

**PLANNING DEPARTMENT TRANSMITTAL
TO THE CITY CLERK'S OFFICE
SUPPLEMENTAL
*CF 17-0021-S2***

CITY PLANNING CASE:	ENVIRONMENTAL DOCUMENT:	COUNCIL DISTRICT:
CPC-2015-4184-GPA-ZC-BL-SPR	ENV-2015-4183-MND-REC 1	7
PROJECT ADDRESS:		
9433 SEPULVEDA BOULEVARD 15500-15508 PLUMMER STREET		
PLANNER CONTACT INFORMATION:	TELEPHONE NUMBER:	EMAIL ADDRESS:
LAURA FRAZIN STEELE	818.374.9919	LAURA.FRAZINSTEELE@LACITY.ORG

NOTES / INSTRUCTION(S):	
AS MODIFIED BY THE PLUM COMMITTEE ON OCTOBER 16, 2018 NEW CONDITIONS OF APPROVAL (SEE ATTACHED)	
AS MODIFIED BY THE PLUM COMMITTEE ON OCTOBER 16, 2018, CORRECTED T CONDITIONS (SEE ATTACHED)	
TRANSMITTED BY:	TRANSMITTAL DATE:
Laura Frazin Steele	10/23/18

**CONDITIONS FOR EFFECTUATING (T)
TENTATIVE CLASSIFICATION REMOVAL**

As modified by the Planning and Land Use Management Committee October 16, 2018

Pursuant to Section 12.32 G of the Los Angeles Municipal Code, the (T) Tentative Classification shall be removed by the recordation of a final tract map (**VTT-73939-CN**) or by posting of guarantees through the B-permit process of the City Engineer to secure the following without expense to the City of Los Angeles, with copies of any approval or guarantees provided to the Department of City Planning for attachment to the subject planning case file.

1. **Improvement(s).** Prior to the issuance of any building permits, public improvements and dedications for streets and other rights-of-way adjoining the subject property shall be guaranteed to the satisfaction of the Bureau of Engineering, Department of Transportation and Fire Department (and other responsible City, regional and federal government agencies, as may be necessary). Specifically, the Project developer shall:
 - a. The proposed internal driveway access shall not be shown on the final map.
 - b. Improve Sepulveda Boulevard adjoining the subdivision by the reconstruction of the existing sidewalk and provide a new 17-foot wide full-width sidewalk with tree wells including any necessary removal and reconstruction of existing improvements.
 - c. Improve Plummer Street adjoining the subdivision by the reconstruction of the existing sidewalk and provide a new 10-foot wide full-width concrete sidewalk with tree wells including any necessary removal and reconstruction of existing improvements including sidewalk area west of this tract all satisfactory to the Valley District Engineer.
2. **Engineering Fees.** Prior to issuance of a clearance letter by the Bureau of Engineering, all engineering fees pertaining to Ordinance No. 176,077 adopted by the City Council, must be paid in full at the Development Services Division office.
3. **Street Lighting.** No street lighting improvements if no street widening per BOE improvement conditions. Otherwise relocate and upgrade street lights; one (1) on Plummer Street and two (2) on Sepulveda Boulevard.
4. **Sewers.** Sewer lines exist in Sepulveda Boulevard and in Plummer Street. All Sewerage Facilities Charges and Bonded Sewer Fees are to be paid prior to issuance of a building permit.
5. **Parking and Driveway Plan.** Submit parking area and driveway plan to the Valley District Office of the Bureau of Engineering and Department of Transportation for review and approval prior to issuance of a building permit.
6. **Fire.** A plot plan shall be submitted for Fire Department review and approval prior to issuance of a building permit.
7. **Cable Television.** Make satisfactory arrangements in accordance with the requirements of the Information Technology Agency to assure that cable television facilities will be installed in the same manner as other required improvements. Refer to the Los Angeles Municipal Code

(LAMC) Section 17.05 N. Written evidence of such arrangements must be submitted to the Information Technology Agency, 200 N. Main Street, Room 1255, Los Angeles, CA 90012.

8. **Recreation and Parks.** Per Section 12.33 of the Los Angeles Municipal Code, the applicant shall dedicate land for park or recreational purposes or pay the applicable Quimby fees for the construction of condominiums, or Recreation and Park fees for construction of apartment buildings.
9. **Covenant.** Prior to the issuance of any permits relative to this matter, an agreement concerning all the information contained in these conditions shall be recorded by the property owner in the County Recorder's Office. The agreement (standard master covenant and agreement form CP-6770) shall run with the land and shall be binding on any subsequent owners, heirs or assigns. Further, the agreement must be submitted to the Planning Department for approval before being recorded. After recordation, a copy bearing the Recorder's number and date must be given to the City Planning Department for attachment to the subject file.

Notice:

Certificates of Occupancy for the subject property will not be issued by the City until the construction of all the public improvements (streets, sewers, storm drains, etc.), as required herein, are completed to the satisfaction of the City Engineer.

CONDITIONS OF APPROVAL

As modified by the Planning and Land Use Management Committee October 16, 2018

Site Plan Review Conditions

Pursuant to Los Angeles Municipal Code Section 16.05, the following conditions are hereby imposed on the project:

1. **Site Development.** Except as modified herein, the project shall be in substantial conformance with the plans and materials submitted by the applicant, stamped "**Exhibit A**" (dated May 24, 2018) and attached to the subject case file. No change to the plans will be made without prior review by the Department of City Planning, Valley Project Planning Division, and written approval by the Director of Planning. Each change shall be identified and justified in writing. Minor deviations may be allowed in order to comply with the provisions of the LAMC or the project conditions.
2. **Signage.** No signage, other than that permitted by the LAMC sign regulations, shall be installed on the property. There shall be no off-site commercial signage on construction fencing during construction.
3. **Graffiti.** All graffiti on the site shall be removed or painted over to match the color of the surface to which it is applied within 24 hours of its occurrence.
4. **Storage of Materials.** No open portions of the property around the buildings shall be used for storage of equipment, products or waste products.
5. **Landscape Plan.** Revised landscape plans shall be submitted to show the size and location of all plants. The landscape plan shall indicate landscape points for the Project as required by LAMC 12.40 and Landscape Ordinance Guidelines "O". All open areas not used for buildings, driveways, parking areas, recreational facilities or walks shall be landscaped, including an automatic irrigation system, and maintained in accordance with a final landscape plan prepared by a licensed landscape architect or licensed architect, and submitted for approval to the Department of City Planning. The final landscape plan shall be in substantial conformance with the submitted Landscape Plans dated June 8, 2018, and stamped as **Exhibit "A."**
6. **Woonerf.** The woonerf shall include landscaping, connecting pedestrian paths, and three (3) open space parks with amenities (such as play equipment, barbeques, picnic benches) located at the project entrance off of Plummer Street, at the elbow corner, and at the entrance off of Sepulveda Boulevard. The woonerf shall include traffic calming features and differential paving along the building faces and areas for pedestrian crossing to clearly identify pedestrian access areas.
7. **Trees in the Public Right-of-Way.** New trees planted within the public right-of-way shall be spaced not more than an average of 30 feet on center, unless otherwise permitted by the Urban Forestry Division, Bureau of Public Works.
8. **Maintenance.** The property shall be maintained in a neat and attractive condition at all times. The property shall be maintained free of weeds and debris.

9. **Lighting.** All outdoor and parking lighting along the woonerf and elbow corner shall be shielded and down-cast within the site in a manner that prevents the illumination of adjacent public rights-of-way, adjacent properties, and the night sky (unless otherwise required by the Federal Aviation Administration (FAA) or for other public safety purposes).
10. **Lighting Design.** Areas where nighttime uses are located shall be maintained to provide sufficient illumination of the immediate environment so as to render objects or persons clearly visible for the safety of the public and emergency response personnel. All pedestrian walkways and vehicular access ways, including the woonerf, shall be illuminated with lighting fixtures. Lighting fixtures shall be harmonious with the building design. Wall mounted lighting fixtures to accent and complement architectural details at night shall be installed on the building to provide illumination to pedestrians and motorists.
11. **Air Filtration.** The project shall include an air filtration system having a Minimum Efficiency Reporting Value (MERV 13) to reduce the effects of diminished air quality on occupants of the project.
12. **Greywater.** The project shall be constructed with an operable recycled water pipe system for onsite greywater use, to be served from onsite non-potable water sources such as showers, washbasins, or laundry and to be used as untreated subsurface irrigation for vegetation or for cooling equipment. The system specifics shall be required as determined feasible by DWP in consultation with DCP.
13. **Vehicular Access.** Vehicular driveway access to the Project site shall be provided from Sepulveda Boulevard and Plummer Street.
14. **Permeable Paving.** The Project shall incorporate techniques throughout the Project site including permeable paving and landscaping to avoid excessive runoff into the Los Angeles Flood Control Basin. LID requirements shall be met by providing an underground LID filtration basin beneath the driveway at the Sepulveda Boulevard entrance.
15. **Trash Enclosures.** All trash enclosure areas shall be screened from public view from Sepulveda Boulevard and Plummer Street.
16. **Solar and Electric Generator.** Generators used during the construction process shall be electric or solar powered. Solar generator and electric generator equipment shall be located as far away from sensitive uses as feasible.
17. **Solar-ready Buildings.** The Project shall comply with the Los Angeles Municipal Green Building Code, Section 99.05.211, to the satisfaction of the Department of Building and Safety.
18. **Solar Power.** The project shall provide photovoltaic solar panels on a minimum of 20% of the total residential dwelling units (15 residential dwelling units) . The remainder of the dwelling units shall be solar ready. The operational photovoltaic system shall be maintained for the life of the project. Solar panels may be installed on all rooftop structures and/or surface parking lots with the exception of areas occupied by rooftop mechanical equipment.
19. **Utility Connections.** New utility connections shall be undergrounded to the best extent possible.

20. **Colors/Materials.** As shown in “**Exhibit A,**” the following materials shall be used: flat roof with parapet walls, stucco finish with control joints, horizontal siding with control board, stucco over foam trim, wood trim at siding, decorative metal awning, decorative shutters, decorative light fixture, and metal sectional roll up garage door. Material colors shall be as shown in “**Exhibit A.**” Prior to final building permit sign-off, plans shall be revised to the satisfaction of the Director of Planning to show similar materials and colors (e.g., awnings) on the north, south, east, and west elevations. Materials shall be similar to those shown on Sheets A1.3 and A2.3.
21. **Fence at Sepulveda Boulevard Frontage.** In lieu of the 6 foot high stucco over CMU wall at the Sepulveda Boulevard frontage (as shown on the Conceptual Wall and Fence Plan, Exhibit A (page 39), the applicant shall redesign the fence to provide variation in materials and texture to create a sense of security and privacy without diminishing the pedestrian environment or obscuring views. The fence shall be redesigned entirely with highly transparent materials, including decorative wrought iron, picket, or split rail, or shall be redesigned with a combination of masonry wall/stucco and highly transparent materials. If metal is used, it shall not include spears or sharp points. The fence height shall not be higher than 3 feet 6 inches and shall include individual gates at each unit entry.

Environmental Conditions (ENV-2015-4183-MND)

22. **Aesthetics (Landscape Plan).** All landscaped areas shall be maintained in accordance with a landscape plan, including an automatic irrigation plan, prepared by a licensed landscape architect in accordance with LAMC Sections 12.40 and 12.41. The final landscape plan shall be reviewed and approved by the City of Los Angeles Department of City Planning during the building permit process.
23. **Aesthetics (Light).** Outdoor lighting shall be designed and installed with shielding, so that the light source cannot be seen from adjacent residential properties, nor from above.
24. **Air Quality**
- a. All off-road construction equipment greater than 50 hp shall meet US EPA Tier 4 emission standards, where available, to reduce NOx, PM10 and PM2.5 emissions at the Project site. In addition, all construction equipment shall be outfitted with Best Available Control Technology devices certified by CARB. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 3 diesel emissions control strategy for a similarly sized engine as defined by CARB regulations.
 - b. Require the use of 2010 and newer diesel haul trucks (e.g., material delivery trucks and soil import/export) and if the Lead Agency determines that 2010 model year or newer diesel trucks cannot be obtained, the Lead Agency shall require trucks that meet U.S. EPA 2007 model year NOx emissions requirements.

- c. At the time of mobilization of each applicable unit of equipment, a copy of each unit's certified tier specification, BACT documentation, and CARB or SCAQMD operating permit shall be provided.

25. Habitat Modification (Nesting Native Birds, Non-Hillside or Urban Areas)

- a. The project will result in the removal of vegetation and disturbances to the ground and therefore may result in take nesting native bird species. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R Section 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA).
- b. Proposed project activities (including disturbances to native and non-native vegetation, structures and substrates) should take place outside of the breeding bird season which generally runs from March 1 – August 31 (as early as February 1 for raptors) to avoid take (including disturbances which would cause abandonment of active nests containing eggs and/or young). Take means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch capture or kill (Fish and Game Code Section 86).
- c. If project activities cannot feasibly avoid the breeding bird season, beginning thirty days prior to the disturbance of suitable nesting habitat, the applicant shall:
 - Arrange for weekly bird surveys to detect any protected native birds in the habitat to be removed and any other such habitat within properties adjacent to the project site, as access to adjacent areas allows. The surveys shall be conducted by a qualified biologist with experience in conducting breeding bird surveys. The surveys shall continue on a weekly basis with the last survey being conducted no more than 3 days prior to the initiation of clearance/construction work.
 - If a protected native bird is found, the applicant shall delay all clearance/construction disturbances activities within 300 feet of suitable nesting habitat for the observed protected bird species until August 31.
 - Alternatively, the Qualified Biologist could continue the surveys in order to locate any nests. If an active nest is located, clearing and construction within 300 feet of the nest or as determined by a qualified biological monitor, shall be postponed until the nest is vacated and juveniles have fledged and when there is no evidence of a second attempt at nesting. The buffer zone from the nest shall be established in the field with flagging and stakes Construction personnel shall be instructed on the sensitivity of the area.

- The applicant shall record the results of the recommended protective measures described above to document compliance with applicable State and Federal laws pertaining to the protection of native birds. Such record shall be submitted and received into the case file for the associated discretionary action permitting the project.

26. Tree Preservation (Grading Activities). “Orange fencing” or other similarly highly visible barrier shall be installed outside of the drip line of locally protected and significant (trunk diameter of 8 inches or greater) non-protected trees, or as may be recommended by the Tree Expert. The barrier shall be maintained throughout the grading phase, and shall not be removed until the completion and cessation of all grading activities.

27. Tree Preservation (Non-Protected Trees)

- a. Prior to the issuance of any permit, a plot plan shall be prepared indicating the location, size, type, and general condition of all existing trees on the site and within the adjacent public right(s)-of-way.
- b. All significant (8-inch or greater trunk diameter, or cumulative trunk diameter if multi-trunked, as measured 54 inches above the ground) non-protected trees on the site proposed for removal shall be replaced at a 1:1 ratio with a minimum 24-inch box tree. Net, new trees, located within the parkway of the adjacent public right(s)-of-way, may be counted toward replacement tree requirements.
- c. Removal or planting of any tree in the public right-of-way requires approval of the Board of Public Works. Contact Urban Forestry Division at: 213-847-3077. All trees in the public right-of-way shall be provided per the current standards of the Urban Forestry Division, Bureau of Street Services, Department of Public Works.

28. Tree Removal (Locally Protected Species)

- a. All protected tree removals require approval from the Board of Public Works.
- b. A Tree Report shall be submitted to the Urban Forestry, Division of the Bureau of Street Services, Department of Public Works, for review and approval (213-847-3077), prior to implementation of the Report’s recommended measures.
- c. A minimum of two trees (a minimum of 48-inch box in size if available) shall be planted for each protected tree that is removed. The canopy of the replacement trees, at the time they are planted, shall be in proportion to the canopies of the protected tree(s) removed and shall be to the satisfaction of the Urban Forestry Division.
- d. The location of trees planted for the purposes of replacing a removed protected tree shall be clearly indicated on required landscape plan, which

shall also indicate the replacement tree species and further contain the phrase “Replacement Tree” in its description.

- e. The applicant shall post a cash bond or other assurances acceptable to the Bureau of Engineering in consultation with the Urban Forestry Division and the decision maker guaranteeing the survival of trees required to be maintained, replaced or relocated in such a fashion as to assure the existence of continuously living trees for a minimum of three years from the date that the bond is posted or from the date such trees are replaced or relocated, whichever is longer. Any change of ownership shall require that the new owner post a new protected tree bond to the satisfaction of the Bureau of Engineering. Subsequently, the original owner’s protected tree bond may be exonerated.
- f. The City Engineer shall use the provisions of Section 17.08 as its procedural guide in satisfaction of said bond requirements and processing. Prior to exoneration of the bond, the owner of the property shall provide evidence satisfactory to the City Engineer and Urban Forestry Division that the protected trees were properly replaced, the date of the replacement and the survival of the replacement trees for a period of three years.

29. Green House Gas Emissions

- a. Low- and non-VOC containing paints, sealants, adhesives, solvents, asphalt primer, and architectural coatings (where used), or pre-fabricated architectural panels shall be used in the construction of the Project to reduce VOC emissions to the maximum extent practicable.
- b. The project shall include at least 20 percent (20%) of the total code-required parking spaces capable of supporting future electric vehicle supply equipment (EVSE). Plans shall indicate the proposed type and location(s) of EVSE and also include raceway method(s), wiring schematics and electrical calculations to verify that the electrical system has sufficient capacity to simultaneously charge all electric vehicles at all designated EV charging locations at their full rated amperage. Plan design shall be based upon Level 2 or greater EVSE at its maximum operating ampacity. Five percent (5%) of the total code required parking spaces will be further provided with EV chargers to immediately accommodate electric vehicles within the parking areas. When the application of either the required 20 percent or 5 percent results in a fractional space, round up to the next whole number. A label stating “EV CAPABLE” shall be posted in a conspicuous place at the service panel or subpanel and next to the raceway termination point.

Any parking spaces provided above LAMC requirements shall be provided with EV chargers to immediately accommodate electric vehicles within the parking areas.

- c. The Project shall meet the Tier 1 requirements of the Los Angeles Green Building Code.

- d. The Project shall meet the Tier 2 requirements of the Los Angeles Green Building Code.
30. **Emergency Evacuation Plan.** Prior to the issuance of a building permit, the applicant shall develop an emergency response plan in consultation with the Fire Department. The emergency response plan shall include but not be limited to the following: mapping of emergency exits, evacuation routes for vehicles and pedestrians, location of nearest hospitals, and fire departments.
31. **Increased Noise Levels (Demolition, Grading, and Construction Activities)**
- a. Construction and demolition shall be restricted to the hours of 7:00 am to 6:00 pm Monday through Friday, and 8:00 am to 6:00 pm on Saturday.
 - b. Demolition and construction activities shall be scheduled so as to avoid operating several pieces of equipment simultaneously, which causes high noise levels.
 - c. The project contractor shall use power construction equipment with state-of-the-art noise shielding and muffling devices.
32. **Severe Noise Levels (Residential Fronting on Major or Secondary Highway, or adjacent to a Freeway)**
- a. All exterior windows having a line of sight of a Major or Secondary Highway shall be constructed with double-pane glass and use exterior wall construction which provides a Sound Transmission Class (STC) value of 50, as determined in accordance with ASTM E90 and ASTM E413, or any amendment thereto.
 - b. The applicant, as an alternative, may retain an acoustical engineer to submit evidence, along with the application for a building permit, any alternative means of sound insulation sufficient to mitigate interior noise levels below a CNEL of 45 dBA in any habitable room.
33. **Public Services (Fire).** The following recommendations of the Fire Department relative to fire safety shall be incorporated into the building plans, which includes the submittal of a plot plan for approval by the Fire Department either prior to the recordation of a final map or the approval of a building permit. The plot plan shall include the following minimum design features: fire lanes, where required, shall be a minimum of 20 feet in width; all structures must be within 300 feet of an approved fire hydrant, and entrances to any dwelling unit or guest room shall not be more than 150 feet in distance in horizontal travel from the edge of the roadway of an improved street or approved fire lane.
34. **Public Services (Police – Demolition/Construction Sites).** Temporary construction fencing shall be placed along the periphery of the active construction areas to screen as much of the construction activity from view at the local street level and to keep unpermitted persons from entering the construction area.
35. **Public Services (Police).** Plans shall incorporate guidelines relative to security, semi-public and private spaces, which may include but not be limited to access control to

building, secured parking facilities, walls/fences with key systems, well-illuminated public and semi-public space designed with a minimum of dead space to eliminate areas of concealment, location of toilet facilities or building entrances in high-foot traffic areas, and provision of security guard patrol throughout the project site if needed. Please refer to “Design Out Crime Guidelines: Crime Prevention Through Environmental Design,” published by the Los Angeles Police Department. Contact the Community Relations Division, located at 100 W. 1st Street, #250, Los Angeles, CA 90012 (213)486-6000. These measures shall be approved by the Police Department prior to the issuance of building permits.

36. Public Services (Construction Activity Near Schools)

- a. The developer and contractors shall maintain ongoing contact with administrator of Sepulveda Middle School. The administrative offices shall be contacted when demolition, grading and construction activity begin on the project site so that students and their parents will know when such activities are to occur. The developer shall obtain school walk and bus routes to the schools from either the administrators or from the LAUSD’s Transportation Branch (323)342-1400 and guarantee that safe and convenient pedestrian and bus routes to the school be maintained.
- b. The developer shall install appropriate traffic signs around the site to ensure pedestrian and vehicle safety.
- c. There shall be no staging or parking of construction vehicles, including vehicles to transport workers on any of the streets adjacent to the school.
- d. Due to noise impacts on the schools, no construction vehicles or haul trucks shall be staged or idled on these streets during school hours.

37. Recreation. Pursuant to the Los Angeles Municipal Code, the applicant shall pay the applicable Quimby fees for the construction of dwelling units.

38. Transportation/Traffic

- a. Applicant shall plan construction and construction staging as to maintain pedestrian access on adjacent sidewalks throughout all construction phases. This requires the applicant to maintain adequate and safe pedestrian protection, including physical separation (including utilization of barriers such as K-Rails or scaffolding, etc.) from work space and vehicular traffic and overhead protection, due to sidewalk closure or blockage, at all times.
- b. Temporary pedestrian facilities should be adjacent to the project site and provide safe, accessible routes that replicate as nearly as practical the most desirable characteristics of the existing facility.
- c. Covered walkways shall be provided where pedestrians are exposed to potential injury from falling objects.
- d. Applicant shall keep sidewalk open during construction until only when it is absolutely required to close or block sidewalk for construction staging.

Sidewalk shall be reopened as soon as reasonably feasible taking construction and construction staging into account.

Administrative Conditions

39. **Approval, Verification and Submittals.** Copies of any approvals, guarantees or verification of consultations, review of approval, plans, etc., as may be required by the subject conditions, shall be provided to the Department of City Planning prior to clearance of any building permits, for placement in the subject file.
40. **Code Compliance.** Use, area, height, and yard regulations of the zone classification of the subject property shall be complied with, except where granted conditions differ herein.
41. **Covenant.** Prior to the issuance of any permits relative to this matter, an agreement concerning all the information contained in these conditions shall be recorded in the County Recorder's Office. The agreement (standard master covenant and agreement form CP-6770) shall run with the land and shall be binding on any subsequent property owners, heirs or assigns. The agreement shall be submitted to the Department of City Planning for approval before being recorded. After recordation, a copy bearing the Recorder's number and date shall be provided to the Department of City Planning for attachment to the file.
42. **Definition.** Any agencies, public officials or legislation referenced in these conditions shall mean the agencies, public offices, legislation or their successors, designees or amendment to any legislation.
43. **Enforcement.** Compliance with these conditions and the intent of these conditions shall be to the satisfaction of the Department of City Planning and any designated agency, or the agency's successor and in accordance with any stated laws or regulations, or any amendment thereto.
44. **Building Plans.** Page 1 of the grant and all the conditions of approval shall be printed on the building plans submitted to the department of City Planning and the Department of Building & Safety.
45. **Corrective Conditions.** The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the City Planning Commission, or the Director of Planning, pursuant to Section 12.27.1 of the Municipal Code, to impose additional corrective conditions, if in the decision makers opinion, such actions are proved necessary for the protection of persons in the neighborhood or occupants of adjacent property.
46. **Project Plan Modifications.** Any corrections and/or modifications to the Project plans made subsequent to this grant that are deemed necessary by the Department of Building and Safety, Housing Department, or other Agency for Code compliance, and which involve a change in site plan, floor area, parking, building height, yards or setbacks, building separations, or lot coverage, shall require a referral of the revised plans back to the Department of City Planning for additional review and final sign-off prior to the issuance of any building permit in connection with said plans. This process may require additional review and/or action by the appropriate decision making authority including the Director of Planning and the City Planning Commission.

47. Mitigation Monitoring. Pursuant to California State Public Resources Code Section 21081.6 and the California Environmental Quality Act, the applicant and any future owners, successors, heirs or assigns shall provide the Planning Department with status reports for assessing and ensuring the efficacy of the mitigation measures (environmental conditions) required herein.

- a. Within 30 days of the effective date of this land use entitlement and prior to any Planning Department clearance of the conditions of approval contained herein, the applicant shall file a Mitigation Monitoring and Reporting Program (MMRP) in a manner satisfactory to the Planning Department which defines specific reporting and/or monitoring requirements to be enforced during Project implementation. Each environmental condition shall be identified as to the responsible mitigation monitor(s), the applicable enforcement agency, the applicable monitoring agency and applicable phase of Project implementation as follows:
 - i. Pre-construction (prior to issuance of a building permit);
 - ii. Construction (prior to certificate of occupancy); and
 - iii. Post-construction / maintenance (post-issuance of certificate of occupancy).

In some cases, a specific mitigation measure may require compliance monitoring during more than one phase of Project implementation. Such measures shall be noted within the discussion of the specific mitigation measure in the MMRP.

- b. The applicant shall demonstrate compliance with each mitigation measure in a written report submitted to the Planning Department and the applicable enforcement agency prior to issuance of a building permit or certificate of occupancy, and, as applicable, provide periodic status reports to the Planning Department regarding compliance with post-construction / maintenance conditions.
- c. If the environmental conditions include post-construction / maintenance mitigation measures, the applicant and all future owners, successors, heirs or assigns shall be obligated to disclose these ongoing mitigation monitoring requirements to future buyers of the subject property.
- d. The applicant and any future owners, successors, heirs or assigns shall reimburse the Planning Department for its actual costs, reasonably and necessarily incurred, necessary to accomplish the required review of periodic status reports.

48. Indemnification and Reimbursement of Litigation Costs.

The applicant shall do all of the following:

- i. Defend, indemnify and hold harmless the City from any and all actions against the City, in whole or in part, relating to or arising out of the City's processing and approval of this entitlement, including but not limited to, an action to attack, challenge, set aside, void, or otherwise modify or annul the approval of the entitlement, the

- environmental review of the entitlement, or the approval of subsequent permit decisions, or to claim personal property damage, including from inverse condemnation or any other constitutional claim.
- ii. Reimburse the City for any and all costs incurred in defense of an action related to or arising out of the City's processing and approval of the entitlement, including but not limited to payment of all court costs and attorney's fees, costs of any judgments or awards against the City (including an award of attorney's fees), damages, and/or settlement costs.
 - iii. Submit an initial deposit for the City's litigation costs to the City within 10 days' notice of the City tendering defense to the Applicant and requesting a deposit. The initial deposit shall be in an amount set by the City Attorney's Office, in its sole discretion, based on the nature and scope of action, but in no event shall the initial deposit be less than \$50,000. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (ii).
 - iv. Submit supplemental deposits upon notice by the City. Supplemental deposits may be required in an increased amount from the initial deposit if found necessary by the City to protect the City's interests. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (ii).
 - v. If the City determines it necessary to protect the City's interest, execute an indemnity and reimbursement agreement with the City under terms consistent with the requirements of this condition.

The City shall notify the applicant within a reasonable period of time of its receipt of any action and the City shall cooperate in the defense. If the City fails to notify the applicant of any claim, action, or proceeding in a reasonable time, or if the City fails to reasonably cooperate in the defense, the applicant shall not thereafter be responsible to defend, indemnify or hold harmless the City.

The City shall have the sole right to choose its counsel, including the City Attorney's office or outside counsel. At its sole discretion, the City may participate at its own expense in the defense of any action, but such participation shall not relieve the applicant of any obligation imposed by this condition. In the event the Applicant fails to comply with this condition, in whole or in part, the City may withdraw its defense of the action, void its approval of the entitlement, or take any other action. The City retains the right to make all decisions with respect to its representations in any legal proceeding, including its inherent right to abandon or settle litigation.

For purposes of this condition, the following definitions apply:

"City" shall be defined to include the City, its agents, officers, boards, commissions, committees, employees, and volunteers.

"Action" shall be defined to include suits, proceedings (including those held under alternative dispute resolution procedures), claims, or lawsuits. Actions includes actions, as defined herein, alleging failure to comply with any federal, state or local law.

Nothing in the definitions included in this paragraph are intended to limit the rights of the City or the obligations of the Applicant otherwise created by this condition.