

**TOWN OF MORAGA  
PLANNING COMMISSION**

**RESOLUTION NO. 13-2023**

**Approving the Rheem Valley Shopping Center Design Review (DRB-07-23) and Grading Permit (GR-03-23) for a new grocery store building with in line tenant space and two new free-standing pad buildings, parking lot reconfiguration, new landscaping, grading, and granting exceptions to three Rheem Park Objective Design Standards, as the proposed project meets the General Plan policies and the Rheem Park Objective Design Standards, located at 430, 536 and 580 Moraga Road (APN 255-150-019, 255-160-035 and 255-160-040).**

**WHEREAS**, on July 5, 2023, Lowney Architecture (“the applicant”) on behalf of U.S. Realty Partners, Inc. (aka Rheem Valley Property Owner LP) submitted a Design Review Board application for partial redevelopment of the Rheem Valley Shopping Center; and

**WHEREAS**, on August 2, 2023, the application was deemed incomplete for processing; and

**WHEREAS**, at the applicant’s request, on September 5, 2023, a study session was held with the Planning Commission to receive feedback and guidance on the proposed project; and

**WHEREAS**, on October 27, 2023, the applicant resubmitted revised project plans; and

**WHEREAS**, on November 21, 2023, the application was deemed complete.

**WHEREAS**, public hearing notices were mailed to 67 property owners within a 300 foot radius of the project site on December 1, 2023 and posted on the project site, the Town offices, the Commons Park and the Hacienda de las Flores at least ten (10) days prior to the hearing date; and

**WHEREAS**, the Planning Commission held a public hearing acting as the Design Review Board for this application on December 12, 2023 and at that public hearing, at which time it considered all oral and documentary evidence presented, and incorporated all testimony and documents into the record by reference and opened and closed the public hearing for public comments.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the Town of Moraga acting as the Design Review Board hereby makes the following findings and determinations pertaining to the project:

**SECTION 1: RECITALS.** The foregoing recitals are true and correct and incorporated

into the findings and determinations set forth in this Resolution.

## **SECTION 2: CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15301 (Class 1 - Existing Facilities), 15303 (Class 2 - Replacement or Reconstruction), 15303 (Class 3 - New Construction or Conversion of Small Structures) and 15332 (Class 33 – In-Fill Development Projects) because the project consists of approximately 7,758 square feet of additions to existing buildings, modifications to existing parking facilities and landscaping, reconstruction of existing buildings, and construction of two new free standing pad buildings of approximately 4,500 and 2,152 square feet, respectively, and the project site activities will disturb less than 5 acres, are surrounded by urban uses and are in an area where all public services are available.

**SECTION 3: RHEEM PARK OBJECTIVE DESIGN STANDARDS CONSISTENCY.** The Planning Commission acting as the Design Review Board hereby finds that the project is in substantial compliance with the Rheem Park Objective Design Standards set forth in Moraga Municipal Code (MMC) Sections 8.210.040 through 8.210.170, with findings for three design exceptions as allowed under MMC Section 8.210.030.I for major projects, which allows for up to ten design exceptions.

- 1. Design Exception 1:** MMC §8.210.070.D.2: *Required Transparency. Required ground-floor transparency along publicly accessible sidewalks, publicly accessible pathways, and publicly accessible open spaces is as follows... (b) For grocery store, pharmacy, and retail uses of 30,000 (thirty thousand) square feet or greater, a minimum of 20% of the building wall located between 5 (five) and 9 (nine) feet above sidewalk level shall be transparent.(c) For other non-office commercial ground-floor uses, a minimum of 50% of the building wall area located between 3 (three) and 7 (seven) feet above sidewalk level shall be transparent.*

Issue: The grocery store is less than 30,000 square feet in size; therefore, it is reviewed under section C of this design standard, which requires that 50% of the building wall area located between 3 (three) and 7 (seven) feet above the sidewalk be transparent. Currently the grocery store façade provides 23% transparency, so it does not comply.

### **Findings**

- a. The proposed use has unique operational or design characteristics with which providing the required design element is incompatible.** The applicant has communicated to staff that the operational layout of the grocery store makes it difficult to achieve 50% transparency, as there are interior displays along the front walls that are typical for grocery store designs.
- b. The alternative design includes elements to mitigate negative impacts, if any, of the reduction or waiver, such as enhanced architectural**

**detail, façade relief, door and window treatments, public amenities, features to improve visual interest at the pedestrian level, or other elements.** The frontage of the grocery store includes a variety of materials and recesses, roof overhang, a green screen and landscaping to create visual interest along the building frontage. Additionally, as a pedestrian friendly amenity to the site, the applicant has included an outdoor plaza area north of the grocery store which includes café seating, landscaping, and a place for public art.

2. **Design Exception 2:** MMC §8.210.080.B: *Tenant Space Depth, Nonresidential Uses. Nonresidential ground floor interior tenant spaces shall be a minimum of 45 (forty-five) feet in depth for a minimum of 20 (twenty) feet in width or 35% of the total width of the tenant space, whichever is greater.*

Issue: Based on the proposed building entrances for building B, the depth of the building tenant space(s) would be approximately 34 feet.

#### **Findings**

- a. **The proposed use has unique operational or design characteristics with which providing the required design element is incompatible.** The operational needs of pad style buildings are different than in-line spaces, and a depth of 45 feet is not as necessary for a standalone pad building as it might be for an in-line space as was envisioned in the objective design standards, Tenants that seek pad buildings have different operational needs and space requirements than what is provided by in-line spaces.
- b. **The alternative design includes elements to mitigate negative impacts, if any, of the reduction or waiver, such as enhanced architectural detail, façade relief, door and window treatments, public amenities, features to improve visual interest at the pedestrian level, or other elements.** The building includes a variety of materials, recesses, overhang at the front entries, wrap around parapets on two corners of the building and includes a large outdoor patio area that could be utilized by tenant(s) to provide additional usable area for their businesses. Behind the building along Moraga Road will be landscaping 50 feet in depth that will include ground covers, small and medium shrubs, and trees to enhance the property.
3. **Design Exception 3:** MMC §8.210.090.B.2: *Base Materials. Shall be at least 4 (four) feet in height from the ground using the materials listed in Section 8.210.090.A.1, except for wood or stucco.*

Issue: The proposed building designs do not include base materials.

#### **Findings**

- a. **The proposed use has unique operational or design characteristics**

**with which providing the required design element is incompatible.** The proposed buildings are intended to be compatible with the design of the existing shopping center, most of the shopping center's existing buildings do not have base materials in their designs.

- b. The alternative design includes elements to mitigate negative impacts, if any, of the reduction or waiver, such as enhanced architectural detail, façade relief, door and window treatments, public amenities, features to improve visual interest at the pedestrian level, or other elements.** The proposed building designs include a variety of materials and design elements to provide interest and activate them, including alternating of wall materials, recesses, reveals and over hanging roofs in front of the buildings. The project includes pedestrian friendly amenities, including an outdoor plaza north of the grocery store and wide patio areas with room for seating and planter boxes in front of each of the pad buildings. The building designs achieve the intent of the objective design standards.

**SECTION 4: SHARED PARKING.** The existing shopping center has 1,065 parking spaces which are shared by all the tenants extending from HomeGoods at the south end of the site to the Rheem Theatre property to the northwest of the site. The proposed project will result in the reduction of 75 parking spaces within the shopping center necessary for the expansion of the grocery store, in-line tenant space, new outdoor plaza area, new building pads and landscaping, which will leave 990 parking spaces. Based on the building square footage of the shopping center and existing occupancies, 1,102 parking spaces are required by the MMC, which means the existing shopping center is currently under parked by 37 spaces. A parking study for the shopping center with the proposed new buildings was prepared by Advanced Mobility Group dated September 19, 2023, which concluded:

- *Based on results of the shared parking evaluation, it is estimated that the peak parking demand is approximately 986 and 953 parking spaces, respectively during the weekday and weekend of a typical December.*
- *However, the averages for the 12-month periods are 850 and 777 respectively during the weekday and weekends. The difference between the peak December month and average month is approximately 135 and 115 vehicles respectively during the weekday and weekends.*

The modelling shows that the shopping center will be able to meet the peak parking demand.

**SECTION 5: HOUSING - NO NET LOSS FINDINGS.** Proposed Building B is 2,152 square feet in size and would be located on property zoned Rheem Mixed Commercial Residential (RMCR), APN 255-150-019. This property is identified in the Moraga 2023-2031 (6<sup>th</sup> Cycle) Housing Element as a Housing Opportunity Site F8 (Non-Vacant Sites Zoned for Mixed Use Development). The property is currently improved with commercial,

and office uses, parking lots and landscaping on approximately four acres located within the Rheem Valley Shopping Center. The allowed density is 24 dwelling units per acre under the zoning and general plan, and the overall site has a theoretical density of 96 dwelling units. The property includes older buildings that the property owner has indicated during the Housing Opportunity site selection process for the 6<sup>th</sup> Cycle Housing Element that they intend to redevelop for housing in the near future. The proposed 2,152 square foot building will cover a small approximately 1% portion of the available area of the site, it is not located where potential new housing is anticipated, will replace some of the older commercial spaces that are expected to be demolished when new housing is constructed and therefore would not result in a net loss of sites available for new housing. Additionally, based on an existing underground creek, housing may be limited at this portion of the site. Based on the proposed square footage, the building could theoretically reduce the property's ability to construct 1.19 residential units (or two units rounded up), however the Town's 6<sup>th</sup> Cycle Housing Element certified September 14, 2023, includes a buffer of 684 dwelling units above the required RHNA of 1,118 units. This is the first project proposed on a Housing Opportunity site since the 6<sup>th</sup> Cycle Housing Element was certified, therefore even with the theoretical loss of the potential for two lower income units, the buffer would be reduced to 112 units. This site and the remaining Housing Opportunity sites, as shown in Table 1, are adequate to meet the Town's remaining RHNA at each income category during the 6<sup>th</sup> Cycle Housing Element planning period.

**Table 1: Summary of Housing Opportunities**

Site Type	Income Category			TOTAL
	Lower (Low/ Very Low)	Moderate	Above Moderate	
Entitled Projects (Development Pipeline)	0	15	210	225
Housing Opportunity Sites				
Vacant, zoned for Low Density Residential	0	0	242	242
Vacant, zoned for Medium Density Residential	0	18	182	200
Vacant, zoned for High Density Residential	109	210	98	417
Vacant, zoned for Mixed Use	154	0	61	215
Non-Vacant, zoned for Mixed Use	341	0	130	471
Accessory Dwelling Units	11	16	5	32
<b>TOTAL</b>	<b>615</b>	<b>259</b>	<b>928</b>	<b>1,802</b>
RHNA	501	172	445	1,118
Buffer	+114	+87	+483	+684
Percent Buffer for Lower Income Sites	23%			

Source: Barry Miller Consulting, 2022.

**SECTION 6: GRADING APPROVAL FINDINGS.** Pursuant to MMC Section 14.12.030(A), the Planning Commission, acting as the Design Review Board, hereby makes the following findings for grading exceeding 200 cubic yards on slopes less than 20 percent:

1. **Consistent with the town design guidelines** because the proposed grading does not require any exceptions to the Town's Design Guidelines. The project site is substantially level, the purpose of the grading is to prepare the project site for new commercial improvements which will closely maintain the existing level grade of the site.
2. **Does not result in any slope of twenty (20) percent or more** because the project site is level and no slopes of twenty (20) percent or more will be created as a result of the grading.
3. **Consistent with the regulations and restrictions of Chapter 14.12 of the Moraga Municipal Code and does not require a modification** because the grading permit has been considered by the Design Review Board at noticed public hearings. The request does not require modifications and as specified, the required findings can be made, as documented in Findings 1 through 6, herein.
4. **Not detrimental to public safety** because the project site is substantially level and the purpose of the grading is to prepare the project site for the proposed commercial development. The grading complies with the Town Design Guidelines, does not require a modification from the grading ordinance and will not be on or create slopes that are 20% or greater. The grading work will be reviewed and inspected by Contra Costa County Conservation and Development grading inspectors.
5. **Not detrimental to stormwater runoff** because the proposed development must be completed in compliance with the requirements of the Regional Water Quality Control Board C.3 Guidelines. A stormwater control plan will be required to be submitted to the Department of Public Works for review and approval prior to development of the property. Improvements to on-site storm drain facilities will be installed as part of the site improvements and in conjunction with the proposed commercial development, including construction of stormwater control facilities and infrastructure that has been determined by the Town's Public Works Department to be adequate to address any on-site drainage issues.
6. **Not inconsistent with the general plan** because the project site is substantially level. The purpose of the grading is to prepare the project site for new commercial improvements which will closely maintain the existing level grade of the site. The proposed grading does not require an exception to the Town's design guidelines pertaining to grading and will not be on or create slopes of 20% or greater.

**SECTION 7: APPROVAL.** The Planning Commission acting as the Design Review Board hereby approves Design Review (DR-07-23), and Grading Permit (GR 03-23), subject to the Conditions of Approval attached hereto as Attachment No. A.

**PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE  
TOWN OF MORAGA THIS 12th DAY OF DECEMBER 2023, BY THE FOLLOWING  
VOTE:**

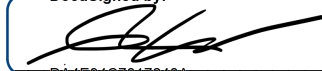
AYES: Helber, Lentell, Bode, Mapel, Polsky, Thiel

NOES:

ABSENT: Luster

ABSTAIN:

APPROVED:

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Ben Helber  
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Afshan Hamid, AICP  
Planning Director

**Attachment A**  
**CONDITIONS OF APPROVAL**

**Design Review (DR 07-23)**

**Grading Permit (GR 03-23)**

**APNs: 255-150-019, 255-160-035 and 255-160-040**

**Project Description:**

- Reconstruction of approximately 11,167 square feet of existing in-line building at 536 Moraga Road (Tenant addresses are 578 through 564 Center Street) be replaced with a new 17,404 square foot grocery store building and a separate 1,521 square foot in-line tenant space. (APN 255-160-035)
- Construction of a new 4,500 square foot free standing pad building “A” along Moraga Road (536 and 580 Moraga Road – APN’s 255-160-035 and 255-160-040) with a lot line adjustment between the two properties prior to building permits.
- Construction of a new 2,152 square foot free standing pad building “B” along Moraga Road (430 Moraga Road; APN 255-150-019)
- 75 existing parking stalls which are in excess and will be removed to accommodate the new buildings and additions.
- New landscaping in front of the grocery and in-line tenant space and between the new pad buildings A and B adjacent to Moraga Road.
- Removal of 20 trees, and planting of 31 new trees.
- Grading Permit for approximately 2,346 cubic yards (cy) comprised of 1,580 cy of cut and 766 cy of fill on substantially level ground.

**CONDITIONS OF APPROVAL:**

**Prior to Building/Grading Permit Issuance**

1. The plans submitted for building and grading permits to construct shall be substantially in accordance with the plans approved by the Design Review Board on December 12, 2023, and the conditions of this permit. Minor revisions to the plans may be approved administratively by the Planning Director, including minor adjustments to building footprints and dimensions. Any significant changes to the plans will require re-submittal to the Design Review Board for approval.
2. These conditions of approval shall be printed on the first or second sheet of each plan set submitted for a building or grading permit pursuant to this approval, under the title ‘Conditions of Approval.’ Subsequent sheets may also be used if the first sheet is not of sufficient size to list all the conditions. The sheet(s) containing the conditions shall be the same size as those sheets containing the construction



drawings; 8- 1/2" by 11" sheets are not acceptable. The applicant shall provide a written response to each condition and how it is addressed by the applicant.

3. The applicant will work with staff on design refinements to the grocery store building pursuant to the design review board direction, which include the following:
  - a. Parking lot accent paving for pedestrian crossings should be a break in material, or stamped asphalt, rather than burnt on thermal plastic.
  - b. Add additional fenestration to the facade of the grocery store, further break up the wall, consider adding hardie lap siding or alternate materials that are consistent with the semi-rural character of the Town.
  - c. Consider changing the grocery cart corral to a half height solid wall.
4. Final designs for the pad building facades visible from the Moraga Road Scenic Corridor and enhanced landscaping between the buildings and Moraga Road shall be brought back to the Design Review Board for final approval. Initial comments for these elevations include:
  - a. Break up the white stucco and gray CMU block wall. The facades need more articulation and interest.
  - b. Add more mature trees and shrubs. New trees along the scenic corridor shall be larger substantial specimens, 48-inch box or greater.
  - c. Relocate the trash enclosures back from the front of the building frontages facing the interior of the shopping center.
  - d. Consider grouping EV chargers together and providing chargers that are above level 2.
  - e. Provide additional landscape detail for the bioretention areas, more clearly define the edges and provide the landscape details.
5. The Moraga-Orinda Fire District shall review and approve the construction plans. Verification of MOFD approval shall be submitted to the Town of Moraga Planning Department.
6. The plans shall be reviewed and approved by the Moraga Police Department. The plans shall include the locations and specifications for concrete or metal bollards along the frontage of the outdoor pedestrian areas in front of the grocery store, in line tenant and pad buildings to be installed for protection from runaway vehicles. Multi-lens cameras shall be installed (1) on the north façade of the grocery store; (2) in front of the grocery store; (3) driveway into the parking lot from Moraga Road; (4) the North/South driveway in front of the grocery store; (5) at the southwest and southeast corners of building A with the cameras providing views of the parking lot, North/South driveway in front of the building and Moraga Road; and (6) at the southwest and southeast corners of building B, with the cameras providing views of parking areas in front of the building and southwest side of the building and Moraga Road. Exact locations and cameras to be used to be approved by the

Moraga Police Department.

7. A Construction & Demolition Debris Recycling Waste Management Plan Acknowledgement Form shall be submitted to the Planning Department prior to issuance of the grading or building permit for the project.
8. Development impact fees shall be paid. These may be paid in phases, prior to building permit issuance of each building if building permits are issued at different times.
9. The permit holder shall submit enhanced plans for outdoor features subject to Planning Director approval, which include the following:
  - a. Add grocery cart corrals, minimum of two in the parking lot.
  - b. Add additional paving pattern at the grocery store plaza and further refine final plaza design.
  - c. Bike racks, bollards and all outdoor furniture shall have a cohesive and complementary design language.
10. The project shall comply with the Model Water Efficient Landscaping Ordinance Sections 492.6(a)(3)(B) (C), (D), and (G) of the State Model Water Efficient Landscaping Ordinance. The submittal requirements per Model Water Efficient Landscape Ordinance Section 492.3, 492.4, 492.5, 492.6, 492.7, 492.8, 492.9, 492.10, 492.11, and 492.12, due at building Permit plan check are:
  - a. Project information, including: date, project applicant, project address (if available, parcel and/or lot number(s)), total landscape area (square feet), project type (e.g., new, rehabilitated, public, private, cemetery, homeowner-installed), water supply type (e.g., potable, recycled, well) and identify the local retail water purveyor if the applicant is not served by a private well, checklist of all documents in Landscape Documentation Package, project contacts to include contact information for the project applicant and property owner, applicant signature and date with statement, "I agree to comply with the requirements of the water efficient landscape ordinance and submit a complete Landscape Documentation Package".
  - b. Water Efficient Landscape Worksheet including: hydrozone information table, water budget calculations, Maximum Applied Water Allowance (MAWA), and Estimated Total Water Use (ETWU)
    - i. soil management report;
    - ii. landscape design plan;
    - iii. irrigation design plan; and
    - iv. grading design plan.
    - v. Certification of Completion
    - vi. Irrigation Scheduling
    - vii. Landscape and irrigation maintenance Schedule
    - viii. Irrigation audit, irrigation survey, and irrigation water use analysis.

11. The project photometric plans shall show the following related to lighting:

- a. All new lighting and any illuminated addresses shall be dark sky compliant.
- b. Lighting for outdoor public areas shall be 4,000 (four thousand) kelvin or less to provide a warmer light quality.
- c. Lighting in parking areas shall be maintained with a minimum of one foot-candle of illumination at the ground level during one hour prior to sunset and one hour after sunrise. Fixtures shall be dark sky compliant.
- d. Aisles, passageways, walkways, and recesses related to and within a development shall be illuminated with an intensity of at least 0.25 foot-candles at the ground level during the hours of darkness. Fixtures shall be dark-sky compliant.

12. Final Recycling, Organics and Landfill enclosures, designs, location, and dimensions shall be reviewed and approved by Republic Services.

13. The plans shall show trash/recycling receptacles adjacent to major tenants or every 50 (fifty) feet.

14. Ancillary facilities, equipment, and utilities. The items below are subject to Planning Director review and approval.

- a. All new utilities and utility connections shall be placed underground, unless otherwise prohibited by the utility provider.
- b. Any new above-ground utilities, utility transformers, or utility connections shall be screened from view of adjacent public rights-of-way or integrated within the building architecture. When this is not possible, these ancillary features may be located in free-standing enclosures designed compatibly with the project's architecture style. Landscaping that provides immediate screening may be considered.
- c. New above-ground utilities or utility enclosures may not be located within 50 (fifty) feet of a street corner, or within the public right-of-way.
- d. New utility transformers that are outside the public right-of-way shall have adequate access to ensure the ability to perform maintenance on the transformers.
- e. Any new building or mechanical equipment shall be screened or integrated within the building architecture. When this is not possible, these ancillary features may be located in free-standing enclosures designed compatibly with the project's architectural style. Landscaping that provides immediate screening may be considered.
- f. New wall-mounted, ground-mounted, or roof-mounted air conditioning units and associated electrical and plumbing service connections shall be screened by parapets, walls, fences, or landscape screening. The proposed method shall be shown on the building permit plan set.
- g. The color of all flashing, vents, gutters, exhaust fans/ventilators, and pipe stacks shall match the adjacent roof or wall material and/or color.

- h. New permanent mechanical equipment such as a motor, compressor, pump or compactor which would be a source of structural vibration or structure-borne noise in excess of town standards shall be shock-mounted with inertia blocks or bases or vibration isolators.

15. Landscape plans:

- a. A minimum of one 24-inch box size tree or greater shall be planted on average at least every 800 square feet of new landscaping, the remaining trees shall be at least 15-gallon size.
- b. Shrubs shall be planted at minimum 5-gallon size.
- c. Ground cover plants, other than grasses, shall be four-inch pot size of greater and planted at a density that will cover the entire area within two years.
- d. Mulch (as a ground cover) shall be confined to areas underneath plants and is not a substitute for ground cover plants.
- e. Existing landscaping at the shopping center's Moraga Road entrance, along the main driveway and within the parking lot between the proposed grocery store, in line tenant space and pad building A shall be revitalized by upgrading key landscape areas and areas of dead landscaping using the projects planting palette to better connect existing and new landscaping in a cohesive manner, subject to review and approval of the Planning Director.

16. Bicycle Parking Space Dimensions: A minimum of six bicycle parking spaces shall be provided, with at least one located at each building.

- a. Any bicycle parking space must be a minimum area of 72 (seventy-two) inches in length and 24 (twenty-four) inches in width that is clear of obstructions;
- b. No part of any rack may be located closer than 30 inches to a wall or other obstruction;
- c. The front or back of any rack shall be located no less than 48 (forty-eight) inches from a sidewalk or pedestrian way; and
- d. A minimum of 30 (thirty) inches shall be provided between any adjoining racks.

17. Any electrical vehicle (EV) charging stations required under the California Building Code shall be designed as follows:

- a. Each EV charging space must be accessible to persons with disabilities.
- b. Each EV charging space must include a posted sign and painted curb, or ground markings, indicating that the space is exclusively for EV charging purposes.
- c. EV charging equipment must be located so that pedestrians are not required to cross between the EV charging space and the EV charging equipment. The EV charging equipment may not obstruct any Americans with Disabilities Act-compliant sidewalk, entrance, curb-cut, or ramp, while in use or otherwise.

- d. EV charging equipment must be illuminated by lighting to enable the equipment to be used at night.
  - e. Concrete-filled steel bollards or other similar barriers must be installed between EV charging equipment and an EV charging space if either of the following applies:
    - i. The EV charging equipment is located less than twenty-four (24) inches away from the EV charging space that it serves; or
    - ii. The EV charging equipment is located twenty-four (24) inches or more away from the EV charging space that it serves and does not include, between the space and the equipment, a curb measuring at least six inches high.
18. No signage is approved by this permit. Any future signage shall be subject to review for conformance with the Rheem Valley Shopping Center Master Sign Program and Moraga Municipal Code §8.88.

Moraga Engineering/Public Works Department Conditions of Approval

19. In the event that clarification is required to these Conditions of Approval, the Town Engineer has the authority to clarify the intent of these Conditions of Approval to the Applicant/Developer without going to a public hearing. The Town Engineer also has the authority to make minor modifications to these conditions without going to a public hearing in order for the Applicant/Developer to fulfill needed improvements or mitigations resulting from impacts of this project.
20. The applicant shall obtain an Encroachment Permit from the Public Works Department for any work within the public right-of-way.
21. The Final project plans shall show that where there is a required walkway, or sidewalk that is parallel and within two feet of an auto travel lane, it must be separated from the auto travel lane by a physical barrier consisting of a raised curb at least four inches high, or by another barrier as determined by the Public Works Director
22. A lot line adjustment will be necessary between APN's 255-160-040 and 255-160-035 for the location of the pad building A. The location of the building can be approved prior to the recording of the lot line adjustment, however a building permit for the building cannot be issued until the lot line adjustment is recorded.
23. The applicant shall obtain and provide a copy of a grading permit issued by the County Grading Division. The applicant shall submit grading plans for review and approval by the Town Public Works Department and Planning Department prior to submitting to the County Grading Division.
24. Applicant/Developer shall provide faithful performance security to guarantee the improvements, as well as payment security, as determined by the Town Engineer (Note: The performance security shall remain in effect until one year after final

inspection).

25. As recommended by Cornerstone Earth Group in their Geologic Feasibility Evaluation Report dated October 30, 2023 (Project No. 1470-1-1), for the hillside slope located west of the Rheem Valley Shopping Center property, the existing drainage benches behind the planned grocery building should be maintained prior to completion of new construction, including clearing soil debris from the existing concrete lined v-ditches. Localized v-ditch repair should also be performed to mitigate undermined concrete ditches. In addition, existing storm drain inlets should be checked to ensure that they are clear of debris or sediment.
26. Applicant/Developer shall submit a Design Level Geotechnical Report, which includes pavement sections, grading and additional information and/or clarifications as determined by the Town Engineer.
27. The Grading Plan shall be in conformance with the recommendation of the Geotechnical Report, the approved Design Review, and the Town design standards & ordinances. In case of conflict between the soil engineer's recommendation and the Town ordinances, the Town Engineer shall determine which shall apply.
28. A detailed Erosion and Sediment Control Plan shall be included with the Grading Plan submittal. The plan shall include detailed design, location, and maintenance criteria of all erosion and sedimentation control measures. The plan shall also address site housekeeping best management practices.
  - a. The Erosion and Sediment Control Plan shall be implemented between October 15<sup>th</sup> and April 30<sup>th</sup> unless otherwise allowed in writing by the City Engineer. The Applicant/Developer will be responsible for maintaining erosion and sediment control measures for one year following the City's acceptance of the improvements.
29. All applications involving the hauling of more than 500 cubic yards shall require a permit issuable by the Town Council following notice to interested parties in accordance with the most current Town ordinance. Prior to issuance of a grading permit, the applicant shall obtain a hauling permit.
30. Prior to the issuance of a grading permit, the applicant shall obtain access rights, rights of entry, permits and/or easements for the construction of temporary or permanent improvements (if needed).
31. Prior to the issuance of a grading permit, improvement plans prepared by a registered Civil Engineer shall be submitted to the Public Works Department, Engineering Division, along with review and inspection fees. Any necessary signing and striping shall be included in the improvement plans for review by the Public Works Department.

32. Any new signage, landscaping, fencing, retaining walls, lighting, or other obstructions proposed shall be checked for adequate sight distance.
33. CCCSD Requirements. Prior to the issuance of a grading permit, the Contra Costa Sanitary District (CCCSD) shall review and approve the plans. Verification of CCCSD approval shall be submitted to the Town of Moraga.
34. EBMUD Requirements. Prior to the issuance of a grading permit, the East Bay Municipal Utilities District (EBMUD) shall review and approve the plans. Verification of EBMUD approval shall be submitted to the Town of Moraga.
  - a. Separate structures on the same property require separate water meters.
  - b. When the development plans are finalized, the project sponsor should contact EBMUD's New Business Office and request a water service estimate to determine the costs and conditions of providing water service to the development.
  - c. Engineering and installation of water mains and meters requires substantial lead time, which should be provided for in the project sponsor's development schedule.
  - d. No water meters are allowed to be located in driveways.
  - e. The project sponsor should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense.
  - f. Due to EBMUD's limited water supply, all customers should plan for shortages in time of drought.
35. As noted in the Covenants, Conditions, Restrictions and Easements document recorded August 17, 1982 in Book 10895, Page 929 of Official Records (and subsequent amendments) Rheem Valley Property Owner, LP, or its successors has a legal obligation to maintain the private storm drainage facilities and any appurtenant facilities. The Town will not accept these facilities for ownership or maintenance.
36. Green Stormwater Infrastructure. The Applicant/Developer shall incorporate Green Infrastructure facilities within the public rights-of-way of newly constructed or widened streets, for treatment of additional impervious area not part of the project, subject to the review of the Public Works Department. Green Stormwater Infrastructure facilities include, but are not limited to: infiltration basins, bioretention facilities, pervious pavements, etc.
37. The project shall fully comply with the Town's Stormwater Management and Discharge Control Ordinance, the Contra Costa Clean Water Program's Stormwater C.3 Guidebook and any amendments thereof, and the requirements

of the Regional Water Quality Control Board. As part of these requirements, the applicant shall incorporate Low Impact Development (LID), Integrated Management Practices (IMPs) or Best Management Practices (BMPs) to the maximum extent practicable into the design of this project, implement them, and provide for perpetual operation and maintenance for all treatment IMPs/BMPs.

38. All construction plans (including, but not limited to, site, improvement, structural, mechanical, architectural, building, grading and landscaping plans) shall comply with the approved Stormwater Control Plan (SWCP), the Town's Stormwater Management and Discharge Control Ordinance, the "C.3 Guidebook" and the requirements of the Regional Water Quality Control Board. All construction plans shall include details and specifications necessary to implement all measures of the SWCP, subject to the review and approval of the Public Works Department. To ensure conformance with the SWCP, the applicant shall submit a completed "Construction Plan C.3 Checklist" indicating the location on the construction plans of all elements of the SWCP as described in the "C.3 Guidebook."
39. Any proposed water quality features that are designed to retain water for longer than 72 hours shall be subject to the review of the Contra Costa Mosquito & Vector Control District.
40. The landscape plans shall include plantings for the bioretention areas that comply with Appendix B of the Contra Costa County Stormwater C.3 Guidebook.
41. The applicant shall comply with all rules, regulations and procedures of the NPDES for municipal, construction and industrial activities as promulgated by the California State Water Resources Control Board or any of its Regional Water Quality Control Boards. This includes compliance with Provisions C.3 and C.10 of the NPDES Permit, including:
  - a. Minimize the amount of directly connected impervious surface area, directing run-off to landscaped/pervious areas prior to entering the storm drain system.
  - b. Stencil all storm drains ("No Dumping, Drains to Creek") using thermoplastic tape.
  - c. Trash bins shall be located within a covered enclosure.
  - d. Filters shall be provided in all proposed or existing inlets.
  - e. Other alternatives comparable to the above as approved by Public Works.
42. *Basic Construction Best Management Practices.* The following Basic Construction Best Management Practices shall be noted on the grading and building permit plans and implemented to ensure that construction-related emissions, including fugitive dust, do not exceed applicable BAAQMD Thresholds of Significance:
  - a. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.



- b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
  - c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - d. All vehicle speeds on unpaved roads shall be limited to 15 mph.
  - e. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
  - f. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes [as required by the California airborne toxics control measure Title 13, Section 2485 of the California Code of Regulations (CCR)]. Clear signage shall be provided for construction workers at all access points.
  - g. All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
  - h. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The District's phone number shall also be visible to ensure compliance with applicable regulations.
43. Discovery of Archaeological Resources. The project proponent shall include a note on any plans that require ground disturbing excavation that there is potential for exposing buried cultural resources. If prehistoric or historic-period cultural materials are unearthed during ground-disturbing activities, all work within 200 feet of the find shall halt until a qualified archaeologist and Native American representative can assess the significance of the find. If the find is determined to be potentially significant, the archaeologist, in consultation with the Native American representative, will develop a treatment plan that could include site avoidance, capping, or data recovery.

### **During Construction**

44. Noise-generating construction and grading activities shall take place on weekdays only between the hours of 8:00 AM and 5:00 PM. No construction or grading activities are permitted on Saturdays, Sundays or Town observed holidays, unless it is an emergency and prior Town approval has been obtained.
45. Dust control and equipment wash-down shall be done with Title 22 recycled water and contained on-site. Runoff from these procedures shall not be allowed to flow onto adjoining properties or into the Town's storm drain system.

46. The applicant and its contractors shall be responsible for preventing spills of any demolition debris or construction materials on Town streets. If any spills of debris occur, then the applicant will be held responsible for the immediate cleanup of the spill and repair of any damage that may have been done to the street. All corrections shall be made to the satisfaction of the Town Engineer.
47. If underground utilities leading to any adjacent properties are uncovered and/or damaged or broken at any time during construction, the applicant and the contractor involved shall immediately notify the Public Works Department and the appropriate agency/ies and carry out any corrective action to its/their satisfaction.
48. Town staff (including authorized agents) shall have the right to enter the subject property to verify compliance with these conditions. The holder of any permit associated with this project shall make the premises available to Town staff during regular business and shall, upon request, make records and documents available to Town staff as necessary to evidence compliance with the terms and conditions of the permit.

Moraga Engineering/Public Works Department Conditions of Approval

49. All construction, demolition and other related noise-generating activities shall be limited to the hours of 8:00 AM to 5:00 PM, Monday through Friday. No construction-related activity shall occur on weekends or holidays without prior approval of the Planning Director.
50. Temporary construction fencing shall be installed along the construction work perimeter to separate the construction area from the public. All construction activities shall be confined within the fenced area. Construction materials and/or equipment shall not be operated/stored outside of the fenced area or within the public right-of-way unless approved in advance by the Town Engineer.
51. Applicant/Developer shall prepare a construction noise management plan that identifies measures to minimize construction noise on surrounding developed properties. The plan shall include hours of construction operation, use of mufflers on construction equipment, speed limit for construction traffic, haul routes and identify a noise monitor. Specific noise management measures shall be provided prior to project construction.
52. Closing of any existing pedestrian pathway and/or sidewalk during construction shall be implemented through a Town-approved Traffic Control Plan and shall be done with the goal of minimizing the impact on pedestrian circulation.
53. Construction traffic and parking may be subject to specific requirements by the Town Engineer.
54. No structures, fences, or retaining walls shall be installed within the public right-of-

way.

55. Within 30 days of the adoption of these Conditions of Approval, the Town Engineer or his representative and a responsible representative of the property ownership shall inspect the public sidewalk along the shopping center property frontage on Moraga Road: Any cracked and displaced curb, gutter and sidewalk along the property frontage of Moraga Road shall be removed and replaced to the limits directed in the field by the Town Engineer or his representative. Concrete shall be sawcut prior to removal. Existing lines and grades shall be maintained.

- a. The Applicant/Developer shall be responsible for the repair of any damaged pavement, curb & gutter, sidewalk, or other public street facility resulting from construction activities associated with the development of the project.

56. The applicant shall provide an ADA compliant pedestrian path of travel to all entrances/exits of the proposed building(s) from the public right-of-way and from required accessible parking spaces.

- a. Any existing or proposed curb ramps and pedestrian facilities along the designated path of travel shall be designed and constructed in accordance with current Public Works standards, Title 24 and the Americans with Disabilities Act (ADA). Prior to Final Occupancy, the County Building Department shall conduct an inspection to confirm this condition on behalf of the Town.
- b. Adjacent to Building A, repair or replace the existing path(s) of travel intended as the accessible path of travel from the public sidewalk on Moraga Road to the proposed building entrances/exits in accordance with Public Works standards, Title 24, and ADA regulations.
- c. The Applicant shall revise the project plans to include a safe pedestrian accessible path of travel from the public sidewalk at Moraga Road to the primary building entrance for the grocery store building, with the proposed crossing location and design subject to review and approval by the Public Works Department. Suitable treatments for the accessible path may include continuation of sidewalk adjacent to the entrance drive aisle, pedestrian crossing signs, pavement markings, and or treatments such as textured paving or raised pavement markers to notify drivers of the crossing area and/or demarcate the crossing area.

57. The Applicant/Developer shall provide adequate dust control measures at all times during the grading and hauling operations. All trucks hauling export and import materials shall be provided with tarp cover at all times. Spillage of haul materials and mud-tracking on the haul routes shall be prevented at all times. The Applicant/Developer shall be responsible for sweeping of streets within, surrounding and adjacent to the project, as well as along the haul route, if it is determined that the tracking or accumulation of material on the streets is due to its

construction activities.

58. Dust control and equipment wash-down shall be done with Title 22 recycled water and contained on-site. Runoff from these procedures shall not be allowed to flow onto adjoining properties or into the Town's storm drain system.
59. The applicant and its contractors shall be responsible for preventing spills of any demolition debris or construction materials on Town streets. If any spills of debris occur, then the applicant will be held responsible for the immediate cleanup of the spill and repair of any damage that may have been done to the street. All corrections shall be made to the satisfaction of the Town Engineer
60. PCBs Demolition Requirements. The applicant shall provide all screening and testing forms required to comply with the requirements of Municipal Regional Stormwater Permit C.12 PCB controls during the Building Demolition Process. Forms and additional resources may be found at <https://www.contracosta.ca.gov/DocumentCenter/View/59578/Demolition-Permit-Requirement---PCBs-Screening-Assessment-Form>
61. Construction BMPs for PCBs Demolition Projects. To minimize potential transport of Polychlorinated Biphenyls to the storm drain system, enhanced construction best management practices (BMPs) must be implemented. Minimum BMPs include the following:
  - Street sweeping. Daily street sweeping of the project and adjacent streets using vacuum or regenerative air sweepers to effectively remove sediment, dust, and debris must be conducted. Daily street sweeping is required during all phases of the project.
  - Demolition debris. Demolition debris must be covered with an impermeable liner (or equivalent) at all times. Demolition debris must be covered until it is safely and properly disposed of at an appropriate waste handling facility.

#### **Prior to Building Permit Final Occupancy**

62. Landscaping associated with the building seeking Final approval shall be installed per the project plans. A letter shall be submitted by the landscape architect confirming that the landscaping and irrigation have been installed consistent with the project landscaping plans.
63. All new landscaping and irrigation shall be consistent with the State Model Water Efficient Landscaping Ordinance, and any additional requirements imposed by the State and/or East Bay Municipal Utility District regarding water conservation. The landscape architect shall certify that the landscaping and irrigation comply.
64. The Moraga Police Department shall conduct a final inspection confirming the installation of bollards for protection of pedestrian areas in front of the grocery store, in line tenant, Building A and Building B and inspect the installation of

security cameras required in condition 4, confirm they are operational, are the approved type and at the approved locations.

65. A landscape maintenance bond shall be posted to secure the replacement of any necessary plant material by the developer for a period of one year.

66. The Planning Department shall conduct a final inspection of the site to verify compliance with the project plans and conditions of approval.

Moraga Engineering/Public Works Department Conditions of Approval

67. The applicant shall provide a Stormwater Control Operation and Maintenance (O&M) Plan for review by the Public Works Department, and record an Operation and Maintenance Agreement, including any necessary rights-of-entry, prior to building permit final inspection/certificate of occupancy.

68. All existing trees and shrubs to remain shall be trimmed to allow for a clear line of sight for vehicles exiting the driveway. All proposed landscaping shall be set back to ensure that the sight line is clear of any obstructions.

69. The Engineering/Public Works Department shall conduct a final inspection of the site to verify compliance with the project plans and conditions of approval.

**At All Times**

70. The applicant shall ensure compliance with all of the conditions of approval. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the approval. These conditions of approval only apply to the project area as conditioned, and not to the remainder of the existing Rheem Valley Shopping Center.

71. The applicant shall ensure compliance with all of the conditions herein, including submittal to the project planner of required approval signatures at the times specified. Notice of failure to comply with any condition shall be provided to the applicant by the Town, and a reasonable opportunity to gain compliance provided. Applicant's failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the permit.

72. The approved construction and grading is subject to, and shall comply with, all applicable Town Ordinances and laws and regulations of other governmental agencies.

73. All landscaping approved under this permit shall be permanently maintained for the life of the project.

74. Cameras required by the Moraga Police Department to be installed for this project shall be connected to the Moraga Police system for immediate viewing in the event of a criminal investigation or critical incident. The permit holder is responsible for ensuring the cameras are in working order and is responsible for their maintenance and upkeep at all times.
75. The project includes a noted 'focal point' space for public art or special exhibits such as holiday displays or a compact stage, within the outdoor plaza north of the grocery store. Public Art is not required by the objective design standards, but voluntarily introduced as an option by the permit holder, who agrees to discuss making this area available for public art selected by the Town of Moraga Art in Public Spaces Committee. The property owner retains final approval of any selection and of the length of time an art piece may be displayed, including whether it may be removed temporarily for seasonal or special exhibits."
76. EV charging spaces if required under the California Building Code:
- a. An electric vehicle may occupy an EV charging space only while charging is in progress. Parking in an EV charging space when charging is not in progress is prohibited.
  - b. EV charging equipment must be maintained in working order at all times. The name and telephone number of the party responsible for maintaining and repairing the equipment must be posted on the equipment and updated as necessary.
77. The applicant shall apply for and pay all appropriate fees for building permits, plan checks and inspections.
78. This permit and each condition contained herein shall be binding upon the applicant and any transferor, or successor in interest.
79. The applicant and/or property owner agree to defend, indemnify, and hold harmless the Town of Moraga, its agents, officers, council members, employees, boards, commissions, and Council from any and all claims, actions or proceedings brought against any of the foregoing individuals or entities, seeking to attack, set aside, void or annul any approval of the application or related decision, or the processing or adoption of any environmental documents or negative declarations which relate to the approval. This indemnification shall include, but is not limited to, all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision, whether or not there is concurrent, passive or active negligence on the part of the Town, its agents, officers, council members, employees, boards, commissions, and Council. If for any reason any portion of this indemnification agreement is held to be void or unenforceable by a court of competent jurisdiction, the remainder of the agreement shall remain in full force

and effect. The Town of Moraga shall have the right to appear and defend its interest in any litigation arising from the approval of the application or any related decision through its Town Attorney or outside counsel selected by the Town Attorney. The applicant shall be required to reimburse the Town for attorney's fees incurred by the Town in connection with the litigation.

80. The design review and grading permits will automatically expire on December 12, 2024. If a building or grading permit is not issued by December 12, 2024, the permits become null and void. However, this discretionary action may be renewed by the Planning Director for a maximum period of one (1) year provided the applicant places such a request in writing to the Planning Director with a showing good cause.