

## Exhibit "C"

### Findings and Conditions of Approval for PLN2017-00229 Discretionary Design Review Permit, Vesting Tentative Tract No. 8438, Private Street

#### SiliconSage Centerville Mixed-Use Project

37358-37494 Fremont Boulevard and 3768-3820 Peralta Boulevard (APNs 501-1475-028-02, -032-06, -033-00, -034-00, -035-02, -036-02, -038-00, -039-00, -040-02, -041-01, -043-04, -049-02, -050-02)

### FINDINGS

The findings below are made on the basis of information presented at the public hearing and contained in the report to the Planning Commission dated February 14, 2019, incorporated hereby:

#### **General Plan and Zoning Conformance Finding:**

- (a) Find PLN2017-00229, including the Reduced Massing Alternative of the Original Project, is consistent with the General Plan, Community Plan, and Zoning Ordinance as shown in Exhibit "C" (Project Plans) based upon Conditions in Exhibit "B."

#### **Discretionary Design Review Permit Findings**

Pursuant to FMC Section 18.235.060, the following findings must be made by the Planning Commission in order to approve a Discretionary Design Review Permit:

- (b) The proposed project is consistent with the general plan, any applicable community or specific plan, planning and zoning regulations, and any adopted design rules and guidelines.

*Analysis:* The proposed mixed-use project would conform to the Fremont General Plan policies and goals, and development standards of the TC-P zoning district and TOD Overlay as enumerated in the staff report. The project would also meet or exceed the design rules contained within the Multifamily Design Guidelines and the Citywide Design Guidelines including but not limited to site and building design, open space and landscape and context sensitive design.

- (c) The project's architectural, site, and landscape design will not unreasonably interfere with the use and enjoyment of adjacent development nor be detrimental to the public health, safety, or welfare.

*Analysis:* The area surrounding the project site along Fremont Boulevard is zoned TC-P and located within the TOD Overlay. The proposed project would not interfere with the use and enjoyment of adjacent developments, nor would it be detrimental to the public health, safety, or welfare in that the proposed project would be compatible in scale and would encourage neighborhood compatibility. The project adequately provides a transition of scale that is compatible with the surrounding development, while providing the commercial component required by the TC-P zoning district and TOD Overlay.

- (d) Where HARB review is required, the proposed project is consistent with the applicable standards and findings required in Chapters 18.135 and 18.175.

*Analysis:* As noted herein and as contained in the HARB report dated January 17, 2019, HARB recommended retention and rehabilitation of the fire station and reducing the massing and stepping back the proposed mixed-use building in proximity to the northwestern edge of the structure based upon findings and subject to conditions.

### ***Mixed-Use Development Findings***

Pursuant to FMC Section 18.45.040(d) (Mixed-use development requirements), the following findings must be made prior to approving a mixed-use project:

- (e) The development's site layout, building(s), and land uses integrate into the existing community, the layout and buildings create an appropriate human scale and an efficiently functioning infrastructure, and the amenities serving the residents of the development function better as a whole than what could be provided in a non-mixed-use project.

*Analysis:* The development would include a commercial mixed-use building adjacent to the main-street environment, and would step down the intensity to the rear of the site in order to fit the project into the surrounding neighborhood. The plan contains a unified circulation system that provides for convenient access and parking for the commercial uses in a location between the two types of buildings. Pedestrians may connect through the site in multiple connected ways, and the architecture would be complementary throughout. Common spaces and pathways are blended into the overall site plan in a cohesive way.

- (f) The development complies with the General Plan and Citywide Design Guidelines with regard to pedestrian orientation, provision of open space, and appropriate provision of parking.

*Analysis:* The proposed project would locate residential and commercial development in a TOD area with convenient access to the Centerville Train Station, Altamont Commuter Express routes, AC Transit bus routes and surrounding commercial uses. The project design and site layout would integrate into the existing neighborhood and create a compatible pedestrian scale. The project would provide sufficient parking, open space, and pedestrian amenities.

### ***Vesting Tentative Tract Map Findings***

Based on the analysis contained in the staff report, and pursuant to FMC Section 17.20.200 and Government Code Section 66474, the proposed Vesting Tentative Tract Map is in conformance with the General Plan, Zoning Ordinance, and the Subdivision Map Act, and none of the following findings can be made:

- (g) The map fails to meet or perform one or more of the requirements or conditions imposed by the Subdivision Map Act or Title 17 of the Municipal Code (Subdivisions);
- (h) The proposed subdivision, together with the provisions for its design and improvements, is not consistent with applicable general and specific plans;
- (i) The site is not physically suitable for the type or proposed density of development;
- (j) The design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;
- (k) The design of the subdivision or the type or improvements is likely to cause serious public health problems; and

- (l) The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the commission may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the commission to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

In addition, the following finding should be made pursuant to Government Code Section 66473.5:

- (m) The proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan or any specific plan for the reasons stated in this staff report.

**Private Street Finding**

Pursuant to FMC Section 17.25.040, the following finding must be made to approve a Private Street:

- (n) The most logical development of the land requires private street access.

*Analysis:* The land being subdivided is currently designated Town Center in the General Plan and TC-P with a TOD Overlay in the Zoning Ordinance. The City's standard street section for a public residential cul-de-sac in order to serve the rear townhomes would require two travel lanes, and on-street parking, curbs, gutters, and sidewalks with landscape planters on both sides of the street. If the applicant were required to construct a full public street section to this standard, the amount of developable land remaining on the property would not be sufficient for development prescribed by the Land Use Element of the General Plan. Allowing private access to the site would enable the development of the site at an intensity that is within the range prescribed by the General Plan.

**Tree Removal Finding**

Pursuant to FMC Section 18.215.070, the following finding must be made to allow the removal of trees that are subject to protection under the City's Tree Protection Ordinance:

- (o) The proposed removal of 23 protected trees would be consistent with the Tree Protection Ordinance because removal is necessary to enable reasonable and conforming use of the property or to achieve a superior project, and the trees cannot be preserved by a reasonably required project redesign.

*Analysis:* As discussed in the staff report, the project would require the removal of 23 regulated (protected) non-fruit bearing trees with a minimum six-inch DBH located in various areas of the site. The proposed tree removal would be consistent with the City's Tree Preservation Ordinance because removal is necessary to enable reasonable and conforming use of the property and to achieve a superior project, and the trees cannot be preserved by a reasonably required project redesign. The removal of the trees would not adversely affect the appearance of the subject property as new trees and landscaping would be installed. This project would adequately comply with the ordinance-required mitigation for the loss of the trees by planting an equivalent number of new trees of at least 24-inch box size as part of the 145 new 24-inch box trees proposed.

## CONDITIONS OF APPROVAL

### General Conditions:

- A-1. **Conformance to Approved Plans and Exhibits.** The project shall substantially conform to Exhibit "B" (Development Plans) and all conditions of approval set forth herein.
- A-2. **Exterior Additions Not Permitted.** No exterior additions to the residential structures shall be permitted unless expressly allowed with the initial development of the project.
- A-3. **Accessory Buildings and Structures.** No accessory buildings or structures shall be permitted other than those shown on Exhibit "C" (Development Plans).
- A-4. **Balconies and Patios Kept Clear.** Balconies and patios shall be kept clear of laundry, storage, and mechanical equipment such that no such items or materials may be seen from the public right-of-way or walkways within the project site. If air conditioning or other mechanical units must be placed in balconies or patios, they shall be screened with screening material and painted to match the building, to the satisfaction of the Planning Manager.
- A-5. **Minor Modifications to Approved Plans.** Minor modifications to the approved plans and Vesting Tentative Tract Map No. 8438 may be made, subject to review and approval of the Planning Manager and/or City Engineer. Minor modifications to building elevations and footprints that support a superior project design may be made, subject to review and approval of the Planning Manager and City Engineer. The Planning Manager and City Engineer shall retain the authority to determine the level of review required (i.e., depending on the severity or location of the modification, the project may be referred to the Planning Commission or City Council for public comment, review and approval).
- A-6. **Final Colors and Materials Approval.** The final colors and materials palette for the project shall be subject to review and approval of the Planning Manager as part of the building permit application submittal.
- A-7. **Garage Doors.** All garage doors shall be of high quality materials and design, to the satisfaction of the Planning Manager.
- A-8. **Addressing.** An application shall be submitted to the City's GIS Division for approval of the addressing for the development prior to building permit issuance. Building addresses shall be plainly legible and visible from the public street. These numbers shall contrast with their background.
- A-9. **Development Impact Fees.** The project shall be subject to Citywide Development Impact Fees. These fees include fees for fire protection services, capital facilities, park facilities and parkland, and traffic facilities. The fees shall be calculated at the rate in effect at the time of building permit issuance.
- A-10. **City Indemnification.** The applicant shall defend, indemnify, and hold harmless the City or any of its boards, commissions, agents, officers, and employees (collectively "City") from any claim, action or proceeding against the City to attack, set aside, void, or annul, the approval of the project. The City shall promptly notify the applicant of any such claim, action or proceeding and shall cooperate fully in the defense. Nothing contained in this condition shall prohibit the City from participating in a defense of any claim, action, or

proceeding if the City bears its own attorney's fees and costs, and the City defends the action in good faith.

- A-11. **Signage.** Signage is not included with this permit. Approval of a sign permit is required prior to the installation of any signs.
- A-12. **Building and Subdivision Permit Reviews.** The applicant shall submit plans to the Community Development and Public Works Departments for building permit and subdivision improvement review and approval, respectively, to ensure conformance with the conditions herein, as well as with all relevant codes, policies, and other requirements of the Fremont Municipal Code, State and federal laws.
- A-13. **Demolition Permits.** The applicant shall apply for and obtain approval of demolition permits for the existing structures from the Building Division prior to the commencement of any demolition and/or site-clearing activities.

### **Special Project Conditions:**

- B-1. **Commercial Frontage on Fremont and Peralta Boulevards.** Ground-floor commercial tenant spaces located in the mixed-use building(s) shall be oriented with a pedestrian-accessible, primary entrance facing Fremont Boulevard or Peralta Boulevard, not the on-site parking area. A secondary entrance may be provided facing the on-site parking but in no way shall the primary entrance be blocked by storage, "back of house" improvements, or other aspects of the business that make it look undesirable to the pedestrian. Plans submitted for a building permit for tenant improvements shall be designed with a floor plan that will accomplish this condition of approval.
- B-2. **Property Acquisition.** The applicant shall work with the City to successfully acquire the portion of the City property as necessary to complete the development project, at the discretion of the Director of Public Works.

### ***Environmental Mitigation:***

- B-3. The following mitigation measures shall be implemented as described in the Mitigation and Monitoring Plan (MMP) adopted for the project (see Exhibit "A"):
  - 1) **Mitigation Measure HIST-1a: Archival Documentation.** In consultation with the City of Fremont Planning Division, the project applicant shall document the fire station property prior to alteration, construction activities, removal, or demolition. A detailed archival record of the fire station shall be prepared, so that a record of the significant resource is maintained for public information. Prior to the commencement of construction or demolition activities involving the fire station, professionals qualified under the Secretary of the Interior's Professional Qualifications Standards (in history or architectural history) (36 CFR Part 61) shall prepare archival materials consistent with the standards of the National Parks Service (NPS) Historic American Building Survey (HABS) documentation. The record for the fire station shall be equivalent to HABS Level III documentation and consist of:

- a. Sketch plans (illustrating the site plan and exterior elevations of the fire station may be produced in computer assisted drafting (CAD) format, or based on as- built drawings, if available).
  - b. Archival photographs (large-format negatives, one set of mounted archival prints and one additional set of archival prints, photograph key, and photograph log).
  - c. Written historical data (including significance statement, narrative building description and historical description), and a sketch map. The materials shall be compiled as a detailed record that reflects the fire station's historical significance.
  - d. Following completion of the documentation, the record shall be submitted to the City of Fremont Planning Division for approval. Following completion of the HABS documentation and approval by the Planning Division, the materials shall be placed on file with the City of Fremont, local historical societies, and libraries (including, at a minimum, the Washington Township Museum of Local History and the Fremont Main Library).
- 2) **Mitigation Measure HIST-1b: Interpretative Display.** The project applicant shall create a display and interpretive material to the satisfaction of the City of Fremont Planning Division for public exhibition concerning the history of the fire station and the site. The display and interpretive material, such as a printed brochure, poster, panel, or page for a local history website, could include information from the archival record prepared under Mitigation Measure HIST-1a. This display and interpretive material shall be made available to local organizations, the public, and other interested agencies. The City shall be responsible for reviewing and approving the display materials, including the language used for the display.
- 3) **Mitigation Measure HIST-1c: Architectural Salvage (applies to VARIANT ONLY).** The project applicant shall offer the fire station building for a period of sixty (60) days following certification of the EIR for the price of \$1 to any party willing to move it off the site at their own expense. The project applicant shall notify various groups via letters, email, notification on the City's website, or public notices posted in newspapers concerning the offer, and shall provide verification of such notifications to the City. If a party (or parties) expresses a sincere interest in purchasing and removing the building, the project applicant shall coordinate with the interested party to complete the sale and remove the building within an appropriate period of time, to be determined in conjunction with the project construction schedule.
- a. Should no parties express interest in purchasing and removing the building within the 60 day offer period, the project applicant shall make historic-period architectural materials, not part of the project variant, available for donation prior to demolition. The project applicant shall notify various groups via letters, email, notification on the City's website, or public notices posted in newspapers concerning the availability of the salvaged materials, and shall provide verification of such notifications to the City. Should no parties express interest in salvaging the offered materials prior to the commencement of demolition activities, no further action is required by the project applicant.
  - b. If a party (or parties) expresses a sincere interest in salvaging offered materials, the applicant shall coordinate with the interested parties to make arrangements for identification and removal of salvageable materials prior to the commencement of demolition activities, to ensure that materials removed do not experience further damage from removal/demolition. The salvage materials shall be removed prior to or during demolition either by the project applicant, or by a licensed contractor retained

by the salvaging party. The project applicant shall be responsible for storing the salvaged materials for an appropriate period of time, to be determined in conjunction with the project construction schedule.

- c. No sale or building removal, or salvage and removal of materials shall occur until HABS documentation with a photographic inventory of key exterior features and materials is completed (in accordance with Mitigation Measure HIST-1a). Materials that are contaminated, unsound, or decayed shall not be included in the salvage program and shall not be available for future use or display.
- 4) **Mitigation Measure NOI-1: Exterior Noise Barriers.** The project applicant shall construct a 6-foot-tall noise barrier between the northwestern side of the clubhouse (gym) and the adjacent townhouse building to the northwest, to reduce exterior noise levels in community outdoor areas. Effective noise barriers may be comprised of various materials including concrete masonry units, plaster, wood (enhanced fencing), glass, plastic, or earthen berm. They should be solid from bottom to top with no cracks or gaps and should have a minimum surface density of approximately three pounds per square foot. The required height and location of the noise barriers specified below may be modified at the recommendation of a qualified acoustical consultant and approval of the City, based on final project design and grading plans, provided the noise barrier reduces exterior noise levels within the outdoor recreation area to less than 60 dBA Ldn (or between 60-65 dBA Ldn at the City's discretion).
  - 5) **Mitigation Measure NOI-2: Interior Sound Insulation Ratings.** The project applicant shall retain a qualified acoustic consultant to assess the final project design and recommend required minimum sound transmission class (STC) ratings for all exterior windows and doors (including upgraded walls, as necessary) to achieve the following performance standards:
    - a. An average day-night sound level (Ldn) of 45 dBA for the interior of residential units.
    - b. An hourly average (Leq(h)) of 50 dBA for the interior of non-residential spaces.
    - c. The recommendations of the acoustic consultant shall be reviewed by the City of Fremont, and shall be included as conditions of approval of the project, and implemented fully by the project applicant. Sound insulation ratings should be for the completed assembly, including glass and frame, and should be based on laboratory test reports of similar sized samples from a National Voluntary Laboratory Accreditation Program accredited lab. Ventilation systems, exhaust fans, vents, and similar elements must not compromise sound insulation of the exterior wall assemblies.
  - 6) **Mitigation Measure AQ-1: Selection of Equipment During Construction to Minimize Diesel PM and PM2.5 Emissions.** The construction contractor shall use off-road construction diesel engines that meet, at a minimum, the Tier 4 interim California Emissions Standards, unless such an engine is not available for a particular item of equipment. Tier 3 engines will be allowed on a case-by-case basis when the contractor has documented that no Tier 4 Interim equipment or emissions equivalent retrofit equipment is available for a particular equipment type that must be used to complete construction. Documentation shall consist of signed written statements from at least two construction equipment rental firms.

- 7) **Mitigation Measure HAZ-1: Hazardous Building Materials Survey and Abatement.** Prior to building permit issuance for demolition or renovation activities of any structures, the applicant shall retain a California Division of Occupational Safety and Health Administration (Cal-OSHA) certified contractor to determine the presence or absence of building materials or equipment that contains hazardous materials, including asbestos, lead-based paint, and PCB-containing equipment. If such substances are found to be present, the contractor shall prepare and submit a workplan to the City to demonstrate how these hazardous materials would be properly removed and disposed of in accordance with federal and state law, including Bay Area Air Quality Management District Regulation 11, Rule 2 (Asbestos Demolition, Renovation, and Manufacturing), as a condition of the demolition or building permit. Following completion of removal activities, the applicant shall submit documentation to the City verifying that all hazardous materials were properly removed and disposed.
- 8) **Mitigation Measure HAZ-2: Environmental Site Investigation and Mitigation Plan.** Prior to the issuance of a grading permit and before any substantial ground disturbance, the applicant shall hire a qualified environmental professional to conduct additional environmental site investigation and prepare a site mitigation plan for the project site. The site mitigation plan, and any remedial actions required as part of it, shall be implemented by the applicant and its contractors to the satisfaction of the relevant oversight agencies (City of Fremont Fire Department, Alameda County Water District (ACWD) and/or designated Alameda County or State Department oversight agency, or other appropriate agency having jurisdiction) to ensure sufficient minimization of risk to human health and the environment is completed.
- a. At a minimum, the site mitigation plan shall:
- i. Establish appropriate site-specific cleanup targets, which are protective of human health and the environment, based on the proposed future land uses(s). At a minimum, these targets shall be equal to, or more protective than the San Francisco Bay Regional Water Quality Control Board's (RWQCB) Environmental Screening Levels (ESLs) for Residential Use, or in the case of contaminants which have naturally occurring background levels that exceed the residential ESLs, the target shall be equal to, or more protective than, the regional background level for that contaminant.
  - ii. Delineate the extent of soil and/or groundwater contamination at levels exceeding the plan's clean up targets. Identify and implement measures such as excavation, containment, or treatment of the hazardous materials to achieve the plan's cleanup levels. The site mitigation plan should include figures and drawings showing areas and depths of soil excavation or treatment, soil waste classifications, and any mitigating measures. Within such areas, the plan shall establish procedures for safe handling and transportation of the excavated materials, consistent with State, federal, and local regulations, including:
    1. Removal of soil and materials shall be performed by a licensed engineering contractor with a Class A license and hazardous-substance removal certification. A California-licensed engineer shall provide field oversight on behalf of the applicant to document the origin and destination of all removed materials. If necessary, removed materials shall be temporarily stockpiled and covered with plastic sheeting pending relocation, segregation, or off-haul.

2. If excess materials are off-hauled, waste profiling of the material shall be completed and documented. Materials classified as nonhazardous waste shall be transported under a bill of lading. Materials classified as hazardous waste shall be transported under a hazardous waste manifest. All materials shall be disposed of at an appropriately licensed landfill or facility.
  3. Trucking operations shall comply with Caltrans and any other applicable regulations, and all trucks shall be licensed and permitted to carry the appropriate waste classification. The tracking of dirt by trucks leaving the project site shall be minimized by cleaning the wheels upon exit and cleaning the loading zone and exit area as needed.
  4. Description of post-excavation confirmation sampling requirements. If residual contamination remains at the site above the site-specific cleanup targets, include appropriate controls, including institutional controls where and if necessary, to assure that activities by future users do not expose them to unacceptable health and safety risks. Such controls may include but are not limited to visual barriers over contaminated soil, followed by a cap of clean soil or hard surface materials; operation and maintenance protocols for any disturbance of contaminated soils; and recording of deed restrictions, such as activity and use limitations, with the Alameda County Recorder's Office to assure that the remedy is maintained.
- iii. Delineate areas of the site where contaminants exceed the RWCQB's ESLs for direct exposure by construction workers. Establish procedures for limiting access to such areas to properly trained personnel. Establish minimum requirements for site-specific health and safety plans, to protect the general public and workers in the construction area (note: these requirements and the environmental sampling results shall be provided by the applicant to all contractors, who shall be responsible for developing their own construction worker health and safety plans and training requirements).
  - iv. Include contingency measures to address unanticipated conditions or contaminants encountered during construction and development activities. The contingency measures shall establish and describe procedures for responding in the event that unanticipated subsurface hazards or hazardous material releases are discovered during construction, including appropriately notifying nearby property owners, schools, and residents and following appropriate site control procedures. Control procedures would include but not be limited to further investigation and, if necessary, remediation of such hazards or releases, including off-site removal and disposal, containment, or treatment. If unanticipated subsurface hazards or hazardous material releases are discovered during construction, the contingency measures addressing unknown contaminants shall be followed. The contingency measures shall be amended as necessary if new information becomes available that could affect implementation of the measures.

**9) Mitigation Measure NOI-1-IS: Modification, Placement and Operation of Construction Equipment.**

- a. To reduce noise impacts during construction, the applicant shall include the following measures in contractor specifications for the project, and such measures shall be implemented during construction:

- i. Construction equipment shall be well maintained and operated in a manner to reduce or avoid high levels of noise emission. (By way of example, and to the extent practical, lower—rather than drop—loads into containers or onto platforms, thus reducing opportunity for noise-generating impacts of contacting surfaces.)
  - ii. Construction activities, including the loading and unloading of materials and truck movements, shall be limited to the hours of 7:00 AM to 7:00 PM on weekdays and between the hours of 9:00 AM and 6:00 PM on Saturdays. No construction activities shall be permitted on Sundays or holidays.
  - iii. Excavating, grading, and filling activities, including warming of equipment motors, shall be limited to between the hours of 7:00 AM to 7:00 PM on weekdays and between the hours of 9:00 AM and 6:00 PM on Saturdays. No excavation, grading or filling activities shall be permitted Sundays or holidays.
  - iv. All internal combustion engine-driven equipment shall be equipped with mufflers, which are in good condition and appropriate for the equipment.
  - v. The contractor shall utilize “quiet” models of air compressors, electrical generators, pumps and other stationary noise sources where options for such off-the-shelf technology exist.
  - vi. Loading, staging areas, stationary noise-generating equipment, etc. shall be located as far as feasible from sensitive receptors, and/or shielded with temporary noise barriers if necessary.
  - vii. The contractor shall comply with Air Resource Board idling prohibitions of unnecessary idling of internal combustion engines.
  - viii. Wherever possible, noise-generating construction equipment shall be shielded from nearby residences by on-site positioning of noise-attenuating barriers, such as structures or truck trailers. Temporary barriers, composed of field-erected curtains or panels, may also be used to occlude direct airborne sound paths between construction activity noise sources and, if designed and installed properly, could be expected to yield at least 7 to 12 dBA of noise reduction.
- b. Signs shall be posted at the construction site that include permitted construction days and hours, a day and evening contact number for the job site, and a contact number for the project sponsor in the event of noise complaints. The applicant shall designate an on-site complaint and enforcement manager to track and respond to noise complaints.

10) **Mitigation Measure TRA-1: Construction Traffic Management Plan.** The applicant and its construction contractor shall prepare and implement a traffic management plan for construction activities that may affect road rights-of-way during construction, to reduce traffic congestion during construction and facilitate emergency vehicle access along affected roadways. The traffic management plan must follow applicable City of Fremont Standard Details and Specifications (whichever editions are current as of the date of construction), which include minimum requirements for:

- a. Conformance with the most current California Manual on Uniform Traffic Control Devices and State Standard Plans;
- b. No lane closures during weekends and weekdays before 8:30 am or after 4:00 pm;
- c. 72-hour notice prior to start of work to all affected parties (businesses, residents, agencies, schools, etc.);
- d. Removal/coverage of all conflicting signs, striping, or pavement markings when work is completed.
- e. Maintaining access to private property at all times;
- f. Minimum of one paved traffic lane no less than 10-feet wide; and
- g. All hauling on City streets shall be on adopted truck routes.
- h. The plan shall be in effect throughout the duration of project-related construction activities. The traffic management plan shall be submitted to the City of Fremont Department of Public Works for review and approval prior to approval of improvement plans and issuance of building permits where roadway improvements may cause impacts on traffic. The plan shall include the following items to address requirements above:
  - i. A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours; detour signs (if required); traffic coning and other lane closure devices; warning signs; use of flag persons to direct traffic flows (when needed); and designated construction access routes.
  - j. Identification of haul routes for movement of construction vehicles that would minimize impacts on traffic, transit, bicycle, and pedestrian circulation and safety, specifically along those streets in the project area.
  - k. Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures would occur.

***Transportation Demand Management:***

- B-4. **Transportation Demand Management.** In accordance with the City's TOD Ordinance, the project shall include at least one transportation demand management (TDM) measure to promote the use of alternatives to automobile travel, such as improved bicycle infrastructure, provision of transit passes at initial move-in, and transite option information boards, and reduce total vehicle trips and vehicle trips during peak hours through site design measures. In addition, the project is required to maintain participation in a TDM association supporting programs for enhanced transit ridership, biking, and walking, to the satisfaction of the Planning Manager or designee.

***Affordable Housing:***

- B-5. **Affordable Housing Agreement.** In accordance with the City of Fremont Affordable Housing Ordinance, the applicant shall work with staff to develop an Affordable Housing Regulatory Agreement that shall provide for five low and five very-low income units to be constructed on-site. The Affordable Housing Regulatory Agreement shall set metrics for

construction of the affordable housing units with respect to the remainder of the development, among other requirements, subject to the approval of the Director of Community Development. In addition, the applicant shall pay affordable housing fees in accordance with the City of Fremont Affordable Housing Ordinance for the market-rate apartments. The mixed-use buildings shall be constructed concurrently with the Townhouse buildings, and in no case shall permits for more than 50 percent of the townhouse units receive occupancy until the affordable housing units and their associated common facilities necessary for their operation are ready for occupancy and use.

**Project Design Conditions (Site, Building, and Landscape):**

***Engineering:***

**C-1. Street Improvements.**

- a. Developer shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- b. Developer shall remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
- c. Developer shall construct curb, gutter, and sidewalk along the Fremont Boulevard, Peralta Boulevard, Parish Avenue, and Jason Way street frontages.
- d. Developer shall close unused driveway cut(s).
- e. Dedication and improvement of the public streets shall be provided to the satisfaction of the Director of Public Works. Improvements shall include but are not limited to the following: curb and gutter, sidewalk, asphalt pavement, streetlights, fire hydrants, street trees, tree well planters, water, sewer and storm drainage facilities, joint trench facilities, signing and striping, and accessible ramps.
- f. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration deemed necessary at the discretion of the Public Works Director will be included as part of the approved street improvement plans.
- g. Developer shall be required to grind and overlay Fremont Boulevard and Peralta Boulevard in accordance with the City of Fremont "Street Cutting Policy – Multiple Cuts within One Block."

**C-2. Undergrounding.** The applicant shall complete the underground conversion of existing overhead utilities both abutting and crossing the subdivision. All new utility service connections, including electrical and communications, shall be installed underground. Electrical transformers shall be installed in underground vaults within an appropriate utility easement or public service easement.

**C-3. Demolition of Existing Building(s).** Developer shall demolish existing structures that encroach on the proposed lot lines, with the exception of Fire Station No. 6, which shall be retained in place.

**C-4. Mylar Copy of Final Map.** The subdivider shall provide a Mylar copy and an electronic copy (in PDF format) of the map after the map is recorded. The subdivider shall provide a bond

copy and an electronic copy (in PDF format) of the subdivision improvement plan record drawings prior to City Engineer approval and acceptance of the constructed subdivision improvements.

**Fire Department (Public Safety):**

- C-5. **Intersection Design.** All public intersections shall be designed and built to accommodate fire apparatus turning radii (currently 22.5 feet inside and 37.5 feet outside dimensions) without the inherently dangerous use of the "opposite lane" or "turning into opposing traffic" to continue to an incident on the interior of the project.
- C-6. **Fire Flow.** In accordance with the California Fire Code, Appendix B, fire flow and duration shall not be less than that specified in Table B105.1. A reduction in required fire flow of 50 percent, as approved, is allowed when the building is provided with an approved automatic sprinkler system.
- C-7. **Fire Access Roads/Lanes.** For dwellings/structures over 30 feet in height, a Fire Department access road having a minimum 26-foot unobstructed linear width shall be provided. These access roads shall be designated as Fire Lanes and shall meet Fire Department standards for surface type (all-weather), distance (not to exceed 150 feet in length without an approved turnaround), weight loads (75,000 lb. minimum), turn radius (radii of 22.5 feet inside and 37.5 feet outside as measured from the same point), grades (not to exceed 15 percent with cross grade, intersections and turnarounds being level [with a maximum 5 percent slope] with the exception of crowning for water run-off), and vertical clearance (13.5 feet minimum).
- C-8. **Fire Hydrants.** Fire hydrants shall be spaced at 300-foot intervals for commercial, mixed-use and multi-family housing developments. All distances are measured as the fire engine travels on all-weather surfaces. Additional hydrants shall be required on Fremont Boulevard and Peralta Boulevard.
- C-9. **Architectural Projections.** Building projections shall not interfere with the placement of Fire Department ground ladders, such as at the end unit facing Peralta Boulevard with the ladder pad at the tree trunk and the units across from the pool which have the ladder pads overlaid on the building. These emergency escape and rescue openings shall be moved or the structures/tree revised. As measured in front of each projection, the base of Fire Department ground ladders shall be placed approximately  $\frac{1}{4}$  the height of the building (e.g., to ladder a 30-foot building the base of the ladder will be placed 7.5 feet from the building with the tip of the ladder touching the building).
- C-10. **Ladder Pad Locations.** Bioretention area, slopes, grades or incompatible surfaces which are unsafe for the use of a ladder, as well as tree trunks, shrubs, plants which are firmly constructed (such as boxwoods) and fencing shall not interfere with placement of Fire Department ground ladders. Ladder pad size is four feet by four feet.
- C-11. **Standpipes.** Wet standpipes shall be provided in stairwells and at the roof. Standpipes shall be installed in accordance with NFPA 14, the California Fire Code, and applicable City Ordinances. In multi-storied buildings, standpipes shall be installed at intermediate landings.
- C-12. **Elevators.** Elevator size shall be determined to meet the footprint of the building. The elevator car shall be of such a size and arrangement to accommodate a 24-inch by 84-inch ambulance gurney or stretcher with no less than five-inch radius corners, in the horizontal,

open position, shall be provided with a minimum clear distance of not less than 80 inches by 54 inches, and shall have a 42-inch side-slide door.

**Landscaping:**

- C-13. **Site Amenities.** Details of proposed site amenities and other accessory items shall be reviewed and approved by the Planning Division during the building permit review process.
- C-14. **Landscape Plans.** The landscape plan on Sheet L2.0 is approved in "design concept" only. The final landscape plans shall be submitted for review and approval by the City Landscape Architect. Landscape construction documents shall be submitted with Subdivision Improvement Plans for review and approval, indicating full details regarding: (1) paving materials and textures of walkways and paved pedestrian areas; (2) lighting of walkways and pedestrian areas with low intensity non-glare type fixtures; (3) design and detail for the front yard landscape of individual lots; and (4) landscaping of site and open areas. The landscape design shall meet all nine of the required Bay-Friendly Basic Practices. As part of the landscape plans the applicant shall submit:
- a. A site layout plan to illustrate the design of all hardscape elements including walls, fences, gates, landscape structural elements, decorative landscape features, light locations, at grade or above grade utility boxes and vaults, walkways and decorative pavement.
  - b. A Planting Plan utilizing a plant palette heavy in water-conserving plants. Of the total quantity of plants, a minimum 75 percent shall be California native, Mediterranean, or climate-adapted plants, per Bay Friendly Basic Practice. All shrubs, groundcover, and vines are minimum one gallon size, with a minimum 40 percent of all shrubs and groundcover five gallon or larger.
  - c. A Hydrozone Plan showing Low, Medium and High water use areas. Calculations and information that complies with the Water Efficient Landscape Ordinance (WELo).
  - d. An Irrigation Plan utilizing low flow, durable, approved irrigation equipment complying with the Water Efficient Landscape Ordinance (WELo) and Bay-Friendly requirements.
  - e. Construction details of raised planters, bioretention areas or other Stormwater treatment landscape areas, walkways, paths, benches, walls, fences, planting details, irrigation details, and other architectural or landscape structural features as appropriate to the project.
- C-15. **A/C Screening.** Air conditioning condenser units shall be screened with appropriate landscape or architecturally integrated low walls.
- C-16. **Street Trees.** Trees to be planted in the median fronting the property shall be irrigated by the project's Property Owners Association (POA) for a minimum period of three years. Rate of irrigation shall be as required for the selected tree species and size. At the end of the third year of planting and irrigation, the POA shall contact the City Landscape Architect to review the condition of the trees and determine if the irrigation may be discontinued. Once the City Landscape Architect determines that the trees can thrive without supplemental irrigation, irrigation to the median can be shut off. Irrigation line isolation valves shall be installed, one at the median, and one at the roadside. In the event that conditions of the trees require supplemental irrigation after the minimum three-year period, the POA shall provide the irrigation as necessary for the trees to thrive. If the City elects to install its own

irrigation meter and provide an irrigated landscaping connection to this median, the POA will no longer be required to provide irrigation to these mitigation trees.

- C-17. **Protected Tree Mitigation.** All protected trees approved for removal shall be mitigated on site pursuant to the Tree Preservation Ordinance. Mitigation is calculated after the property's baseline tree requirement has been established. A deposit, payable at the time of Demolition Permit, Grading Permit or Building permit issuance, whichever is first is required to assure mitigation trees will be planted. The amount of the deposit shall equal the per-unit cost to the City for a 24-inch box tree as established by the City's last award of a contract for such work. Please note street trees and required trees do not count toward mitigation.

***Solid Waste:***

- C-18. Garbage and recycling requirements are explained in the City of Fremont Waste Handling Guidelines document. The applicant will be responsible for incorporating these guidelines into the project [www.fremont.gov/whg](http://www.fremont.gov/whg).
- C-19. Garbage and recycling carts shall be kept hidden from public view, except on collection days. At least 27 square feet of storage space shall be provided in each private garage of townhouse developments for garbage, recycling and organics carts.
- C-20. A separate trash enclosure shall be provided for the retail tenants in addition to the trash room for the multi-family residential units.
- C-21. All trash enclosures/rooms shall be located within 250 feet of each dwelling unit.
- C-22. All trash enclosures shall comply with requirements from the City of Fremont, the Union Sanitary District and the Alameda County Health Department. Trash rooms in commercial or mixed-use buildings with a food service facility such as a restaurant or café shall feature a sanitary sewer connection.
- C-23. Plans shall show space inside the building for the storage of materials such as, racks, crates, boxes, cardboard, pallets, and other items that require storage space. The storage of any materials outside the building or in the trash enclosure is prohibited.

***Stormwater:***

- C-24. **Stormwater Management Plan.** The project shall implement post-construction measures to minimize stormwater pollutant discharges and increases in peak flows in accordance with the requirements of the Municipal Regional Permit (MRP). The Preliminary Stormwater Management Plan provided by the developer as part of the Vesting Tentative Tract Map approval is approved in concept only; the Final Stormwater Management Plan must contain/address all elements of the Final Stormwater Management Plan Checklist (available at [www.fremont.gov/swmp](http://www.fremont.gov/swmp)). Developer is required to submit engineered plans, details and calculations that demonstrate compliance with Provision C.3 of the Municipal Regional Permit.
- C-25. **Stormwater Maintenance Agreement.** A Stormwater Treatment Measures Maintenance Agreement (O&M Agreement) shall be submitted for review and approval when the project comes in for building permit. Template documents and instructions for completing the O&M

Agreement may be found at <http://fremont.gov/stormwaterdevelopment>. Building permits will not be issued without an approved, executed O&M Agreement.

- C-26. **Storm Drain Stencils.** All public and private storm drain inlets shall be stenciled "No Dumping Drains to Bay" with thermoplastic stencils purchased from the City of Fremont Environmental Services Division. Alternative inlet stencils or markings may be permitted, subject to approval by the City.

***Transportation:***

- C-27. **Off-site Signing and Striping.** Off-site signing and striping plans shall be approved by the Director of the Public Works Department prior to issuance of the building permits. The signing and striping plans must include a general note stating that all signing and striping shall conform to the latest CA MUTCD, Caltrans Standard Plans and Specifications, and the City of Fremont Standard Details.
- C-28. **Intersection and Driveway Design.** Intersection and driveway design shall meet safety standards, including line-of-sight requirements, [to the satisfaction of the City Engineer](#).

**Vesting Tentative Tract Map Conditions:**

- D-1. **Construction Agreement.** This entitlement requires construction of certain public and private improvements. The developer shall submit for City's review and approval engineered plans for all required improvements. Following City's approval of the improvement plans, the Developer shall execute Improvement Agreement(s) on the City's standard form that guarantee the timely completion of the public and private improvements to the satisfaction of the City Engineer. The Improvement Agreement(s) shall be executed and delivered to the City prior to approval of the Final Map. The Improvement Agreement(s) shall be accompanied by performance and labor and material security and required insurance certificates and endorsements in forms approved by the City.
- D-2. **Expiration.** Approval of this Vesting Tentative Tract Map shall expire twenty-four (24) months after the date of approval in accordance with the provisions of the State Subdivision Map Act and any amendments thereto and applicable provisions of Fremont Municipal Code.
- D-3. **Dedication of Right-of-Way and Construction of Street Improvements.** Developer shall dedicate the right-of-way and construct ultimate public street improvements for all proposed streets fronting the subdivision (Fremont Boulevard) as shown on Exhibit "B." Improvements shall include but not limited to the following: curb and gutter, concrete sidewalk, asphalt pavement, streetlights, fire hydrants, street trees, tree well planters, sewer and storm drainage facilities, joint trench facilities, signing and striping and accessible ramps.
- D-4. **Erosion and Sediment Control Plan.** The project plan set must include an Erosion and Sediment Control Plan (ESCP) sheet showing the Best Management Practices (BMPs) to be implemented to minimize pollutant discharges related to construction activity. The ESCP must show the development site at the stage of maximum land disturbance. A copy of the ESCP or the Stormwater Pollution Prevention Plan (SWPPP) or both, as applicable, must be maintained on the project site at all times throughout the demolition/grading/construction process. The ESCP or SWPPP or both, as applicable, must be updated as necessary to show adequate BMPs appropriate for the current stage of the project.

- D-5. **Quitclaim of Private Easements.** Developer shall cause to quitclaim all existing private easements, not shown on the final map, within the boundaries of the proposed subdivision. Developer shall either show all existing private easements on the final map or provide a copy of the recorded quitclaims prior to recordation of the final tract map. Existing private easements over streets dedicated to the public on the final map shall be quitclaimed prior to acceptance of public improvements.
- D-6. **Hydrology.** Developer shall submit a hydrology map and hydraulic calculations prepared, stamped, and signed by a licensed California Civil Engineer using a design storm of 15-year recurrence interval for primary facilities and 10-year recurrence interval for secondary facilities in accordance with the Alameda County Public Works Agency Hydrology and Hydraulics Criteria to ensure adequate conveyance of storm run-off from the project site. Off-site construction of storm drainage facilities to mitigate projected flows may be required.

**Requirements to be Completed Prior to Request for Final Inspection:**

- E-1. **Final Engineering Certification.** Upon completion of grading, the project engineer that prepared the final approved grading plan shall submit to the City a statement that the as-built grading conditions do not deviate from the approved plan by more than one foot of vertical elevation, subject to the review and approval of the Public Works Department prior to the issuance of occupancy permits for each structure.
- E-2. **Final Landscaping Certification.** Upon completion of all landscape work, the project landscape architect shall submit a letter to the Public Works Department certifying that the on-site and streetscape landscaping have been constructed in conformance with the approved landscape and irrigation plan, subject to the review and approval of the City Landscape Architect.
- E-3. **Architectural Conformance.** Upon completion of construction, the project architect shall submit a letter to the City certifying that the buildings have been constructed in conformance with the approved architectural plans, subject to the review and approval of the Planning Manager.

**HOA Requirements and Deed Restrictions**

- F-1. A Property Owners Association (POA) shall be formed and Covenants, Conditions and Restrictions (CC&Rs), including these imposed conditions, shall be submitted to the Community Development Department (or to the Public Works Department during the tract map improvement plan review process) for review and approval.

Subject to the approval of the Planning Manager, a POA for the mixed-use buildings may be created, with a separate Homeowners Association for the townhomes, provided that amenities, parking, private streets, and other facilities to be used in common are the responsibility of a master POA, or are used and maintained under a recorded joint use and maintenance agreement approved as to form by the City Attorney. Regardless of the structure ultimately agreed upon to govern use and maintenance of the development, the following conditions must be satisfied on an on-going basis and shall be included in recorded deed restrictions (i.e., CC&Rs and, as applicable, any recorded joint use and maintenance agreement) created for the development:

- a. The applicant shall provide a complete set of construction plans to the POA at the time of its formation.
- b. The POA shall be required to contract with a professional management firm to handle maintenance operations. Documentation of such contract shall be submitted to the City prior to Final Map approval.
- c. The POA shall covenant and be responsible for the maintenance of all commonly owned facilities that are not maintained by the public utility agency.
- d. All commonly owned facilities shall be well-maintained in a good condition. The exterior parking of boats, campers, and trailers on the site shall be prohibited. In no event shall household storage preclude the parking of vehicles in a garage area. No power equipment, hobby shops, car maintenance (other than emergency work) shall be permitted within the private garage areas where such activities would displace normal use of the garages for day to day parking purposes. The POA may inspect garages for this purpose.
- e. In the interest of aesthetics, uniformity in appearance, safety and security, all garage doors shall be maintained in a closed position, except during entering or exiting movements from the garage.
- f. Residents shall be informed that, in the interest of aesthetics, uniformity in appearance, safety and security, balconies and patios shall kept clear of laundry, storage, and mechanical equipment such that no such items or materials may be seen from the public right of way or walkways within the project site.
- g. Landscaping shall be designed with an efficient irrigation system to reduce runoff and promote surface filtration and to minimize the use of fertilizers, herbicides, and pesticides which can contribute to urban runoff pollution. Street trees shall be irrigated by the POA in accordance with Condition C-16.
- h. The POA shall periodically provide educational materials on stormwater pollution prevention (as furnished by the City) to all occupants.
- i. All roof-mounted and other mechanical equipment shall be screened from view from adjacent public rights-of-way and internal private streets. Satellite dishes are exempt from this condition as more particularly described under federal law.
- j. Garbage, trash or recycling containers shall be suitably concealed in a dedicated area in accordance with the Fremont Municipal Code (FMC), except such containers may be placed at curbside on the designated garbage pick-up day.
- k. A provision shall be included in the CC&Rs stating that the payment of the utility (e.g., water, energy) bills for all common facilities is the obligation of the HOA.
- l. Each buyer and renter shall sign an acknowledgment that he/she has read the constitution and bylaws of the POA, and the CC&Rs, and alternative agreement for the apartment building, if utilized, applying to the development.
- m. Rights of City. The CC&Rs shall include the following provision:

Notwithstanding anything to the contrary in this Declaration, no amendment which deals with any of the following matters shall be effective without the prior written consent of the Director of the City's Community Development Department: (a) Any amendment, the design or purpose of which is to eliminate an obligation of the POA to maintain, manage and repair the common area or to lower the standards for maintaining and repairing the common area; (b) Any amendment with regard to the fundamental purpose for which the project was created (for example, a change from residential use to a different use); (c) Any amendment to sections (list applicable sections), each of which were required as a condition of approval for the project.

- n. Enforcement by City. The CC&Rs and alternative agreement, if utilized, shall include the following provision:

Notwithstanding any provision of this Declaration to the contrary, and with respect to matters within the regulatory powers of the City, the City has the right, but not any duty, to enforce the terms of this Declaration in the City's absolute discretion.

- F-2. **Stormwater Treatment Measure CC&Rs Language.** At a minimum, the following statements or similar must be included in the CC&Rs (if multiple associations are formed for the development, one of them shall covenant to be responsible for maintenance of stormwater treatment measures for the entire project site, and appropriate provisions will be made in recorded agreements giving that association all easements and other access or use rights necessary to carry out that responsibility):

- a. **Stormwater Treatment Measures Maintenance Agreement.** The development is subject to the Stormwater Treatment Measures Maintenance Agreement dated [date] and recorded on [date] as Document No. [no.] in the records of Alameda County, CA. Under the Stormwater Treatment Measures Maintenance Agreement, this development is responsible for ensuring that stormwater treatment measures installed on-site to meet the requirements of the National Pollutant Discharge Elimination System (NPDES) Permit remain in effective operating condition in perpetuity.

Commencing on the date the POA begins operation, the POA assumes the rights and duties of the property owner as defined in the Stormwater Treatment Measures Maintenance Agreement. The POA Board shall have full right, power and authority to act on behalf of the POA, its members and homeowners under the Stormwater Treatment Measures Maintenance Agreement.

- b. **Storm Drainage Restrictions.** As part of the original construction of the development, stormwater treatment measures were installed within the development in connection with the development's drainage system. Neither the POA nor any owner shall do any work, construct any improvement, place any landscaping or otherwise perform any action whatsoever which alters or interferes with the drainage pattern for any lot or any portion of the common areas, except to the extent such alteration in drainage pattern is approved in writing by the City of Fremont.
- c. **Stormwater Treatment Measure Maintenance.** The on-site stormwater treatment measures (bioretention ponds) shall be inspected and maintained as detailed in the Stormwater Treatment Measures Maintenance Agreement. The POA shall maintain an inspection and maintenance record on file made available to the City upon request. In addition, all on-site storm drains shall be cleaned at least annually before commencement of the rainy season (by October 1) of each year.

## **END OF CONDITIONS**

SUBDIVIDER, PLEASE NOTE: The fees, dedications, reservations and/or other exactions imposed on this project are those listed in the foregoing conditions of this tentative tract map approval. The subdivider is hereby notified that the 90-day period in which the subdivider may protest these fees, dedications, reservations and other exactions pursuant to Government Code Section 66020(a) begins on the date of approval of this tentative tract map. If the subdivider fails to file a protest within this 90-day period complying with all the requirements of Government Code Section 66020, the subdivider will be legally barred from later challenging such actions.