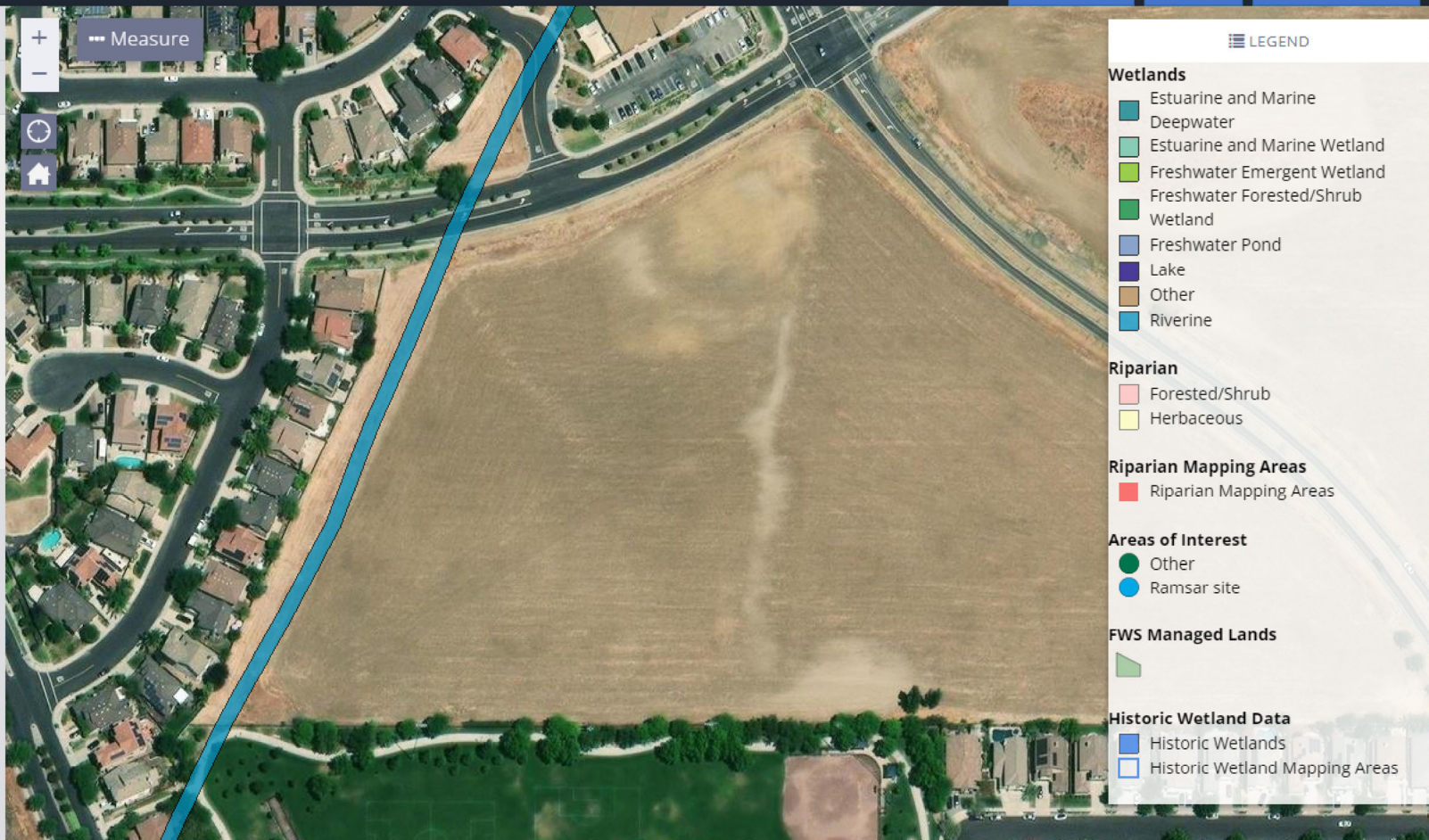
PRINT

FIND LOCATION

BASEMAPS >

MAP LAYERS >

- Wetlands 1 2
- Riparian 1 2
- Riparian Mapping Areas 1 2
- Data Source 1 2
 - Source Type
 - Image Scale
 - Image Year
- Areas of Interest 1
- FWS Managed Lands 1 2
- Historic Wetland Data 1 2



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



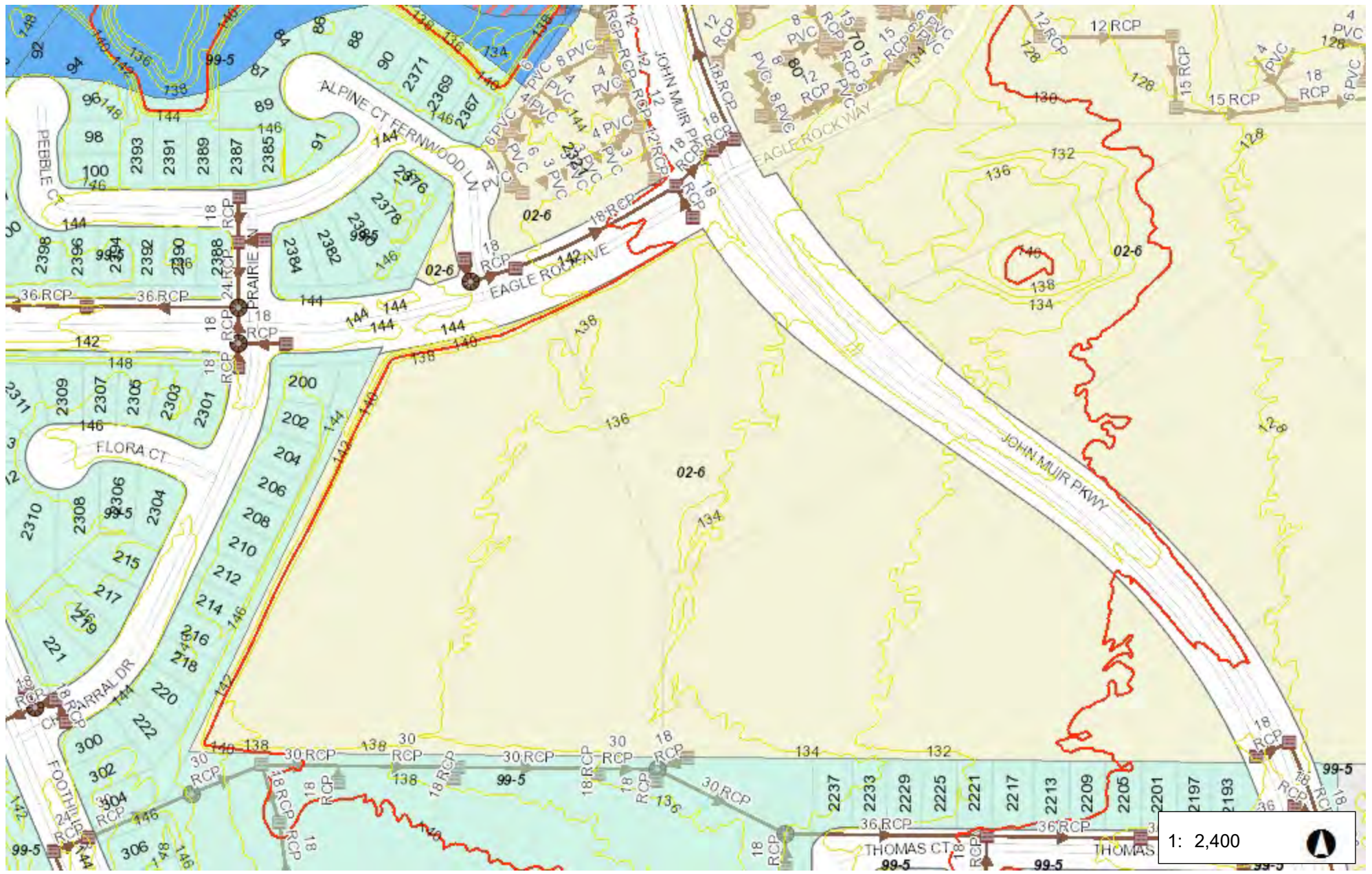
Historic Wetland Data

- Historic Wetlands
- Historic Wetland Mapping Areas

EXHIBIT 3



City of Brentwood - COB MAP



400.0 0 200.0 400.0 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: [David Young](#)
To: [Wimberly, Margaret](#); [Wisinski, Katherine](#)
Cc: [David Young](#)
Subject: Letter to Mayor and City Council Re 3/14/2023 Agenda Item 9.B
Date: Tuesday, March 14, 2023 3:01:19 PM
Attachments: [2023-3-14 Corr to Brentwood May and Council re Sand Creek Extension.pdf](#)

CAUTION – EXTERNAL SENDER

Hi Margaret and Katherine,

Attached please find a letter and transmittal regarding tonight's City Council Meeting. Please confirm receipt of this email and that you have circulated the letter to the Mayor and Councilmembers.

Thank you in advance and please let me know if you have any questions.

Thank you,

David Young
General Counsel
Discovery Builders, Inc.
925-324-7479 (c)

CONFIDENTIAL COMMUNICATION

This electronic mail message and any attachments are intended only for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law.

If you are not an intended recipient, or the employee or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you.

WCHB Development, LLC
4021 Port Chicago Highway • Concord, CA 94520
(925) 671-7711

TRANSMITTAL

TO: Margaret Wimberly
Brentwood City Clerk

DATE: March 14, 2023

ATTENTION: Mayor Joel Bryant and City Council

RE: March 14, 2023 City Council Meeting Agenda Item 9.B

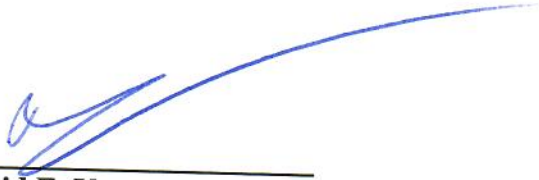
WE ARE FORWARDING THE FOLLOWING:

QUANTITY	DATE	DESCRIPTION
1	3/14	Letter to the Mayor and City Council

DELIVERED VIA:

HAND DELIVERY

COMMENTS: PLEASE PROVIDE THE ATTACHED CORRESPONDENCE TO THE MAYOR AND CITY COUNCIL PRIOR TO TONIGHT'S COUNCIL MEETING.



David E. Young
General Counsel

Cc:

WCHB Development, LLC
4021 Port Chicago Highway • Concord, CA 94520
(925) 671-7711

VIA HAND DELIVERY

March 14, 2023

Mayor Joel Bryant
Members of the City Council
c/o Margaret Wimberly, City Clerk
City of Brentwood
150 City Park Way
Brentwood, California 94513

RE: Sand Creek Road West Extension: Agenda Item 9.B

Mayor and Members of the City Council.

We have been advised that the City Council intends to award the construction contract for the Sand Creek Rd Extension during the March 14th, 2023 City Council Agenda (Item 9.B).

The City and WCHB Development, LLC executed an agreement dated December 20, 2021 related to the Sand Creek Road west extension (the "Agreement"). Section 8 of the Agreement requires that the City "shall include utilities as part of the roadway construction at a size adequate to serve the Developer's project," and further requires that, "...the utilities to be installed and the locations of the entrances into the Bridle Gate Project shall be subject to review of the Developer." This is a material term of the Agreement and WCHB relied on the City's representations when it agreed to enter into the Agreement.

Over the past year, our company and civil engineering consultants have worked closely with Public Works staff reviewing the Sand Creek Road extension plans. Our engineering firm (Apex Engineering) previously provided detailed comments on the plans, and it is unclear whether those comments are incorporated into the current project documents. Please immediately advise whether City staff incorporated Apex's comments and if they did not, why they were excluded.

Notwithstanding the previously discussed Agreement and the City's obligations arising therefrom, it appears from the City Council Meeting Agenda Item 9.B for March 14th, 2023 that the pending Sand Creek Road west extension contract includes a base bid of \$6,992,765 (plus 10% contingency). In our review of the bid schedule (the only document indicating the scope being approved), it is apparent that the base bid does not include, among other items, the utilities needed to serve the Bridle Gate Project, which are required by the Agreement. We do see that the bid schedule includes three alternates for storm drainage,

WCHB Development, LLC
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sanitary sewer, and water; but these alternates are not included in the bid award, do not fully satisfy the City's obligations, and are not discussed in the draft resolution, notwithstanding the City's clear obligations outlined in the Agreement. If these improvements are not completed at the same time as the roadway work, the City's costs to do so will significantly increase if the work can even be performed after construction of the roadway, and may jeopardize our ability to commence construction. Further, the Agreement assumes that the utility work will occur "during the roadway construction" and failure to do so constitutes a breach of the Agreement.

The contract and related bid currently pending before the City Council this evening is not consistent with the Agreement. Before the City Council accepts the bid and awards the contract, the City must confirm the following:

- That our comments on the plans have been incorporated.
- City will install the utilities (needed to serve the Developer's project) during construction of Sand Creek Road west extension.

It is imperative that the City perform its obligations under the Agreement and in conjunction with the work outlined in the pending contract and bid. Please have staff provide this confirmation, prior to approval of Item 9.B, of the City's intent to perform its obligations under the Agreement.

Very truly yours,



David E. Young, Esq.