

RESOLUTION NO. P-13-17

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FOSTER CITY APPROVING A MODIFICATION OF THE CONDITIONS OF APPROVAL OF A USE PERMIT FOR THE TRITON (FORMERLY WAVERLY) PORTION OF THE PILGRIM-TRITON MASTER PLAN PROJECT ON APPROXIMATELY 5.3 ACRES INCLUDING THE CONSTRUCTION OF 240 MULTI-FAMILY RESIDENTIAL UNITS AND 5,000 SQUARE FEET OF GROUND FLOOR COMMERCIAL – IN NEIGHBORHOOD PT – AREA OF VI TRITON, LLC – (APN 094-010-570) – UP2017-0019

CITY OF FOSTER CITY PLANNING COMMISSION

WHEREAS, on June 18, 2013, Thompson Dorfman LLC, on behalf of the property owner, AREOF VI Triton, LLC, applied for a Specific Development Plan/Use Permit and Tentative Map for The Triton (then Waverly) portion of the Pilgrim-Triton Master Plan Project; and

WHEREAS, The Triton (Waverly) Project consists of approximately ±6.3 acres and as previously approved includes as Phase 1 the construction on 5.3 acres of 220 multi-family residential units and 5,000 square feet of ground floor commercial and related parking structure in a multi-use building and construction of 20 townhouse style units with individual garages in five buildings with related surface parking (APN 094-010-570) in Foster City; and

WHEREAS, in accordance with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) and implementing guidelines (“CEQA”) the City Council by Resolution No. 2008-39 adopted on April 21, 2008 certified a Final Environmental Impact Report (SCH #2007012023; EA-06-003) for the ±20.75 acre Pilgrim-Triton Master Plan Project and adopted a mitigation monitoring and reporting program; and

WHEREAS, the Planning Commission, based on facts and analysis in the Staff Report, Initial Study, written and oral testimony, and other evidence in the record of proceedings, has determined that the EIR is, and remains, an adequate environmental document pursuant to CEQA and State CEQA Guidelines for the purpose of analysis and consideration of The Triton Project; and

WHEREAS, the Use Permit for The Triton (Waverly) was approved by the Planning Commission on January 16, 2014, following a duly noticed Public Hearing; and

WHEREAS, on June 22, 2017, Thompson Dorfman LLC, on behalf of the property owner, AREOF VI Triton, LLC, applied for a Modification of the Specific Development Plan/Use Permit and Tentative Map for The Triton portion of the Pilgrim-Triton Master Plan Project to amend the conditions of approval; and

WHEREAS, a Notice of Public Hearing was duly posted, published, and mailed for consideration of the Use Permit request at the Regular Planning Commission meeting of August 17, 2017, and on said date the Public Hearing was opened, held and closed.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission, based on the facts and analysis in the Staff Report, written and oral testimony, and exhibits presented finds:

1. That the proposal to modify the conditions of approval for The Triton (Waverly) phase of the Pilgrim-Triton Master Plan, as conditioned in Exhibit A, is consistent with the Foster City General Plan, Chapter 17.28 (CM Commercial Mix District) and 17.36 (PD Planned Development) of Title 17, (Zoning), and Chapter 2.28 (Planning), of Title 2, (Administration and Personnel), of the Foster City Municipal Code as described in Section IV of the Final Environmental Impact Report prepared for the Pilgrim Triton Master Plan (SCH #2007012023; EA-06-003) dated March 2008; and
2. That the proposal to modify the conditions of approval is appropriate to the City and the neighborhood in which it is proposed because the proposed development, as conditioned: 1) will ensure that the townhouse portion of The Triton will provide a visual buffer for the taller buildings to the north as originally approved in UP-13-003; 2) will ensure that the obligations of the development to provide affordable housing, Transportation Demand Management including a shuttle program, lagoon edge improvements will continue to be met; and 3) will ensure that the owners of The Triton will cooperate in the completion of Triton Park as included in the Pilgrim Triton Master Plan.
3. That the proposal to modify the conditions of approval is compatible with its environment with respect to use, forms, materials, colors, setbacks, location, height, design, or similar qualities as specified in Section 17.58.010, Intent and Purpose, of Chapter 17.58, Architectural Control and Supervision, of the Foster City Municipal Code because the proposal as conditioned will not change the building materials/colors, architecture or landscaping previously approved for The Triton.
4. That the proposal to modify the conditions of approval will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be injurious or detrimental to property and improvements in the neighborhood, property values in the area, or the general welfare of the City because the proposal, as conditioned: 1) will not alter the physical characteristics of The Triton; 2) will comply with the intent and purpose of the zone in which the property is located and with the Goals and Policies of the Land Use and Circulation Element and the Housing Element of City's General Plan and is consistent with the intent and purpose of the City's Architectural Control and Supervision Ordinance as stated in Section 17.58.010B of the Foster City Municipal Code.

BE IT FURTHER RESOLVED that the Planning Commission approves the modification of the conditions of approval for The Triton as contained in Exhibit A attached hereto and incorporated herein.

PASSED AND ADOPTED by the Planning Commission of the City of Foster City at a Regular Meeting thereof on August 17, 2017, by the following vote:

AYES, COMMISSIONERS: Dyckman, Pattum, Wykoff and Chair Avram

NOES, COMMISSIONERS: Williams

ABSTAIN, COMMISSIONERS:

ABSENT, COMMISSIONERS:



NOEMI AVRAM, CHAIR

ATTEST:



CURTIS BANKS, SECRETARY

Exhibit A
Modification to The Triton Use Permit Conditions of Approval

(Conditions attached to approval of UP2017-0019 by the
Planning Commission on August 17, 2017)

The following conditions as previously adopted by Resolution P-07-14 on January 16, 2014 are hereby modified as follows:

New Condition 1.2.1:

1.2.1 The project may be built and occupied as three separate phases on Parcels A, B, and C, respectively, shown on the Final Map No. 01-15 for The Waverly approved by the City Council on May 4, 2015. The first phase shall be the build-out of the multi-family residential parcel, consisting of 220 multi-family residential units, 5,000 square feet of ground floor commercial and related parking structure on Parcel A. The second phase shall be the build-out of the townhouse parcel, consisting of 20 townhouse style units with individual garages and related surface parking on Parcel B. The third phase shall be the replacement of the existing commercial building with a new commercial building on Parcel C. (CDD)

Renumbered 1.2.1 to 1.2.2:

*1.2.2 Pursuant to Section 4.5 of the Pilgrim Triton Master Development Agreement, the project approval shall expire at the expiration of the term of the Pilgrim Triton Master Development Agreement on February 11, 2020. No extensions of the Use Permit shall be considered or granted except that Use Permits issued in conjunction with a Tentative Subdivision Map for a planned unit development shall expire no sooner than the approved Tentative Map, or any extension thereof, whichever occurs later (Municipal Code Section 17.06.180). (CDD)

New 1.2.3, 1.2.4 and 1.2.4.1:

*1.2.3 The following conditions apply to the project through all phases of development but with the development on Parcel A establishing and administering some programs on behalf of Parcel B, including: Conditions 1.22.1, 1.22.2, and 1.22.3, relating to the establishment of shuttle bus service, Conditions 1.30, 1.30.1, and 1.30.2, relating to affordable housing requirements, and Condition 13.5 relating to the construction of the lagoon wall. In addition, as of the date of the use permit modification approved on August 17, 2017, certain conditions listed herein have been fully satisfied or completed. Notwithstanding that those completed conditions remain listed as conditions of approval and are not necessarily shown as having been satisfied, the approval of the use permit modification shall not be construed to mean that those conditions were re-adopted and have not been fully satisfied or completed.

*1.2.4 Pursuant to Condition 1.15, below, the City will issue separate final certificates of occupancy upon completion of each phase of the project described above. In the event a final certificate of occupancy is issued for the first phase of the project prior to the commencement of construction of the second phase of the project, the following additional condition shall apply:

- *1.2.4.1 If the developer of Parcel A retains ownership of Parcel B, then no later than six months following issuance of a final certificate of occupancy for the first phase the developer of Parcel A shall submit plans for an application for building permits for the townhomes on Parcel B; provided that this deadline shall be extended in the reasonable discretion of the Planning Director in the event of delays caused by circumstances beyond the developer's reasonable control; and provided further, that the foregoing obligation on the part of the developer of Parcel A shall terminate and be of no further force and effect upon the sale of Parcel B to a third party townhouse developer.
- 1.6.1 A plan for additional phasing of construction, if any, shall be approved by the Planning Commission.
(PC, PBP)
- 1.15 Prior to occupancy, all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the City and so reported on the sign-off sheet in the Use Permit file. The project shall be built in substantial compliance with the approved plans on record in the City. The City may issue separate certificates of occupancy upon completion of each phase of the project as described in Condition 1.2, provided that as to that phase the pertinent conditions of approval have been satisfied.
(CDD, PBO)
- 1.18 Prior to occupancy, the applicant shall provide a letter from a third-party evaluator documenting the sustainable practices that are included in the project or project phase to be occupied (including separate letters for the 220-unit/5,000 SF commercial development on Parcel A, the 20 unit townhouse development on Parcel B, and the commercial development on Parcel C), conforming to the "Sustainable Design Features" list dated received 11/19/13, on file in the Community Development Department, for review and approval by the Community Development Director.
(CDD, PBP)
- 1.22 The current and future owners of Parcels A, B and C as shown on the Final Map 01-15, shall be responsible for implementing the Transportation Demand Management (TDM) Program required by the City/County Association of Governments, on file with the Community Development Department and attached as Exhibit B, except that the TDM Program established for Parcel A shall also apply to Parcel B, so that the owner of Parcel B will not be required to provide a separate TDM Program. The owner or its successor in interest with respect to each of Parcel A and Parcel C shall file an annual report by January 31 of each year with the Foster City Community Development Department documenting efforts undertaken and results achieved in the previous year pursuant to the TDM program.
(CDD)
- 1.22.1 The owner or its successor in interest shall cooperate with the other Pilgrim Triton Developers to establish and operate a peak hour shuttle bus service, or shall contribute funding to the operation of a peak-hour shuttle bus service to Caltrain and/or BART as approved by the City, consistent with the requirements of Section 3.7 of the Pilgrim Triton Master Development Agreement and the TDM Program for the Waverly, attached as Exhibit B. Although the owner(s) of Parcel B as shown on

the Final Map 01-15 shall not be required to participate in the establishment, operation or funding of such shuttle bus service, the shuttle bus service established for Parcel A shall also be available to the residents and guests of Parcel B.

1.22.2 It is currently anticipated that the applicant shall initially satisfy its obligations under Section 3.7 of the Master Development Agreement and Condition 1.22 by participating in the shuttle service program operated by the Peninsula Traffic Congestion Relief Alliance (“Alliance”). Prior to issuance of the first certificate of occupancy, applicant shall enter into an agreement with the Alliance to provide shuttle service for the project (“Alliance Agreement”). The Alliance shall determine shuttle schedules and programming, and applicant shall pay its share of program costs as determined by the Alliance and set forth in the Alliance Agreement; provided, however, that the City shall not require Developer to make payments under the Alliance Agreement for service to those portions of the project that have not yet been issued a certificate of occupancy. Although the owner(s) of Parcel B as shown on the Final Map 01-15 shall not be required to participate in the establishment, operation or funding of such shuttle bus service, the shuttle bus service established for Parcel A shall also be available to the residents and guests of Parcel B.

1.22.4 Alternative Shuttle Program. In the event that the Alliance shall announce its intention to cease providing shuttle service to the project, within ninety (90) days of the earlier of a) actual termination of shuttle service to the project, or b) receipt of notice of the anticipated termination of such service, applicant and the other Pilgrim-Triton developers, shall prepare and submit for City review and approval a plan to provide, at developers’ cost, shuttle service between the project and CalTrain or BART substantially equivalent to the level of service previously provided by the Alliance, as reflected in the TDM Plan (“Alternative Shuttle Program”). Following City approval of such plan, applicant and the other developers, under the Master Development Agreement and their successors shall thereafter provide such shuttle service in accordance with the approved Alternative Shuttle Program. Although the owner(s) of Parcel B as shown on the Final Map 01-15 shall not be required to participate in the establishment, operation or funding of such shuttle bus service, the shuttle bus service established for Parcel A shall also be available to the residents and guests of Parcel B.

1.30 Prior to occupancy, an Affordable Housing Covenant in a form acceptable to the City governing the provision of forty-eight (48) affordable units for a term of not less than fifty-five (55) years shall be recorded. The City acknowledges that the forty-eight (48) units provided on Parcel A also satisfies the affordable housing requirement for Parcel B, pursuant to the recordation of the Affordable Housing and Maintenance Covenant recorded on January 16, 2016 as Document No. 2016-006851 in the Official Records of the San Mateo County Clerk-Recorder's Office.
(CDD, PBO)

Former condition 5.7.1 shall be renumbered to 5.6.1 as follows:

5.6.1 The applicant shall prepare a detailed water pipe hydraulic flow analysis, to be submitted to the Foster City Public Works Department, to determine whether the existing water

distribution system is properly sized to meet the projected new water demands on the project site. The analysis shall take account of fire flows and peak hourly flows.
(E/PW, BD, PBP) Mitigation Measure

- *7.10 Prior to occupancy of Parcel A, the property owner of Parcel C shall enter into a written agreement to execute the Plaza Easement for its portion of the property to be included in the Pilgrim Triton Park Plaza.
(CDD, P&R)

- 13.5 The owner of Parcel A of Final Map 01-15 shall construct lagoon retaining walls, slope protection and/or bulkheads in accordance with the performance criteria of the Engineering Division. Neither the owner of Parcel B nor the owner of Parcel C of Final Map 01-15 shall have responsibility for construction of any lagoon retaining walls, slope protection and/or bulkhead improvements and building permits, certificates of occupancy and other approvals for Parcel B and/or Parcel C shall not be withheld based on the status of the owner of Parcel A's compliance with this condition. Following completion, including any warranty period, ongoing maintenance of any lagoon retaining walls, slope protection and/or bulkheads shall be the responsibility of the property owner on which the improvements are located.
(E/PW, PBP)