



**Planning Commission
Regular Meeting**

**Tuesday, June 28, 2022, 7:00 P.M.
AGENDA**

Virtual Meeting

**Watch on Webinar: <https://tinyurl.com/pc-2022-06-28>
Watch on YouTube: <http://www.youtube.com/cityofsanrafael>
Telephone: 1 (669) 900-9128
Meeting ID: 883 2384 1452#
One Tap Mobile: US: + 16699009128,,88323841452#**

CORONAVIRUS (COVID-19) ADVISORY NOTICE

In response to Assembly Bill 361, the City of San Rafael is offering teleconference without complying with the procedural requirements of Government Code section 54953(b)(3). This meeting will be held virtually using Zoom.

How to participate in the meeting:

- **Submit public comments in writing. Correspondence received by 10:00 p.m. on Tuesday the week before the meeting will be provided with the agenda materials provided to the Commission.** Correspondence received after this deadline but before the hearing will be conveyed to the Commission as a supplement. Send correspondence to the project planner or to PlanningPublicComment@cityofsanrafael.org; or send in writing to Planning Division, CDD; 1400 5th Ave. 3rd Fl.; San Rafael, CA 94901.
- Join the Zoom webinar and use the 'raise hand' feature to provide verbal public comment.
- Dial-in to Zoom's telephone number using the meeting ID and provide verbal public comment.

Any member of the public who needs accommodations should contact the City Clerk (email city.clerk@cityofsanrafael.org or phone at 415-485-3066) who will use their best efforts to provide reasonable accommodations to provide as much accessibility as possible while also maintaining public safety in accordance with the City procedure for resolving reasonable accommodation requests.

Members of the public may speak on Agenda items.

CALL TO ORDER

RECORDING OF MEMBERS PRESENT AND ABSENT

APPROVAL OR REVISION OF ORDER OF AGENDA ITEMS

PUBLIC NOTIFICATION OF MEETING PROCEDURES

ORAL COMMUNICATIONS FROM THE PUBLIC

Remarks are limited to three minutes per person and may be on anything within the subject matter jurisdiction of the body. Remarks on non-agenda items will be heard first, remarks on agenda items will be heard at the time the item is discussed.

CONSENT CALENDAR

The Consent Calendar allows the Commission to take action, without discussion, on Agenda items for which there are no persons present who wish to speak, and no Commission members who wish to discuss.

1. Approval of the Planning Commission Meeting Minutes of June 14, 2022

Recommended Action – Approve minutes as submitted

2. 350 Merrydale/3833 Redwood Hwy - “Merrydale Townhomes”

ED18-100; TS18-006; UP18-039

Request for a time extension for the Merrydale Townhomes entitlements; APN: 179-041-27, 179-041-28; Planned Development District (PD1979); Michael Hooper (Campus Properties), Applicant; STORAGE EQUITES INC, Owner;

Project Planner: Renee Nickenig Renee.nickenig@cityofsanrafael.org

Recommended Action – Adopt resolution to modify the conditions of approval for ED18-100, TS18-006, and UP18-039 to expire if permits are not issued by June 30, 2023.

ACTION ITEMS

3. Animal Care Facilities

PLAN22-031; ZO22-002

Proposed Amendment to Table 14.05.020 of Section 14.05.020 of the San Rafael Municipal Code to allow “animal care facilities” excluding exterior kennels, pens or runs, as a conditionally permitted use in the Office (O) District; Citywide-all real property located within O – Office District; Peter Spoerl, applicant;

Project Planner: Jayni Allsep, Contract Planner Jayni.allsep@cityofsanrafael.org

Recommended Action – Adopt resolution recommending City Council approve the zoning text amendment.

DIRECTOR’S REPORT

COMMISSION COMMUNICATION

ADJOURNMENT

Any records relating to an agenda item, received by a majority or more of the Commission less than 72 hours before the meeting, shall be available for inspection online. Sign Language interpreters may be requested by calling (415) 485-3066 (voice), emailing city.clerk@cityofsanrafael.org or using the California Telecommunications Relay Service by dialing “711”, at least 72 hours in advance of the meeting. Copies of documents are available in accessible formats upon request.

The Planning Commission will take up no new business after 11:00 p.m. at regularly scheduled meetings. This shall be interpreted to mean that no agenda item or other business will be discussed or acted upon after the agenda item under consideration at 11:00 p.m. The Commission may suspend this rule to discuss and/or act upon any additional agenda item(s) deemed appropriate by a unanimous vote of the members present. Appeal rights: any person may file an appeal of the Planning Commission’s action on agenda items within five business days (normally 5:00 p.m. on the following Tuesday) and within 10 calendar days of an action on a subdivision. An appeal letter shall be filed with the City Clerk, along with an appeal fee of \$350 (for non-applicants) or a \$4,476 deposit (for applicants) made payable to the City of San Rafael, and shall set forth the basis for appeal. There is a \$50.00 additional charge for request for continuation of an appeal by appellant.



**Planning Commission
Regular Meeting**

**Tuesday, June 14, 2022, 7:00 P.M.
MINUTES**

Virtual Meeting

**Watch on Webinar: <https://tinyurl.com/pc-2022-06-14>
Watch on YouTube: <http://www.youtube.com/cityofsanrafael>**

Telephone: 1 (669) 900-9128

Meeting ID: 897 4566 6511#

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CALL TO ORDER

Vice-Chair Saude called meeting to order at 7:01 PM. She then invited Planning Manager Leslie Mendez to call roll.

RECORDING OF MEMBERS PRESENT AND ABSENT

PRESENT: CAMILLE HARRIS, COMMISSIONER
JON HAVEMAN, COMMISSIONER
SAMINA SAUDE, VICE-CHAIR
KELLY SHALK, COMMISSIONER

ABSENT ALDO MERCADO, COMMISSIONER
SHINGAI SAMUDZI, COMMISSIONER
JON PREVITALI, CHAIR

ALSO PRESENT: LESLIE MENDEZ, PLANNING MANAGER
 ALI GIUDICE, COMMUNITY DEVELOPMENT DIRECTOR
 CECELIA JAROSLAWSKY, CONTRACT PLANNER
 LIZ DARBY, CONSULTANT

APPROVAL OR REVISION OF ORDER OF AGENDA ITEMS

No changes were made to the order of the agenda.

PUBLIC NOTIFICATION OF MEETING PROCEDURES

Vice-Chair Saude invited Planning Manager Leslie Mendez, who informed the community the meeting is being streamed live to YouTube and members of the public could provide public comment either on the telephone or through Zoom. She explained the process for community participation on the telephone and Zoom.

ORAL COMMUNICATIONS FROM THE PUBLIC

There was no communication from the public.

CONSENT CALENDAR

1. Approval of the Planning Commission Meeting Minutes of May 24, 2022

Vice-Chair Saude invited public comment and there was none.

Commissioner Haveman moved, and Commissioner Shalk seconded to approve the Consent Calendar.

Vice-Chair Saude invited Planning Manager Leslie Mendez to take roll:

AYES: Commissioners Harris, Haveman, Shalk, Vice-Chair Saude
NOES: None
ABSENT: Commissioners Mercado & Samudzi, and Chair Previtali
ABSTAIN: None

Motion carried 4 – 0

ACTION ITEMS

2. 55 Brookdale Avenue

PLAN21-006: ED21-071/LLA21-004

To construct ten (10) dwelling units within three (3) detached structures on two vacant lots; APNs: 011-074-04 and 011-074-04,05; High Density Residential (HR1) Zone; Mike Folk and Steve Crutchfield, Applicants; 55 Brookdale LLC, Property Owner; Near Southeast Neighborhood.

Project Planner: Cecilia Jaroslowsky, Contract Planner
cecilia.jaroslowsky@cityofsanrafael.org

Vice-Chair Saude invited Staff to present the project. Leslie Mendez introduced the project as the first to take advantage of the one-year pilot program for streamlined design review. Staff then took roll of the Design Review Board representatives.

RECORDING OF DRB MEMBER REPRESENTATIVES PRESENT AND ABSENT

PRESENT: BOARD MEMBER JEFF KENT

DRB CHAIR SARAH REGE

ABSENT None

Staff then introduced Contract Planner, Cecelia Jaroslowsky, who presented the Staff Report.

Contract Planner then introduced Applicant, Michael Folk, who gave a short presentation.

Vice-Chair Saude asked for questions of Staff and Applicant from Design Review Board representatives.

Design Review Board representatives asked questions of Staff & Applicant. Applicant responded.

Vice-Chair Saude asked for questions of Staff and Applicant from the Planning Commission. Commissioners Haveman and Shalk asked questions. Staff & Applicant responded.

Vice-Chair Saude opened public hearing and asked Staff to open public comment.

Comment provided from Amy Likover, of the Federation of San Rafael Neighborhoods.

Vice-Chair Saude closed public hearing and called on DRB Representatives, in turn, to ask follow-up questions of staff & Applicant.

Vice-Chair Saude then turned it over to the DRB representatives for discussion and deliberation. DRB representatives discussed, deliberated, and made a recommendation to the Planning Commission.

Vice-Chair Saude then called on Planning Commissioners, in turn, to ask follow-up questions of Staff and DRB representatives. Commissioners discussed with staff & DRB representatives.

Commissioners offered final comments on the Project and Planning Manager Leslie Mendez offered a recommended motion with recommended conditions.

Commissioner Haveman moved, and Commissioner Shalk seconded a motion to adopt the recommended conditions put forth by Staff and to accept the project.

Planning Manager then took roll:

AYES: Commissioners Harris, Haveman, Shalk, Vice-Chair Saude
NOES: None
ABSENT: Commissioners Mercado & Samudzi, and Chair Previtali
ABSTAIN: None

Motion carried 4 – 0

INFORMATIONAL ITEMS

3. Affirmatively Furthering Fair Housing, Presentation

Presentation on [Affirmatively Furthering Fair Housing \(AFFH\)](#) in San Rafael.

Project Presenter: Liz Darby, Consultant to the City Manager

liz.darby@cityofsanrafael.org

Staff introduced Liz Darby, Consultant to the City Manager, who presented a report on Affirmatively Furthering Fair Housing.

Vice-Chair Saude invited Commissioners to ask questions. There was none.

DIRECTOR'S REPORT

Planning Manager reported on the following items:

- Update on City Council passing changes to the composition of the Planning Commission
- Senior Planner staffing update

COMMISSION COMMUNICATION

Commissioners discuss and confirm the involvement of the Design Review Board for future Planning Commission meetings.

ADJOURNMENT

There being no further business, Vice-Chair Saude adjourned the meeting at 8:30 PM.

LESLIE MENDEZ, Planning Manager

APPROVED THIS _____ DAY OF _____, 2022

SAMINA SAUDE, Vice-Chair



REPORT TO PLANNING COMMISSION

SUBJECT: 350 Merrydale/3833 Redwood Hwy, (Merrydale Townhomes) – Request for a time extension for the Merrydale Townhomes entitlements; APN: 179-041-27, 179-041-28; Planned Development District (PD1979); Michael Hooper (Campus Properties), Applicant; STORAGE EQUITES INC, Owner; Case Number(s): ED18-100; TS18-006; UP18-039

EXECUTIVE SUMMARY

The applicant has requested a two-year time extension for the project entitlements originally set to expire December 10, 2022.

Staff is recommending a limited time extension for the applicant to submit for permits by December 30, 2023, and for permits to be issued by June 30, 2024. The related Conditions of Approval will be modified in the following way:

The Use Permit and Environmental and Design Review Permit would be extended for a period of 18 months so long as grading permits and/or building permits are obtained and diligently pursued as follows:

- application for grading and/or building permits(s) and associated construction documents shall be submitted by December 30, 2023;
- a grading permit and/or building permits(s) shall be obtained and grading/construction diligently commenced and pursued for all 9 buildings (45 units) by June 30, 2024;
- the project shall be diligently pursued and completed within 2 years of commencing.

The Tentative Subdivision Map would be valid until June 30, 2024.

RECOMMENDATION

It is recommended that the Planning Commission take the following action:

1. Adopt a resolution to modify the conditions of approval for ED18-100, TS18-006, and UP18-039 to expire if permits are not issued and diligently pursued by June 30, 2024 as noted in the modified Conditions of Approval.

PROPERTY FACTS

Address/Location:	350 Merrydale/ 3833 Redwood Hwy	Parcel Number(s):	179-041-27; 179-041-28
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BACKGROUND

On [February 3, 2020](#) the City Council adopted Resolution No. 14763 conditionally approving an Environmental and Design Review Permit (ED18-100), Tentative Subdivision Map (TS18-006), Use Permit (UP18-039), and Subdivision Exception (EX19-012) to allow the demolition of existing one-story buildings and construction of nine (9) three-story residential buildings with a total of 45 for sale multi-family residential units (including 9 below-market-rate [BMR] units), 94 parking spaces with new landscaping and Creekside enhancements on an existing 2.28-acre parcel located at 350 Merrydale Rd/3833 Redwood Hwy (Merrydale Townhomes). The resolution included the following conditions of approval regarding the validity of the entitlements:

ED18-100 Condition of Approval No. 14 - This Environmental and Design Review Permit shall run with the land and shall remain valid regardless of any change of ownership of the Project site, subject to these conditions, provided that a building/grading permit is issued, and construction commenced, or a time extension request is submitted to the City's Community Development Department, Planning Division, within three (3) years of the City Council approval, or on December 10, 2022. Failure to obtain a building permit and grading permit and construction or grading activities commenced, or failure to obtain a time extension within the three-year period will result in the expiration of this Environmental and Design Review Permit.

TS18-006 Condition of Approval No. 2 - The Tentative Subdivision Map (TS18-006) shall be valid for a period of three (3) years from the date of City Council approval, or until December 10, 2022 and shall become null and void unless a Final Map has been recorded or a time extension is granted.

UP18-039 Condition of Approval No. 2(c) - This Master Use Permit (UP18-039) shall be valid for three (3) years from the date of City Council approval, or until December 10, 2022 and shall become null and void if: 1) a building permits(s) have not been obtained and construction diligently commenced and pursued for all 9 buildings (45 units); 2) construction has not commenced on both Phase Two and Phase Three; 3) the project has not substantially progressed in constructions of Phase Two and Three; or 4) a time extension request has not been received before December 10, 2022. The time extension application (including project plans) must be submitted to the Planning Department with all associated fees. The time extension is subject to a public hearing and review and approval by the Planning Commission.

On March 1, 2021, the City Council adopted Ordinance No. 1990 amending the affordable housing ordinance and adopted Resolution 14890 establishing Guidelines for the Administration of the affordable Housing Requirement Program. The City Council action was aimed at encouraging housing development and streamlining development approvals.

On July 19, 2021, the applicant received approval for modification of the affordable housing obligation for this project, to align with the City Council newly adopted Guidelines for the two (2) on-site units and pay in-lieu fees equal to 2.5 units. The modification did not approve a time extension of the original approval.

PROJECT DESCRIPTION & ANALYSIS

The applicant is requesting a two-year time extension for the project entitlements (ED18-100, TS18-006, and UP18-039). If approved, the entitlements set to expire December 10, 2022 would expire December 10, 2024. The applicant has cited the following obstacles that have delayed the project:

- 1) Financial impediment due to the affordable housing requirement prior to 2021 resulted in a delay to project implementation. The change in the City's affordable housing requirements make this project more feasible, however, that did not get applied to this project until summer 2021.
- 2) Difficulty in procuring "Will Serve" letter from Las Gallinas Valley Sanitation District for allocation of sewer capacity.

- 3) Lengthy process to obtain a Pipeline Extension Agreement from Marin Municipal Water District.

Condition of Approval No.2(c) of UP18-039 currently requires that the 350 Merrydale project be vested by December 10, 2022. It also stipulates that time extension requests are subject to a public hearing and review and approval by the Planning Commission. The review authority for ED18-100, and TS18-006, is not stipulated in the conditions of approval. However, the authority to extend is typically the Community Development Director (for Design Reviews) or the Planning Commission (for Tentative Subdivision Maps). It is typical to bundle all applications for consideration by the same review body in accordance with San Rafael Municipal Code Section 14.23.040. As such, the requested extension for all three entitlements are being referred to the Planning Commission for consideration.

As mentioned in the background section, the City Council adopted an ordinance amendment and associate resolution, reducing the affordable housing obligation for residential developments in order to encourage production of housing development projects. This reduction extended to projects that were already entitled but were needing extra relief from the cost of incorporated the number of units that were previously required as part of a prior approval. An approval of the reduction of affordable housing units is not intended to be indefinite as the ultimate goal is getting the units built within a reasonable time frame. It is unclear whether the City Council will continue with this change in the affordable housing requirement. While staff supports an extension of time, staff is recommending a lesser time extension as follows:

- That a permit application with supporting construction drawings be submitted no later than December 30, 2023.
- That the vesting deadline for the project be extended to June 30, 2024.
- That the Final Map be recorded by June 30, 2024.

ENVIRONMENTAL DETERMINATION

The proposed project is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines which exempts projects where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

NEIGHBORHOOD MEETING / CORRESPONDENCE

Notice of hearing for the project was conducted in accordance with noticing requirements contained in Chapter 29 of the Zoning Ordinance. A Notice of Public Hearing was mailed to all property owners and occupants within a 300-foot radius of the subject site, and all other interested parties, 15 calendar days prior to the date of all meetings, including this hearing. Public notice was also posted on the subject site 15 calendar days prior to the date of all meetings, including this hearing.

OPTIONS

The Planning Commission has the following options:

1. Approve the time extensions as recommended by staff.
2. Approve the time extension as presented by the applicant.
3. Deny the time extension.

EXHIBITS

1. Draft Resolution
2. City Council Resolution No. 14763
3. City Council Resolution No. 14947

RESOLUTION NO. 10-

RESOLUTION OF THE SAN RAFAEL PLANNING COMMISSION APPROVING A TIME EXTENSION FOR MERRYDALE TOWNHOMES ENTITLEMENTS ED18-100, UP18-039, AND TS18-006 LOCATED AT 350 MERRYDALE RD/3833 REDWOOD HWY
APN: 179-041-27; 179-041-28

WHEREAS, on February 3, 2020 the City Council adopted resolution 14763 approving Environmental and Design Review (ED18-100), Use Permit (UP18-039), and Tentative Subdivision Map (TS18-006) for a 45-unit residential condominium project at 350 Merrydale/3833 Redwood Hwy. Said project included nine (9) below market rate units; and

WHEREAS, on March 1, 2021, the City Council adopted Ordinance No. 1990 amending the affordable housing ordinance and adopted Resolution 14890 establishing Guidelines for the Administration of the Affordable Housing Requirement Program. The City Council action was aimed at encouraging housing development and streamlining development approvals; and

WHEREAS, on July 19, 2021, the City Council approved a modification of the affordable housing obligation for this project, to align with the City Council newly adopted Guidelines for the Administration of the affordable Housing Requirement Program. As a result, the applicant is now required to provide two (2) onsite below market rate units and pay in-lieu fees equal to 2.5 units; and

WHEREAS, on May 18, 2022 Michael Hooper (Campus Properties LLC) submitted a request for a time extension for the approved entitlements (ED18-100, UP18-039, and TS18-006) inclusive of the reduction in the affordable housing obligation; and

WHEREAS, upon review of the application, the project has been determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines which exempts projects where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and

WHEREAS, on June 28, 2022 the San Rafael Planning Commission held a duly noticed public hearing on the proposed time extension, accepting all oral and written public testimony and the written report of the Community Development Department staff.

NOW THEREFORE BE IT RESOLVED, the Planning Commission makes the following findings relating to the requested time extensions for ED18-100, UP18-039, and TS18-006:

Findings (PLAN22-086)

1. The application for extension of time was submitted prior to the expiration of the project entitlements.
2. Findings for approval of the project remain valid.

3. There have been no substantial changes in the factual circumstances surrounding the original approvals that would cause denial of the extension
4. The extension would result in changes to Conditions of Approval set forth in Exhibit A under City Council Resolution No. 14763 (February 3, 2020) to allow an extension of time for vesting the following entitlements: Environmental and Design Review (ED18-100), Tentative Subdivision Map (TS18-006), Use Permit (UP18-039).
5. No other Conditions of Approval for ED18-100, TS18-006, or UP18-039 will be modified.

Conditions of Approval (PLAN22-086)

1. Exhibit A of City Council Resolution No. 14763 is incorporated herein, as amended.
2. All other Conditions of Approval for ED19-100, TS18-006, and UP18-039 contained in Exhibit A shall apply.
3. No additional time extensions will be granted for ED18-100, TS18-006, or UP18-039.

The foregoing Resolution was adopted at the regular City of San Rafael Planning Commission meeting held on the 28th day of June, 2022.

Moved by Commissioner _____ and seconded by Commissioner _____.

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

SAN RAFAEL PLANNING COMMISSION

ATTEST: _____
 Alicia Giudice, Secretary

BY: _____
 Chair

ATTACHMENT:

1. Exhibit A of City Council Resolution No. 14947, as amended

**EXHIBIT A
MODIFIED CONDITIONS OF APPROVAL**

350 MERRYDALE RD/3833 REDWOOD HWY (MERRYDALE TOWNHOMES)
ENVIRONMENTAL AND DESIGN REVIEW (ED18-100), USE PERMIT (UP18-039) AND
TENTATIVE MAP (TS18-006)
(APN'S: 179-041-27 AND 179-041-28)

**Environmental and Design Review Permit Conditions of Approval
(ED18-100)**

General Project Conditions

Community Development Department - Planning Division

- 1) The proposed 45-unit townhome development shall be installed and designed in substantial conformance with the proposed site plan and elevations and landscape plan as presented for approval on plans prepared by WHA Architects, date stamped **Approved, December 10, 2019**, and shall be the same as required for issuance of a building permit, subject to the listed conditions of approval. Minor modifications or revisions to the project shall be subject to review and approval of the Community Development Department, Planning Division. Modifications deemed not minor by the Community Development Director shall require review and approval by the original decision-making body.
- 2) Approved colors for the main body, trim and accent colors are as shown on the approved Color and Material Board: a) Sherman Williams Paint for Body Colors- High Reflective White (SW 7757), Gossamer Veil (SW 9165), Tin Lizzie (SW9163), Jute Brown (SW 6096); b) Trim Color -Thunder Gray (SW 7645); c) Accent Colors-Deep Sea Dive (SW 7618), Rookwood Terra Cotta (SW2803), and Raisin (SW7630); and d) Manufactured Stone (Timberwolf). Any future modification to colors shall be subject to review and approval by the Planning Division. Modifications deemed not minor by the Community Development Director shall require review and approval by the Design Review Board.
- 3) Applicant shall remit payment of the State Fish and Game fees in order for staff to file a Notice of Determination with the County Clerk within 5 days of project approval. The current fee amounts are \$2,354.74 (current fee as of 2018) payable to the State Fish and Game and \$50.00 payable to the Marin County Clerk and are subject to increase on January 1st of each year.
- 4) Applicant and property owner shall be responsible for implementing all mitigation measures presented in the Project's Mitigated Negative Declaration, on file with the Community Development Department, including any mitigation measures that may not have been incorporated into the Project conditions of approval. A deposit for Mitigation Monitoring shall be paid as required by ED18-100 project Conditions of Approval #31, herein.
- 5) The project shall comply with all mitigation measures as identified in the IS/MND Mitigation Measure Monitoring and Program, dated November 8, 2019. All required mitigation measures are identified in the Mitigation Monitoring and Reporting Program (MMRP) as recommend for

adopted by separate Resolution and included as conditions of approval. The IS/MND determined that the proposed project would result in potentially significant impacts in Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality, Noise, Transportation and Tribal Resources. The IS/MND identifies Mitigation Measures that, when implemented, would reduce the impacts identified to a less-than-significant level. These mitigation measures are also identified as conditions of approval in the relevant sections herein and detailed in the IS/MND Mitigation Monitoring and Reporting Program (Exhibit 2-Attachment A).

- 6) Property owner and applicant agree to defend, indemnify, release and hold harmless the City, its agents, officers, attorneys, employees, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities ("indemnities"), the purpose of which is to attack, set aside, void or annul the approval of this application or the certification of any environmental document which accompanies it. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the indemnities, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the indemnities.
- 7) In the event that any claim, action or proceeding as described above is brought, the City shall promptly notify the Property owner and applicant of any such claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action, or proceeding. In the event applicant/property owner is required to defend the City in connection with any said claim, action or proceeding, the City shall retain the right to: 1) approve the counsel to so defend the City; 2) approve all significant decisions concerning the manner in which the defense is conducted; and 3) approve any and all settlements, which approval shall not be unreasonably withheld. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding, provided that if the City chooses to have counsel of its own to defend any claim, action or proceeding where Property owner and applicant already has retained counsel to defend the City in such matters, the fees and the expenses of the counsel selected by the City shall be paid by the City.
- 8) As a condition of this application, applicant/property owner agree to be responsible for the payment of all City Attorney expenses and costs, both for City staff attorneys and outside attorney consultants retained by the City, associated with the reviewing, process and implementing of the land use approval and related conditions of such approval. City Attorney expenses shall be based on the rates established from time to time by the City Finance Director to cover staff attorney salaries, benefits, and overhead, plus the actual fees and expenses of any attorney consultants retained by the City. Applicant shall reimburse City for City Attorney expenses and costs within 30 days following billing of same by the City.
- 9) All site improvements, including but not limited to, site lighting, fencing, landscape islands and paving striping shall be maintained in good, undamaged condition at all times. Any damaged improvements shall be replaced in a timely manner.
- 10) The Project site shall be kept free of litter and garbage. Any trash, junk or damaged materials that are accumulated on the site shall be removed and disposed of in a timely manner.

- 11) All new landscaping shall be irrigated with an automatic drip system and maintained in a healthy and thriving condition, free of weeds and debris, at all times. Any dying or dead landscaping shall be replaced in a timely fashion.
- 12) Final landscape and irrigation plans for the Project shall comply with the provisions of Marin Municipal Water District's (MMWD) most recent water conservation ordinance. Construction plans submitted for issuance of building/grading permit shall be pre-approved by MMWD and stamped as approved by MMWD or include a letter from MMWD approving the final landscape and irrigation plans. Modifications to the final landscape and irrigation plans, as required by MMWD, shall be subject to review and approval of the Community Development Department, Planning Division.
- 13) All public streets and sidewalks and on-site streets which are privately owned that are impacted by the grading and construction operation for the Project shall be kept clean and free of debris at all times. The general contractor shall sweep the nearest street and sidewalk adjacent to the site on a daily basis unless conditions require greater frequency of sweeping.
- 14) ~~This Environmental and Design Review Permit shall run with the land and shall remain valid regardless of any change of ownership of the Project site, subject to these conditions, provided that a building/grading permit is issued, and construction commenced or a time extension request is submitted to the City's Community Development Department, Planning Division, within three (3) years of the City Council approval, or on December 10, 2022. Failure to obtain a building permit and grading permit and construction or grading activities commenced, or failure to obtain a time extension within the three-year period will result in the expiration of this Environmental and Design Review Permit.~~

This Environmental and Design Review Permit shall be extended for a period of 18 months so long as grading permits and/or building permits are obtained and diligently pursued as follows:

- application for grading and/or building permits(s) and associated construction documents shall be submitted by December 30, 2023;
 - a grading permit and/or building permits(s) shall be obtained and grading/construction diligently commenced and pursued for all 9 buildings (45 units) by June 30, 2024;
 - the project shall be diligently pursued and completed within 2 years of commencing.
- 15) Phasing of the project is allowed, subject to the terms and conditions of approval of the Master Use Permit (UP18-039) below.
 - 16) This Environmental and Design Review Permit (ED18-100) approving the Project shall run concurrently with the approved Master Use Permit (UP18-039). If either entitlement expires, this Environmental and Design Review Permit approving the Project, as depicted on Project plans, shall also expire and become invalid.

Prior to the Issuance of a Demo/Building/Grading Permit

Community Development Department - Planning Division

- 17) A copy of the Conditions of Approval for ED18-100 shall be included as a plan sheet with the building permit plan submittal.

- 18) As offered by the applicant, the project shall: 1) install pre-wiring for “Level 2” electric vehicle chargers in each garage; and 2) install pre-wiring for solar panels on all buildings/units. Compliance with this condition shall be demonstrated on the building permit plans and installed prior to occupancy.
- 19) The project proponent shall demonstrate and notate on the building permit plans that Air Quality measures III (a), III (b) and III(c) (**AQ-1, AQ1a and AQ-2**) to eliminate dust control and exhaust during construction, set standards for diesel equipment over 25 horsepower to meet U.S. particle emission standards, and requires that the project include high-efficiency particulate filtration systems in residential ventilation systems will be completed during construction.
- 20) (**GEO-1**): Prior to a grading or building permit submittal, the project sponsor shall prepare a design-level geotechnical investigation prepared by a qualified and licensed geotechnical engineer and submit the report to the City Engineer. Minimum mitigation includes design of new structures in accordance with the provisions of the current California Building Code or subsequent codes in effect when final design occurs. Recommended seismic design coefficients and spectral accelerations shall be consistent with the findings presented in Section 4 of the May 8, 2018 ENGEO report.
- 21) (**GEO-2**): Prior to a grading or building permit submittal, the project sponsor shall prepare a design-level geotechnical investigation prepared by a qualified and licensed geotechnical engineer and submit the report to the City Engineer for review and approval. In order to reduce the effects of the potentially expansive soils and/or liquefaction settlement, foundations should be designed to withstand minimum differential movements. Foundation design recommendations are presented in Section 4 of the May 8, 2018 ENGEO report.
- 22) (**GEO-3**): Prior to a grading or building permit submittal, the project sponsor shall prepare a site drainage system prepared by a qualified and licensed civil engineer and submit the report to the City Engineer. The site drainage system will demonstrate the ability to collect surface water and discharge into an established storm drainage system. The project Civil Engineer of Architect is responsible for designing the site drainage system and, an erosion control plan shall be developed prior to construction per the current guidelines of the City of San Rafael Public Works Department (DPW) Grading and Construction Erosion and Sediment Control Plan Permit Application Package and the Regional Water Quality Control Board standards.
- 23) (**GEO-4**): Soils shall be moisture conditioned to above the optimum moisture content during site grading and maintained at this moisture content until imported aggregate base and/or surface flatwork is completed.
- 24) (**TRANS-1**): demonstrate on building permit or improvement plans the design of the pedestrian sidewalk, subject to the availability of right-of-way and the feasibility of the drainage design, on the west side of Redwood Road directly adjacent to the project driveway connecting to the existing sidewalk.
- 25) (**HYDRO-1**): Prior to issuing a grading or building permit, the project applicant shall prepare a Stormwater Pollution Prevention Plan (SWPPP) and/or Erosion and Sediment Control Plan (ESCP) in accordance with the requirements of the statewide Construction General Permit and the City of San Rafael Department of Public Works. The SWPPP shall be prepared by a

Qualified SWPPP Developer (QSD). The SWPPP shall include the minimum Best Management Practices (BMPs) required for the identified risk level. The SWPPP shall be designed to address the following objectives:

- a) All pollutants and their sources, including sources of sediment associated with construction, construction site erosion, and all other activities associated with construction activity are controlled;
 - b) Where not otherwise required to be under a Regional Water Quality Control Board permit, all non-stormwater discharges are identified and either eliminated, controlled, or treated;
 - c) Site BMPs are effective and result in the reduction or elimination of pollutants in stormwater discharges and authorized non-stormwater discharges from construction activity. The erosion and sediment control plan shall include the rationale used for selecting BMPs including supporting soil loss calculations, as necessary;
 - d) Stabilization BMPs installed to reduce or eliminate pollutants after construction are completed.
 - e) BMP implementation shall be consistent with the BMP requirements in the most recent version of the California Stormwater Quality Association Stormwater Best Management Handbook-Construction or the Caltrans Stormwater Quality Handbook Construction Site BMPs Manual.
- 26) The applicant shall provide information on the building permit plans to show compliance with noise Mitigation Measures recommended on Page 74 of the Illingworth and Rodkin Noise Assessment regarding required forced-air ventilation and STC rated windows on all buildings. Minimum STC Ratings required to reduce noise levels are listed in Table 5 on Page 22 of the Noise Report.
- 27) **(BIO-1): Pre-construction nesting bird and bat survey.** The nesting season is defined here as being from February 1 to August 31 and therefore work should commence between September 1 and January 31.
- i) If this is not possible, and project activities are initiated during the nesting season, then a nesting bird survey shall be conducted by a qualified wildlife biologist no more than 14 days prior to the start of project activities.
 - ii) If nests are identified, a no-disturbance buffer should be implemented to avoid impacts to nesting birds and should remain in place until all young are fledged or the nest otherwise becomes inactive.
 - iii) Buffers typically range from 25 feet to 500 feet depending on the species.
 - iv) If work is to be initiated within the bat breeding/ winter roosting season, an assessment of existing buildings should be performed prior to construction activities to determine if a roost is present.
 - v) If a roost is observed, construction activities should be postponed until a qualified biologist determines the bats are excluded from the roost location.
- 28) **(HAZ-1):** Prior to submittal for a demolition permit, the project sponsor shall use a qualified and licensed professional to prepare a hazardous building materials survey for all structures proposed for demolition or renovation as part of the project. All lead-based paint and asbestos-containing materials (ACM) shall be abated by a certified contractor in accordance with local, state, and federal requirements. All hazardous materials shall be removed from buildings prior to demolition in accordance with California Division of Occupational Safety and Health (DOSH) and California Department of Toxic Substances Control (DTSC) regulations. A

completion of abatement activities report shall be prepared by a qualified professional and submitted to the City prior to permit approval.

- 29) **(HAZ-2):** Prior to submittal for a demolition permit, the project sponsor shall use a qualified and licensed professional to prepare a Soil Management Plan to develop protocols and procedures for handling potentially impacted soils or underground structure/equipment that may be encountered during grading operations and other construction activities as part of the project. If impacted soils or underground structure/equipment are encountered during construction activities, all construction shall stop, and a qualified and licensed professional shall be contacted to conduct a site visit to make observations and prepare recommendations for proper handling of soils and/or structures/equipment.
- 30) Bicycle parking shall be provided in compliance with San Rafael Municipal Code Section 14.18.090. This requires bicycle spaces provided on site at a minimum of 5% of total vehicle parking, including a minimum of one two bike capacity rack for short term bicycle parking. Final plans shall include a design detail for proposed bicycle parking spaces, proposed number and location subject to final review and approval by the Community Development Department and Traffic Engineer.
- 31) The proposed project will be required to provide bicycle improvements along Merrydale Rd. in keeping with the 2018 adopted update of the San Rafael Bicycle/Pedestrian Master Plan, which identifies Merrydale Rd. for a Class III Bike Route. The applicant will be required to install the appropriate signage and striping along Merrydale Road (fronting the project site) to signify that the street is a Class III Bike Lane. Specifics of the bike lane striping are subject to final review and approval by the Community Development Department and Traffic Engineer.
- 32) Property Owner/applicant shall be responsible for all costs associated with mitigation monitoring and shall remit an initial deposit in the amount of \$5,000.00 for mitigation monitoring and condition compliance. Staff shall bill time against this deposit amount during Project review and implementation of the Project and monitoring of Project conditions, to assure compliance with conditions and mitigation measures has been achieved.
- 33) All mechanical equipment (i.e., air conditioning units, meters and transformers) and appurtenances not entirely enclosed within the structure (on side of building or roof) shall be screened from public view. The method used to accomplish the screening shall be indicated on the building plans and approved by the Planning Division.
- 34) Any outstanding Planning Division application processing fees shall be paid.
- 35) A construction logistics plan shall be submitted demonstrating how construction conditions shall be met. The plan must be approved by the Public Works Department and Community Development Director and shall include the conditions of approval and mitigation measures that are applicable to the construction of the Project.
- 36) ~~The project shall be subject to the affordable housing requirements prescribed in Section 14.16.030 of the San Rafael Zoning Ordinance and is therefore required to provide nine (9) of the 45 for-sale units as affordable. Prior to the issuance of a building permit or recordation of the final map, whichever occurs first, a Below Market Rate (BMR) agreement for the nine (9) affordable unit shall be approved by the City Council and recorded on the property.~~

~~Consistent with the affordable housing requirements, five (5) of the units shall be affordable to low income household and four (4) of the units shall be affordable at the moderate income level. The location of the BMR units shall be identified on the project plans and the final location shall be subject to review and approval of the City as part of the City's consideration of the BMR agreement. Please contact the Marin Housing Authority to commence the agreement process.~~

The project is required to provide a primary and secondary affordable housing requirement pursuant to San Rafael Municipal Code Section 14.16.030 and City Council Resolution 14890. The applicant shall comply with this requirement by providing 2 units on-site (5% of the total units) and by paying an in-lieu fee equal to the 2.5 units (2.25 + .25 (fractional unit from the onsite requirement)).

Prior to the issuance of a building permit or recordation of the final map, whichever occurs first, The applicant shall:

- a. Pay the affordable housing in-lieu fee equal to 2.5 units.
- b. Enter into a Below Market Rate (BMR) agreement. The BMR agreement for the two (2) affordable unit shall be approved by the Community Development Director and City Manager and recorded on the property. Consistent with the affordable housing requirements, the affordable housing units shall be affordable to low-income households. The location of the BMR units shall be identified on the project plans and the final location shall be subject to review and approval of the City as part of the City's consideration of the BMR agreement.

37) Protective barrier fencing shall be installed during construction to protect existing trees that are to remain on site, as per the approved landscape plan. Plans showing the fencing, signage and barrier details shall be included on Project plans. The fencing shall be a minimum four-foot orange mesh protected by hay bales and signage designed to avoid intrusion by construction workers and equipment.

~~38) The project shall be subject to the affordable housing requirements prescribed in Section 14.16.030 of the San Rafael Zoning Ordinance and is therefore required to provide nine (9) of the 45 for sale units as affordable. Prior to the issuance of a building permit or recordation of the final map, whichever occurs first, a Below Market Rate (BMR) agreement for the nine (9) affordable unit shall be approved by the City Council and recorded on the property. Consistent with the affordable housing requirements, five (5) of the units shall be affordable to low income household and four (4) of the units shall be affordable at the moderate income level. The location of the BMR units shall be identified on the project plans and the final location shall be subject to review and approval of the City as part of the City's consideration of the BMR agreement. Please contact the Marin Housing Authority to commence the agreement process. Should the project not record a final map, the BMR agreement will be modified to a rental agreement and comply with the affordable housing requirements for rental, which would be five (5) units affordable at very low income level and (4) at low income level.~~

Public Works Department - Land Development Division

General

39) The proposed private roads do not meet the requirements for Right-of-Way/Easement width or paving width per Municipal Code (MC) section 15.06.050. An exception request pursuant

to Municipal Code 15.01.120 has been received and we have no objection to the proposed widths based on the necessary findings.

- 40) It is our understanding that the applicant has provided the minimum garbage facilities required. However, the location and potential for higher demand may necessitate additional storage for a condominium project of this size. We recommend the applicant provide a method to address this in the future if the project is approved as currently proposed.
- 41) Redwood Hwy and Merrydale Rd do not currently have a cul-de-sac or other vehicular turn around for the dead ends, this project proposes a public access easement over the privately maintained roadways to connect the two which will allow for through circulation. With through public access provided, turnarounds are not required at the end of the publicly maintained roadways.
- 42) The site is located in or near areas that may be susceptible to localized flooding, or the drainage of the site may be influenced by larger flooding events. We recommend that the applicant consider these concerns, as well as potential impacts due to sea level rise.
- 43) Third party peer review of geotechnical and engineering reports and inspection throughout construction shall be required, paid for by the project sponsor and contracted by the City. Provide a proposed project schedule for the duration of work, so that an estimate may be prepared for the required deposit amount.
- 44) Provide will serve letters from the various utilities for the proposed subdivision.
- 45) It is our understanding that there the sanitary sewer system is currently proposed as a gravity flow. However, LGSVD may require mitigation to alleviate flow in the downstream sewer, or that a pump station may be necessary. We recommend that as a condition of approval the applicant provide the will serve letter showing that all requirements from LGSVD shall be met prior to issuance of a permit.

Access

- 46) Provide the lighting analysis, include the frontage for Merrydale Rd and Redwood Hwy.

Grading

- 47) Show the estimate of proposed grading on the plan. This project is located along an open creek. Therefore, all mass grading shall be limited to April 15 through October 15, unless otherwise approved in writing by the Department of Public Works.
- 48) A grading permit shall be obtained for all grading and site improvement work. Trucking trips during peak hours may be limited.
- 49) A preliminary geotechnical report has been provided. This does not thoroughly analyze the geotechnical concerns but references that design-level explorations should be conducted prior to site development once more detailed plans have been prepared. The project is in application for design. Therefore, the subsequent geotechnical report shall be a condition of approval. However, the findings of that report may affect the design of the project, which may require re-review of the project.

- 50) All plans, reports, monitoring, inspection and testing for the proposed project will be reviewed by an independent Geotechnical Engineer and/or Engineering Geologist retained by the City, at the expense of the project sponsor. This third-party consultant will review all plans, reports, monitoring, inspection and testing data prior to appropriate approvals and/or certifications. A letter report summarizing findings and recommendations shall be submitted by the geotechnical engineer to the City Engineer for review and approval, as well as incorporation into grading plans. Final grading and foundation techniques shall be developed by a certified geotechnical engineer or engineering geologist and reviewed and approved by the City.
- 51) A construction management plan shall be provided for review and approval by the City.
- a) All materials and equipment shall be staged on-site.
 - b) The construction management plan shall include the traffic control plan to address on-site and off-site construction traffic.
 - c) A screened security fence approved by the City shall be placed and maintained around the perimeter of the project and removed immediately following construction work
 - d) Truck routes shall be reviewed and approved by the City. Hauling shall be limited to 1 truck in and 1 truck out per 15 minutes during the AM and PM peak, which may be revised at the time of grading permit issuance.
- 52) This project includes over one (1) acre of disturbance. A SWPPP shall be required.
- 53) Phasing of the project shall be configured to develop the area adjacent to the creek first along with the infrastructure. This area is required for access, maintenance and drainage. This would allow for early establishment of vegetation in this area to reduce potential impacts to the creek. Due to the size of the project and configuration, the infrastructure required on and off site shall be developed as part of phase one. Infrastructure items that are commonly delayed to later phases shall be reviewed by the Department of Public Works, such as final lift of asphalt.

Drainage

- 54) This site includes work in or immediately adjacent to a creek. The applicant shall comply with requirements of the various creek permitting agencies and obtain all necessary permits.
- (a) Pet waste bags, signage and trash receptacles shall be provided in convenient locations to reduce the likelihood of litter near the creek path.
- 55) The final drainage plan shall be subject to review and approval by the City Engineer. The final drainage plan shall address the following:
- a) The plans shall show the existing drainage facilities
 - b) Runoff shall not be increased, leaving the project boundary
 - c) Filtration shall be required for particles equal to or larger than 5mm, so they do not enter into the City's storm drainage system
 - d) Placards (medallions) shall be installed on all new drainage inlets to prohibit dumping of pollutants. These are available from the City or MCSTOPPP
 - e) A stormwater facilities maintenance agreement shall be required
 - f) How the project's drainage system shall be maintained, whether separate for each site or together along with the other development improvements.
 - g) The drainage plan shall be developed in consideration with the findings of the geotechnical report.
- 56) The site drainage system is located at elevations that may be subject to tidally influenced surcharge events. The drainage system shall include backflow prevention.

- 57) Frontage improvements shall include where necessary, street lighting, conduit for City facilities, accessible curb ramp pairs, drainage facilities, street trees, sidewalk, curb and gutter. This shall be reviewed at the time of permit issuance.
- 58) Due to the level of improvements we recommend that as a condition of approval the full width of Merrydale Rd be resurfaced with this project, additionally we suggest that this be extended to the intersection with Las Gallinas, as this is one of the only two sites that currently take access from this end of Merrydale Rd. The extents of resurfacing shall be reviewed based on existing conditions at the time of permit issuance.
- 59) An encroachment permit is required for any work within the Right-of-Way, from the Department of Public Works located at 111 Morphew Street. Restriping of public streets shall be of thermoplastic, as approved by the Department of Public Works.

Traffic

- 60) The Traffic Impact Study (TIS) has been updated, dated October 3, 2019 and previous comments have been addressed.
- 61) The proposed project results in additional trips generated at the site. Based on the draft traffic impact study and the additional proposed unit, this results in an estimated **17 AM and 19 PM** peak hour trips. Using the current traffic mitigation fee rate this results in an estimated fee of (36*\$4,246) \$152,856 which shall be calculated and due at the time of building permit issuance.
- 62) A construction vehicle impact fee shall be required at the time of building permit issuance; which is calculated at 1% of the valuation, with the first \$10,000 of valuation exempt.

Community Development Department – Building Division

- 63) The design and construction of all site alterations shall comply with the 2016 California Building Code (CBC), 2016 California Plumbing Code (CPC), 2016 California Electrical Code (CEC), 2016 California Mechanical Code (CMC), 2016 California Fire Code (CFC), 2016 California Energy Code, 2016 California Green Building Standards Code and City of San Rafael Ordinances and Amendments.
- 64) A building permit is required for the proposed work. Applications shall be accompanied by four (4) complete sets of construction drawings to include:
- a) Architectural plans
 - b) Structural plans
 - c) Electrical plans
 - d) Plumbing plans
 - e) Mechanical plans
 - f) Site/civil plans (clearly identifying grade plane and height of the building)
 - g) Structural Calculations
 - h) Truss Calculations
 - i) Soils reports
 - j) Green Building documentation
 - k) Title-24 energy documentation

- 65) Building height and story must comply with CBC Section 504. On the plan justify the proposed building area and height.
- 66) Building areas are limited by CBC Table 506.2. On plan justify the proposed building area.
- 67) The maximum area of unprotected and protected openings permitted in the exterior wall in any story of a building shall not exceed the percentages specified in CBC Table 705.8 "Maximum Area of Exterior Wall Openings Based on Fire Separation Distance and Degree of Opening Protection." To calculate the maximum area of exterior wall openings you must provide the building setback distance from the property lines and then justify the percentage of proposed wall openings and include whether the opening is unprotected or protected.
- 68) Townhouses more than three stories above grade in height must comply with the CBC. CBC Table 705.8 allows:
- a) 15% exterior wall openings (in any story) in sprinklered buildings where the openings are 3' to less than 5' from the property line or buildings on the same property.
 - b) 25% exterior wall openings (in any story) in sprinklered buildings where the openings are 5' to less than 10' from the property line or buildings on the same property.
 - c) 45% exterior wall openings (in any story) in sprinklered buildings where the openings are 10' to less than 15' from the property line or buildings on the same property.
- 69) Each building must have address identification placed in a position that is plainly legible and visible from the street or road fronting the property. Numbers painted on the curb do not satisfy this requirement. In new construction and substantial remodels, the address must be internally or externally illuminated and remain illuminated at all hours of darkness. Numbers must be a minimum 4 inches in height with ½ inch stroke for residential occupancies and a minimum 6 inches in height with ½ inch stroke for commercial applications. The address must be contrasting in color to their background SMC 12.12.20.
- 70) Bollards must be placed in the garage to protect mechanical equipment, water heater, and washer dryer from vehicular damage when located in the path of a vehicle.
- 71) Any demolition of existing structures will require a permit. Submittal shall include three (3) copies of the site plan, asbestos certification and PG&E disconnect notices. Also, application must be made to the Bay Area Air Quality Management District prior to obtaining the permit and beginning work.
- 72) School fees will be required for the project. Calculations are done by the San Rafael City Schools, and those fees are paid directly to them prior to issuance of the building permit.
- 73) Based on the distance to the property line (and/or adjacent buildings on the same parcel), the building elements shall have a fire resistive rating not less than that specified in CBC Table 601 and exterior walls shall have a fire resistive rating not less than that specified in CBC Table 602.
- 74) Walls separating proposed tenant space from existing neighboring tenant spaces must be a minimum of 1-hour construction.

75) Multifamily dwelling and apartment accessible parking spaces shall be provided at a minimum rate of 2 percent of the covered multifamily dwelling units. At least one space of each type of parking facility shall be made accessible even if the total number exceeds 2 percent.

76) When parking is provided for multifamily dwellings and is not assigned to a resident or a group of residents, at least 5 percent of the parking spaces shall be accessible and provide access to grade-level entrances of multifamily dwellings and facilities (e.g. swimming pools, club houses, recreation areas and laundry rooms) that serve the dwellings. Accessible parking spaces shall be located on the shortest accessible route to an accessible building, or dwelling unit entrance.

77) Public accommodation disabled parking spaces must be provided according the following table and must be uniformly distributed throughout the site.

Total Number of Parking Spaces Provided	Minimum Required Number of H/C Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	Two percent of total
1,001 and over	Twenty, plus one for each 100 or fraction thereof over 1,001

78) At least one disabled parking space must be van accessible; 9 feet wide parking space and 8 feet wide off- load area. Additionally, one in every eight required handicap spaces must be van accessible.

79) This project is subject to the City of San Rafael Green Building Ordinance. A sliding scale is applied based on the average unit square footage. New multi-family dwellings must comply with the "Green Building Rating System" by showing a minimum compliance threshold between 65 and 75 points. Additionally, the energy budget must also be below Title 24 Energy Efficiency Standards a minimum 15%.

Fire Department – Fire Prevention Bureau

80) Prior to issuance of building permit, the following requirements shall be added to the building permit plans as Sheet SP-6:

- a) Fire Lane signage shall be installed at both entrances that meet City of San Rafael Parking Enforcement standards.
- b) KNOX box installation at Community Rec Room exterior wall.
- c) Fire Sprinkler system conforming to NFPA standards installed throughout.
- d) all hydrants to be Clow model 960 appliances.

81) Plan Sheet SP-6 (Fire Engine Truck Access Plan) shall be part of the building permit submittal packet and reviewed by the Fire Department as part of the building permit review.

Las Gallinas Valley Sanitation District

82) Las Gallinas Valley Sanitation District has determined that the proposed project is within the Sphere of Influence and District facilities boundary. The proposed project must apply for and receive an allocation of sewer capacity from this District before it can receive sewer services. The proposed project must make satisfactory arrangements with this District for the construction of any off-site or on-site sewers which may be required. The District has provided the following comments, as of October 15, 2019: The District will consider a gravity option with the following conditions:

- a) The initial report from Nute Engineering has indicated that a gravity option is not feasible without flow diversion within the District collection system and upgrades to Rafael Meadows Pump Station. This option is subject to final review by Nute Engineering. The District anticipates receiving the Nute's final recommendation and preliminary construction cost estimate by end of October 2019.
- b) The District has considered constructing flow diversion structures at its own expense to alleviate surcharging of sanitary sewers in the area. However, at the minimum, applicant may be required to cost share the electrical and pump upgrades to the Rafael Meadows Pump Station, pending District Board approval.
- c) If a gravity option is not feasible, the District will require a dedicated private pump station in addition to the Rafael Meadows Pump Station upgrades as described above. The private pump station option shall comply with the following conditions:
 - i) The pump station design shall meet the requirements set by the Regional Water Quality Control Board and other regulatory agencies.
 - ii) The pump station shall include backup generator and pumps with series of sensors and alarm systems to alert District staff of pump failure and potential sewage overflows.
 - iii) The pump station shall comply with city ordinance general noise limits (chapter 8.13), which at a minimum are 60dBA intermittent daytime and 50dBA intermittent nighttime.
- d) Applicant shall submit plans **electronically** to LGVSD for review and approval. A Will Serve Letter will be issued based on the following:
 - i) Approved plans designed with District standard details and specifications.
 - ii) Compliance with District requirements outlined in previous plan reviews.
 - iii) Other requirements based on future submittals.

Marin Municipal Water District

83) The applicant must enter into a pipeline extension agreement with the Marin Municipal Water District for the installation of the necessary facilities and said agreement must be approved by

the District's Board of Directors. All costs associated with a pipeline extension are borne by the applicant.

- 84) Complete a High-pressure Water Service Application
- 85) Pay appropriate fees and charges
- 86) Complete the structure's foundation within 120 days of the date of application
- 87) Comply with the District's rules and regulations in effect at the time service is requested, including the installation of a separate water service for each residential structure.
- 88) Comply with all indoor and outdoor requirements of District Code Title 13 – Water Conservation. This may include ventilation of specific indoor fixture efficiency compliance.
- 89) If you are pursuing a landscaping project subject to review by your local planning department and/or subject to a city permit, please contact the district water conservation department at 415-945-1497 or e-mail to plancheck@marinwater.org. More information about district water conservation requirements can be found online at www.marinwater.org.
- 90) Comply with the backflow preventer requirements, if upon the District's review backflow protection is warranted, including installation, testing and maintenance. Questions regarding backflow requirements should be directed to the Backflow Prevention Program Coordinator at 415-945-1558.
- 91) Comply with Ordinance No.429 requiring the installation of gray water recycling systems when practicable for all projects required to install new water service and existing structures undergoing "substantial remodel" that necessitates an enlarged water service.
- 92) Comply with California water Code – Division 1, Chapter 8, Article 5, Section 537; which requires individual metering of multiple living units within newly constructed structures.

During Construction and Grading

Community Development Department – Planning Division

- 93) Construction hours and activity (including any and all deliveries) are limited to the applicable requirements set forth in Chapter 8.13 of the San Rafael Municipal Code.
- 94) **AIR QUALITY (AQ-1)**: Include basic measures to control dust and exhaust during construction. During any construction period ground disturbance, the applicant shall ensure that the project contractor implement measures to control dust and exhaust. Implementation of the measures recommended by BAAQMD and listed below would reduce the air quality impacts associated with grading and new construction to a less-than-significant level. The contractor shall implement the following best management practices that are required of all projects:
 - a) All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - b) All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

- c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d) All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
- e) All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- f) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- g) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- h) Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

95) **AIR QUALITY (AQ-1a)**: All diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet U.S. EPA particulate matter emissions standards for Tier 2 engines with CARB-certified Level 3 Diesel Particulate Filters or equivalent.

- a) The use of equipment meeting U.S. EPA Tier 4 standards for particulate matter would also meet this requirement.
- b) Use of equipment that includes alternatively fueled equipment (i.e., non-diesel) would meet this requirement.
- c) Other measures may be the use of added exhaust devices, or a combination of measures, provided that these measures are approved by the City and demonstrated to reduce community risk impacts to less-than-significant.

96) **AIR QUALITY (AQ-2)**: Include high-efficiency particulate filtration systems in residential ventilation systems. The significant exposure for new project receptors is judged by two effects: (1) increased cancer risk, and (2) annual PM_{2.5} concentration. Exposure to cancer risk from U.S. Highway 101 are significant. Cancer risk is based on exposure to exhaust emissions while annual PM_{2.5} concentrations are based on the exposure to PM_{2.5} resulting from emissions attributable to truck and auto exhaust, the wearing of brakes and tires and re-entrainment of roadway dust from vehicles traveling over pavement. PM_{2.5} exposure drives the mitigation plan. Reducing PM_{2.5} exposures to less than significant would also reduce cancer risk to less than significant levels. The project shall include the following measures to minimize long-term annual PM_{2.5} exposure for new project occupants:

1. Install air filtration in residential dwellings. Air filtration devices shall be rated MERV 13 or higher. To ensure adequate health protection to sensitive receptors (i.e., residents), this ventilation system, whether mechanical or passive, all fresh air circulated into the dwelling units shall be filtered, as described above.
2. As part of implementing this measure, an ongoing maintenance plan for the buildings' heating, ventilation, and air conditioning (HVAC) air filtration system shall be required.

3. Ensure that the use agreement and other property documents: (1) require cleaning, maintenance, and monitoring of the affected buildings for air flow leaks, (2) include assurance that new owners or tenants are provided information on the ventilation system, and (3) include provisions that fees associated with owning or leasing a unit(s) in the building include funds for cleaning, maintenance, monitoring, and replacements of the filters, as needed.

97) **BIOLOGICAL RESOURCES (BIO-1): Pre-construction nesting bird and bat survey:** The nesting season is defined here as being from February 1 to August 31 and therefore work should commence between September 1 and January 31.

- i) If this is not possible, and project activities are initiated during the nesting season, then a nesting bird survey shall be conducted by a qualified wildlife biologist no more than 14 days prior to the start of project activities.
- ii) If nests are identified, a no-disturbance buffer should be implemented to avoid impacts to nesting birds and should remain in place until all young are fledged or the nest otherwise becomes inactive.
- iii) Buffers typically range from 25 feet to 500 feet depending on the species.
- iv) If work is to be initiated within the bat breeding/ winter roosting season, an assessment of existing buildings should be performed prior to construction activities to determine if a roost is present.
- v) If a roost is observed, construction activities should be postponed until a qualified biologist determines the bats are excluded from the roost location.

98) **CULTURAL RESOURCES (CULT-1): Protect Archaeological Resources Identified during Construction:** The project sponsor shall ensure that construction crews stop all work within 100 feet of the discovery until a qualified archaeologist can assess the previously unrecorded discovery and provide recommendations. Resources could include subsurface historic features such as artifact-filled privies, wells, and refuse pits, and artifact deposits, along with concentrations of adobe, stone, or concrete walls or foundations, and concentrations of ceramic, glass, or metal materials. Native American archaeological materials could include obsidian and chert flaked stone tools (such as projectile and dart points), midden (culturally derived darkened soil containing heat-affected rock, artifacts, animal bones, and/or shellfish remains), and/or groundstone implements (such as mortars and pestles).

99) **CULTURAL RESOURCES (CULT-2): Protect Human Remains Identified During Construction:** The Project proponent shall treat any human remains and associated or unassociated funerary objects discovered during soil-disturbing activities according to applicable State laws. Such treatment includes work stoppage and immediate notification of the Marin County Coroner and qualified archaeologist, and in the event that the Coroner's determination that the human remains are Native American, notification of NAHC according to the requirements in PRC Section 5097.98. NAHC would appoint a Most Likely Descendant ("MLD"). A qualified archaeologist, Project proponent, County of Marin, and MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of any human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5[d]). The agreement would take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, and final disposition of the human remains and associated or unassociated funerary objects. The PRC allows 48 hours to reach agreement on these matters.

100) **GEOTECHNICAL (GEO-5):** Should paleontological resources be encountered during project subsurface construction activities located in previously undisturbed soil and bedrock, all ground-disturbing activities within 25 feet shall be halted and a qualified paleontologist contacted to assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. For purposes of this mitigation, a “qualified paleontologist” shall be an individual with the following qualifications: 1) a graduate degree in paleontology or geology and/or a person with a demonstrated publication record in peer-reviewed paleontological journals; 2) at least two years of professional experience related to paleontology; 3) proficiency in recognizing fossils in the field and determining their significance; 4) expertise in local geology, stratigraphy, and biostratigraphy; and 5) experience collecting vertebrate fossils in the field.

a) If the paleontological resources are found to be significant and project activities cannot avoid them, measures shall be implemented to ensure that the project does not cause a substantial adverse change in the significance of the paleontological resource. Measures may include monitoring, recording the fossil locality, data recovery and analysis, a final report, and accessioning the fossil material and technical report to a paleontological repository. Upon completion of the assessment, a report documenting methods, findings, and recommendations shall be prepared and submitted to the City for review. If paleontological materials are recovered, this report also shall be submitted to a paleontological repository such as the University of California Museum of Paleontology, along with significant paleontological materials. Public educational outreach may also be appropriate.

b) The project applicants shall inform its contractor(s) of the sensitivity of the project site for paleontological resources and shall verify that the following directive has been included in the appropriate contract specification documents: “The subsurface of the construction site may contain fossils. If fossils are encountered during project subsurface construction, all ground-disturbing activities within 25 feet shall be halted and a qualified paleontologist contacted to assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. Project personnel shall not collect or move any paleontological materials. Fossils can include plants and animals, and such trace fossil evidence of past life as tracks or plant imprints. Marine sediments may contain invertebrate fossils such as snails, clam and oyster shells, sponges, and protozoa; and vertebrate fossils such as fish, whale, and sea lion bones. Vertebrate land mammals may include bones of mammoth, camel, saber tooth cat, horse, and bison. Contractor acknowledges and understands that excavation or removal of paleontological material is prohibited by law and constitutes a misdemeanor under California Public Resources Code, Section 5097.5.”

101) **NOISE (NOISE-1):** Implementation of the following measures would reduce construction noise levels emanating from the site, limit construction hours, and minimize disruption and annoyance.

a) Construction activities shall be limited to the hours specified in the City of San Rafael's Municipal Code (7 am to 6 pm on weekdays and 9 am to 6 pm on Saturdays). No construction activities are permitted on Sundays and holidays.

b) Limit use of the concrete saw to a distance of 50 feet or greater from residences, where feasible. Construct temporary noise barriers to screen stationary noise-generating equipment, such as the concrete saw, when located near adjoining

sensitive land uses. Temporary noise barriers could reduce construction noise levels by 5 dBA.

- c) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - d) Unnecessary idling or internal combustion engines should be strictly prohibited.
 - e) Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors.
 - f) Utilize "quiet" air compressors and other stationary noise sources where technology exists.
 - g) Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
 - h) Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.
 - i) Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.
- 102) **TRIBAL-1:** Address the potential discovery of previously unknown resources within the project area. If significant tribal cultural resources are identified onsite, all work would stop immediately within 50 feet of the resource(s) and the project applicant would comply with all relevant State and City policies and procedures prescribed under PRC Section 21074.

Prior to Final Occupancy

Community Development Department – Planning Division

- 103) A post-construction Acoustical Study shall be performed and submitted to the Planning Division to confirm that the project was constructed compliant with noise reducing materials and construction techniques as recommended in the Illingworth and Rodkin Acoustical Study.
- 104) **AESTHETICS (AES-1)**: Prior to the Building Permit final inspection, the project applicant shall submit to the satisfaction of the Community Development Department Director, a post-installation photometric lighting study showing that the lighting on site complies with the approved lighting levels per ED18-100 and the requirements of SRMC 14.16.227. The project applicant shall also demonstrate to the Building Department that outdoor lighting fixtures meet the requirements of the California Energy Code (known as Part 6, Title 24 of the California Code of Regulations).
- 105) Install any improvements required by **TRANS-1** prior to final occupancy
- 106) **HYDROLOGY (HYDRO-2)**: Prior to a certificate of occupancy, the Project applicant shall verify that operational stormwater quality control measures that comply with the requirements of the current Phase II Small MS4 Permit have been implemented. Responsibilities include, but are not limited to:

- a) Designing BMPs into Project features and operations to reduce potential impacts to surface water quality and to manage changes in the timing and quantity of runoff associated with operation of the project. These features shall be included in the design-level drainage plan and final development drawings.
 - b) The proposed project shall incorporate site design measures and Low Impact Development design standards, including minimizing disturbed areas and impervious surfaces, infiltration, harvesting, evapotranspiration, and/or bio-treatment of stormwater runoff.
 - c) The Project applicant shall establish an Operation and Maintenance Plan. This plan shall specify a regular inspection schedule of stormwater treatment facilities in accordance with the requirements of the Phase II Small MS4 Permit.
 - d) Funding for long-term maintenance of all BMPs shall be specified.
- 107) The applicant shall contact the Planning Division to request a final inspection, prior to the issuance of the final building permit. The final inspection shall require a minimum of 48-hours advance notice. All landscaping and irrigation shall be installed prior to the occupancy of the building or the property owner shall post a bond in the amount of the estimated landscaping/ irrigation cost with the City of San Rafael. In the event that a bond is posted, all areas proposed for landscaping must be covered with bark or a substitute material approved by the Planning Division prior to occupancy. The landscape architect shall certify in writing and submit to the Planning Division, and call for inspection, that the landscaping has been installed in accordance with all aspects of the approved landscape plans, that the irrigation has been installed and been tested for timing and function, and all plants including street trees are healthy. Any dying or dead landscaping shall be replaced.
- 108) All exterior lighting shall be shielded down. Following the issuance of a certificate of occupancy, all exterior lighting shall be subject to a 90-day lighting level review by the Police Department and Planning Division to ensure compatibility with the surrounding area.
- 109) All plan details shall be implemented as indicated plans approved for building permit, in compliance with all conditions of approval and applicable City zoning code requirements, to the satisfaction of the Community Development Director. Any outstanding fees including planning review fees, inspection fees, etc. shall be paid.

Fire Department – Fire Prevention Bureau

- 110) Prior to Final occupancy, the following requirements shall be installed in addition to all Fire code Requirements on the site and shown on the Fire Engine Truck Access Plan Sheet SP-6:
- a) Fire Lane signage shall be installed at both entrances that meet City of San Rafael Parking Enforcement standards.
 - b) KNOX box shall be installed at Community Rec Room exterior wall.
 - c) Fire Sprinkler system conforming to NFPA standards installed throughout.
 - d) All hydrants installed on site shall be Clow model 960 appliances.

**Tentative Subdivision Map Conditions of Approval
(TS18-006)**

Community Development Department - Planning Division

2. The Tentative Subdivision Map (TS18-006) shall be valid ~~for a period of three (3) years from the date of City Council approval, or until December 10, 2022~~ until June 30, 2024 and shall become null and void unless a Final Map has been recorded or a time extension is granted.
3. The proposed project is approved as a Three-Phase development, consisting of a Phase One "pre-phase" (on and off-site improvements) to complete building Phase One -construction of Buildings 1-4 and all landscaping north of Private street "A" (Fall 2021) and Phase Three-construction of Buildings 5-9, tree removal along the south property line and all remaining landscaping (Summer 2022). The Final Map may be recorded in phases or all at once.
4. ~~The project shall be subject to the affordable housing requirements prescribed in Section 14.16.030 of the San Rafael Zoning Ordinance and is therefore required to provide nine (9) of the 45 for sale units as affordable. Prior to the issuance of a building permit or recordation of the final map, whichever occurs first, a Below Market Rate (BMR) agreement for the nine (9) affordable unit shall be approved by the City Council and recorded on the property. Consistent with the affordable housing requirements, five (5) of the units shall be affordable to low-income household and four (4) of the units shall be affordable at the moderate income level. The location of the BMR units shall be identified on the project plans and the final location shall be subject to review and approval of the City as part of the City's consideration of the BMR agreement. Please contact the Marin Housing Authority to commence the agreement process.~~

The project is required to provide a primary and secondary affordable housing requirement pursuant to San Rafael Municipal Code Section 14.16.030 and City Council Resolution 14890. The applicant shall comply with this requirement by providing 2 units on-site (5% of the total units) and by paying an in-lieu fee equal to the 2.5 units (2.25 + .25 (fractional unit from the onsite requirement)).

Prior to the issuance of a building permit or recordation of the final map, whichever occurs first, The applicant shall :

- a. Pay the affordable housing in-lieu fee equal to 2.5 units.
 - b. Enter into a Below Market Rate (BMR) agreement. The BMR agreement for the two (2) affordable unit shall be approved by the Community Development Director and City Manager and recorded on the property. Consistent with the affordable housing requirements, the affordable housng units shall be affordable to low-income households. The location of the BMR units shall be identified on the project plans and the final location shall be subject to review and approval of the City as part of the City's consideration of the BMR agreement.
5. Prior to issuance of building permits or prior to the recordation of a Final Map, whichever occurs first, the developer shall pay to the City in lieu parkland dedication fees for 45 new units in accordance with the provisions of City Council Ordinance No. 1558, which would be 45 x 2.5 persons/dwelling unit x 3 acres per 1,000 persons x \$262,396.80 = \$88,558.92
 6. Conditions, Covenants and Restrictions (CC&R's) shall be prepared and submitted with an application for a Final Parcel Map. The CC&R's shall include the following requirements and provisions:
 - a. The formation of a homeowner's association (HOA).

- b. Project will be governed by a homeowner's association (HOA) which will manage, maintain and operate the Project in accordance with Conditions, Covenants and Restrictions (CC&Rs) to be recorded against each unit and the common areas, Articles of Incorporation (Articles) and Bylaws. The HOA will have the right to adopt rules, regulations and guidelines, including design guidelines and community space rules to implement the CC&Rs. HOA responsibilities for ongoing maintenance of the shared or common facilities, including but not limited to the common driveway, common landscaping and irrigation, fencing, subdivision infrastructure improvements (storm water and sanitary sewer facilities) and exterior building and lighting improvements. All common areas including the Creek Promenade and the Paseos will be owned, managed and controlled by the HOA. Initially the builder will own all units within the project and will control the HOA until sufficient units have been sold for a HOA Board of Directors to be elected. The builder will pay HOA dues to the HOA for each unit until each unit is sold. Restrictions and regulations imposed on each lot owner. The CC&R's shall include provisions, which restrict the use of the parking spaces to vehicle parking.
- c. Requirements and provisions for professional management services or the services of a Certified Public Accountant to oversee the HOA responsibilities and budget.
- d. Include an article providing for rights of the City of San Rafael, as follows:

ARTICLE ____ . RIGHTS OF THE CITY OF SAN RAFAEL

1. Use Restrictions. In furtherance of the police power of the City of San Rafael, the following provisions will apply to the Property:

(a)no re-subdivision of any Lot shown on the Map will be done without the approval and consent of the City of San Rafael.

(b)the restrictions set out in this Declaration will burden the Property, for the benefit of the City of San Rafael, and the same are enforceable by and will inure to the benefit of the City of San Rafael.

2. Right to Remedy Failure to Maintain Common Area. In the event that there is a failure to maintain the Common Area so that owners, lessees, and their guests suffer, or will suffer, substantial diminution in the enjoyment, use, or property value of their Project, thereby impairing the health, safety and welfare of the residents in the Project, the City, by and through its duly authorized officers and employees, will have the right to enter upon the subject Property, and to commence and complete such work as is necessary to maintain said Common Area. The City will enter and repair only if, after giving the Association and Owners written notice of the failure to maintain the Common Area, they do not commence correction of such conditions in no more than thirty (30) days from the giving of the notice and proceed diligently to completion. All expenses incurred by the City shall be paid within thirty (30) days of written demand. Upon a failure to pay within said thirty (30) days, the City will have the right to impose a lien for the proportionate share of such costs against each Lot in the Project.

It is understood that by the provisions hereof, the City is not required to take any affirmative action, and any action undertaken by the City will be that which, in its sole

discretion, it deems reasonable to protect the public health, safety and general welfare, and to enforce it and the regulations and ordinances and other laws.

It is understood that action or inaction by the City, under the provisions hereof, will not constitute a waiver or relinquishment of any of its rights to seek redress for the violation of any of the provisions of these restrictions or any of the rules, regulations and ordinances of the City, or of other laws by way of a suit in law or equity in a court of competent jurisdiction or by other action.

It is further understood that the remedies available to the City by the provision of this section or by reason of any other provisions of law will be cumulative and not exclusive of the maintenance of any other remedy. In this connection, it is understood and agreed that the failure to maintain the Common Area will be deemed to be a public nuisance and the City will have the right to abate said condition, assess the costs thereof, and cause the collection of said assessments to be made on the tax roll in the manner provided by appropriate provisions of the San Rafael Municipal Code or any other applicable law.

The City Council of the City may, at any time, relinquish its rights and interest in the Project as herein set forth by appropriate resolution. Any such relinquishment by the City Council will be effective on the date that the resolution is adopted, and a copy thereof is placed in the United States mail, postage prepaid, addressed to the Association. The Owner will execute and record a declaration reflecting such relinquishment within ten (10) days of receipt of a copy of the resolution.

3. **No Waiver.** No failure of the City of San Rafael to enforce any of the covenants or restrictions contained herein will in any event render them ineffective.

4. **Third-Party Beneficiary.** The rights of the City of San Rafael pursuant to this Article will be the rights of an intended third party beneficiary of a contract, as provided in Section 1559 of the California Civil Code, except that there will be no right of Declarant, the Association, or any Owner(s) to rescind the contract involved so as to defeat such rights of the City of San Rafael.

5. **Hold Harmless.** Declarant, Owners, and each successor in interest of Declarant and said Owners, hereby agree to save and hold the City of San Rafael harmless from any and all liability for inverse condemnation which may result from, or be based upon, City's approval of the Development of the subject Property.

6. **Amendments.** The City of San Rafael will be given reasonable advance notice in writing of any amendments to the Declaration affecting the rights of the City as provided herein, and no such amendment will be deemed effective without the written consent of the San Rafael City Council.

7. Prior to recordation of the final map, the CC&R's shall be reviewed and approved by the Department of Community Development and the City Attorney's Office.

8. Approved CC&R's shall be recorded concurrently with the final map.

Department of Public Works - Land Development Division

9. A Final Map shall be required to be filed and approved by the Department of Public Works.
10. Should the applicant elect to record the final map prior to completion of the subdivision improvements, a subdivision improvement agreement shall be required. As part of this agreement bonds shall be required based on the engineer's estimate. The current fees for the subdivision:
 - \$2,615.00 Improvement Plan Check
 - \$3,285.00 minimum, (or actual cost if greater) for Final Map Plan Check.
 - \$1,464.00 Subdivision Improvement Inspection Fees.

**Master Use Permit Conditions of Approval
(UP18-039)**

1. Except as modified herein, the Master Use Permit (UP18-039) authorizes redevelopment of the existing 2.28-acre site for residential use as shown in the approved plans in a maximum of three (3) phases. Although phasing is not required, this Use Permit authorizes that the project may be phased as follows, subject to the conditions of approval
 - a) Phase One (Pre-Phase) which entails site preparation, demolition, landscaping/tree removal (except no removal of existing trees along the southern property line).
 - b) Phase Two – Shall include construction of buildings, construction of the 2 on-site below market rate units. ~~Construction of Buildings 1 through Building 4 (a total of 25 units, including five (5) BMR units),~~ trash enclosure, and creek promenade enhancements including landscaping, hardscape and recreational amenities.
 - c) Phase Three - Construction of any remaining units Building 5 through Building 9 (a total of 20 units, including four (4) BMR units), removal of existing trees along southern property line and the remaining landscaping.
2. Should the project proceed in a phased development approach, the following requirements shall apply:
 - a) All site improvement, roadways, sidewalk, utilities shall be installed and completed no later than the completion of Phase Two.
 - b) Landscaping may be installed by each phase:
 - i. Prior to final occupancy of Phase Two, the approved landscaping along the Merrydale Rd border (along Building 1) and along the Highway 101 frontage (Building 3 and Building 4) along with all other on-site landscaping in that phase, shall be installed.
 - ii. Prior to final occupancy of Phase Three, the approved landscaping along the Merrydale Rd border (along Building 9) and along the Highway 101/Redwood Hwy frontage (Building 5 and Building 6), along with all other on-site landscaping in that phase, shall be installed.
 - ~~e) This Master Use Permit (UP18-039) shall be valid for three (3) years from the date of City Council approval, or until December 10, 2022 and shall become null and void if: 1) a building permits(s) have not been obtained and construction diligently commenced and~~

~~pursued for all 9 buildings (45 units); 2) construction has not commenced on both Phase Two and Phase Three; 3) the project has not substantially progressed in constructions of Phase Two and Three; or 4) a time extension request has not been received before December 10, 2022. The time extension application (including project plans) must be submitted to the Planning Department with all associated fees. The time extension is subject to a public hearing and review and approval by the Planning Commission.~~

This Master Use Permit (UP18-039) shall be extended for a period of 18 months so long as grading permits and/or building permits are obtained and diligently pursued as follows:

- application for grading and/or building permits(s) and associated construction documents shall be submitted by December 30, 2023;
- a grading permit and/or building permits(s) shall be obtained and grading/construction diligently commenced and pursued for all 9 buildings (45 units) by June 30, 2024;
- the project shall be diligently pursued and completed within 2 years of commencing.

- d) Once the building permit(s) is/are issued and construction and framing are commenced within the three (3) year period, then the Use Permit shall become valid and run with the land and will not have an expiration date. On-going compliance with all conditions of approval shall be required to keep the Use Permit valid.
3. Prior to completion of Phase Two, an "Interim Site Plan" for the area of Phase Three shall be submitted, to address visual conditions, dust/erosion control, security and drainage and site maintenance. This plan shall be subject to review and approval of the Community Development Department and Department of Public Works.
4. Once the Interim Site Plan is approved, all specific conditions of the interim plan for the area of Phase Three shall be installed per the approved plan, prior to final occupancy of Buildings 1 through Building 4, as approved per Phase Two construction.

RESOLUTION NO. 14763

RESOLUTION OF THE CITY OF SAN RAFAEL CITY COUNCIL CONDITIONALLY APPROVING AN ENVIRONMENTAL AND DESIGN REVIEW PERMIT (ED18-100), TENTATIVE SUBDIVISION MAP (TS18-006), MASTER USE PERMIT (UP18-039), AND SUBDIVISION EXCEPTION (EX19-012) TO ALLOW THE DEMOLITION OF EXISTING ONE-STORY BUILDINGS AND CONSTRUCTION OF NINE (9) THREE-STORY RESIDENTIAL BUILDINGS WITH A TOTAL OF 45 “FOR SALE” MULTI-FAMILY RESIDENTIAL UNITS (INCLUDING 9 BELOW-MARKET-RATE (BMR) UNITS), 94 PARKING SPACES, WITH NEW LANDSCAPING AND CREEKSIDE ENHANCEMENTS ON AN EXISTING 2.28 ACRE PARCEL LOCATED AT 350 MERRYDALE RD/3833 REDWOOD HWY (MERRYDALE TOWNHOMES) (APN’S: 179-041-27 AND 179-041-28)

WHEREAS, on September 17, 1990, the San Rafael City Council adopted Ordinance No. 1594, which established a Planned Development (PD) allowing the land use regulations for use of the property as a day care for training up to 120 developmentally disabled adults consistent with conditions of approval in the Use Permit (UP90-22) approved by the Planning Commission on August 14, 1990; and

WHEREAS, the current Planned Development (PD1594) District zoning for this site does not allow residential development and does not contain appropriate land use limitations and development standards, as required by Section 14.07.060 of Title 14 the San Rafael Municipal Code (Zoning Ordinance); and

WHEREAS, on January 18, 2018, Planning staff completed Pre-Application review (PA17-007) and provided technical feedback on compliance with various codes and regulations based on a preliminary design of a proposal to construct nine (9) three-story buildings with a total of 44 residential townhome units and 92 parking spaces and nine (9) below-market rate (BMR) units (with five (5) units available to low-income households and four (4) units available to moderate-income households); and

WHEREAS, on July 17, 2018, the Design Review Board (“DRB” or “Board”) provided Conceptual Design Review comments on the project, which proposed 44 “for sale” townhome units with building encroachments into the required 25-foot creek setback. The Board took public comments and provided recommendations for the project including: 1) providing a broader range of unit types and sizes, 2) providing a community room and outdoor patio complete with furnishings, 3) increasing the creek setback to a minimum of 25 ft; 4) providing crane pads for creek maintenance; 5) increasing the front setback on the Merrydale frontage from 8 feet 1 inch to 15 feet, 2 inches from the Merrydale frontage property line; 6) eliminating the proposed roof decks; 7) eliminating the proposed ADU’s; 8) eliminating the California Pepper tree species; 9) providing more details on the creek promenade area (which will also have amenities for youth to play); 10) adding bio-retention information to the landscape plan, and 11) providing information on the required trash enclosure; and

WHEREAS, on November 8, 2019, Michael Hooper of Campus Properties, on behalf of the property owner, Ridgewood Properties Inc, submitted a formal application for Environmental and Design Review Permit (ED18-100), Master Use Permit (UP18-039) Tentative Subdivision Map (TS18-006), and Subdivision Exception (EX19-012), and these applications and are being processed concurrent with the Rezoning application, as required by the Zoning Ordinance; and

WHEREAS, on November 8, 2019, Michael Hooper of Campus Properties, on behalf of the property owner, Ridgewood Properties, concurrently submitted an application for PD Rezoning (ZC19-002) requesting to establish the required development standards for the proposed redevelopment of the site to allow the construction of 45 residential “for sale” condominium units, parking, landscaping and creekside enhancements; and

WHEREAS, consistent with the requirement of the City of San Rafael Environmental Assessment Procedures Manual and the California Environmental Quality Act (CEQA) Guidelines, an Initial Study was prepared finding that the proposed new 45-unit townhome development would not result in significant environmental effects, in that revisions to the project have been made and mitigation measures are required to mitigate any potential adverse impacts to less-than-significant levels. Mitigation Measures were identified to reduce the level of significance to less than significant in the following topical areas (Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hydrology and Water Quality, Noise, Transportation, and Tribal Resources); and

WHEREAS, consistent with the provisions of CEQA, a Mitigation Monitoring and Reporting Program has been prepared to implement the project mitigation measures and to accompany the Mitigated Negative Declaration; and

WHEREAS, on July 25, 2019, the applicant hosted a neighborhood meeting to have a more informal presentation and discussion with surrounding neighbors; and

WHEREAS, the applicant revised the project in response to the Board's comments, as well as to public comments during the DRB conceptual design review and neighborhood meetings, including 1) providing a broader range of unit types and sizes, 2) providing a community room and outdoor patio complete with furnishings, 3) increasing the creek setback to a minimum of 25 ft. 4) providing crane pads for creek maintenance. 5) increasing the front setback on the Merrydale frontage from 8 feet 1 inch to 15 feet, 2 inches from the Merrydale property line; 6) eliminating the proposed roof decks; 7) eliminating the proposed ADU's; 8) eliminating the California Pepper tree species; 9) providing more details on the creek promenade area (which will also have amenities for youth to play); and 10) adding bio-retention information to the landscape plan. The side yard setback along the south property line was *reduced* from 10 feet to a setback of 7-9 feet (approximately) and some street parking was eliminated in order to re-design and eliminate the proposed building encroachment into the required 25' creek setback; and

WHEREAS, on August 6, 2019, the DRB conducted a duly noticed public meeting and reviewed the formal application and plans submitted for the project. The Board found that the changes had adequately addressed their prior comments during conceptual review and in conclusion, the Board voted to recommend approval of the project design, with some minor changes. The motion was made by Member Saude and second by Member Rege. Motion to recommend approval passed 3-0-2, with Members Paul, Rege and Saude voting "aye" and Members Kent and Summers absent. The recommended modifications included:

- Community/Recreation Room and adjacent Paseo promenade needs to provide a more integrated indoor/outdoor common amenity for the residents.
- Visual impacts of A/C units need to be mitigated better along public areas (Paseo and creek trail) and Merrydale frontage. The applicant is encouraged to explore greater landscape screening and/or relocating and grouping the A/C units to the interior ends of the buildings.
- The project needs to incorporate greater sustainability into the design, including, but not limited to, pre-wiring all garages for EV charging stations and pre-wiring all roofs for PV rooftop solar systems.

WHEREAS, the applicant incorporated all recommended changes in the revised plan submitted to the Planning Commission; and

WHEREAS, the project, including the Notice of Availability of the Initial Study/Mitigated Negative Declaration, along with the planning applications were publicly noticed 30 days in advance of the scheduled December 10, 2019 Planning Commission hearing, through the following means: 1)

publishing a legal ad in the Marin Independent Journal on November 9, 2019 pursuant to CEQA Guidelines Section 15072; 2) subject site was posted with a public notice regarding the Mitigated Negative Declaration and project applications; and 3) notices were mailed to surrounding property owners within 400 feet, pertinent agencies (including responsible and trustee agencies), organizations and special interest groups; and

WHEREAS, on December 10, 2019, the San Rafael Planning Commission (Planning Commission) held a duly noticed a hearing to consider the PD rezoning (ZC19-002), Environmental and Design Review Permit (ED18-100), Tentative Map Subdivision (TS18-006), Use Permit (UP18-039), and Subdivision Exception (EX19-012) applications, accepted and considered all oral and written public testimony and the written report of Planning staff; and

WHEREAS, on December 10, 2019, following a public hearing and deliberation on the project, the Planning Commission voted 6-0-1 (Commissioner Samudzi absent) to adopt Planning Commission Resolution No. 19-12 to recommend approval of the Environmental and Design Review Permit (ED18-100), Tentative Map Subdivision (TS18-006), Use Permit (UP18-039), and Subdivision Exception (EX19-012) applications project to the City Council, subject to an additional condition of approval accepting the applicant's offer to 1) install pre-wiring in all garages for Level 2 electric vehicle chargers and 2) add pre-wiring for solar panels on roofs of all buildings; and

WHEREAS, on December 10, 2019, by adoption of a separate resolution, the Planning Commission recommended adoption of a PD Rezoning (ZC19-002) approval to rescind the current PD zoning and establish a new PD to allow for the multi-family development as presented in the proposed development plans, with appropriate development regulations and land use limitations for the residential use; and

WHEREAS, on February 3, 2020, by adoption of a separate resolution, the City Council adopted a Mitigated Negative Declaration and approved a Mitigation Monitoring and Reporting Program for the project; and

WHEREAS, on February 3, 2020, the San Rafael City Council held a duly noticed public hearing to consider the PD Rezoning (ZC19-002), Environmental and Design Review Permit (ED18-100), Tentative Map Subdivision (TS18-006), Use Permit (UP18-039), and Subdivision Exception (EX19-012) and accepted and considered all oral and written public testimony and the written report of Planning staff; and

WHEREAS, the custodian of documents which constitute the record of proceedings upon which this decision is based is the Community Development Department;

NOW THEREFORE BE IT RESOLVED that the City Council of the City of San Rafael does hereby make the following findings related to the applications for Environmental and Design Review Permit (ED18-100), Tentative Map Subdivision (TS18-006), Use Permit (UP18-039), and Subdivision Exception (EX19-012):

Environmental and Design Review Permit Findings (ED18-100)

In accordance with San Rafael Municipal Code (SRMC) Section 14.25.090. Findings, the following findings are required for approval of an Environmental and Design Review Permit:

1. The Project design is in accord with the General Plan, the objectives of the Zoning Ordinance, and the purposes of the zoning district in which the site is located as noted above. A detailed discussion

of the Project's consistency with the applicable General Plan policies is provided in detail in matrix format in the General Plan Consistency Analysis (Exhibit 5) included in the December 10, 2019 staff report to the Planning Commission.

- a) The proposed project as designed and conditioned would be consistent with Land Use Element Policies LU-2 (*Development Timing*), LU-8 (*Density of Residential Development*), LU-10 (*Planned Development Zoning*), LU-12 (*Building Heights*), LU-14 (*Land Use Compatibility*), LU-23 (*Land Use Map and Categories*) given that the project: 1) would be approved at a time when there is adequate infrastructure to serve the proposed development; 2) the proposed 45-units would not exceed the maximum density allowed in the GC Land Use category (34-72 units); 3) would not exceed the maximum building height of 36 feet allowed for this area of San Rafael; and 4) has been designed to minimize potential visual impacts on the surrounding residential properties by limiting bulk, mass and height.
- b) The proposed project as designed and conditioned would be consistent with Housing Element Policies H-2 (*Designs that Fit Into Neighborhoods*), H-3 (*Public Information and Participation*), H-14 (*Adequate Sites*), H-15 (*Infill Near Transit*), and H-19 (*Inclusionary Housing*), in that: 1) residential development is allowed on the site per the General Commercial General Plan Land Use designation; 2) the project design has been subject to review by the public and has been recommended for approval by the Design Review Board; 3) the project would add 45-units of housing within walking distance of mass transit, including the Civic Center SMART Train station (½ mile from the project site of the SMART Train); and 4) the project would include nine (9) below-market-rate (BMR) units (five (5) affordable at the low-income level and four (4) at moderate-income level). The project is partially consistent with the applicable Neighborhoods Element Policy NH-2 (*New Development in Residential Neighborhoods*), NH-3 (*Housing Mix*), NH-17 (*Competing Concerns*), NH-151 (*New Development*), NH-86 (*Design Considerations for Development in the Vicinity of the Civic Center*), NH-128 (*Sidewalk Improvements*), NH-129 (*Neighborhood Parking*), NH-142 (*Redwood Highway Improvements*), and NH-148 (*Residential Uses at the end of Merrydale Rd.*) in that: 1) the proposed new 45-unit development has been designed to be a transitional use between existing commercial development and residential development on Merrydale Rd. The building design minimizes impacts to surrounding residential properties by providing code compliant front and side setbacks and preserving some existing trees at the perimeter of the project site and proposing 28 new trees on site; 2) 94 parking spaces are provided on the site in compliance with the required parking requirement for 45-units, and 4 new on-street parking spaces would be created along the east side of Merrydale Rd.; 3) Redwood Highway would be extending and provide secondary access through the project site, allowing pedestrian access to the proposed new "creek promenade" on the north side of the site as well as vehicular access to Merrydale Road.
- c) The project as proposed and as conditioned would be consistent with Community Design Element Policies CD-2 (*Neighborhood Identity*), CD-3 (*Neighborhoods*), CD-5 (*Views*), CD-11 (*Multifamily Design Guidelines*), CD-14 (*Recreational Facilities*), CD-15 (*Participation in Project Review*), CD-18 (*Landscaping*), and CD-19 (*Lighting*) in that the project design: 1) preserves, to the greatest extent possible, views of the Civic Center from the adjacent one-story residential neighborhood. The building height is 33.5' (less than the 36' height limit allowed); 2) is generally in keeping with the mass and scale of adjacent commercial and residential development on the east side of Merrydale Road and would introduce a higher quality architectural design than currently present on the site; 3) provides landscaping to screen and enhance the project and site; 4) provides new "creek promenade" with landscaping and recreational amenities along Las Gallinas Creek to the north of the development; 5) creates adequate lighting without spillover onto adjacent properties or natural areas; and 6) has been reviewed by the Design Review Board and found to be consistent with the applicable design policies of the General Plan, the City's Residential Design Guidelines and Civic Center Station Plan.

- d) The project as proposed and as conditioned would be consistent with Circulation Policies C-5 (*Traffic Level of Service Standards*), C-7 (*Circulation Improvements Funding*), C-8 (*Eliminating and Shifting Peak Hour Trips*), C-9 (*Access for Emergency Services*), C-26 (*Bicycle Plan Implementation*) and C-31 (*Residential Area Parking*) in that the project: 1) would not exceed the acceptable level of service standards (LOS), LOS E, for both intersections or arterials; 2) would be required to pay its fair share towards traffic impacts to fund circulation impacts in order to maintain acceptable LOS standards for the General Plan; 3) would maintain adequate access for emergency services as determined by the City's Public Safety Departments; and 4) would create a new Class III Bike Lane along Merrydale Road and install a new sidewalk along the east side of Merrydale, thereby facilitating better pedestrian access along Merrydale Road as well as pedestrian access to the new creek promenade area,
- e) The project as proposed and as conditioned would be consistent with Infrastructure Element Policies I-2 (*Adequacy of City Infrastructure and Services*), and I-10 (*Sewer Facilities*) in that: 1) the appropriate utility agencies have reviewed the project and determined that the property is currently being served. However, 1) Marin Municipal Water District (MMWD) has determined that the property's current annual water entitlement may be insufficient for the new uses and the purchase of additional water entitlement may be required, as well as compliance with all indoor and outdoor requirements of District Code Title 13 for water conservation.; and 2) the Las Gallinas Valley Sanitation District (LGVSD) would continue to provide service to the project site, although the 45 proposed residential townhome units would result in an increase in intensity of development over existing uses. The LGVSD has reviewed the project, provided comments and will require that the development project submit an Application for Allocation of Capacity and pay additional capacity fees prior to submittal of a building permit. The project design incorporates sanitary sewer infrastructure that connects all residences to the current LGVSD sanitary system, including two possible infrastructure improvements, 1) a gravity system and flow diversion with an updated LGVSD pump station, or 2) a lift-station (with control cabinet) located in the southeastern corner of the project site for pumping sanitary sewer to the main LGVSD pump station (which would also be updated). Either design solution would satisfy LGVSD requirements for sanitary sewer service.
- f) The project as proposed and as conditioned would be consistent with the Sustainability Element Policies SU-5 (*Reduce Use of Non-Renewable Resources*), SU-6 (*Resource Efficiency in Site Development*), SU-7 (*New and Existing Trees*), and SU-10 (*Zero Waste*) in that given that: 1) the revised project plans include a provision that all townhome units and stacked flats (to the extent practicable) will be provided with pre-wiring for photovoltaic rooftop solar systems; 2) all garage units will be provided with 220-volt power points suitable for EV charging; 3) the project will comply with the most recently adopted CBC (California Building Code) CalGreen and Title-24 Energy regulations; 4) conditions subject the project to the Marin Municipal Water District's most recently adopted water conservation and gray water regulations; 5) 55 new trees will be planted on site and 13 existing trees will be preserved on site; and 6) the project is proposing a covered and screened trash enclosure, the design and location of which has been reviewed and approved by Marin Sanitary Service (MSS).
- g) The project as proposed and as conditioned would be consistent with the Culture and Arts Element Policy CA-15 (*Protection of Archaeological Resources*) in that: 1) The existing buildings were constructed in 1967 or 1968 as a school facility but does not meet the criteria for a "historic resource" as defined in CEQA Guidelines Section 15064.5. The existing structures and site have been modified over the years and do not appear to have any historical significance; and 2) the site for original construction of existing buildings would have disrupted any archaeological deposits if they were present. Indications of the disturbance would likely still be apparent when examining remnant soils. Based on the results of the cultural resources investigation conducted for the proposed project, no prehistoric or historic-period archaeological resources were identified within the project area. However, mitigation measures have been

included in the IS/MND MMRP (CULT-1 and CULT-2) to protect any resources found during construction activities.

- h) The project as proposed and as conditioned would be consistent with Park and Recreation Element Policy PR-10 (*On-site Recreation Facilities*) in that the project will provide a 500 square foot “community room” for the residents which will include a kitchen area and bathroom. The community room will also have sliding glass doors that open onto an approximately 500 square foot patio area, with planters seating, and a BBQ area.
- i) The project as proposed and as conditioned would be consistent with Safety Element Policies: S-1 (*Location of Future Development*), S-3 (*Use of Hazard Maps in Development Review*), S-4 (*Geotechnical Review*), S-6 (*Seismic Safety of New Buildings*), S-18 (*Storm Drainage Improvements*), S-25 (*Regional Water Quality Control Board (RWQCB) Requirements*), and S-32 (*Safety Review of Development Projects*) in that: 1) the project has been reviewed using the hazard maps and Geotechnical Review Matrix; 2) the geotechnical review and peer review concluded that the development on this site, with conditions, is feasible and appropriate from a geotechnical engineering standpoint; 3) the project would not include any hazardous materials or uses in its operations; 4) the development would be built to conform to current building and seismic safety codes; and 5) the structure would be built in accordance with the Federal Emergency Management Agency (FEMA) regulations for this type of structure and use in a 500-year flood zone; 6) an erosion control plan would be required during construction of the project; 7) the drainage plan would direct all new run-off from the site into vegetative bio-retention areas before being released into the storm drain system; and 8) the project has been reviewed by the Police and Fire Department and found to be in conformance with their fire and crime prevention standards and would not pose a risk to public safety or impact their levels of service.
- j) The project as proposed and as conditioned would be consistent with Noise Element Policies N-1 (*Noise Impacts on New Development*), N-2 (*Exterior Noise Levels for Residential Use*), N-3 (*Planning and Design of New Development*), N-4 (*Noise from New Nonresidential Development*), and N-5 (*Traffic Noise from New Development*) in that the project: 1) Based on information in the Acoustical Report by Illingworth and Rodkin, the IS/MND analysis indicated that Building 2 through Building 7 would exceed the 45 dBA Ldn threshold with windows partially open. With standard construction and forced-air ventilation, allowing occupants the option of keeping windows closed to control noise, Buildings 1, 2, 8, and 9 would achieve the 40 dBA Ldn and 45 dBA Ldn thresholds. The east facades of buildings 3, 4, 5, and 6, facing US-101, would be exposed to 70 dBA Ldn. The east facade of Buildings 2 and 7 would be partially shielded by the buildings to the east and would be exposed to 67 dBA Ldn. The west facade of Buildings 1 and 9 would be exposed to traffic noise from Merrydale Road up to 58 dBA Ldn. These levels are in the “Clearly Unacceptable” range in Exhibit 31 of the General Plan 2020. Therefore, the Acoustical Report recommended incorporation of conditions of approval including providing suitable form or forced-air mechanical ventilation, and sound rated construction for Building 3 through Building 7 to maintain interior noise levels at acceptable levels; and 2) conditions and mitigations have been incorporated to reduce any temporary noise impacts due to construction (Initial Study Mitigation NOISE-1). 3) the Acoustical Report determined that the primary noise sources at the site would continue to be vehicular traffic on US-Hwy 101 and Merrydale Rd. US Hwy-101 is elevated by about 10 feet above the site. Based on traffic volumes provided in the Traffic Impact Assessment Report prepared for the proposed project, traffic noise levels are calculated to increase by 1 dBA along Merrydale Rd. under future conditions (2040) due to increases in traffic volumes on Merrydale Road. An increase in 1 dBA would be barely detectable to typical human hearing and is not considered a significant increase..
- k) The project as proposed and as conditioned would be consistent with Conservation Element Policies CON-6 (*Creek and Drainage Setbacks*), CON-7 (*Public Access to Creeks*), CON-8

(*Enhancement of Creeks and Drainageways*), CON-9 (*Native and/or Sensitive Habitats*), CON-14 (*Special Status Species*), and CON-16 (*Landscape with Native Plant Species*) in that the proposed project: 1) would maintain setbacks from the creek and provide creek enhancements with added landscaping and pedestrian access point; 2) would not impact a wildlife corridor since the site is currently developed and biological assessments have found no such corridors; 3) would not impact any sensitive or threatened/endangered species or habitats; 4) has been conditioned to ensure that disturbance to any potential nesting birds be avoided during construction; and 5) would provide new trees and shrubs throughout the site, as well as bio-retention areas to facilitate proper site drainage.

- 1) The project as proposed and as conditioned would be consistent with Air and Water Quality Element Policies: AW-1 (*State and Federal Standards*), AW-2 (*Land Use Compatibility*), AW-4 (*Particulate Matter Pollution Reduction*), AW-7 (*Local, State and Federal Standards*), and AW-8 (*Reduce Pollution from Urban Runoff*) since the project: 1) would comply with local, state and federal air quality standards; 2) mitigation measures have been incorporated to address temporary air quality impacts during construction; 3) drainage systems have been designed to utilize vegetated swales before discharging drainage into storm drain systems or the creek; and 4) methods consistent with the Storm Water Pollution Prevention Standards of the Regional Water Quality Board have been incorporated into the design and conditions have been included to require compliance with these standards.
2. The project design, as proposed and as conditioned, is consistent with the objectives and criteria of the Zoning Ordinance, and the purposes of Chapter 14.25 (*Environmental and Design Review Permit*) in that:
 - a) The development presents a competent design that has been thoughtfully studied and presented to the Design Review Board, both as a conceptual design and then as a formal application design. The proposed project site plan, building design and landscaping were revised to incorporate recommendations by the Board. The proposed 3-story buildings have been design to minimize bulk and mass, and the height (33.5') is 2.5' lower than the 36' height limit allowed. A Community Room was added to the site and pedestrian walkways throughout the site were enhanced. The buildings comply with all required setbacks (front, side and rear yards) and decks have been designed as recessed decks to preserve privacy to adjacent property windows along the south property line. The project has also be reviewed by the San Rafael Meadows Neighborhood Association, as well as local residents during informal project meetings with the applicant and a formal Neighborhood Meeting (including a 15-day noticed sent to property owners and tenants within 400 feet of the project site). The design of the project has been modified based on comments from both residents and the Board.
 - b) The site plan respects site features and constraints by maintaining a 25' setback from Las Gallinas Creek and at the same time, enhamcing and incorporating the creek into the project site design. The south bank of the creek willl be enhances with vegetation and will be designed as a "creek promenade" area, with passive recreational amenities for children and a pedestrian pathway with lighting and benches. The pathway is designed to also accommodate access as required by maintenace vehicles. Several existing trees (13) will be preserved at the perimter of the site and new trees (55 total) will be planted, including new trees along both the Merrydale Road and Redwood Highway frontage. Additional trees will be planted along the south property line to provide additional privacy to the adjacent residential development.
 - c) The materials and colors that have been included in the proposed architecture are consistent with the context of the surrounding area. Specifically, building materials are flush, textured and veritical metal panels and roofing and building colors would be a combination of green, tan and brown colors. The lower portion of the buildings will include manufactured stone on the façade.

The proposed colors and materials would effectively blend the proposed building with the predominant colors of the surrounding natural setting.

- d) The proposed site plan would utilize the existing drainage facilities and would not alter the drainage patterns of the site. Furthermore, the plan would direct all new run-off to vegetated swales to filter any pollutants from the run-off consistent with storm water pollution prevention standards.
3. The project design with conditions minimizes adverse environmental impacts in that:
 - a) The building and site improvement are sited to provide adequate setbacks from the creek to the north.
 - b) The project would not cause the level of service at nearby intersections to exceed the standards of the General Plan. Furthermore, the project would be required to pay its fair share of traffic mitigation fees to contribute to a planned, area-wide traffic improvements in the North San Rafael area.
 - c) Potential environmental impacts have been addressed through the preparation of an Initial Study and Mitigated Negative Declaration (IS/MND) consistent with the requirements of the California Environmental Quality Act (CEQA). The IS/MND concluded that the proposed project would result in potentially significant impacts in Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hydrology and Water Quality, Noise, Transportation, and Tribal Resources. The project impacts would be mitigated to a less-than-significant level through implementation of recommended mitigation measures or through compliance with existing Municipal Code requirements or City standards. Recommended measures are summarized in the Mitigation Monitoring and Reporting Plan (MMRP) and IS/MND (Exhibit 2).
 4. The project design, as proposed and as conditioned, will not be detrimental to the public health, safety or welfare, nor materially injurious to properties or improvements in the vicinity in that:
 - a) The environmental impacts associated with the development of the project have been assessed and the project impacts can be mitigated to less-than-significant levels with the implementation of specific mitigation measures as discussed in Environmental and Design Review Permit Finding #3 above.
 - b) The project design would blend with the surrounding neighborhood on Merrydale Road, acting as a transitional use in an area which has both commercial, single-family and multi-family development. The project would also preserve the natural environment of the existing Las Gallinas Creek on the north side of the property by planting trees and creating a pedestrian walkway/passive children's recreational play area. Furthermore, the project's siting, scale and mass has been designed to minimize visual impacts on adjacent properties, and the new lighting is within the 1-foot candle (Fc) limit along the property line. The site is subject to a condition of approval requiring a 90-day lighting review to adjust lighting levels and reduce glare as needed to eliminate spillover glare onto adjacent properties.

Tentative Map Findings (TS18-006)

1. The proposed map is consistent with the San Rafael General Plan and any applicable, adopted specific plan or neighborhood plan as noted in Environmental and Design Review Permit Finding #1 above and the General Plan Consistency Table (Exhibit 5) included in the December 10, 2019 staff report to the Planning Commission and as noted in Environmental and Design Review Permit finding #1 above. The purpose of the map is to allow the creation of 45 residential air space

condominium units. The development is proposed as a “phased” development, consisting of a Phase One (“pre-phase”) commencing in Spring of 2020 for on and off-site improvements to complete building Phase Two construction of Buildings 1-4 and all landscaping north of Private street “A” by fall of 2021, and Phase Three construction of Buildings 5-9, tree removal along the south property line and all remaining landscaping by Summer 2022.

2. The design or improvement of the subdivision is consistent with the San Rafael General Plan and any pertinent, adopted specific plan or neighborhood plan in that: 1) the subdivision would create 45-units on the 2.28-acre parcel, which is in keeping with the allowable density (15-32 units/acre or 34-72 units) per the General Commercial Land Use Designation as well as consistent with the Civic Center Station Area Plan, which encourages multi-family housing in this location. The proposed project is consistent with the applicable development standards for HR1 (High Density Residential) required setbacks (used as most similarly zoned district with which to set development standards, based on adjacent multi-family development similarly zoned HR1); and 2) the City has balanced the regional and local housing needs against the public service needs of its residents, as well as available fiscal and environmental resources, and concludes that adequate public services are available to the site based on existing service providers that have reviewed the project and indicated that subject to conditions of approval, the system has the capacity to provide service.
3. The property subject to subdivision is physically suitable for the density of development that is proposed in that: a) the proposed subdivision would create 45 air condominium units on site, which is below the maximum density allowable per General Plan 2020 (72 units); b) the project would also provide two-car garages for all units, which complies with the required parking in the zoning ordinance and all qualifying concessions allowed for affordable housing projects; c) ample, code compliant private and common usable open space is provided for the project; and d) the proposed subdivision would create air condominiums, with no impact on the actual orientation of the physical lots on the ground level in terms of property lines.
4. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat in that: a) the site is currently graded and developed with no known environmental resources on the site; b) the site is an in-fill site that has been designated in the General Plan as General Commercial Land Use. Residential development is allowed at a density of 15-32 units per acres; and c) An Initial Study/Mitigated Negative Declaration has been prepared and appropriate mitigation measures identified in the Mitigation Monitoring and Reporting Program (BIO-1) to reduce any impacts identified to a less-than-significant.
5. The design of the subdivision or the type of the proposed improvements is not likely to cause serious health problems in that: a) it is a residential project in keeping with the existing residential zoning in the project vicinity; b) the proposed project would be built in accordance with the latest Building and Fire codes to ensure the health and safety of future residents and adjacent neighbors; c) the City’s Public Works Department and Las Gallinas Valley Sanitation District have reviewed the drainage and proposed sewer connections for the project site and deemed the project design to be in keeping with City standards, subject to conditions of approval; and d) as conditioned, the proposed subdivision would not result in impacts to water quality or impacts to environmental resources in that an erosion control plan is required as a condition of project approval, which must be implemented before any grading or construction commences on the site.
6. The design of the subdivision or the type of proposed improvements will not conflict with existing identified easements on site (including a 25’ Marin County Flood Control easement and a 15’ wide maintenance easement immediately adjacent to the 25’ flood control easement). A north/south roadway easement (along Redwood Highway on the east side of the site is to remain. In addition,

the project proposes to provide a new Public Access Easement/Public Utility Easement (PAE/PUE) which will be provided at the time of recordation of the Final Map. This PAE/PUE comprises Private Street B providing pedestrian, vehicular, fire truck and trash truck access and required parking.

Master Use Permit Findings (UP18-039)

1. The proposed 45-unit residential townhome development at 350 Merrydale/3833 Redwood Hwy, landscaping, Community Room and the associated 94 parking spaces on site will be in accord with the San Rafael Municipal Code (the Zoning Ordinance) and the purpose of the rezoned Planned Development District in which the site is located, given that:
 - a) As documented in the General Plan 2020 Consistency Table (Exhibit 5 of the 12/10/19 Staff Report to the Planning Commission) and as noted in Environmental and Design Review Permit Finding #1 above, the proposed project would implement and promote the goals as policies of the San Rafael General Plan 2020.
 - b) As documented in the Zoning Ordinance Consistency Table (Exhibit 6 of the 12/10/19 Staff Report to the Planning Commission), the proposed project would be consistent with the objectives of the Zoning Ordinance; and 3) the proposed project would be consistent and compatible with the purposes of the PD District and the High Density Residential (HR1) Zoning District development standards (comparable to the adjacent properties to the south) given that:
 - i. the project site will be rezoned to accommodate the proposed residential development, with setbacks, height and parking provided in keeping with the high-density residential development on adjacent properties on the south eastern side of Merrydale Rd;
 - ii. The project would provide a wide variety of housing types (market rate and affordable “for-sale” condominium units) and sizes (ranging from 741 to 836 sf for the 1-bedroom units, 1,285 to 1,461 sf for the 2-bedroom units, 1,461 to 2,119 sf for the 3-bedroom units and 2,119 sf for the 4-bedroom units;
 - iii. The project would comply with the creek setback standard pursuant to SRMC Section 14.16.080 by providing a 25’ creek setback along the south side of the existing Las Gallinas Creek;
 - iv. The proposed project would create a new “creek promenade”, with improvements to the area adjacent to the creek that would accommodate a “dual use” for both required creek maintenance activities by the City and recreational uses for adults with walkways and benches and a passive play area for children; and
 - v. the project has been reviewed by appropriate City departments and non-city agencies and determined that adequate infrastructure exists to meet all new service demands.
2. The proposed new residential buildings would not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the City, given that the project has been reviewed by appropriate City departments, non-City agencies, and the appropriate surrounding neighborhood groups, interested parties, the Design Review Board at two separate meetings (Conceptual Design Review on July 17, 2018 and Design Review on the formal application on August 6, 2019). In addition, pursuant to CEQA regulations, the project required preparation of an Initial Study to review potential project impacts on the environment. Potential impacts were identified to Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality, Noise, Transportation, and Tribal Cultural Resources that would require

mitigation to reduce the potential negative impacts from the proposed project to a less-than-significant level. The required mitigation measures for each are identified in the IS/MND Mitigation Monitoring and Reporting Program (Exhibit 2, Pages A-1 through A-18).

3. The proposed use of the site would comply with each of the applicable provisions of the PD District, as amended, and other applicable provisions of the Zoning Ordinance in that the City Council has adopted an ordinance to rezone the current PD (1594) Zoning.

Subdivision Exception Findings (EX19-012)

1. As documented in the Subdivision Ordinance Compliance Table (Exhibit 7) included in the December 10, 2019 staff report to the Planning Commission, there are special circumstances and/or conditions of the property proposed for subdivision that warrant the approval of the exception to requirements per San Rafael Municipal Code Section 15.06.050 (c) which requires a minimum right-of-way of 60 feet for local streets, and a minimum pavement width of 40'. The project site is located at the terminus of Redwood Hwy and near the end of Merrydale Rd. The site comprises 2.28 acres but is encumbered by the Marin County Flood Control District (Creek) easement and the City of San Rafael maintenance easement totaling 0.32 acres, reducing the net area of the Project Site available for development to 1.96 acres. In addition, the east property line is bounded by the Caltrans right-of-way (ROW) for US Hwy 101, which limits access. The project is requesting an exception to allow a private street with an easement of 30' and a minimum pavement width of 20' and providing at least one sidewalk. In order to provide the required back-up distance for the garages and provide sidewalks to allow pedestrian walkways, the exception to the roadway width was proposed. In addition, the site design includes the creation of a new "through" street, providing access from Redwood Highway (Private Street "B") via Private Street "A" to Merrydale Rd.
2. That the exception is necessary for the preservation and enjoyment of a substantial property right of the subdivider or property owner. The property is designed as for-sale condominiums. In order to provide quality of design that fits into the character of the neighborhood, with ample access to a garage, common open space and private patios, the proposed exception would preserve the owner's ability to align the proposed subdivision more closely with the target density.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated. The reduced ROW and pavement width would have minimal impacts as the site is near the terminus of Merrydale Road and the City streets of Merrydale Road and Redwood Hwy are the primary routes for adjacent properties and the proposed privately maintained roads primarily serve the residential development itself. Future through traffic is hindered by the nearby SMART train ROW and Caltrans ROW. The 30' wide roadway provides the full width necessary for emergency vehicle access. Therefore, there is no detriment to public welfare and does not cause injury to adjacent properties.

BE IT FURTHER RESOLVED, that the City Council hereby conditionally approves the applications for the Environmental and Design Review Permit (ED18-100), Master Use Permit (UP18-039) Tentative Subdivision Map (TS18-006), and Subdivision Exception (EX19-012), subject to the conditions of approval listed below:

**Environmental and Design Review Permit Conditions of Approval
(ED18-100)**

General Project Conditions

Community Development Department - Planning Division

- 1) The proposed 45-unit townhome development shall be installed and designed in substantial conformance with the proposed site plan and elevations and landscape plan as presented for approval on plans prepared by WHA Architects, date stamped **Approved, December 10, 2019**, and shall be the same as required for issuance of a building permit, subject to the listed conditions of approval. Minor modifications or revisions to the project shall be subject to review and approval of the Community Development Department, Planning Division. Modifications deemed not minor by the Community Development Director shall require review and approval by the original decision-making body.
- 2) Approved colors for the main body, trim and accent colors are as shown on the approved Color and Material Board: a) Sherman Williams Paint for Body Colors- High Reflective White (SW 7757), Gossamer Veil (SW 9165), Tin Lizzie (SW9163), Jute Brown (SW 6096); b) Trim Color -Thunder Gray (SW 7645); c) Accent Colors-Deep Sea Dive (SW 7618), Rookwood Terra Cotta (SW2803), and Raisin (SW7630); and d) Manufactured Stone (Timberwolf). Any future modification to colors shall be subject to review and approval by the Planning Division. Modifications deemed not minor by the Community Development Director shall require review and approval by the Design Review Board.
- 3) Applicant shall remit payment of the State Fish and Game fees in order for staff to file a Notice of Determination with the County Clerk within 5 days of project approval. The current fee amounts are \$2,354.74 (current fee as of 2018) payable to the State Fish and Game and \$50.00 payable to the Marin County Clerk and are subject to increase on January 1st of each year.
- 4) Applicant and property owner shall be responsible for implementing all mitigation measures presented in the Project's Mitigated Negative Declaration, on file with the Community Development Department, including any mitigation measures that may not have been incorporated into the Project conditions of approval. A deposit for Mitigation Monitoring shall be paid as required by ED18-100 project Conditions of Approval #31, herein.
- 5) The project shall comply with all mitigation measures as identified in the IS/MND Mitigation Measure Monitoring and Program, dated November 8, 2019. All required mitigation measures are identified in the Mitigation Monitoring and Reporting Program (MMRP) as recommend for adopted by separate Resolution and included as conditions of approval. The IS/MND determined that the proposed project would result in potentially significant impacts in Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality, Noise, Transportation and Tribal Resources. The IS/MND identifies Mitigation Measures that, when implemented, would reduce the impacts identified to a less-than-significant level. These mitigation measures are also identified as conditions of approval in the relevant sections herein and detailed in the IS/MND Mitigation Monitoring and Reporting Program (Exhibit 2- Attachment A).
- 6) Property owner and applicant agree to defend, indemnify, release and hold harmless the City, its agents, officers, attorneys, employees, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities ("indemnities"), the purpose of which is to attack, set aside, void or annul the approval of this application or the certification of any environmental document which accompanies it. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees or expert witness fees that may be asserted or

incurred by any person or entity, including the applicant, third parties and the indemnities, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the indemnities.

- 7) In the event that any claim, action or proceeding as described above is brought, the City shall promptly notify the Property owner and applicant of any such claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action, or proceeding. In the event applicant/property owner is required to defend the City in connection with any said claim, action or proceeding, the City shall retain the right to: 1) approve the counsel to so defend the City; 2) approve all significant decisions concerning the manner in which the defense is conducted; and 3) approve any and all settlements, which approval shall not be unreasonably withheld. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding, provided that if the City chooses to have counsel of its own to defend any claim, action or proceeding where Property owner and applicant already has retained counsel to defend the City in such matters, the fees and the expenses of the counsel selected by the City shall be paid by the City.
- 8) As a condition of this application, applicant/property owner agree to be responsible for the payment of all City Attorney expenses and costs, both for City staff attorneys and outside attorney consultants retained by the City, associated with the reviewing, process and implementing of the land use approval and related conditions of such approval. City Attorney expenses shall be based on the rates established from time to time by the City Finance Director to cover staff attorney salaries, benefits, and overhead, plus the actual fees and expenses of any attorney consultants retained by the City. Applicant shall reimburse City for City Attorney expenses and costs within 30 days following billing of same by the City.
- 9) All site improvements, including but not limited to, site lighting, fencing, landscape islands and paving striping shall be maintained in good, undamaged condition at all times. Any damaged improvements shall be replaced in a timely manner.
- 10) The Project site shall be kept free of litter and garbage. Any trash, junk or damaged materials that are accumulated on the site shall be removed and disposed of in a timely manner.
- 11) All new landscaping shall be irrigated with an automatic drip system and maintained in a healthy and thriving condition, free of weeds and debris, at all times. Any dying or dead landscaping shall be replaced in a timely fashion.
- 12) Final landscape and irrigation plans for the Project shall comply with the provisions of Marin Municipal Water District's (MMWD) most recent water conservation ordinance. Construction plans submitted for issuance of building/grading permit shall be pre-approved by MMWD and stamped as approved by MMWD or include a letter from MMWD approving the final landscape and irrigation plans. Modifications to the final landscape and irrigation plans, as required by MMWD, shall be subject to review and approval of the Community Development Department, Planning Division.
- 13) All public streets and sidewalks and on-site streets which are privately owned that are impacted by the grading and construction operation for the Project shall be kept clean and free of debris at all times. The general contractor shall sweep the nearest street and sidewalk adjacent to the site on a daily basis unless conditions require greater frequency of sweeping.
- 14) This Environmental and Design Review Permit shall run with the land and shall remain valid regardless of any change of ownership of the Project site, subject to these conditions, provided that a building/grading permit is issued, and construction commenced, or a time extension request is submitted to the City's Community Development Department, Planning Division, **within three (3) years** of the City Council approval, or on December 10, 2022. Failure to obtain a building permit

and grading permit and construction or grading activities commenced, or failure to obtain a time extension within the three-year period will result in the expiration of this Environmental and Design Review Permit.

- 15) Phasing of the project is allowed, subject to the terms and conditions of approval of the Master Use Permit (UP18-039) below.
- 16) This Environmental and Design Review Permit (ED18-100) approving the Project shall run concurrently with the approved Master Use Permit (UP18-039). If either entitlement expires, this Environmental and Design Review Permit approving the Project, as depicted on Project plans, shall also expire and become invalid.

Prior to the Issuance of a Demo/Building/Grading Permit

Community Development Department - Planning Division

- 17) A copy of the Conditions of Approval for ED18-100 shall be included as a plan sheet with the building permit plan submittal.
- 18) As offered by the applicant, the project shall: 1) install pre-wiring for “Level 2” electric vehicle chargers in each garage; and 2) install pre-wiring for solar panels on all buildings/units. Compliance with this condition shall be demonstrated on the building permit plans and installed prior to occupancy.
- 19) The project proponent shall demonstrate and notate on the building permit plans that Air Quality measures III (a), III (b) and III(c) (**AQ-1, AQ1a and AQ-2**) to eliminate dust control and exhaust during construction, set standards for diesel equipment over 25 horsepower to meet U.S. particle emission standards, and requires that the project include high-efficiency particulate filtration systems in residential ventilation systems will be completed during construction.
- 20) (**GEO-1**): Prior to a grading or building permit submittal, the project sponsor shall prepare a design-level geotechnical investigation prepared by a qualified and licensed geotechnical engineer and submit the report to the City Engineer. Minimum mitigation includes design of new structures in accordance with the provisions of the current California Building Code or subsequent codes in effect when final design occurs. Recommended seismic design coefficients and spectral accelerations shall be consistent with the findings presented in Section 4 of the May 8, 2018 ENGEO report.
- 21) (**GEO-2**): Prior to a grading or building permit submittal, the project sponsor shall prepare a design-level geotechnical investigation prepared by a qualified and licensed geotechnical engineer and submit the report to the City Engineer for review and approval. In order to reduce the effects of the potentially expansive soils and/or liquefaction settlement, foundations should be designed to withstand minimum differential movements. Foundation design recommendations are presented in Section 4 of the May 8, 2018 ENGEO report.
- 22) (**GEO-3**): Prior to a grading or building permit submittal, the project sponsor shall prepare a site drainage system prepared by a qualified and licensed civil engineer and submit the report to the City Engineer. The site drainage system will demonstrate the ability to collect surface water and discharge into an established storm drainage system. The project Civil Engineer of Architect is responsible for designing the site drainage system and, an erosion control plan shall be developed prior to construction per the current guidelines of the City of San Rafael Public Works Department (DPW) Grading and Construction Erosion and Sediment Control Plan Permit Application Package and the Regional Water Quality Control Board standards.

- 23) **(GEO-4):** Soils shall be moisture conditioned to above the optimum moisture content during site grading and maintained at this moisture content until imported aggregate base and/or surface flatwork is completed.
- 24) **(TRANS-1):** demonstrate on building permit or improvement plans the design of the pedestrian sidewalk, subject to the availability of right-of-way and the feasibility of the drainage design, on the west side of Redwood Road directly adjacent to the project driveway connecting to the existing sidewalk.
- 25) **(HYDRO-1):** Prior to issuing a grading or building permit, the project applicant shall prepare a Stormwater Pollution Prevention Plan (SWPPP) and/or Erosion and Sediment Control Plan (ESCP) in accordance with the requirements of the statewide Construction General Permit and the City of San Rafael Department of Public Works. The SWPPP shall be prepared by a Qualified SWPPP Developer (QSD). The SWPPP shall include the minimum Best Management Practices (BMPs) required for the identified risk level. The SWPPP shall be designed to address the following objectives:
- a) All pollutants and their sources, including sources of sediment associated with construction, construction site erosion, and all other activities associated with construction activity are controlled;
 - b) Where not otherwise required to be under a Regional Water Quality Control Board permit, all non-stormwater discharges are identified and either eliminated, controlled, or treated;
 - c) Site BMPs are effective and result in the reduction or elimination of pollutants in stormwater discharges and authorized non-stormwater discharges from construction activity. The erosion and sediment control plan shall include the rationale used for selecting BMPs including supporting soil loss calculations, as necessary;
 - d) Stabilization BMPs installed to reduce or eliminate pollutants after construction are completed.
 - e) BMP implementation shall be consistent with the BMP requirements in the most recent version of the California Stormwater Quality Association Stormwater Best Management Handbook-Construction or the Caltrans Stormwater Quality Handbook Construction Site BMPs Manual.
- 26) The applicant shall provide information on the building permit plans to show compliance with noise Mitigation Measures recommended on Page 74 of the Illingworth and Rodkin Noise Assessment regarding required forced-air ventilation and STC rated windows on all buildings. Minimum STC Ratings required to reduce noise levels are listed in Table 5 on Page 22 of the Noise Report.
- 27) **(BIO-1): Pre-construction nesting bird and bat survey.** The nesting season is defined here as being from February 1 to August 31 and therefore work should commence between September 1 and January 31.
- i) If this is not possible, and project activities are initiated during the nesting season, then a nesting bird survey shall be conducted by a qualified wildlife biologist no more than 14 days prior to the start of project activities.
 - ii) If nests are identified, a no-disturbance buffer should be implemented to avoid impacts to nesting birds and should remain in place until all young are fledged or the nest otherwise becomes inactive.
 - iii) Buffers typically range from 25 feet to 500 feet depending on the species.
 - iv) If work is to be initiated within the bat breeding/ winter roosting season, an assessment of existing buildings should be performed prior to construction activities to determine if a roost is present.

- v) If a roost is observed, construction activities should be postponed until a qualified biologist determines the bats are excluded from the roost location.
- 28) **(HAZ-1):** Prior to submittal for a demolition permit, the project sponsor shall use a qualified and licensed professional to prepare a hazardous building materials survey for all structures proposed for demolition or renovation as part of the project. All lead-based paint and asbestos-containing materials (ACM) shall be abated by a certified contractor in accordance with local, state, and federal requirements. All hazardous materials shall be removed from buildings prior to demolition in accordance with California Division of Occupational Safety and Health (DOSH) and California Department of Toxic Substances Control (DTSC) regulations. A completion of abatement activities report shall be prepared by a qualified professional and submitted to the City prior to permit approval.
- 29) **(HAZ-2):** Prior to submittal for a demolition permit, the project sponsor shall use a qualified and licensed professional to prepare a Soil Management Plan to develop protocols and procedures for handling potentially impacted soils or underground structure/equipment that may be encountered during grading operations and other construction activities as part of the project. If impacted soils or underground structure/equipment are encountered during construction activities, all construction shall stop, and a qualified and licensed professional shall be contacted to conduct a site visit to make observations and prepare recommendations for proper handling of soils and/or structures/equipment.
- 30) Bicycle parking shall be provided in compliance with San Rafael Municipal Code Section 14.18.090. This requires bicycle spaces provided on site at a minimum of 5% of total vehicle parking, including a minimum of one two bike capacity rack for short term bicycle parking. Final plans shall include a design detail for proposed bicycle parking spaces, proposed number and location subject to final review and approval by the Community Development Department and Traffic Engineer.
- 31) The proposed project will be required to provide bicycle improvements along Merrydale Rd. in keeping with the 2018 adopted update of the San Rafael Bicycle/Pedestrian Master Plan, which identifies Merrydale Rd. for a Class III Bike Route. The applicant will be required to install the appropriate signage and striping along Merrydale Road (fronting the project site) to signify that the street is a Class III Bike Lane. Specifics of the bike lane striping are subject to final review and approval by the Community Development Department and Traffic Engineer.
- 32) Property Owner/applicant shall be responsible for all costs associated with mitigation monitoring and shall remit an initial deposit in the amount of \$5,000.00 for mitigation monitoring and condition compliance. Staff shall bill time against this deposit amount during Project review and implementation of the Project and monitoring of Project conditions, to assure compliance with conditions and mitigation measures has been achieved.
- 33) All mechanical equipment (i.e., air conditioning units, meters and transformers) and appurtenances not entirely enclosed within the structure (on side of building or roof) shall be screened from public view. The method used to accomplish the screening shall be indicated on the building plans and approved by the Planning Division.
- 34) Any outstanding Planning Division application processing fees shall be paid.
- 35) A construction logistics plan shall be submitted demonstrating how construction conditions shall be met. The plan must be approved by the Public Works Department and Community Development Director and shall include the conditions of approval and mitigation measures that are applicable to the construction of the Project.

- 36) The project shall be subject to the affordable housing requirements prescribed in Section 14.16.030 of the San Rafael Zoning Ordinance and is therefore required to provide nine (9) of the 45 for-sale units as affordable. Prior to the issuance of a building permit or recordation of the final map, whichever occurs first, a Below Market Rate (BMR) agreement for the nine (9) affordable unit shall be approved by the City Council and recorded on the property. Consistent with the affordable housing requirements, five (5) of the units shall be affordable to low-income household and four (4) of the units shall be affordable at the moderate-income level. The location of the BMR units shall be identified on the project plans and the final location shall be subject to review and approval of the City as part of the City's consideration of the BMR agreement. Please contact the Marin Housing Authority to commence the agreement process.
- 37) Protective barrier fencing shall be installed during construction to protect existing trees that are to remain on site, as per the approved landscape plan. Plans showing the fencing, signage and barrier details shall be included on Project plans. The fencing shall be a minimum four-foot orange mesh protected by hay bales and signage designed to avoid intrusion by construction workers and equipment.
- 38) The project shall be subject to the affordable housing requirements prescribed in Section 14.16.030 of the San Rafael Zoning Ordinance and is therefore required to provide nine (9) of the 45 for-sale units as affordable. Prior to the issuance of a building permit or recordation of the final map, whichever occurs first, a Below Market Rate (BMR) agreement for the nine (9) affordable unit shall be approved by the City Council and recorded on the property. Consistent with the affordable housing requirements, five (5) of the units shall be affordable to low-income household and four (4) of the units shall be affordable at the moderate-income level. The location of the BMR units shall be identified on the project plans and the final location shall be subject to review and approval of the City as part of the City's consideration of the BMR agreement. Please contact the Marin Housing Authority to commence the agreement process. Should the project not record a final map, the BMR agreement will be modified to a rental agreement and comply with the affordable housing requirements for rental, which would be five (5) units affordable at very-low income level and (4) at low-income level.

Public Works Department - Land Development Division

General

- 39) The proposed private roads do not meet the requirements for Right-of-Way/Easement width or paving width per Municipal Code (MC) section 15.06.050. An exception request pursuant to Municipal Code 15.01.120 has been received and we have no objection to the proposed widths based on the necessary findings.
- 40) It is our understanding that the applicant has provided the minimum garbage facilities required. However, the location and potential for higher demand may necessitate additional storage for a condominium project of this size. We recommend the applicant provide a method to address this in the future if the project is approved as currently proposed.
- 41) Redwood Hwy and Merrydale Rd do not currently have a cul-de-sac or other vehicular turn around for the dead ends, this project proposes a public access easement over the privately maintained roadways to connect the two which will allow for through circulation. With through public access provided, turnarounds are not required at the end of the publicly maintained roadways.
- 42) The site is located in or near areas that may be susceptible to localized flooding, or the drainage of the site may be influenced by larger flooding events. We recommend that the applicant consider these concerns, as well as potential impacts due to sea level rise.

- 43) Third party peer review of geotechnical and engineering reports and inspection throughout construction shall be required, paid for by the project sponsor and contracted by the City. Provide a proposed project schedule for the duration of work, so that an estimate may be prepared for the required deposit amount.
- 44) Provide will serve letters from the various utilities for the proposed subdivision.
- 45) It is our understanding that there the sanitary sewer system is currently proposed as a gravity flow. However, LGSVD may require mitigation to alleviate flow in the downstream sewer, or that a pump station may be necessary. We recommend that as a condition of approval the applicant provide the will serve letter showing that all requirements from LGSVD shall be met prior to issuance of a permit.

Access

- 46) Provide the lighting analysis, include the frontage for Merrydale Rd and Redwood Hwy.

Grading

- 47) Show the estimate of proposed grading on the plan. This project is located along an open creek. Therefore, all mass grading shall be limited to April 15 through October 15, unless otherwise approved in writing by the Department of Public Works.
- 48) A grading permit shall be obtained for all grading and site improvement work. Trucking trips during peak hours may be limited.
- 49) A preliminary geotechnical report has been provided. This does not thoroughly analyze the geotechnical concerns but references that design-level explorations should be conducted prior to site development once more detailed plans have been prepared. The project is in application for design. Therefore, the subsequent geotechnical report shall be a condition of approval. However, the findings of that report may affect the design of the project, which may require re-review of the project.
- 50) All plans, reports, monitoring, inspection and testing for the proposed project will be reviewed by an independent Geotechnical Engineer and/or Engineering Geologist retained by the City, at the expense of the project sponsor. This third-party consultant will review all plans, reports, monitoring, inspection and testing data prior to appropriate approvals and/or certifications. A letter report summarizing findings and recommendations shall be submitted by the geotechnical engineer to the City Engineer for review and approval, as well as incorporation into grading plans. Final grading and foundation techniques shall be developed by a certified geotechnical engineer or engineering geologist and reviewed and approved by the City.
- 51) A construction management plan shall be provided for review and approval by the City.
- a) All materials and equipment shall be staged on-site.
 - b) The construction management plan shall include the traffic control plan to address on-site and off-site construction traffic.
 - c) A screened security fence approved by the City shall be placed and maintained around the perimeter of the project and removed immediately following construction work
 - d) Truck routes shall be reviewed and approved by the City. Hauling shall be limited to 1 truck in and 1 truck out per 15 minutes during the AM and PM peak, which may be revised at the time of grading permit issuance.
- 52) This project includes over one (1) acre of disturbance. A SWPPP shall be required.

53) Phasing of the project shall be configured to develop the area adjacent to the creek first along with the infrastructure. This area is required for access, maintenance and drainage. This would allow for early establishment of vegetation in this area to reduce potential impacts to the creek. Due to the size of the project and configuration, the infrastructure required on and off site shall be developed as part of phase one. Infrastructure items that are commonly delayed to later phases shall be reviewed by the Department of Public Works, such as final lift of asphalt.

Drainage

54) This site includes work in or immediately adjacent to a creek. The applicant shall comply with requirements of the various creek permitting agencies and obtain all necessary permits.

Pet waste bags, signage and trash receptacles shall be provided in convenient locations to reduce the likelihood of litter near the creek path.

55) The final drainage plan shall be subject to review and approval by the City Engineer. The final drainage plan shall address the following:

- a) The plans shall show the existing drainage facilities
- b) Runoff shall not be increased, leaving the project boundary
- c) Filtration shall be required for particles equal to or larger than 5mm, so they do not enter into the City's storm drainage system
- d) Placards (medallions) shall be installed on all new drainage inlets to prohibit dumping of pollutants. These are available from the City or MCSTOPPP
- e) A stormwater facilities maintenance agreement shall be required
- f) How the project's drainage system shall be maintained, whether separate for each site or together along with the other development improvements.
- g) The drainage plan shall be developed in consideration with the findings of the geotechnical report.

56) The site drainage system is located at elevations that may be subject to tidally influenced surcharge events. The drainage system shall include backflow prevention.

57) Frontage improvements shall include where necessary, street lighting, conduit for City facilities, accessible curb ramp pairs, drainage facilities, street trees, sidewalk, curb and gutter. This shall be reviewed at the time of permit issuance.

58) Due to the level of improvements we recommend that as a condition of approval the full width of Merrydale Rd be resurfaced with this project, additionally we suggest that this be extended to the intersection with Las Gallinas, as this is one of the only two sites that currently take access from this end of Merrydale Rd. The extents of resurfacing shall be reviewed based on existing conditions at the time of permit issuance.

59) An encroachment permit is required for any work within the Right-of-Way, from the Department of Public Works located at 111 Morphew Street. Restriping of public streets shall be of thermoplastic, as approved by the Department of Public Works.

Traffic

60) The Traffic Impact Study (TIS) has been updated, dated October 3, 2019 and previous comments have been addressed.

61) The proposed project results in additional trips generated at the site. Based on the draft traffic impact study and the additional proposed unit, this results in an estimated **17 AM and 19 PM** peak hour trips. Using the current traffic mitigation fee rate this results in an estimated fee of (36*\$4,246) \$152,856 which shall be calculated and due at the time of building permit issuance.

62) A construction vehicle impact fee shall be required at the time of building permit issuance; which is calculated at 1% of the valuation, with the first \$10,000 of valuation exempt.

Community Development Department – Building Division

63) The design and construction of all site alterations shall comply with the 2016 California Building Code (CBC), 2016 California Plumbing Code (CPC), 2016 California Electrical Code (CEC), 2016 California Mechanical Code CCMC), 2016 California Fire Code (CFC), 2016 California Energy Code, 2016 California Green Building Standards Code and City of San Rafael Ordinances and Amendments.

64) A building permit is required for the proposed work. Applications shall be accompanied by four (4) complete sets of construction drawings to include:

- a) Architectural plans
- b) Structural plans
- c) Electrical plans
- d) Plumbing plans
- e) Mechanical plans
- f) Site/civil plans (clearly identifying grade plane and height of the building)
- g) Structural Calculations
- h) Truss Calculations
- i) Soils reports
- j) Green Building documentation
- k) Title-24 energy documentation

65) Building height and story must comply with CBC Section 504. On the plan justify the proposed building area and height.

66) Building areas are limited by CBC Table 506.2. On plan justify the proposed building area.

67) The maximum area of unprotected and protected openings permitted in the exterior wall in any story of a building shall not exceed the percentages specified in CBC Table 705.8 "Maximum Area of Exterior Wall Openings Based on Fire Separation Distance and Degree of Opening Protection." To calculate the maximum area of exterior wall openings you must provide the building setback distance from the property lines and then justify the percentage of proposed wall openings and include whether the opening is unprotected or protected.

68) Townhouses more than three stories above grade in height must comply with the CBC. CBC Table 705.8 allows:

- a) 15% exterior wall openings (in any story) in sprinklered buildings where the openings are 3' to less than 5' from the property line or buildings on the same property.
- b) 25% exterior wall openings (in any story) in sprinklered buildings where the openings are 5' to less than 10' from the property line or buildings on the same property.
- c) 45% exterior wall openings (in any story) in sprinklered buildings where the openings are 10' to less than 15' from the property line or buildings on the same property.

69) Each building must have address identification placed in a position that is plainly legible and visible from the street or road fronting the property. Numbers painted on the curb do not satisfy this requirement. In new construction and substantial remodels, the address must be internally or externally illuminated and remain illuminated at all hours of darkness. Numbers must be a minimum 4 inches in height with ½ inch stroke for residential occupancies and a minimum 6 inches in height with

½ inch stroke for commercial applications. The address must be contrasting in color to their background SMC 12.12.20.

- 70) Bollards must be placed in the garage to protect mechanical equipment, water heater, and washer dryer from vehicular damage when located in the path of a vehicle.
- 71) Any demolition of existing structures will require a permit. Submittal shall include three (3) copies of the site plan, asbestos certification and PG&E disconnect notices. Also, application must be made to the Bay Area Air Quality Management District prior to obtaining the permit and beginning work.
- 72) School fees will be required for the project. Calculations are done by the San Rafael City Schools, and those fees are paid directly to them prior to issuance of the building permit.
- 73) Based on the distance to the property line (and/or adjacent buildings on the same parcel), the building elements shall have a fire resistive rating not less than that specified in CBC Table 601 and exterior walls shall have a fire resistive rating not less than that specified in CBC Table 602.
- 74) Walls separating purposed tenant space from existing neighboring tenant spaces must be a minimum of 1-hour construction.
- 75) Multifamily dwelling and apartment accessible parking spaces shall be provided at a minimum rate of 2 percent of the covered multifamily dwelling units. At least one space of each type of parking facility shall be made accessible even if the total number exceeds 2 percent.
- 76) When parking is provided for multifamily dwellings and is not assigned to a resident or a group of residents, at least 5 percent of the parking spaces shall be accessible and provide access to grade-level entrances of multifamily dwellings and facilities (e.g. swimming pools, club houses, recreation areas and laundry rooms) that serve the dwellings. Accessible parking spaces shall be located on the shortest accessible route to an accessible building, or dwelling unit entrance.
- 77) Public accommodation disabled parking spaces must be provided according the following table and must be uniformly distributed throughout the site.

Total Number of Parking Spaces Provided	Minimum Required Number of H/C Spaces
1 to 25	1
26 o 50	2
51 o 75	3
76 o 100	4
101 150	5
151 200	6
201 300	7
301 400	8
401 500	9
501 1,000	Two percent of total
1,001 and over	Twenty, plus one for each 100 or fraction thereof over 1,001

78) At least one disabled parking space must be van accessible; 9 feet wide parking space and 8 feet wide off-load area. Additionally, one in every eight required handicap spaces must be van accessible.

79) This project is subject to the City of San Rafael Green Building Ordinance. A sliding scale is applied based on the average unit square footage. New multi-family dwellings must comply with the "Green Building Rating System" by showing a minimum compliance threshold between 65 and 75 points. Additionally, the energy budget must also be below Title 24 Energy Efficiency Standards a minimum 15%.

Fire Department – Fire Prevention Bureau

80) Prior to issuance of building permit, the following requirements shall be added to the building permit plans as Sheet SP-6:

- a) Fire Lane signage shall be installed at both entrances that meet City of San Rafael Parking Enforcement standards.
- b) KNOX box installation at Community Rec Room exterior wall.
- c) Fire Sprinkler system conforming to NFPA standards installed throughout.
- d) all hydrants to be Clow model 960 appliances.

81) Plan Sheet SP-6 (Fire Engine Truck Access Plan) shall be part of the building permit submittal packet and reviewed by the Fire Department as part of the building permit review.

Las Gallinas Valley Sanitation District

82) Las Gallinas Valley Sanitation District has determined that the proposed project is within the Sphere of Influence and District facilities boundary. The proposed project must apply for and receive an allocation of sewer capacity from this District before it can receive sewer services. The proposed project must make satisfactory arrangements with this District for the construction of any off-site or on-site sewers which may be required. The District has provided the following comments, as of October 15, 2019: The District will consider a gravity option with the following conditions:

- a) The initial report from Nute Engineering has indicated that a gravity option is not feasible without flow diversion within the District collection system and upgrades to Rafael Meadows Pump Station. This option is subject to final review by Nute Engineering. The District anticipates receiving the Nute's final recommendation and preliminary construction cost estimate by end of October 2019.
- b) The District has considered constructing flow diversion structures at its own expense to alleviate surcharging of sanitary sewers in the area. However, at the minimum, applicant may be required to cost share the electrical and pump upgrades to the Rafael Meadows Pump Station, pending District Board approval.
- c) If a gravity option is not feasible, the District will require a dedicated private pump station in addition to the Rafael Meadows Pump Station upgrades as described above. The private pump station option shall comply with the following conditions:
 - i) The pump station design shall meet the requirements set by the Regional Water Quality Control Board and other regulatory agencies.
 - ii) The pump station shall include backup generator and pumps with series of sensors and alarm systems to alert District staff of pump failure and potential sewage overflows.
 - iii) The pump station shall comply with city ordinance general noise limits (chapter 8.13), which at a minimum are 60dBA intermittent daytime and 50dBA intermittent nighttime.

- d) Applicant shall submit plans **electronically** to LGVSD for review and approval. A Will Serve Letter will be issued based on the following:
 - i) Approved plans designed with District standard details and specifications.
 - ii) Compliance with District requirements outlined in previous plan reviews.
 - iii) Other requirements based on future submittals.

Marin Municipal Water District

- 83) The applicant must enter into a pipeline extension agreement with the Marin Municipal Water District for the installation of the necessary facilities and said agreement must be approved by the District's Board of Directors. All costs associated with a pipeline extension are borne by the applicant.
- 84) Complete a High-pressure Water Service Application
- 85) Pay appropriate fees and charges
- 86) Complete the structure's foundation within 120 days of the date of application
- 87) Comply with the District's rules and regulations in effect at the time service is requested, including the installation of a separate water service for each residential structure.
- 88) Comply with all indoor and outdoor requirements of District Code Title 13 – Water Conservation. This may include ventilation of specific indoor fixture efficiency compliance.
- 89) If you are pursuing a landscaping project subject to review by your local planning department and/or subject to a city permit, please contact the district water conservation department at 415-945-1497 or e-mail to plancheck@marinwater.org. More information about district water conservation requirements can be found online at www.marinwater.org.
- 90) Comply with the backflow preventer requirements, if upon the District's review backflow protection is warranted, including installation, testing and maintenance. Questions regarding backflow requirements should be directed to the Backflow Prevention Program Coordinator at 415-945-1558.
- 91) Comply with Ordinance No.429 requiring the installation of gray water recycling systems when practicable for all projects required to install new water service and existing structures undergoing "substantial remodel" that necessitates an enlarged water service.
- 92) Comply with California water Code – Division 1, Chapter 8, Article 5, Section 537; which requires individual metering of multiple living units within newly constructed structures.

During Construction and Grading

Community Development Department – Planning Division

- 93) Construction hours and activity (including any and all deliveries) are limited to the applicable requirements set forth in Chapter 8.13 of the San Rafael Municipal Code.
- 94) **AIR QUALITY (AQ-1)**: Include basic measures to control dust and exhaust during construction. During any construction period ground disturbance, the applicant shall ensure that the project contractor implement measures to control dust and exhaust. Implementation of the measures recommended by BAAQMD and listed below would reduce the air quality impacts associated with grading and new construction to a less-than-significant level. The contractor shall implement the following best management practices that are required of all projects:

- a) All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- b) All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d) All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
- e) All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- f) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- g) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- h) Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

95) **AIR QUALITY (AQ-1a)**: All diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet U.S. EPA particulate matter emissions standards for Tier 2 engines with CARB-certified Level 3 Diesel Particulate Filters or equivalent.

- a) The use of equipment meeting U.S. EPA Tier 4 standards for particulate matter would also meet this requirement.
- b) Use of equipment that includes alternatively fueled equipment (i.e., non-diesel) would meet this requirement.
- c) Other measures may be the use of added exhaust devices, or a combination of measures, provided that these measures are approved by the City and demonstrated to reduce community risk impacts to less-than-significant.

96) **AIR QUALITY (AQ-2)**: Include high-efficiency particulate filtration systems in residential ventilation systems. The significant exposure for new project receptors is judged by two effects: (1) increased cancer risk, and (2) annual PM_{2.5} concentration. Exposure to cancer risk from U.S. Highway 101 are significant. Cancer risk is based on exposure to exhaust emissions while annual PM_{2.5} concentrations are based on the exposure to PM_{2.5} resulting from emissions attributable to truck and auto exhaust, the wearing of brakes and tires and re-entrainment of roadway dust from vehicles traveling over pavement. PM_{2.5} exposure drives the mitigation plan. Reducing PM_{2.5} exposures to less than significant would also reduce cancer risk to less than significant levels. The project shall include the following measures to minimize long-term annual PM_{2.5} exposure for new project occupants:

1. Install air filtration in residential dwellings. Air filtration devices shall be rated MERV 13 or higher. To ensure adequate health protection to sensitive receptors (i.e., residents), this ventilation system, whether mechanical or passive, all fresh air circulated into the dwelling units shall be filtered, as described above.
2. As part of implementing this measure, an ongoing maintenance plan for the buildings' heating, ventilation, and air conditioning (HVAC) air filtration system shall be required.
3. Ensure that the use agreement and other property documents: (1) require cleaning, maintenance, and monitoring of the affected buildings for air flow leaks, (2) include

assurance that new owners or tenants are provided information on the ventilation system, and (3) include provisions that fees associated with owning or leasing a unit(s) in the building include funds for cleaning, maintenance, monitoring, and replacements of the filters, as needed.

- 97) **BIOLOGICAL RESOURCES (BIO-1): Pre-construction nesting bird and bat survey:** The nesting season is defined here as being from February 1 to August 31 and therefore work should commence between September 1 and January 31.
- i) If this is not possible, and project activities are initiated during the nesting season, then a nesting bird survey shall be conducted by a qualified wildlife biologist no more than 14 days prior to the start of project activities.
 - ii) If nests are identified, a no-disturbance buffer should be implemented to avoid impacts to nesting birds and should remain in place until all young are fledged or the nest otherwise becomes inactive.
 - iii) Buffers typically range from 25 feet to 500 feet depending on the species.
 - iv) If work is to be initiated within the bat breeding/ winter roosting season, an assessment of existing buildings should be performed prior to construction activities to determine if a roost is present.
 - v) If a roost is observed, construction activities should be postponed until a qualified biologist determines the bats are excluded from the roost location.
- 98) **CULTURAL RESOURCES (CULT-1): Protect Archaeological Resources Identified during Construction:** The project sponsor shall ensure that construction crews stop all work within 100 feet of the discovery until a qualified archaeologist can assess the previously unrecorded discovery and provide recommendations. Resources could include subsurface historic features such as artifact-filled privies, wells, and refuse pits, and artifact deposits, along with concentrations of adobe, stone, or concrete walls or foundations, and concentrations of ceramic, glass, or metal materials. Native American archaeological materials could include obsidian and chert flaked stone tools (such as projectile and dart points), midden (culturally derived darkened soil containing heat-affected rock, artifacts, animal bones, and/or shellfish remains), and/or groundstone implements (such as mortars and pestles).
- 99) **CULTURAL RESOURCES (CULT-2): Protect Human Remains Identified During Construction:** The Project proponent shall treat any human remains and associated or unassociated funerary objects discovered during soil-disturbing activities according to applicable State laws. Such treatment includes work stoppage and immediate notification of the Marin County Coroner and qualified archaeologist, and in the event that the Coroner's determination that the human remains are Native American, notification of NAHC according to the requirements in PRC Section 5097.98. NAHC would appoint a Most Likely Descendant ("MLD"). A qualified archaeologist, Project proponent, County of Marin, and MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of any human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5[d]). The agreement would take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, and final disposition of the human remains and associated or unassociated funerary objects. The PRC allows 48 hours to reach agreement on these matters.
- 100) **GEOTECHNICAL (GEO-5):** Should paleontological resources be encountered during project subsurface construction activities located in previously undisturbed soil and bedrock, all ground-disturbing activities within 25 feet shall be halted and a qualified paleontologist contacted to assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. For purposes of this mitigation, a "qualified paleontologist" shall be an individual with the following qualifications: 1) a graduate degree in paleontology or geology and/or a person with a demonstrated publication record in peer-reviewed paleontological

journals; 2) at least two years of professional experience related to paleontology; 3) proficiency in recognizing fossils in the field and determining their significance; 4) expertise in local geology, stratigraphy, and biostratigraphy; and 5) experience collecting vertebrate fossils in the field.

- a) If the paleontological resources are found to be significant and project activities cannot avoid them, measures shall be implemented to ensure that the project does not cause a substantial adverse change in the significance of the paleontological resource. Measures may include monitoring, recording the fossil locality, data recovery and analysis, a final report, and accessioning the fossil material and technical report to a paleontological repository. Upon completion of the assessment, a report documenting methods, findings, and recommendations shall be prepared and submitted to the City for review. If paleontological materials are recovered, this report also shall be submitted to a paleontological repository such as the University of California Museum of Paleontology, along with significant paleontological materials. Public educational outreach may also be appropriate.
- b) The project applicants shall inform its contractor(s) of the sensitivity of the project site for paleontological resources and shall verify that the following directive has been included in the appropriate contract specification documents: "The subsurface of the construction site may contain fossils. If fossils are encountered during project subsurface construction, all ground-disturbing activities within 25 feet shall be halted and a qualified paleontologist contacted to assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. Project personnel shall not collect or move any paleontological materials. Fossils can include plants and animals, and such trace fossil evidence of past life as tracks or plant imprints. Marine sediments may contain invertebrate fossils such as snails, clam and oyster shells, sponges, and protozoa; and vertebrate fossils such as fish, whale, and sea lion bones. Vertebrate land mammals may include bones of mammoth, camel, saber tooth cat, horse, and bison. Contractor acknowledges and understands that excavation or removal of paleontological material is prohibited by law and constitutes a misdemeanor under California Public Resources Code, Section 5097.5."

- 101) **NOISE (NOISE-1)**: Implementation of the following measures would reduce construction noise levels emanating from the site, limit construction hours, and minimize disruption and annoyance.
- a) Construction activities shall be limited to the hours specified in the City of San Rafael's Municipal Code (7 am to 6 pm on weekdays and 9 am to 6 pm on Saturdays). No construction activities are permitted on Sundays and holidays.
 - b) Limit use of the concrete saw to a distance of 50 feet or greater from residences, where feasible. Construct temporary noise barriers to screen stationary noise-generating equipment, such as the concrete saw, when located near adjoining sensitive land uses. Temporary noise barriers could reduce construction noise levels by 5 dBA.
 - c) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - d) Unnecessary idling or internal combustion engines should be strictly prohibited.
 - e) Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors.
 - f) Utilize "quiet" air compressors and other stationary noise sources where technology exists.
 - g) Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
 - h) Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.

- i) Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.
- 102) **TRIBAL-1:** Address the potential discovery of previously unknown resources within the project area. If significant tribal cultural resources are identified onsite, all work would stop immediately within 50 feet of the resource(s) and the project applicant would comply with all relevant State and City policies and procedures prescribed under PRC Section 21074.

Prior to Final Occupancy

Community Development Department – Planning Division

- 103) A post-construction Acoustical Study shall be performed and submitted to the Planning Division to confirm that the project was constructed compliant with noise reducing materials and construction techniques as recommended in the Illingworth and Rodkin Acoustical Study.
- 104) **AESTHETICS (AES-1):** Prior to the Building Permit final inspection, the project applicant shall submit to the satisfaction of the Community Development Department Director, a post-installation photometric lighting study showing that the lighting on site complies with the approved lighting levels per ED18-100 and the requirements of SRMC 14.16.227. The project applicant shall also demonstrate to the Building Department that outdoor lighting fixtures meet the requirements of the California Energy Code (known as Part 6, Title 24 of the California Code of Regulations).
- 105) Install any improvements required by **TRANS-1** prior to final occupancy
- 106) **HYDROLOGY (HYDRO-2):** Prior to a certificate of occupancy, the Project applicant shall verify that operational stormwater quality control measures that comply with the requirements of the current Phase II Small MS4 Permit have been implemented. Responsibilities include, but are not limited to:
- a) Designing BMPs into Project features and operations to reduce potential impacts to surface water quality and to manage changes in the timing and quantity of runoff associated with operation of the project. These features shall be included in the design-level drainage plan and final development drawings.
 - b) The proposed project shall incorporate site design measures and Low Impact Development design standards, including minimizing disturbed areas and impervious surfaces, infiltration, harvesting, evapotranspiration, and/or bio-treatment of stormwater runoff.
 - c) The Project applicant shall establish an Operation and Maintenance Plan. This plan shall specify a regular inspection schedule of stormwater treatment facilities in accordance with the requirements of the Phase II Small MS4 Permit.
 - d) Funding for long-term maintenance of all BMPs shall be specified.
- 107) The applicant shall contact the Planning Division to request a final inspection, prior to the issuance of the final building permit. The final inspection shall require a minimum of 48-hours advance notice. All landscaping and irrigation shall be installed prior to the occupancy of the building or the property owner shall post a bond in the amount of the estimated landscaping/

irrigation cost with the City of San Rafael. In the event that a bond is posted, all areas proposed for landscaping must be covered with bark or a substitute material approved by the Planning Division prior to occupancy. The landscape architect shall certify in writing and submit to the Planning Division, and call for inspection, that the landscaping has been installed in accordance with all aspects of the approved landscape plans, that the irrigation has been installed and been tested for timing and function, and all plants including street trees are healthy. Any dying or dead landscaping shall be replaced.

- 108) All exterior lighting shall be shielded down. Following the issuance of a certificate of occupancy, all exterior lighting shall be subject to a 90-day lighting level review by the Police Department and Planning Division to ensure compatibility with the surrounding area.
- 109) All plan details shall be implemented as indicated plans approved for building permit, in compliance with all conditions of approval and applicable City zoning code requirements, to the satisfaction of the Community Development Director. Any outstanding fees including planning review fees, inspection fees, etc. shall be paid.

Fire Department – Fire Prevention Bureau

- 110) Prior to Final occupancy, the following requirements shall be installed in addition to all Fire code Requirements on the site and shown on the Fire Engine Truck Access Plan Sheet SP-6:
- a) Fire Lane signage shall be installed at both entrances that meet City of San Rafael Parking Enforcement standards.
 - b) KNOX box shall be installed at Community Rec Room exterior wall.
 - c) Fire Sprinkler system conforming to NFPA standards installed throughout.
 - d) All hydrants installed on site shall be Clow model 960 appliances.

Tentative Subdivision Map Conditions of Approval (TS18-006)

Community Development Department - Planning Division

1. The Tentative Subdivision Map (TS18-006) shall be valid for a period of three (3) years from the date of City Council approval, or until December 10, 2022 and shall become null and void unless a Final Map has been recorded or a time extension is granted.
2. The proposed project is approved as a Three-Phase development, consisting of a Phase One “pre-phase” (on and off-site improvements) to complete building Phase One -construction of Buildings 1-4 and all landscaping north of Private street “A” (Fall 2021) and Phase Three- construction of Buildings 5-9, tree removal along the south property line and all remaining landscaping (Summer 2022). The Final Map may be recorded in phases or all at once.
3. The project shall be subject to the affordable housing requirements prescribed in Section 14.16.030 of the San Rafael Zoning Ordinance and is therefore required to provide nine (9) of the 45 for-sale units as affordable. Prior to the issuance of a building permit or recordation of the final map, whichever occurs first, a Below Market Rate (BMR) agreement for the nine (9) affordable unit shall be approved by the City Council and recorded on the property. Consistent with the affordable housing requirements, five (5) of the units shall be affordable to low-income household and four (4) of the units shall be affordable at the moderate-income level. The location of the BMR units shall be identified on the project plans and the final location shall be subject to review and approval of the City as part of the City’s consideration of the BMR agreement. Please contact the Marin Housing Authority to commence the agreement process.
4. Prior to issuance of building permits or prior to the recordation of a Final Map, whichever occurs first, the developer shall pay to the City in lieu parkland dedication fees for 45 new units in

accordance with the provisions of City Council Ordinance No. 1558, which would be 45 x 2.5 persons/dwelling unit x 3 acres per 1,000 persons x \$262,396.80 = \$88,558.92

5. Conditions, Covenants and Restrictions (CC&R's) shall be prepared and submitted with an application for a Final Parcel Map. The CC&R's shall include the following requirements and provisions:
 - a. The formation of a homeowner's association (HOA).
 - b. Project will be governed by a homeowner's association (HOA) which will manage, maintain and operate the Project in accordance with Conditions, Covenants and Restrictions (CC&Rs) to be recorded against each unit and the common areas, Articles of Incorporation (Articles) and Bylaws. The HOA will have the right to adopt rules, regulations and guidelines, including design guidelines and community space rules to implement the CC&Rs. HOA responsibilities for ongoing maintenance of the shared or common facilities, including but not limited to the common driveway, common landscaping and irrigation, fencing, subdivision infrastructure improvements (storm water and sanitary sewer facilities) and exterior building and lighting improvements. All common areas including the Creek Promenade and the Paseos will be owned, managed and controlled by the HOA. Initially the builder will own all units within the project and will control the HOA until sufficient units have been sold for a HOA Board of Directors to be elected. The builder will pay HOA dues to the HOA for each unit until each unit is sold. Restrictions and regulations imposed on each lot owner. The CC&R's shall include provisions, which restrict the use of the parking spaces to vehicle parking.
 - c. Requirements and provisions for professional management services or the services of a Certified Public Accountant to oversee the HOA responsibilities and budget.
 - d. Include an article providing for rights of the City of San Rafael, as follows:

ARTICLE _____. RIGHTS OF THE CITY OF SAN RAFAEL

1. Use Restrictions. In furtherance of the police power of the City of San Rafael, the following provisions will apply to the Property:

- (a) no re-subdivision of any Lot shown on the Map will be done without the approval and consent of the City of San Rafael.
- (b) the restrictions set out in this Declaration will burden the Property, for the benefit of the City of San Rafael, and the same are enforceable by and will inure to the benefit of the City of San Rafael.

2. Right to Remedy Failure to Maintain Common Area. In the event that there is a failure to maintain the Common Area so that owners, lessees, and their guests suffer, or will suffer, substantial diminution in the enjoyment, use, or property value of their Project, thereby impairing the health, safety and welfare of the residents in the Project, the City, by and through its duly authorized officers and employees, will have the right to enter upon the subject Property, and to commence and complete such work as is necessary to maintain said Common Area. The City will enter and repair only if, after giving the Association and Owners written notice of the failure to maintain the Common Area, they do not commence correction of such conditions in no more than thirty (30) days from the giving of the notice and proceed diligently to completion. All expenses incurred by the City shall be paid within thirty (30) days of written demand. Upon a failure to pay within said

thirty (30) days, the City will have the right to impose a lien for the proportionate share of such costs against each Lot in the Project.

It is understood that by the provisions hereof, the City is not required to take any affirmative action, and any action undertaken by the City will be that which, in its sole discretion, it deems reasonable to protect the public health, safety and general welfare, and to enforce it and the regulations and ordinances and other laws.

It is understood that action or inaction by the City, under the provisions hereof, will not constitute a waiver or relinquishment of any of its rights to seek redress for the violation of any of the provisions of these restrictions or any of the rules, regulations and ordinances of the City, or of other laws by way of a suit in law or equity in a court of competent jurisdiction or by other action.

It is further understood that the remedies available to the City by the provision of this section or by reason of any other provisions of law will be cumulative and not exclusive of the maintenance of any other remedy. In this connection, it is understood and agreed that the failure to maintain the Common Area will be deemed to be a public nuisance and the City will have the right to abate said condition, assess the costs thereof, and cause the collection of said assessments to be made on the tax roll in the manner provided by appropriate provisions of the San Rafael Municipal Code or any other applicable law.

The City Council of the City may, at any time, relinquish its rights and interest in the Project as herein set forth by appropriate resolution. Any such relinquishment by the City Council will be effective on the date that the resolution is adopted, and a copy thereof is placed in the United States mail, postage prepaid, addressed to the Association. The Owner will execute and record a declaration reflecting such relinquishment within ten (10) days of receipt of a copy of the resolution.

3. **No Waiver.** No failure of the City of San Rafael to enforce any of the covenants or restrictions contained herein will in any event render them ineffective.

4. **Third-Party Beneficiary.** The rights of the City of San Rafael pursuant to this Article will be the rights of an intended third party beneficiary of a contract, as provided in Section 1559 of the California Civil Code, except that there will be no right of Declarant, the Association, or any Owner(s) to rescind the contract involved so as to defeat such rights of the City of San Rafael.

5. **Hold Harmless.** Declarant, Owners, and each successor in interest of Declarant and said Owners, hereby agree to save and hold the City of San Rafael harmless from any and all liability for inverse condemnation which may result from, or be based upon, City's approval of the Development of the subject Property.

6. **Amendments.** The City of San Rafael will be given reasonable advance notice in writing of any amendments to the Declaration affecting the rights of the City as provided herein, and no such amendment will be deemed effective without the written consent of the San Rafael City Council.

6. Prior to recordation of the final map, the CC&R's shall be reviewed and approved by the Department of Community Development and the City Attorney's Office.
7. Approved CC&R's shall be recorded concurrently with the final map.

Department of Public Works - Land Development Division

8. A Final Map shall be required to be filed and approved by the Department of Public Works.
9. Should the applicant elect to record the final map prior to completion of the subdivision improvements, a subdivision improvement agreement shall be required. As part of this agreement bonds shall be required based on the engineer's estimate. The current fees for the subdivision:
 - \$2,615.00 Improvement Plan Check
 - \$3,285.00 minimum, (or actual cost if greater) for Final Map Plan Check.
 - \$1,464.00 Subdivision Improvement Inspection Fees.

**Master Use Permit Conditions of Approval
(UP18-039)**

1. Except as modified herein, the Master Use Permit (UP18-039) authorizes redevelopment of the existing 2.28-acre site for residential use as shown in the approved plans in a maximum of three (3) phases. Although phasing is not required, this Use Permit authorizes that the project may be phased as follows, subject to the conditions of approval
 - a) Phase One (Pre-Phase) which entails site preparation, demolition, landscaping/tree removal (except no removal of existing trees along the southern property line).
 - b) Phase Two – Construction of Buildings 1- through Building 4 (a total of 25 units, including five (5) BMR units), trash enclosure, and creek promenade enhancements including landscaping, hardscape and recreational amenities.
 - c) Phase Three - Construction of Building 5 through Building 9 (a total of 20 units, including four (4) BMR units), removal of existing trees along southern property line and the remaining landscaping.
2. Should the project proceed in a phased development approach, the following requirements shall apply:
 - a) All site improvement, roadways, sidewalk, utilities shall be installed and completed no later than the completion of Phase Two.
 - b) Landscaping may be installed by each phase:
 - i. Prior to final occupancy of Phase Two, the approved landscaping along the Merrydale Rd border (along Building 1) and along the Highway 101 frontage (Building 3 and Building 4) along with all other on-site landscaping in that phase, shall be installed.
 - ii. Prior to final occupancy of Phase Three, the approved landscaping along the Merrydale Rd border (along Building 9) and along the Highway 101/Redwood Hwy frontage (Building 5 and Building 6), along with all other on-site landscaping in that phase, shall be installed.
 - c) This Master Use Permit (UP18-039) shall be valid for three (3) years from the date of City Council approval, or until December 10, 2022 and shall become null and void if: 1) a building permits(s) have not been obtained and construction diligently commenced and pursued for all 9 buildings (45 units); 2) construction has not commenced on both Phase Two and Phase Three; 3) the project has not substantially progressed in constructions of Phase Two and Three; or 4) a time extension request has not been received before December 10, 2022. The time extension application (including project plans) must be submitted to the Planning Department

with all associated fees. The time extension is subject to a public hearing and review and approval by the Planning Commission.

- d) Once the building permit(s) is/are issued and construction and framing are commenced within the three (3) year period, then the Use Permit shall become valid and run with the land and will not have an expiration date. On-going compliance with all conditions of approval shall be required to keep the Use Permit valid.
- 3. Prior to completion of Phase Two, an "Interim Site Plan" for the area of Phase Three shall be submitted, to address visual conditions, dust/erosion control, security and drainage and site maintenance. This plan shall be subject to review and approval of the Community Development Department and Department of Public Works.
- 4. Once the Interim Site Plan is approved, all specific conditions of the interim plan for the area of Phase Three shall be installed per the approved plan, prior to final occupancy of Buildings 1 through Building 4, as approved per Phase Two construction.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the San Rafael City Council held on the 3rd day of February 2020, by the following vote to wit:

AYES: COUNCILMEMBERS: Colin, Gamblin, McCullough & Mayor Phillips

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: Bushey



LINDSAY LARA, City Clerk

RESOLUTION NO. 14947

RESOLUTION OF THE CITY OF SAN RAFAEL CITY COUNCIL MODIFYING CONDITIONS OF APPROVAL OF ENVIRONMENTAL AND DESIGN REVIEW (ED18-100), USE PERMIT (UP18-039) AND TENTATIVE MAP (TS18-006) FOR THE MERRYDALE TOWNHOMES LOCATED AT 350 MERRYDALE RD/3833 REDWOOD HWY TO ALLOW FULFILLMENT OF THE AFFORDABLE HOUSING REQUIREMENT IN ACCORDANCE WITH CITY COUNCIL RESOLUTION NO. 14890 (APN'S: 179-041-27 AND 179-041-28)

WHEREAS, on February 3, 2020, the San Rafael City Council adopted Ordinance No. 1979, Resolution No. 14762, and Resolution No. 14763 approving entitlements for development of a 45-unit condominium project at 350 Merrydale/3833 Redwood Highway, called the Merrydale Townhomes. The entitlements included approval of Tentative Map, Master Use Permit and Environmental and Design Review; and

WHEREAS, a condition of approval of the Tentative Map, Master Use Permit and Environmental and Design Review for the project required nine Below Market Rate Units in accordance with San Rafael Municipal Code Section 14.16.030 in effect at the time of the approvals; and

WHEREAS, on February 16, 2021, the City Council adopted Ordinance No. 1990 amending San Rafael Municipal Code (SRMC) section 14.16.030, and Resolution No. 14890, which together set forth the affordable housing requirements for housing developments within the City. Ordinance No. 1990 authorized the affordable housing requirement for housing developments of greater than 15 units to be split into a primary requirement (5% of units to be constructed onsite) and a secondary requirement (option of on-site or off-site development; dedication of land; or payment of in-lieu fees); and

WHEREAS, SRMC section 14.16.30, as modified by Ordinance No. 1990, allows modifications of the affordable housing component of projects that were approved prior to the effective date of Ordinance No. 1990 but which have not yet commenced construction; and

WHEREAS, on April 20, 2021, subsequent to adoption of Ordinance No. 1990, the City received an application requesting modification of the affordable housing obligation for the Merrydale Townhomes project; and

WHEREAS, the applicant is proposing to comply with Ordinance No. 1990 and Resolution No. 14890 by providing two (2) onsite below market rate units and by paying in-lieu fees equal to 2.5 units; and

WHEREAS, the proposed modification is consistent with Resolution No. 14890; and

WHEREAS the proposed amendments do not propose any changes to City policies or regulations that would result in a direct or indirect physical, environmental impact; therefore it has been determined that this ordinance amendment qualifies for exemption from the California Environmental Quality Act (CEQA) pursuant to Sections 15183(a) because it entails a project that can be found consistent with the General Plan policies and pursuant to 15061(b)(3), which states that as a 'general rule' CEQA applies only to projects which have the potential to cause a significant, physical environmental impact; and

WHEREAS, on July 19, 2021, the City Council held a duly noticed public hearing on the proposed project, accepting and considering all oral and written public testimony and the written report of the Department of Community Development; and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of San Rafael does hereby approve modifications to conditions of approval for Environmental and Design Review Permit (ED18-100), Tentative Map Subdivision (TS18-006), Use Permit (UP18-039) for the project located at 350 Merrydale/3833 Redwood Hwy.as shown on Exhibit A of this Resolution.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the San Rafael City Council held on the 19th day of July 2021, by the following vote to wit:

AYES: COUNCILMEMBERS: Bushey, Hill, Kertz & Mayor Kate

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: Llorens Gulati



LINDSAY LARA, City Clerk

EXHIBIT A MODIFIED CONDITIONS OF APPROVAL

PER RESOLUTION NO. _____ FOR ENVIRONMENTAL AND DESIGN REVIEW (ED18-100), USE PERMIT (UP18-039) AND TENTATIVE MAP (TS18-006) FOR THE PROPERTY LOCATED AT 350 MERRYDALE RD/3833 REDWOOD HWY (MERRYDALE TOWNHOMES) (APN'S: 179-041-27 AND 179-041-28)

Environmental and Design Review Permit Conditions of Approval (ED18-100)

General Project Conditions

Community Development Department - Planning Division

- 1) The proposed 45-unit townhome development shall be installed and designed in substantial conformance with the proposed site plan and elevations and landscape plan as presented for approval on plans prepared by WHA Architects, date stamped **Approved, December 10, 2019**, and shall be the same as required for issuance of a building permit, subject to the listed conditions of approval. Minor modifications or revisions to the project shall be subject to review and approval of the Community Development Department, Planning Division. Modifications deemed not minor by the Community Development Director shall require review and approval by the original decision-making body.
- 2) Approved colors for the main body, trim and accent colors are as shown on the approved Color and Material Board: a) Sherman Williams Paint for Body Colors- High Reflective White (SW 7757), Gossamer Veil (SW 9165), Tin Lizzie (SW9163), Jute Brown (SW 6096); b) Trim Color -Thunder Gray (SW 7645); c) Accent Colors-Deep Sea Dive (SW 7618), Rookwood Terra Cotta (SW2803), and Raisin (SW7630); and d) Manufactured Stone (Timberwolf). Any future modification to colors shall be subject to review and approval by the Planning Division. Modifications deemed not minor by the Community Development Director shall require review and approval by the Design Review Board.
- 3) Applicant shall remit payment of the State Fish and Game fees in order for staff to file a Notice of Determination with the County Clerk within 5 days of project approval. The current fee amounts are \$2,354.74 (current fee as of 2018) payable to the State Fish and Game and \$50.00 payable to the Marin County Clerk and are subject to increase on January 1st of each year.
- 4) Applicant and property owner shall be responsible for implementing all mitigation measures presented in the Project's Mitigated Negative Declaration, on file with the Community Development Department, including any mitigation measures that may not have been incorporated into the Project conditions of approval. A deposit for Mitigation Monitoring shall be paid as required by ED18-100 project Conditions of Approval #31, herein.
- 5) The project shall comply with all mitigation measures as identified in the IS/MND Mitigation Measure Monitoring and Program, dated November 8, 2019. All required mitigation measures are identified in the Mitigation Monitoring and Reporting Program (MMRP) as recommend for adopted by separate Resolution and included as conditions of approval. The IS/MND determined that the proposed project would result in potentially significant impacts in Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality, Noise, Transportation and Tribal Resources. The IS/MND identifies Mitigation Measures that, when implemented, would reduce the impacts identified to a less-than-significant level. These mitigation measures are also identified as conditions of approval in the relevant

sections herein and detailed in the IS/MND Mitigation Monitoring and Reporting Program (Exhibit 2-Attachment A).

- 6) Property owner and applicant agree to defend, indemnify, release and hold harmless the City, its agents, officers, attorneys, employees, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities ("indemnities"), the purpose of which is to attack, set aside, void or annul the approval of this application or the certification of any environmental document which accompanies it. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the indemnities, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the indemnities.
- 7) In the event that any claim, action or proceeding as described above is brought, the City shall promptly notify the Property owner and applicant of any such claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action, or proceeding. In the event applicant/property owner is required to defend the City in connection with any said claim, action or proceeding, the City shall retain the right to: 1) approve the counsel to so defend the City; 2) approve all significant decisions concerning the manner in which the defense is conducted; and 3) approve any and all settlements, which approval shall not be unreasonably withheld. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding, provided that if the City chooses to have counsel of its own to defend any claim, action or proceeding where Property owner and applicant already has retained counsel to defend the City in such matters, the fees and the expenses of the counsel selected by the City shall be paid by the City.
- 8) As a condition of this application, applicant/property owner agree to be responsible for the payment of all City Attorney expenses and costs, both for City staff attorneys and outside attorney consultants retained by the City, associated with the reviewing, process and implementing of the land use approval and related conditions of such approval. City Attorney expenses shall be based on the rates established from time to time by the City Finance Director to cover staff attorney salaries, benefits, and overhead, plus the actual fees and expenses of any attorney consultants retained by the City. Applicant shall reimburse City for City Attorney expenses and costs within 30 days following billing of same by the City.
- 9) All site improvements, including but not limited to, site lighting, fencing, landscape islands and paving striping shall be maintained in good, undamaged condition at all times. Any damaged improvements shall be replaced in a timely manner.
- 10) The Project site shall be kept free of litter and garbage. Any trash, junk or damaged materials that are accumulated on the site shall be removed and disposed of in a timely manner.
- 11) All new landscaping shall be irrigated with an automatic drip system and maintained in a healthy and thriving condition, free of weeds and debris, at all times. Any dying or dead landscaping shall be replaced in a timely fashion.
- 12) Final landscape and irrigation plans for the Project shall comply with the provisions of Marin Municipal Water District's (MMWD) most recent water conservation ordinance. Construction plans submitted for issuance of building/grading permit shall be pre-approved by MMWD and stamped as approved by MMWD or include a letter from MMWD approving the final landscape and irrigation plans. Modifications to the final landscape and irrigation plans, as required by MMWD, shall be subject to review and approval of the Community Development Department, Planning Division.

- 13) All public streets and sidewalks and on-site streets which are privately owned that are impacted by the grading and construction operation for the Project shall be kept clean and free of debris at all times. The general contractor shall sweep the nearest street and sidewalk adjacent to the site on a daily basis unless conditions require greater frequency of sweeping.
- 14) This Environmental and Design Review Permit shall run with the land and shall remain valid regardless of any change of ownership of the Project site, subject to these conditions, provided that a building/grading permit is issued, and construction commenced, or a time extension request is submitted to the City's Community Development Department, Planning Division, **within three (3) years** of the City Council approval, or on December 10, 2022. Failure to obtain a building permit and grading permit and construction or grading activities commenced, or failure to obtain a time extension within the three-year period will result in the expiration of this Environmental and Design Review Permit.
- 15) Phasing of the project is allowed, subject to the terms and conditions of approval of the Master Use Permit (UP18-039) below.
- 16) This Environmental and Design Review Permit (ED18-100) approving the Project shall run concurrently with the approved Master Use Permit (UP18-039). If either entitlement expires, this Environmental and Design Review Permit approving the Project, as depicted on Project plans, shall also expire and become invalid.

Prior to the Issuance of a Demo/Building/Grading Permit

Community Development Department - Planning Division

- 17) A copy of the Conditions of Approval for ED18-100 shall be included as a plan sheet with the building permit plan submittal.
- 18) As offered by the applicant, the project shall: 1) install pre-wiring for "Level 2" electric vehicle chargers in each garage; and 2) install pre-wiring for solar panels on all buildings/units. Compliance with this condition shall be demonstrated on the building permit plans and installed prior to occupancy.
- 19) The project proponent shall demonstrate and notate on the building permit plans that Air Quality measures III (a), III (b) and III(c) (**AQ-1, AQ1a and AQ-2**) to eliminate dust control and exhaust during construction, set standards for diesel equipment over 25 horsepower to meet U.S. particle emission standards, and requires that the project include high-efficiency particulate filtration systems in residential ventilation systems will be completed during construction.
- 20) (**GEO-1**): Prior to a grading or building permit submittal, the project sponsor shall prepare a design-level geotechnical investigation prepared by a qualified and licensed geotechnical engineer and submit the report to the City Engineer. Minimum mitigation includes design of new structures in accordance with the provisions of the current California Building Code or subsequent codes in effect when final design occurs. Recommended seismic design coefficients and spectral accelerations shall be consistent with the findings presented in Section 4 of the May 8, 2018 ENGEO report.
- 21) (**GEO-2**): Prior to a grading or building permit submittal, the project sponsor shall prepare a design-level geotechnical investigation prepared by a qualified and licensed geotechnical engineer and submit the report to the City Engineer for review and approval. In order to reduce the effects of the potentially expansive soils and/or liquefaction settlement, foundations should be designed to withstand minimum differential movements. Foundation design recommendations are presented in Section 4 of the May 8, 2018 ENGEO report.

- 22) **(GEO-3):** Prior to a grading or building permit submittal, the project sponsor shall prepare a site drainage system prepared by a qualified and licensed civil engineer and submit the report to the City Engineer. The site drainage system will demonstrate the ability to collect surface water and discharge into an established storm drainage system. The project Civil Engineer of Architect is responsible for designing the site drainage system and, an erosion control plan shall be developed prior to construction per the current guidelines of the City of San Rafael Public Works Department (DPW) Grading and Construction Erosion and Sediment Control Plan Permit Application Package and the Regional Water Quality Control Board standards.
- 23) **(GEO-4):** Soils shall be moisture conditioned to above the optimum moisture content during site grading and maintained at this moisture content until imported aggregate base and/or surface flatwork is completed.
- 24) **(TRANS-1):** demonstrate on building permit or improvement plans the design of the pedestrian sidewalk, subject to the availability of right-of-way and the feasibility of the drainage design, on the west side of Redwood Road directly adjacent to the project driveway connecting to the existing sidewalk.
- 25) **(HYDRO-1):** Prior to issuing a grading or building permit, the project applicant shall prepare a Stormwater Pollution Prevention Plan (SWPPP) and/or Erosion and Sediment Control Plan (ESCP) in accordance with the requirements of the statewide Construction General Permit and the City of San Rafael Department of Public Works. The SWPPP shall be prepared by a Qualified SWPPP Developer (QSD). The SWPPP shall include the minimum Best Management Practices (BMPs) required for the identified risk level. The SWPPP shall be designed to address the following objectives:
- a) All pollutants and their sources, including sources of sediment associated with construction, construction site erosion, and all other activities associated with construction activity are controlled;
 - b) Where not otherwise required to be under a Regional Water Quality Control Board permit, all non-stormwater discharges are identified and either eliminated, controlled, or treated;
 - c) Site BMPs are effective and result in the reduction or elimination of pollutants in stormwater discharges and authorized non-stormwater discharges from construction activity. The erosion and sediment control plan shall include the rationale used for selecting BMPs including supporting soil loss calculations, as necessary;
 - d) Stabilization BMPs installed to reduce or eliminate pollutants after construction are completed.
 - e) BMP implementation shall be consistent with the BMP requirements in the most recent version of the California Stormwater Quality Association Stormwater Best Management Handbook-Construction or the Caltrans Stormwater Quality Handbook Construction Site BMPs Manual.
- 26) The applicant shall provide information on the building permit plans to show compliance with noise Mitigation Measures recommended on Page 74 of the Illingworth and Rodkin Noise Assessment regarding required forced-air ventilation and STC rated windows on all buildings. Minimum STC Ratings required to reduce noise levels are listed in Table 5 on Page 22 of the Noise Report.
- 27) **(BIO-1): Pre-construction nesting bird and bat survey.** The nesting season is defined here as being from February 1 to August 31 and therefore work should commence between September 1 and January 31.

- i) If this is not possible, and project activities are initiated during the nesting season, then a nesting bird survey shall be conducted by a qualified wildlife biologist no more than 14 days prior to the start of project activities.
- ii) If nests are identified, a no-disturbance buffer should be implemented to avoid impacts to nesting birds and should remain in place until all young are fledged or the nest otherwise becomes inactive.
- iii) Buffers typically range from 25 feet to 500 feet depending on the species.
- iv) If work is to be initiated within the bat breeding/ winter roosting season, an assessment of existing buildings should be performed prior to construction activities to determine if a roost is present.
- v) If a roost is observed, construction activities should be postponed until a qualified biologist determines the bats are excluded from the roost location.

28) **(HAZ-1):** Prior to submittal for a demolition permit, the project sponsor shall use a qualified and licensed professional to prepare a hazardous building materials survey for all structures proposed for demolition or renovation as part of the project. All lead-based paint and asbestos-containing materials (ACM) shall be abated by a certified contractor in accordance with local, state, and federal requirements. All hazardous materials shall be removed from buildings prior to demolition in accordance with California Division of Occupational Safety and Health (DOSH) and California Department of Toxic Substances Control (DTSC) regulations. A completion of abatement activities report shall be prepared by a qualified professional and submitted to the City prior to permit approval.

29) **(HAZ-2):** Prior to submittal for a demolition permit, the project sponsor shall use a qualified and licensed professional to prepare a Soil Management Plan to develop protocols and procedures for handling potentially impacted soils or underground structure/equipment that may be encountered during grading operations and other construction activities as part of the project. If impacted soils or underground structure/equipment are encountered during construction activities, all construction shall stop, and a qualified and licensed professional shall be contacted to conduct a site visit to make observations and prepare recommendations for proper handling of soils and/or structures/equipment.

30) Bicycle parking shall be provided in compliance with San Rafael Municipal Code Section 14.18.090. This requires bicycle spaces provided on site at a minimum of 5% of total vehicle parking, including a minimum of one two bike capacity rack for short term bicycle parking. Final plans shall include a design detail for proposed bicycle parking spaces, proposed number and location subject to final review and approval by the Community Development Department and Traffic Engineer.

31) The proposed project will be required to provide bicycle improvements along Merrydale Rd. in keeping with the 2018 adopted update of the San Rafael Bicycle/Pedestrian Master Plan, which identifies Merrydale Rd. for a Class III Bike Route. The applicant will be required to install the appropriate signage and striping along Merrydale Road (fronting the project site) to signify that the street is a Class III Bike Lane. Specifics of the bike lane striping are subject to final review and approval by the Community Development Department and Traffic Engineer.

32) Property Owner/applicant shall be responsible for all costs associated with mitigation monitoring and shall remit an initial deposit in the amount of \$5,000.00 for mitigation monitoring and condition compliance. Staff shall bill time against this deposit amount during Project review and implementation of the Project and monitoring of Project conditions, to assure compliance with conditions and mitigation measures has been achieved.

33) All mechanical equipment (i.e., air conditioning units, meters and transformers) and appurtenances not entirely enclosed within the structure (on side of building or roof) shall be screened from public

view. The method used to accomplish the screening shall be indicated on the building plans and approved by the Planning Division.

- 34) Any outstanding Planning Division application processing fees shall be paid.
- 35) A construction logistics plan shall be submitted demonstrating how construction conditions shall be met. The plan must be approved by the Public Works Department and Community Development Director and shall include the conditions of approval and mitigation measures that are applicable to the construction of the Project.
- 36) ~~The project shall be subject to the affordable housing requirements prescribed in Section 14.16.030 of the San Rafael Zoning Ordinance and is therefore required to provide nine (9) of the 45 for-sale units as affordable. Prior to the issuance of a building permit or recordation of the final map, whichever occurs first, a Below Market Rate (BMR) agreement for the nine (9) affordable unit shall be approved by the City Council and recorded on the property. Consistent with the affordable housing requirements, five (5) of the units shall be affordable to low-income household and four (4) of the units shall be affordable at the moderate income level. The location of the BMR units shall be identified on the project plans and the final location shall be subject to review and approval of the City as part of the City's consideration of the BMR agreement. Please contact the Marin Housing Authority to commence the agreement process.~~

The project is required to provide a primary and secondary affordable housing requirement pursuant to San Rafael Municipal Code Section 14.16.030 and City Council Resolution 14890. The applicant shall comply with this requirement by providing 2 units on-site (5% of the total units) and by paying an in-lieu fee equal to the 2.5 units (2.25 + .25 (fractional unit from the onsite requirement)).

Prior to the issuance of a building permit or recordation of the final map, whichever occurs first, The applicant shall :

- a. Pay the affordable housing in-lieu fee equal to 2.5 units.
- b. Enter into a Below Market Rate (BMR) agreement. The BMR agreement for the two (2) affordable unit shall be approved by the Community Development Director and City Manager and recorded on the property. Consistent with the affordable housing requirements, the affordable housing units shall be affordable to low-income households. The location of the BMR units shall be identified on the project plans and the final location shall be subject to review and approval of the City as part of the City's consideration of the BMR agreement.

37) Protective barrier fencing shall be installed during construction to protect existing trees that are to remain on site, as per the approved landscape plan. Plans showing the fencing, signage and barrier details shall be included on Project plans. The fencing shall be a minimum four-foot orange mesh protected by hay bales and signage designed to avoid intrusion by construction workers and equipment.

38) ~~The project shall be subject to the affordable housing requirements prescribed in Section 14.16.030 of the San Rafael Zoning Ordinance and is therefore required to provide nine (9) of the 45 for-sale units as affordable. Prior to the issuance of a building permit or recordation of the final map, whichever occurs first, a Below Market Rate (BMR) agreement for the nine (9) affordable unit shall be approved by the City Council and recorded on the property. Consistent with the affordable housing requirements, five (5) of the units shall be affordable to low income household and four (4) of the units shall be affordable at the moderate income level. The location of the BMR units shall be identified on the project plans and the final location shall be subject to review and approval of the City as part of the City's consideration of the BMR agreement. Please contact the Marin Housing Authority to commence the agreement process. Should the project not record a final map, the BMR~~

~~agreement will be modified to a rental agreement and comply with the affordable housing requirements for rental, which would be five (5) units affordable at very low income level and (4) at low income level.~~

Public Works Department - Land Development Division

General

- 39) The proposed private roads do not meet the requirements for Right-of-Way/Easement width or paving width per Municipal Code (MC) section 15.06.050. An exception request pursuant to Municipal Code 15.01.120 has been received and we have no objection to the proposed widths based on the necessary findings.
- 40) It is our understanding that the applicant has provided the minimum garbage facilities required. However, the location and potential for higher demand may necessitate additional storage for a condominium project of this size. We recommend the applicant provide a method to address this in the future if the project is approved as currently proposed.
- 41) Redwood Hwy and Merrydale Rd do not currently have a cul-de-sac or other vehicular turn around for the dead ends, this project proposes a public access easement over the privately maintained roadways to connect the two which will allow for through circulation. With through public access provided, turnarounds are not required at the end of the publicly maintained roadways.
- 42) The site is located in or near areas that may be susceptible to localized flooding, or the drainage of the site may be influenced by larger flooding events. We recommend that the applicant consider these concerns, as well as potential impacts due to sea level rise.
- 43) Third party peer review of geotechnical and engineering reports and inspection throughout construction shall be required, paid for by the project sponsor and contracted by the City. Provide a proposed project schedule for the duration of work, so that an estimate may be prepared for the required deposit amount.
- 44) Provide will serve letters from the various utilities for the proposed subdivision.
- 45) It is our understanding that there the sanitary sewer system is currently proposed as a gravity flow. However, LGSVD may require mitigation to alleviate flow in the downstream sewer, or that a pump station may be necessary. We recommend that as a condition of approval the applicant provide the will serve letter showing that all requirements from LGSVD shall be met prior to issuance of a permit.

Access

- 46) Provide the lighting analysis, include the frontage for Merrydale Rd and Redwood Hwy.

Grading

- 47) Show the estimate of proposed grading on the plan. This project is located along an open creek. Therefore, all mass grading shall be limited to April 15 through October 15, unless otherwise approved in writing by the Department of Public Works.
- 48) A grading permit shall be obtained for all grading and site improvement work. Trucking trips during peak hours may be limited.
- 49) A preliminary geotechnical report has been provided. This does not thoroughly analyze the geotechnical concerns but references that design-level explorations should be conducted prior to site development once more detailed plans have been prepared. The project is in application for

design. Therefore, the subsequent geotechnical report shall be a condition of approval. However, the findings of that report may affect the design of the project, which may require re-review of the project.

- 50) All plans, reports, monitoring, inspection and testing for the proposed project will be reviewed by an independent Geotechnical Engineer and/or Engineering Geologist retained by the City, at the expense of the project sponsor. This third-party consultant will review all plans, reports, monitoring, inspection and testing data prior to appropriate approvals and/or certifications. A letter report summarizing findings and recommendations shall be submitted by the geotechnical engineer to the City Engineer for review and approval, as well as incorporation into grading plans. Final grading and foundation techniques shall be developed by a certified geotechnical engineer or engineering geologist and reviewed and approved by the City.
- 51) A construction management plan shall be provided for review and approval by the City.
- a) All materials and equipment shall be staged on-site.
 - b) The construction management plan shall include the traffic control plan to address on-site and off-site construction traffic.
 - c) A screened security fence approved by the City shall be placed and maintained around the perimeter of the project and removed immediately following construction work
 - d) Truck routes shall be reviewed and approved by the City. Hauling shall be limited to 1 truck in and 1 truck out per 15 minutes during the AM and PM peak, which may be revised at the time of grading permit issuance.
- 52) This project includes over one (1) acre of disturbance. A SWPPP shall be required.
- 53) Phasing of the project shall be configured to develop the area adjacent to the creek first along with the infrastructure. This area is required for access, maintenance and drainage. This would allow for early establishment of vegetation in this area to reduce potential impacts to the creek. Due to the size of the project and configuration, the infrastructure required on and off site shall be developed as part of phase one. Infrastructure items that are commonly delayed to later phases shall be reviewed by the Department of Public Works, such as final lift of asphalt.

Drainage

- 54) This site includes work in or immediately adjacent to a creek. The applicant shall comply with requirements of the various creek permitting agencies and obtain all necessary permits.
- (a) Pet waste bags, signage and trash receptacles shall be provided in convenient locations to reduce the likelihood of litter near the creek path.
- 55) The final drainage plan shall be subject to review and approval by the City Engineer. The final drainage plan shall address the following:
- a) The plans shall show the existing drainage facilities
 - b) Runoff shall not be increased, leaving the project boundary
 - c) Filtration shall be required for particles equal to or larger than 5mm, so they do not enter into the City's storm drainage system
 - d) Placards (medallions) shall be installed on all new drainage inlets to prohibit dumping of pollutants. These are available from the City or MCSTOPPP
 - e) A stormwater facilities maintenance agreement shall be required
 - f) How the project's drainage system shall be maintained, whether separate for each site or together along with the other development improvements.
 - g) The drainage plan shall be developed in consideration with the findings of the geotechnical report.

- 56) The site drainage system is located at elevations that may be subject to tidally influenced surcharge events. The drainage system shall include backflow prevention.
- 57) Frontage improvements shall include where necessary, street lighting, conduit for City facilities, accessible curb ramp pairs, drainage facilities, street trees, sidewalk, curb and gutter. This shall be reviewed at the time of permit issuance.
- 58) Due to the level of improvements we recommend that as a condition of approval the full width of Merrydale Rd be resurfaced with this project, additionally we suggest that this be extended to the intersection with Las Gallinas, as this is one of the only two sites that currently take access from this end of Merrydale Rd. The extents of resurfacing shall be reviewed based on existing conditions at the time of permit issuance.
- 59) An encroachment permit is required for any work within the Right-of-Way, from the Department of Public Works located at 111 Morphew Street. Restriping of public streets shall be of thermoplastic, as approved by the Department of Public Works.

Traffic

- 60) The Traffic Impact Study (TIS) has been updated, dated October 3, 2019 and previous comments have been addressed.
- 61) The proposed project results in additional trips generated at the site. Based on the draft traffic impact study and the additional proposed unit, this results in an estimated **17 AM and 19 PM** peak hour trips. Using the current traffic mitigation fee rate this results in an estimated fee of (36*\$4,246) \$152,856 which shall be calculated and due at the time of building permit issuance.
- 62) A construction vehicle impact fee shall be required at the time of building permit issuance; which is calculated at 1% of the valuation, with the first \$10,000 of valuation exempt.

Community Development Department – Building Division

- 63) The design and construction of all site alterations shall comply with the 2016 California Building Code (CBC), 2016 California Plumbing Code (CPC), 2016 California Electrical Code (CEC), 2016 California Mechanical Code CCMC), 2016 California Fire Code (CFC), 2016 California Energy Code, 2016 California Green Building Standards Code and City of San Rafael Ordinances and Amendments.
- 64) A building permit is required for the proposed work. Applications shall be accompanied by four (4) complete sets of construction drawings to include:
- a) Architectural plans
 - b) Structural plans
 - c) Electrical plans
 - d) Plumbing plans
 - e) Mechanical plans
 - f) Site/civil plans (clearly identifying grade plane and height of the building)
 - g) Structural Calculations
 - h) Truss Calculations
 - i) Soils reports
 - j) Green Building documentation
 - k) Title-24 energy documentation
- 65) Building height and story must comply with CBC Section 504. On the plan justify the proposed building area and height.

- 66) Building areas are limited by CBC Table 506.2. On plan justify the proposed building area.
- 67) The maximum area of unprotected and protected openings permitted in the exterior wall in any story of a building shall not exceed the percentages specified in CBC Table 705.8 "Maximum Area of Exterior Wall Openings Based on Fire Separation Distance and Degree of Opening Protection." To calculate the maximum area of exterior wall openings you must provide the building setback distance from the property lines and then justify the percentage of proposed wall openings and include whether the opening is unprotected or protected.
- 68) Townhouses more than three stories above grade in height must comply with the CBC. CBC Table 705.8 allows:
- a) 15% exterior wall openings (in any story) in sprinklered buildings where the openings are 3' to less than 5' from the property line or buildings on the same property.
 - b) 25% exterior wall openings (in any story) in sprinklered buildings where the openings are 5' to less than 10' from the property line or buildings on the same property.
 - c) 45% exterior wall openings (in any story) in sprinklered buildings where the openings are 10' to less than 15' from the property line or buildings on the same property.
- 69) Each building must have address identification placed in a position that is plainly legible and visible from the street or road fronting the property. Numbers painted on the curb do not satisfy this requirement. In new construction and substantial remodels, the address must be internally or externally illuminated and remain illuminated at all hours of darkness. Numbers must be a minimum 4 inches in height with ½ inch stroke for residential occupancies and a minimum 6 inches in height with ½ inch stroke for commercial applications. The address must be contrasting in color to their background SMC 12.12.20.
- 70) Bollards must be placed in the garage to protect mechanical equipment, water heater, and washer dryer from vehicular damage when located in the path of a vehicle.
- 71) Any demolition of existing structures will require a permit. Submittal shall include three (3) copies of the site plan, asbestos certification and PG&E disconnect notices. Also, application must be made to the Bay Area Air Quality Management District prior to obtaining the permit and beginning work.
- 72) School fees will be required for the project. Calculations are done by the San Rafael City Schools, and those fees are paid directly to them prior to issuance of the building permit.
- 73) Based on the distance to the property line (and/or adjacent buildings on the same parcel), the building elements shall have a fire resistive rating not less than that specified in CBC Table 601 and exterior walls shall have a fire resistive rating not less than that specified in CBC Table 602.
- 74) Walls separating proposed tenant space from existing neighboring tenant spaces must be a minimum of 1-hour construction.
- 75) Multifamily dwelling and apartment accessible parking spaces shall be provided at a minimum rate of 2 percent of the covered multifamily dwelling units. At least one space of each type of parking facility shall be made accessible even if the total number exceeds 2 percent.
- 76) When parking is provided for multifamily dwellings and is not assigned to a resident or a group of residents, at least 5 percent of the parking spaces shall be accessible and provide access to grade-level entrances of multifamily dwellings and facilities (e.g. swimming pools, club houses, recreation areas and laundry rooms) that serve the dwellings. Accessible parking spaces shall be located on the shortest accessible route to an accessible building, or dwelling unit entrance.

77) Public accommodation disabled parking spaces must be provided according the following table and must be uniformly distributed throughout the site.

Total Number of Parking Spaces Provided	Minimum Required Number of H/C Spaces
1 to 25	1
26 o 50	2
51 o 75	3
76 o 100	4
101 150	5
151 200	6
201 300	7
301 400	8
401 500	9
501 1,000	Two percent of total
1,001 and over	Twenty, plus one for each 100 or fraction thereof over 1,001

78) At least one disabled parking space must be van accessible; 9 feet wide parking space and 8 feet wide off- load area. Additionally, one in every eight required handicap spaces must be van accessible.

79) This project is subject to the City of San Rafael Green Building Ordinance. A sliding scale is applied based on the average unit square footage. New multi-family dwellings must comply with the “Green Building Rating System” by showing a minimum compliance threshold between 65 and 75 points. Additionally, the energy budget must also be below Title 24 Energy Efficiency Standards a minimum 15%.

Fire Department – Fire Prevention Bureau

80) Prior to issuance of building permit, the following requirements shall be added to the building permit plans as Sheet SP-6:

- a) Fire Lane signage shall be installed at both entrances that meet City of San Rafael Parking Enforcement standards.
- b) KNOX box installation at Community Rec Room exterior wall.
- c) Fire Sprinkler system conforming to NFPA standards installed throughout.
- d) all hydrants to be Clow model 960 appliances.

81) Plan Sheet SP-6 (Fire Engine Truck Access Plan) shall be part of the building permit submittal packet and reviewed by the Fire Department as part of the building permit review.

Las Gallinas Valley Sanitation District

82) Las Gallinas Valley Sanitation District has determined that the proposed project is within the Sphere of Influence and District facilities boundary. The proposed project must apply for and receive an allocation of sewer capacity from this District before it can receive sewer services. The proposed project must make satisfactory arrangements with this District for the construction of any off-site or on-site sewers which may be required. The District has provided the following comments, as of October 15, 2019: The District will consider a gravity option with the following conditions:

- a) The initial report from Nute Engineering has indicated that a gravity option is not feasible without flow diversion within the District collection system and upgrades to Rafael Meadows Pump

Station. This option is subject to final review by Nute Engineering. The District anticipates receiving the Nute's final recommendation and preliminary construction cost estimate by end of October 2019.

- b) The District has considered constructing flow diversion structures at its own expense to alleviate surcharging of sanitary sewers in the area. However, at the minimum, applicant may be required to cost share the electrical and pump upgrades to the Rafael Meadows Pump Station, pending District Board approval.
- c) If a gravity option is not feasible, the District will require a dedicated private pump station in addition to the Rafael Meadows Pump Station upgrades as described above. The private pump station option shall comply with the following conditions:
 - i) The pump station design shall meet the requirements set by the Regional Water Quality Control Board and other regulatory agencies.
 - ii) The pump station shall include backup generator and pumps with series of sensors and alarm systems to alert District staff of pump failure and potential sewage overflows.
 - iii) The pump station shall comply with city ordinance general noise limits (chapter 8.13), which at a minimum are 60dBA intermittent daytime and 50dBA intermittent nighttime.
- d) Applicant shall submit plans **electronically** to LGVSD for review and approval. A Will Serve Letter will be issued based on the following:
 - i) Approved plans designed with District standard details and specifications.
 - ii) Compliance with District requirements outlined in previous plan reviews.
 - iii) Other requirements based on future submittals.

Marin Municipal Water District

- 83) The applicant must enter into a pipeline extension agreement with the Marin Municipal Water District for the installation of the necessary facilities and said agreement must be approved by the District's Board of Directors. All costs associated with a pipeline extension are borne by the applicant.
- 84) Complete a High-pressure Water Service Application
- 85) Pay appropriate fees and charges
- 86) Complete the structure's foundation within 120 days of the date of application
- 87) Comply with the District's rules and regulations in effect at the time service is requested, including the installation of a separate water service for each residential structure.
- 88) Comply with all indoor and outdoor requirements of District Code Title 13 – Water Conservation. This may include ventilation of specific indoor fixture efficiency compliance.
- 89) If you are pursuing a landscaping project subject to review by your local planning department and/or subject to a city permit, please contact the district water conservation department at 415-945-1497 or e-mail to plancheck@marinwater.org. More information about district water conservation requirements can be found online at www.marinwater.org.
- 90) Comply with the backflow preventer requirements, if upon the District's review backflow protection is warranted, including installation, testing and maintenance. Questions regarding backflow requirements should be directed to the Backflow Prevention Program Coordinator at 415-945-1558.

- 91) Comply with Ordinance No.429 requiring the installation of gray water recycling systems when practicable for all projects required to install new water service and existing structures undergoing “substantial remodel” that necessitates an enlarged water service.
- 92) Comply with California water Code – Division 1, Chapter 8, Article 5, Section 537; which requires individual metering of multiple living units within newly constructed structures.

During Construction and Grading

Community Development Department – Planning Division

93) Construction hours and activity (including any and all deliveries) are limited to the applicable requirements set forth in Chapter 8.13 of the San Rafael Municipal Code.

94) **AIR QUALITY (AQ-1)**: Include basic measures to control dust and exhaust during construction. During any construction period ground disturbance, the applicant shall ensure that the project contractor implement measures to control dust and exhaust. Implementation of the measures recommended by BAAQMD and listed below would reduce the air quality impacts associated with grading and new construction to a less-than-significant level. The contractor shall implement the following best management practices that are required of all projects:

- a) All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- b) All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d) All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
- e) All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- f) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- g) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- h) Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

95) **AIR QUALITY (AQ-1a)**: All diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet U.S. EPA particulate matter emissions standards for Tier 2 engines with CARB-certified Level 3 Diesel Particulate Filters or equivalent.

- a) The use of equipment meeting U.S. EPA Tier 4 standards for particulate matter would also meet this requirement.
- b) Use of equipment that includes alternatively fueled equipment (i.e., non-diesel) would meet this requirement.
- c) Other measures may be the use of added exhaust devices, or a combination of measures, provided that these measures are approved by the City and demonstrated to reduce community risk impacts to less-than-significant.

96) **AIR QUALITY (AQ-2)**: Include high-efficiency particulate filtration systems in residential ventilation systems. The significant exposure for new project receptors is judged by two effects: (1) increased cancer risk, and (2) annual PM2.5 concentration. Exposure to cancer risk from U.S. Highway 101 are significant. Cancer risk is based on exposure to exhaust emissions while annual PM2.5 concentrations are based on the exposure to PM2.5 resulting from emissions attributable to truck and auto exhaust, the wearing of brakes and tires and re-entrainment of roadway dust from vehicles traveling over pavement. PM2.5 exposure drives the mitigation plan. Reducing PM2.5 exposures to less than significant would also reduce cancer risk to less than significant levels. The project shall include the following measures to minimize long-term annual PM2.5 exposure for new project occupants:

1. Install air filtration in residential dwellings. Air filtration devices shall be rated MERV 13 or higher. To ensure adequate health protection to sensitive receptors (i.e., residents), this ventilation system, whether mechanical or passive, all fresh air circulated into the dwelling units shall be filtered, as described above.
2. As part of implementing this measure, an ongoing maintenance plan for the buildings' heating, ventilation, and air conditioning (HVAC) air filtration system shall be required.
3. Ensure that the use agreement and other property documents: (1) require cleaning, maintenance, and monitoring of the affected buildings for air flow leaks, (2) include assurance that new owners or tenants are provided information on the ventilation system, and (3) include provisions that fees associated with owning or leasing a unit(s) in the building include funds for cleaning, maintenance, monitoring, and replacements of the filters, as needed.

97) **BIOLOGICAL RESOURCES (BIO-1): Pre-construction nesting bird and bat survey**: The nesting season is defined here as being from February 1 to August 31 and therefore work should commence between September 1 and January 31.

- i) If this is not possible, and project activities are initiated during the nesting season, then a nesting bird survey shall be conducted by a qualified wildlife biologist no more than 14 days prior to the start of project activities.
- ii) If nests are identified, a no-disturbance buffer should be implemented to avoid impacts to nesting birds and should remain in place until all young are fledged or the nest otherwise becomes inactive.
- iii) Buffers typically range from 25 feet to 500 feet depending on the species.
- iv) If work is to be initiated within the bat breeding/ winter roosting season, an assessment of existing buildings should be performed prior to construction activities to determine if a roost is present.
- v) If a roost is observed, construction activities should be postponed until a qualified biologist determines the bats are excluded from the roost location.

98) **CULTURAL RESOURCES (CULT-1): Protect Archaeological Resources Identified during Construction**: The project sponsor shall ensure that construction crews stop all work within 100 feet of the discovery until a qualified archaeologist can assess the previously unrecorded discovery and provide recommendations. Resources could include subsurface historic features such as artifact-filled privies, wells, and refuse pits, and artifact deposits, along with concentrations of adobe, stone, or concrete walls or foundations, and concentrations of ceramic, glass, or metal materials. Native American archaeological materials could include obsidian and chert flaked stone tools (such as projectile and dart points), midden (culturally derived darkened soil containing heat-affected rock, artifacts, animal bones, and/or shellfish remains), and/or groundstone implements (such as mortars and pestles).

- 99) **CULTURAL RESOURCES (CULT-2): Protect Human Remains Identified During Construction:**
The Project proponent shall treat any human remains and associated or unassociated funerary objects discovered during soil-disturbing activities according to applicable State laws. Such treatment includes work stoppage and immediate notification of the Marin County Coroner and qualified archaeologist, and in the event that the Coroner's determination that the human remains are Native American, notification of NAHC according to the requirements in PRC Section 5097.98. NAHC would appoint a Most Likely Descendant ("MLD"). A qualified archaeologist, Project proponent, County of Marin, and MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of any human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5[d]). The agreement would take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, and final disposition of the human remains and associated or unassociated funerary objects. The PRC allows 48 hours to reach agreement on these matters.
- 100) **GEOTECHNICAL (GEO-5):** Should paleontological resources be encountered during project subsurface construction activities located in previously undisturbed soil and bedrock, all ground-disturbing activities within 25 feet shall be halted and a qualified paleontologist contacted to assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. For purposes of this mitigation, a "qualified paleontologist" shall be an individual with the following qualifications: 1) a graduate degree in paleontology or geology and/or a person with a demonstrated publication record in peer-reviewed paleontological journals; 2) at least two years of professional experience related to paleontology; 3) proficiency in recognizing fossils in the field and determining their significance; 4) expertise in local geology, stratigraphy, and biostratigraphy; and 5) experience collecting vertebrate fossils in the field.
- a) If the paleontological resources are found to be significant and project activities cannot avoid them, measures shall be implemented to ensure that the project does not cause a substantial adverse change in the significance of the paleontological resource. Measures may include monitoring, recording the fossil locality, data recovery and analysis, a final report, and accessioning the fossil material and technical report to a paleontological repository. Upon completion of the assessment, a report documenting methods, findings, and recommendations shall be prepared and submitted to the City for review. If paleontological materials are recovered, this report also shall be submitted to a paleontological repository such as the University of California Museum of Paleontology, along with significant paleontological materials. Public educational outreach may also be appropriate.
- b) The project applicants shall inform its contractor(s) of the sensitivity of the project site for paleontological resources and shall verify that the following directive has been included in the appropriate contract specification documents: "The subsurface of the construction site may contain fossils. If fossils are encountered during project subsurface construction, all ground-disturbing activities within 25 feet shall be halted and a qualified paleontologist contacted to assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. Project personnel shall not collect or move any paleontological materials. Fossils can include plants and animals, and such trace fossil evidence of past life as tracks or plant imprints. Marine sediments may contain invertebrate fossils such as snails, clam and oyster shells, sponges, and protozoa; and vertebrate fossils such as fish, whale, and sea lion bones. Vertebrate land mammals may include bones of mammoth, camel, saber tooth cat, horse, and bison. Contractor acknowledges and understands that excavation or removal of paleontological material is prohibited by law and constitutes a misdemeanor under California Public Resources Code, Section 5097.5."
- 101) **NOISE (NOISE-1):** Implementation of the following measures would reduce construction noise levels emanating from the site, limit construction hours, and minimize disruption and annoyance.

- a) Construction activities shall be limited to the hours specified in the City of San Rafael's Municipal Code (7 am to 6 pm on weekdays and 9 am to 6 pm on Saturdays). No construction activities are permitted on Sundays and holidays.
- b) Limit use of the concrete saw to a distance of 50 feet or greater from residences, where feasible. Construct temporary noise barriers to screen stationary noise-generating equipment, such as the concrete saw, when located near adjoining sensitive land uses. Temporary noise barriers could reduce construction noise levels by 5 dBA.
- c) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- d) Unnecessary idling or internal combustion engines should be strictly prohibited.
- e) Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors.
- f) Utilize "quiet" air compressors and other stationary noise sources where technology exists.
- g) Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- h) Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.
- i) Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.

102) **TRIBAL-1:** Address the potential discovery of previously unknown resources within the project area. If significant tribal cultural resources are identified onsite, all work would stop immediately within 50 feet of the resource(s) and the project applicant would comply with all relevant State and City policies and procedures prescribed under PRC Section 21074.

Prior to Final Occupancy

Community Development Department – Planning Division

103) A post-construction Acoustical Study shall be performed and submitted to the Planning Division to confirm that the project was constructed compliant with noise reducing materials and construction techniques as recommended in the Illingworth and Rodkin Acoustical Study.

104) **AESTHETICS (AES-1):** Prior to the Building Permit final inspection, the project applicant shall submit to the satisfaction of the Community Development Department Director, a post-installation photometric lighting study showing that the lighting on site complies with the approved lighting levels per ED18-100 and the requirements of SRMC 14.16.227. The project applicant shall also demonstrate to the Building Department that outdoor lighting fixtures meet the requirements of the California Energy Code (known as Part 6, Title 24 of the California Code of Regulations).

105) Install any improvements required by **TRANS-1** prior to final occupancy

106) **HYDROLOGY (HYDRO-2):** Prior to a certificate of occupancy, the Project applicant shall verify that operational stormwater quality control measures that comply with the requirements of the current Phase II Small MS4 Permit have been implemented. Responsibilities include, but are not limited to:

- a) Designing BMPs into Project features and operations to reduce potential impacts to surface water quality and to manage changes in the timing and quantity of runoff associated with operation of the project. These features shall be included in the design-level drainage plan and final development drawings.
 - b) The proposed project shall incorporate site design measures and Low Impact Development design standards, including minimizing disturbed areas and impervious surfaces, infiltration, harvesting, evapotranspiration, and/or bio-treatment of stormwater runoff.
 - c) The Project applicant shall establish an Operation and Maintenance Plan. This plan shall specify a regular inspection schedule of stormwater treatment facilities in accordance with the requirements of the Phase II Small MS4 Permit.
 - d) Funding for long-term maintenance of all BMPs shall be specified.
- 107) The applicant shall contact the Planning Division to request a final inspection, prior to the issuance of the final building permit. The final inspection shall require a minimum of 48-hours advance notice. All landscaping and irrigation shall be installed prior to the occupancy of the building or the property owner shall post a bond in the amount of the estimated landscaping/irrigation cost with the City of San Rafael. In the event that a bond is posted, all areas proposed for landscaping must be covered with bark or a substitute material approved by the Planning Division prior to occupancy. The landscape architect shall certify in writing and submit to the Planning Division, and call for inspection, that the landscaping has been installed in accordance with all aspects of the approved landscape plans, that the irrigation has been installed and been tested for timing and function, and all plants including street trees are healthy. Any dying or dead landscaping shall be replaced.
- 108) All exterior lighting shall be shielded down. Following the issuance of a certificate of occupancy, all exterior lighting shall be subject to a 90-day lighting level review by the Police Department and Planning Division to ensure compatibility with the surrounding area.
- 109) All plan details shall be implemented as indicated plans approved for building permit, in compliance with all conditions of approval and applicable City zoning code requirements, to the satisfaction of the Community Development Director. Any outstanding fees including planning review fees, inspection fees, etc. shall be paid.

Fire Department – Fire Prevention Bureau

- 110) Prior to Final occupancy, the following requirements shall be installed in addition to all Fire code Requirements on the site and shown on the Fire Engine Truck Access Plan Sheet SP-6:
- a) Fire Lane signage shall be installed at both entrances that meet City of San Rafael Parking Enforcement standards.
 - b) KNOX box shall be installed at Community Rec Room exterior wall.
 - c) Fire Sprinkler system conforming to NFPA standards installed throughout.
 - d) All hydrants installed on site shall be Clow model 960 appliances.

**Tentative Subdivision Map Conditions of Approval
(TS18-006)**

Community Development Department - Planning Division

- 2. The Tentative Subdivision Map (TS18-006) shall be valid for a period of three (3) years from the date of City Council approval, or until December 10, 2022 and shall become null and void unless a Final Map has been recorded or a time extension is granted.
- 3. The proposed project is approved as a Three-Phase development, consisting of a Phase One “pre-phase” (on and off-site improvements) to complete building Phase One -construction of Buildings 1-

4 and all landscaping north of Private street "A" (Fall 2021) and Phase Three- construction of Buildings 5-9, tree removal along the south property line and all remaining landscaping (Summer 2022). The Final Map may be recorded in phases or all at once.

- ~~4. The project shall be subject to the affordable housing requirements prescribed in Section 14.16.030 of the San Rafael Zoning Ordinance and is therefore required to provide nine (9) of the 45 for sale units as affordable. Prior to the issuance of a building permit or recordation of the final map, whichever occurs first, a Below Market Rate (BMR) agreement for the nine (9) affordable unit shall be approved by the City Council and recorded on the property. Consistent with the affordable housing requirements, five (5) of the units shall be affordable to low income household and four (4) of the units shall be affordable at the moderate income level. The location of the BMR units shall be identified on the project plans and the final location shall be subject to review and approval of the City as part of the City's consideration of the BMR agreement. Please contact the Marin Housing Authority to commence the agreement process.~~

The project is required to provide a primary and secondary affordable housing requirement pursuant to San Rafael Municipal Code Section 14.16.030 and City Council Resolution 14890. The applicant shall comply with this requirement by providing 2 units on-site (5% of the total units) and by paying an in-lieu fee equal to the 2.5 units (2.25 + .25 (fractional unit from the onsite requirement)).

Prior to the issuance of a building permit or recordation of the final map, whichever occurs first, The applicant shall :

- a. Pay the affordable housing in-lieu fee equal to 2.5 units.
 - b. Enter into a Below Market Rate (BMR) agreement. The BMR agreement for the two (2) affordable unit shall be approved by the Community Development Director and City Manager and recorded on the property. Consistent with the affordable housing requirements, the affordable housing units shall be affordable to low-income households. The location of the BMR units shall be identified on the project plans and the final location shall be subject to review and approval of the City as part of the City's consideration of the BMR agreement.
5. Prior to issuance of building permits or prior to the recordation of a Final Map, whichever occurs first, the developer shall pay to the City in lieu parkland dedication fees for 45 new units in accordance with the provisions of City Council Ordinance No. 1558, which would be 45 x 2.5 persons/dwelling unit x 3 acres per 1,000 persons x \$262,396.80 = \$88,558.92
6. Conditions, Covenants and Restrictions (CC&R's) shall be prepared and submitted with an application for a Final Parcel Map. The CC&R's shall include the following requirements and provisions:
- a. The formation of a homeowner's association (HOA).
 - b. Project will be governed by a homeowner's association (HOA) which will manage, maintain and operate the Project in accordance with Conditions, Covenants and Restrictions (CC&Rs) to be recorded against each unit and the common areas, Articles of Incorporation (Articles) and Bylaws. The HOA will have the right to adopt rules, regulations and guidelines, including design guidelines and community space rules to implement the CC&Rs. HOA responsibilities for ongoing maintenance of the shared or common facilities, including but not limited to the common driveway, common landscaping and irrigation, fencing, subdivision infrastructure improvements (storm water and sanitary sewer facilities) and exterior building and lighting improvements. All common areas including the Creek Promenade and the Paseos will be owned, managed and controlled by the HOA. Initially the builder will own all units within the project and will control the HOA until sufficient units have been sold for a HOA Board of Directors to be elected. The builder will pay HOA dues to the

HOA for each unit until each unit is sold. Restrictions and regulations imposed on each lot owner. The CC&R's shall include provisions, which restrict the use of the parking spaces to vehicle parking.

- c. Requirements and provisions for professional management services or the services of a Certified Public Accountant to oversee the HOA responsibilities and budget.
- d. Include an article providing for rights of the City of San Rafael, as follows:

ARTICLE ____ . RIGHTS OF THE CITY OF SAN RAFAEL

1. Use Restrictions. In furtherance of the police power of the City of San Rafael, the following provisions will apply to the Property:

(a)no re-subdivision of any Lot shown on the Map will be done without the approval and consent of the City of San Rafael.

(b)the restrictions set out in this Declaration will burden the Property, for the benefit of the City of San Rafael, and the same are enforceable by and will inure to the benefit of the City of San Rafael.

2. Right to Remedy Failure to Maintain Common Area. In the event that there is a failure to maintain the Common Area so that owners, lessees, and their guests suffer, or will suffer, substantial diminution in the enjoyment, use, or property value of their Project, thereby impairing the health, safety and welfare of the residents in the Project, the City, by and through its duly authorized officers and employees, will have the right to enter upon the subject Property, and to commence and complete such work as is necessary to maintain said Common Area. The City will enter and repair only if, after giving the Association and Owners written notice of the failure to maintain the Common Area, they do not commence correction of such conditions in no more than thirty (30) days from the giving of the notice and proceed diligently to completion. All expenses incurred by the City shall be paid within thirty (30) days of written demand. Upon a failure to pay within said thirty (30) days, the City will have the right to impose a lien for the proportionate share of such costs against each Lot in the Project.

It is understood that by the provisions hereof, the City is not required to take any affirmative action, and any action undertaken by the City will be that which, in its sole discretion, it deems reasonable to protect the public health, safety and general welfare, and to enforce it and the regulations and ordinances and other laws.

It is understood that action or inaction by the City, under the provisions hereof, will not constitute a waiver or relinquishment of any of its rights to seek redress for the violation of any of the provisions of these restrictions or any of the rules, regulations and ordinances of the City, or of other laws by way of a suit in law or equity in a court of competent jurisdiction or by other action.

It is further understood that the remedies available to the City by the provision of this section or by reason of any other provisions of law will be cumulative and not exclusive of the maintenance of any other remedy. In this connection, it is understood and agreed that the failure to maintain the Common Area will be deemed to be a public nuisance and the City will have the right to abate said condition, assess the costs thereof, and cause the collection of said assessments to be made on the tax roll in the manner provided by appropriate provisions of the San Rafael Municipal Code or any other applicable law.

The City Council of the City may, at any time, relinquish its rights and interest in the Project as herein set forth by appropriate resolution. Any such relinquishment by the City Council will be effective on the date that the resolution is adopted, and a copy thereof is placed in the United States mail, postage prepaid, addressed to the Association. The Owner will execute and record a declaration reflecting such relinquishment within ten (10) days of receipt of a copy of the resolution.

3. **No Waiver.** No failure of the City of San Rafael to enforce any of the covenants or restrictions contained herein will in any event render them ineffective.

4. **Third-Party Beneficiary.** The rights of the City of San Rafael pursuant to this Article will be the rights of an intended third party beneficiary of a contract, as provided in Section 1559 of the California Civil Code, except that there will be no right of Declarant, the Association, or any Owner(s) to rescind the contract involved so as to defeat such rights of the City of San Rafael.

5. **Hold Harmless.** Declarant, Owners, and each successor in interest of Declarant and said Owners, hereby agree to save and hold the City of San Rafael harmless from any and all liability for inverse condemnation which may result from, or be based upon, City's approval of the Development of the subject Property.

6. **Amendments.** The City of San Rafael will be given reasonable advance notice in writing of any amendments to the Declaration affecting the rights of the City as provided herein, and no such amendment will be deemed effective without the written consent of the San Rafael City Council.

7. Prior to recordation of the final map, the CC&R's shall be reviewed and approved by the Department of Community Development and the City Attorney's Office.
8. Approved CC&R's shall be recorded concurrently with the final map.

Department of Public Works - Land Development Division

9. A Final Map shall be required to be filed and approved by the Department of Public Works.
10. Should the applicant elect to record the final map prior to completion of the subdivision improvements, a subdivision improvement agreement shall be required. As part of this agreement bonds shall be required based on the engineer's estimate. The current fees for the subdivision:
 - \$2,615.00 Improvement Plan Check
 - \$3,285.00 minimum, (or actual cost if greater) for Final Map Plan Check.
 - \$1,464.00 Subdivision Improvement Inspection Fees.

**Master Use Permit Conditions of Approval
(UP18-039)**

1. Except as modified herein, the Master Use Permit (UP18-039) authorizes redevelopment of the existing 2.28-acre site for residential use as shown in the approved plans in a maximum of three (3) phases. Although phasing is not required, this Use Permit authorizes that the project may be phased as follows, subject to the conditions of approval
 - a) Phase One (Pre-Phase) which entails site preparation, demolition, landscaping/tree removal (except no removal of existing trees along the southern property line).

- b) Phase Two – Shall include construction of buildings, construction of the 2 on-site below market rate units. ~~Construction of Buildings 1 through Building 4 (a total of 25 units, including five (5) BMR units),~~ trash enclosure, and creek promenade enhancements including landscaping, hardscape and recreational amenities.
 - c) Phase Three - Construction of any remaining units ~~Building 5 through Building 9 (a total of 20 units, including four (4) BMR units),~~ removal of existing trees along southern property line and the remaining landscaping.
2. Should the project proceed in a phased development approach, the following requirements shall apply:
- a) All site improvement, roadways, sidewalk, utilities shall be installed and completed no later than the completion of Phase Two.
 - b) Landscaping may be installed by each phase:
 - i. Prior to final occupancy of Phase Two, the approved landscaping along the Merrydale Rd border (along Building 1) and along the Highway 101 frontage (Building 3 and Building 4) along with all other on-site landscaping in that phase, shall be installed.
 - ii. Prior to final occupancy of Phase Three, the approved landscaping along the Merrydale Rd border (along Building 9) and along the Highway 101/Redwood Hwy frontage (Building 5 and Building 6), along with all other on-site landscaping in that phase, shall be installed.
 - c) This Master Use Permit (UP18-039) shall be valid for three (3) years from the date of City Council approval, or until December 10, 2022 and shall become null and void if: 1) a building permits(s) have not been obtained and construction diligently commenced and pursued for all 9 buildings (45 units); 2) construction has not commenced on both Phase Two and Phase Three; 3) the project has not substantially progressed in constructions of Phase Two and Three; or 4) a time extension request has not been received before December 10, 2022. The time extension application (including project plans) must be submitted to the Planning Department with all associated fees. The time extension is subject to a public hearing and review and approval by the Planning Commission.
 - d) Once the building permit(s) is/are issued and construction and framing are commenced within the three (3) year period, then the Use Permit shall become valid and run with the land and will not have an expiration date. On-going compliance with all conditions of approval shall be required to keep the Use Permit valid.
3. Prior to completion of Phase Two, an “Interim Site Plan” for the area of Phase Three shall be submitted, to address visual conditions, dust/erosion control, security and drainage and site maintenance. This plan shall be subject to review and approval of the Community Development Department and Department of Public Works.
4. Once the Interim Site Plan is approved, all specific conditions of the interim plan for the area of Phase Three shall be installed per the approved plan, prior to final occupancy of Buildings 1 through Building 4, as approved per Phase Two construction.



SAN RAFAEL
THE CITY WITH A MISSION

**Community Development Department – Planning
Division**

Meeting Date: June 28, 2022
Agenda Item: 3
Case Numbers: PLAN22-031;
ZO22-002
**Project
Planner:** Jayni Allsep
(415) 706-0443

REPORT TO PLANNING COMMISSION

SUBJECT: Proposed Amendment to Table 14.05.020 of Section 14.05.020 of the San Rafael Municipal Code to allow “animal care facilities” excluding exterior kennels, pens or runs, as a conditionally permitted use in the Office (O) District; Citywide-all real property located within O – Office District; Peter Spoerl, applicant; File Nos.: PLAN22-031; ZO22-002

EXECUTIVE SUMMARY

The proposed zoning text amendment would allow animal care facilities in the Office (O) District, subject to approval of a use permit by the Zoning Administrator. Staff believes that the proposed amendment is consistent in principle with General Plan 2040 in that it would expand the variety of commercial uses allowed in the Office District, which would contribute to a “complete community” with a diversity of land uses in locations that conveniently serve and benefit the community. Animal care facilities are consistent with the wide range of uses already allowed within the Office District, including residential uses, and they are already conditionally permitted in the General Commercial (GC), Neighborhood Commercial (NC), and Commercial Office (C/O) Districts. The public health, safety and general welfare would be served by the proposed amendment because it would require that animal care facilities within the Office District be located entirely within the interior of a building, overnight boarding of animals would be limited to only that which is strictly necessary for medical purposes, and appropriate sanitation, odor control, and sound attenuation would be required in accordance with State and local regulations.

RECOMMENDATION

It is recommended that the Planning Commission take the following action:

- Adopt a resolution recommending City Council approve the zoning text amendment.

BACKGROUND

Relevant sections of the San Rafael Municipal Code (SRMC) are outlined below:

[Chapter 14.03 DEFINITIONS \(Zoning\)](#)

This chapter defines “Animal care facility” as a use providing grooming, housing, medical care, or other services to animals, including veterinary services, animal hospitals, overnight or short-term boarding ancillary to veterinary care, indoor or outdoor kennels, and similar services.

[Chapter 14.05 - COMMERCIAL AND OFFICE DISTRICTS](#)

This chapter contains land use regulations for commercial and office districts. As shown in Table 14.05, animal care facilities excluding exterior kennels, pens or runs, are conditionally permitted in the General Commercial (GC), Neighborhood Commercial (NC), and Commercial Office (C/O) Districts, subject to approval of a Use Permit by the Zoning Administrator. Animal care facilities are currently not permitted in the Office (O) District.

Chapter 10.24 - DOG KENNELS AND PET SHOPS

This chapter regulates businesses operating as dog kennels and pet shops and includes the following definitions:

10.24.010 Definitions.

(a) "Dog kennel" means any lot, building, structure, enclosure or premises whereon or wherein four or more dogs are kept or maintained for any commercial purpose; provided, however, that if other animals or birds or fowl are bought, sold or bartered, the classification to apply shall be that of a pet shop; and provided, further, that the term "dog kennel" shall not be construed as applying to a duly licensed veterinary hospital nor to the Marin County humane society.

(b) "Pet shop" means any lot, building, structure, enclosure or premises whereon or wherein is carried on a business of buying and/or selling or bartering birds, animals or fowl; but this definition shall not be construed as applying to the buying or selling of livestock, nor to the business or activities of a duly licensed veterinary hospital, nor to the business or activities of the Marin County humane society, nor to a duly licensed dog kennel. Note: a pet shop *is not* considered an animal care facility; it falls under the category of animal retail sales.

Chapter 8.13 - NOISE

This chapter addresses general noise limits, including noise generated by animals, which would be regulated under intermittent noise standards. Intermittent noise limits range from 50 dBA for nighttime limits in residential zones to 70 dBA limits in industrial zones.

PROJECT DESCRIPTION

The proposed zoning text amendment would allow animal care facilities in the O District, subject to approval of a use permit by the Zoning Administrator, and consistent with what is allowed in other Commercial Districts within the City. It is important to note that Table 14.05.020 specifically excludes exterior kennels, pens or runs from the type of animal care facilities permitted in commercial districts. Therefore, even though the Code definition of animal care facilities includes services such as housing, veterinary services, animal hospitals, boarding, and indoor and outdoor kennels, the specific exclusion included in Table 14.05 would not permit any animal care services in commercial and office districts that include exterior kennels, pens or runs.

In addition, the proposed zoning text amendment includes the following additional use regulations for animal care facilities located in the O District:

- Applicants for animal care services uses in the O district must submit documentation demonstrating adequate sound attenuation improvements within the facility to establish their ability to fully comply with the general noise limits of Section 8.13.040(B) of the SRMC; and
- Overnight boarding of animals in conjunction with animal care services in the O district shall be limited to only that which is strictly necessary for medical purposes in conjunction with the provision of veterinary services.

ANALYSIS

Section 14.27.060 of the SRMC requires that prior to any amendment of the City's zoning code, the City Council must find that the proposed amendment is consistent in principle with the General Plan, and that the public health, safety and general welfare would be served by the proposed amendment.

The proposed zoning text amendment would be consistent in principle with General Plan 2040 in that it would expand the variety of commercial uses allowed in the Office District, which would contribute to a diversity of land uses. The proposed amendment also includes appropriate restrictions that address potential land use compatibility issues. As noted above, no exterior kennels, pens or runs would be allowed as part of any animal care service use in the Office District, and overnight boarding of animals would be

limited to only that which is strictly necessary for medical purposes in conjunction with the provision of veterinary services. In addition, the proposed text amendment includes “Additional Use Regulations” as reflected in Exhibit A of Draft Resolution, which require that applicants submit documentation demonstrating adequate sound attenuation improvements within the facility to establish the ability to fully comply with the general noise limits contained in Section 8.13.040(B) of the SRMC. Other restrictions could be imposed on a project-by-project basis as conditions of the Use Permit to address potential effects on public health, safety and general welfare.

Specific general plan goals, policies and programs applicable to the proposed amendment are addressed below:

General Plan 2040 Guiding Principles

[Figure 2-2: General Plan 2040](#) illustrates the guiding principles that underpin General Plan 2040. The principles express a vision of San Rafael as a thriving city. At the core of this vision is a commitment to conserve and strengthen the foundational assets that make San Rafael the place it is today – its neighborhoods, beautiful open spaces, Downtown, strong sense of community, historic legacy, and quality public services. There are five essential principles that flow from this foundation: economic vitality, opportunity for all, adapting to the future, housing our growing community, and mobility.

As noted in the General Plan 2040 Land Use Element, the General Plan embraces the idea that San Rafael should remain a “complete community” that includes a diversity of land uses. In addition, there is nothing to suggest that the ability to permit animal care facilities within the Office District would generate undue traffic impacts. According to the Institute of Transportation Engineers (ITE) Trip Generation Manual, 11th edition, trip generation rates for veterinary clinics are at 21.5 daily trips per 1,000 square feet of floor area, which is significantly lower than several of the other business, office, retail and services uses already permitted “by right” within the Office District.

General Plan 2040 includes policies to provide a variety of neighborhood, community, and regional commercial uses, which support the proposed amendment:

General Plan 2040 Land Use Element

Goal LU-2: A Complete Community. San Rafael is a complete community, with balanced and diverse land uses. San Rafael reflects a mosaic of land use patterns that have changed over time and will continue to evolve in the future. Our desire to maintain existing land use patterns must be balanced with the development necessary to provide jobs, meet housing needs, respond to the challenges of a changing economy, and sustain an evolving, vital community. We continue to value and cherish our diverse neighborhoods, while making them more resilient and adapting to changing conditions.

Policy LU-2.1: Land Use Map and Categories. Use the General Plan Map as the framework for future land use decisions. The Map displays the distribution of different land use categories in the San Rafael Planning Area. Each category is associated with a particular set of uses and densities/intensity standards. All proposed projects must meet these standards, as well as other applicable standards established by the City’s zoning regulations. Some uses in each category are “conditional,” meaning they are allowed only in limited areas or may be subject to specific conditions.

Policy LU-2.13: Odor Impacts. Consider odor impacts when evaluating land uses and development projects near wastewater treatment plants, treatment plant expansion projects, waste transfer stations, and other odor potential sources.

Program LU-2.13A: Evaluation of Odor Impacts. Evaluate odor impacts as part of development review.

A review of the General Plan 2040 Land Use Map and the Zoning Map show that Office districts are generally located adjacent to the US 101 corridor in North San Rafael on property with a general plan land use designation of "Office Mixed Use". This category corresponds to areas where office is the prevailing land use. Typical activities include general offices, medical and professional offices, and administrative or headquarters offices. Staff believes that animal care facilities are compatible with these types of office uses, provided that the facility is entirely within a completely enclosed building, overnight boarding of animals would be limited to only that which is strictly necessary for medical purposes, and appropriate sanitation, odor control, and sound attenuation is provided as addressed below.

Staff also considered the potential for odor impacts from animal care facilities. Animal care facilities that fall under the category of veterinary care are regulated by the State of California Business and Professions Code, and all veterinary premises are required to be registered with the State's Veterinary Medical Board (VMB), which operates under the State of California Department of Consumer Affairs (DCA). All premises where veterinary medicine, veterinary dentistry, or veterinary surgery is being practiced, and all instruments, apparatus and apparel used in connection with those practices, shall be kept clean and sanitary at all times, and shall conform to those [minimum standards established by the board](#). These minimum standards include a requirement that the disposal of waste material shall comply with all applicable state, federal, and local laws and regulations.

Based on the above, the potential for odor impacts on adjacent uses is considered low given that no exterior kennels, pens or runs would be permitted in the Office District and overnight boarding of animals would be limited to only that which is strictly necessary for medical purposes in conjunction with the provision of veterinary services. When considering specific Use Permit applications for animal care facilities, conditions could be imposed to address site-specific operational conditions if warranted. For example, if a facility is proposed in a multi-tenant building, an odor control plan could be required as a condition of the Use Permit, which would require the applicant to specify the administrative and engineering controls (e.g. carbon filtration) the facility will implement to control odors.

In the event that odor issues related to the operation of an animal care facility arise, compliance with State and local regulations would be enforced by the San Rafael Police Department or its designee. SRMC Section 6.10.010 stipulates that the Marin County animal control regulations set forth in Title 8 of the Marin County Code are adopted by reference. The Marin Humane Society is appointed as the animal services agency for the County. One of the many powers and duties of the animal services agency is to enforce the laws of the state of California relating to the care, treatment and impounding of animals, and specifically to issue citations and make arrests for violations of the provisions Chapter 8 of the County Code and related state laws.

Noise Element

Goal N-1: Acceptable Noise Levels. Protect the public from excessive, unnecessary, and unreasonable noise.

Policy N-1.2: Maintaining Acceptable Levels of Noise. Use the following performance standards to maintain an acceptable noise environment in San Rafael:

- New development shall not increase noise levels by more than 3 dB Ldn in a residential area, or by more than 5 dB Ldn in a non-residential area.
- New development shall not cause noise levels to increase above the "normally acceptable" levels shown in Table N-1.
- For larger projects, the noise levels in (a) and (b) should include any noise that would be generated by additional traffic associated with the new development.

Policy N-1.9: Maintaining Peace and Quiet. Minimize noise conflicts resulting from everyday activities such as construction, sirens, yard equipment, business operations, night-time sporting events, and domestic activities.

Program N-1.9A: Noise Ordinance. Maintain and enforce the noise ordinance, which addresses common noise sources such as amplified music, mechanical equipment use, and construction. Updates to the ordinance should be periodically considered in response to new issues (for example, allowing portable generators during power outages).

As noted in the General Plan 2040 Noise Element, most urban land uses generate some degree of noise. Industrial and commercial uses generate noise from heating, ventilation, and air conditioning (HVAC) systems, as well as machinery, compressors, chillers, boilers, loading dock activities, and various processes. These are referred to as stationary noise sources. For certain businesses, conditional use permits may be used to establish hours of operation or limits on activities to reduce the potential for noise conflicts. Various Code requirements may be applied to identify noise muffling and buffering requirements and establish measurable noise thresholds for activities.

[Table 9-2](#) of the General Plan 2040 Noise Element presents the noise compatibility guidelines for San Rafael, which have been adapted from the State guidelines. The table indicates the exterior noise levels that should be considered normally acceptable, conditionally acceptable, normally unacceptable, and clearly unacceptable for major categories of land uses. Where exterior noise levels fall within the “conditionally acceptable” or “normally unacceptable” ranges, acoustical studies are typically required before those land uses are approved.

Animal care facilities fall under the general land use category of commercial and professional office buildings and businesses. For these uses, an interior noise level of 50 dBA is recommended, and exterior noise levels of up to 70 dBA are considered normally acceptable, based on the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements. Exterior noise levels of up to 75 dBA are considered conditionally acceptable. Conventional construction, but with closed windows and fresh air supply systems or air conditioning will normally suffice.

Based on the above, animal care facilities would be compatible with the noise environment that is typical of areas zoned O-Office. As noted above, Office districts are generally located adjacent to the US 101 corridor in North San Rafael where ambient noise levels range from 60 to 70 dBA. It is noted that the noise compatibility guidelines contained in [Table 9-2](#) are typically used to assess the compatibility of the proposed use with the exterior noise environment. See below for a discussion of noise limits regulated by Chapter 8.13 of the SRMC (Noise Ordinance).

[Chapter 8.13 - NOISE](#) addresses general noise limits, including noise generated by animals, which would be regulated under intermittent noise standards. Intermittent noise limits range from 50 dBA for nighttime limits in residential zones to 70 dBA limits in industrial zones.

As noted above, no exterior kennels, pens or runs would be allowed as part of any animal care service use in the Office District, and overnight boarding of animals would be limited to only that which is strictly necessary for medical purposes in conjunction with the provision of veterinary services. In addition, as noted above, the proposed text amendment includes “Additional Use Regulations” as reflected in Exhibit A of Draft Resolution, which require that applicants submit documentation that demonstrates adequate sound attenuation improvements within the facility in order to fully comply with the general noise limits contained in Section 8.13.040(B) of the SRMC. These restrictions and requirements would mitigate potential noise impacts associated with animal care facilities on adjacent land uses.

Conclusion

Based on the analysis above, staff believes that the proposed zoning text amendment would be consistent in principle with General Plan 2040 in that it would expand the variety of commercial uses allowed in the Office District, which would contribute to a “complete community” with a diversity of land uses in locations that conveniently serve and benefit the community. Animal care facilities are consistent with the wide range of uses already allowed within the Office District, including residential uses, and they are already conditionally permitted in the General Commercial (GC), Neighborhood Commercial (NC), and Commercial Office (C/O) Districts. The public health, safety and general welfare would be served by the proposed amendment because it would require that animal care facilities within the Office District be located entirely within the interior of a building, overnight boarding of animals would be limited to only that which is strictly necessary for medical purposes, and appropriate sanitation, odor control, and sound attenuation would be required.

ENVIRONMENTAL DETERMINATION

The project qualifies for a Categorical Exemption from the California Environmental Quality Act (“CEQA”) pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this zoning amendment or its implementation would have a significant effect on the environment.

PUBLIC NOTICE / CORRESPONDENCE

A notice of hearing for the project was conducted in accordance with noticing requirements contained in Chapter 29 of the Zoning Ordinance. A Notice of Public Hearing was mailed to interested parties on June 9, 2022 and was published in the Marin IJ on June 11, 2022. In addition, an email notification was sent to interested parties on June 11, 2022. Those noticed included, among others, all neighborhood associations, and the Federation of San Rafael Neighborhoods. As of the writing of this staff report, no public comment has been received. Any communication received will be forwarded to the Planning Commission.

OPTIONS

The Planning Commission has the following options:

1. Adopt the Resolution recommending to the City Council adoption of the zoning text amendment; or
2. Recommend approval of the application with certain modifications or changes;
3. Continue the hearing (to a date certain or an undefined date) to allow the applicant to address any of the Commission’s comments or concerns; or
4. Recommend that the project be denied.

EXHIBITS

1. Draft Resolution with Attachment A – Amended Text

EXHIBIT 1

RESOLUTION NO. 22-

RESOLUTION OF THE CITY OF SAN RAFAEL PLANNING COMMISSION RECOMMENDING TO THE CITY COUNCIL ADOPTION OF AN AMENDMENT TO TITLE 14 OF THE SAN RAFAEL MUNICIPAL CODE (ZONING), TABLE 14.05.020 UNDER SECTION 14.05.020, LAND USE REGULATIONS (GC, NC, O, C/O, R/O, FBWC) TO ALLOW “ANIMAL CARE FACILITIES” EXCLUDING EXTERIOR KENNELS, PENS OR RUNS, AS A CONDITIONALLY PERMITTED USE IN THE OFFICE (O) DISTRICT (ZO22-002)

WHEREAS, the City of San Rafael Community Development Department has received an application requesting a Zoning Text Amendment (ZO22-002); and

WHEREAS, this zoning text amendment to Title 14 of The San Rafael Municipal Code (Zoning), Table 14.05.020 Under Section 14.05.020, Land Use Regulations (GC, NC O, C/O, R/O, FBWC) would allow “Animal Care Facilities” excluding exterior kennels, pens or runs, as a conditionally permitted use in the Office (O) District, subject to approval of a Use Permit by the Zoning Administrator; and

WHEREAS, on June 28, 2022, the Planning Commission held a duly noticed public hearing on the proposed amendment to the San Rafael Municipal Code, Title 14, accepting all oral and written public testimony and the written report of the Community Development Department staff; and

WHEREAS, upon review of the application, the Planning Commission finds that this project qualifies for a Categorical Exemption from the California Environmental Quality Act (“CEQA”) pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this zoning amendment or its implementation would have a significant effect on the environment.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission recommends to the City Council adoption of the amendment to the San Rafael Municipal Code as outlined in Attachment A of this resolution, based on the following findings as required under Zoning Code Section 14.27.060:

1. The amendment to San Rafael Municipal Code Title 14 – Zoning Ordinance is consistent with the guiding principles that underpin the San Rafael General Plan 2040 in that it would expand the variety of commercial uses allowed in the Office District, and would contribute to a “complete community” with a diversity of land uses in locations that conveniently serve and benefit the community. The amendment is consistent with the following specific and applicable policies:
 - a. **Policy LU-2.1: Land Use Map and Categories** in that the distribution of land use categories within the San Rafael Planning Area, as shown on the General Plan 2040 Land Use Map, was considered in staff’s analysis of the amendment’s conformance with General Plan 2040;
 - b. **Policy LU-2.13: Odor Impacts** and **Program LU-2.13A: Evaluation of Odor Impacts** in that the potential for odor impacts was considered in staff’s analysis of the amendment’s conformance with General Plan 2040;

EXHIBIT 1

c. **General Plan Policies N-1.2: Maintaining Acceptable Levels of Noise and N-1.9 (Maintaining Peace and Quiet)**, and which aims to minimize noise conflicts resulting from everyday activities, including business operations; and **Program N-1.9A: Noise Ordinance** which calls to maintain and enforce the noise ordinance by including “Additional Use Regulations” as reflected in Exhibit A of Draft Resolution, which require that applicants submit documentation that demonstrates adequate sound attenuation improvements within the facility in order to fully comply with the general noise limits contained in Section 8.13.040(B) of the SRMC. These restrictions and requirements would mitigate potential noise impacts associated with animal care facilities on adjacent land uses.

2. The public health, safety and general welfare are served by adoption of the proposed amendment to the SRMC in that all animal care facilities located within the Office District would be required to be located entirely within the interior of a building, overnight boarding of animals would be limited to only that which is strictly necessary for medical purposes, and appropriate sanitation, odor control, and sound attenuation would be required.

The foregoing Resolution was adopted at the regular City of San Rafael Planning Commission meeting held on the 28th day of June 2022.

Moved by Commissioner _____ and seconded by Commissioner

_____.

AYES:

NOES:

ABSENT:

SAN RAFAEL PLANNING COMMISSION

ATTEST: _____
Leslie Mendez, Secretary

BY: _____
Jon Previtali, Chair

Attachment A: Amendment to San Rafael Municipal Code Title 14 (Zoning),
Table 14.05.020 of Section 14.05.020

ZC22-001

AMENDMENTS TO MUNICIPAL CODE

The row of regulations governing “Animal care facilities” under “Animal sales and service, excluding exterior kennels, pens and runs” as set forth under Table 14.05.020 of Section 14.05.050 of the San Rafael Municipal Code is hereby amended to read as follows [NOTE: none of the other cells or rows within Table 14.05.020 is modified by this amendment].

Table 14.05.020

Type of Land Use		GC	NC	O	C/O	R/O	FBWC*	Additional Use Regulations
Commercial Uses								
Animal sales and service, excluding exterior kennels, pens								
	Animal care facilities	CZ	CZ	<u>CZ</u>	CZ			<ul style="list-style-type: none"> • <u>Applicants for animal care services uses in the O district must submit documentation demonstrating adequate sound attenuation improvements within the facility to establish their ability to fully comply with the general noise limits of Section 8.13.040(B).</u> • <u>Overnight boarding of animals in conjunction with animal care services in the O district shall be limited to only that which is strictly necessary for medical purposes in conjunction with the provision of veterinary services.</u>
	Animal retail sales	P	P		P			