

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 9/22/11

FROM: Tim Tune, Senior Planner, via John Swiecki, Community Development Director

SUBJECT: **3836 Bayshore Boulevard;** Design Permit DP-3-11 and Use Permit UP-12-11; Showroom/Office/Warehouse with Two 3-Bedroom Dwelling Units Above and Uncovered or Carport Parking Spaces in Lieu of Garage/Carport Parking Spaces; Joseph Xu, applicant; Lun Hong Wong, owner; APN 007-553-180

UPDATE: This item was continued from the September 8th meeting, so the City Attorney could be consulted regarding staff's recommendation that the requested approvals be denied (see attached updated draft resolution).

The City Attorney advises that although vested rights typically require substantial work being done in reliance upon a building permit issued for a project, a legal argument could be made in court that the property owner has spent substantial sums on planning and building permit applications and soil testing, and so some kind of entitlement to proceed with the original project should be recognized. Although there is no way to predict whether a court would rule that the applicant has acquired any vested rights, a court might be inclined to recognize an entitlement based upon equitable grounds (legal principles that supplement rules of law in cases where their strict application would operate harshly).

In addition, the City Attorney notes that, although the Housing Element, which calls for rezoning of the subject property to high-density residential use, has been adopted; by its own terms, it calls for an amendment to the Land Use Element of the General Plan, which in turn would require an amendment to the Zoning Ordinance, and these amendments have not been adopted. Thus, denial of a mixed-use project could be contested on the ground that the legislation needed to allow only residential uses has not been approved and, in the absence of a moratorium, existing land use regulations are still operative until the effective date of the general plan and zoning amendments. In other words, the Housing Element merely adopts a program for future action and not a land use regulation for present enforcement. For the same reason, the City Attorney would not recommend a condition of approval requiring installation of utility stubouts and rear egress windows, unless the applicant voluntarily offers to do this. To impose this requirement would be the same as giving the Housing Element regulatory effect, which may be premature at this point.

Accordingly, an alternative draft resolution for conditional approval of the project is attached. Revisions and updates of the previous conditions of approval are indicated in red.

UPDATED DRAFT
RESOLUTION DP-3-11/UP-12-11

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
DENYING DESIGN PERMIT DP-3-11 AND USE PERMIT UP-12-11
TO PERMIT A SHOWROOM/OFFICE/WAREHOUSE
WITH TWO DWELLING UNITS ABOVE AND UNCOVERED/CARPORT PARKING
AT 3836 BAYSHORE BOULEVARD

WHEREAS, Joseph Xu, the applicant, had applied to the City of Brisbane for Design Permit and Use Permit approval for a showroom/office/warehouse with three 2-bedroom dwelling units above and uncovered parking at 3836 Bayshore Boulevard, such applications being identified as Design Permit DP-6-07 and Use Permits UP-8-07 & UP-9-07; and

WHEREAS, on February 26, 2009, the Planning Commission approved a Mitigated Negative Declaration and Mitigation Monitoring Program for the project, found that the proposed development of the subject property (HCP Administrative Parcel 2-03-20) complied with the terms of the San Bruno Mountain Area Habitat Conservation Plan Agreement and Section 10(a) Permit, given the conditionally approved Operating Program, and conditionally approved the Design Permit and Use Permits; and

WHEREAS, the applicant now proposes to revise the project with two 3-bedroom units and carport parking, as well as uncovered parking; and

WHEREAS, on September 8 and 22, 2011, the Planning Commission conducted public hearings of the revised applications, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and considered the agenda reports relating to said applications, the plans and photographs, the written and oral evidence presented to the Planning Commission in support of and in opposition to the applications; and

WHEREAS, the Planning Commission of the City of Brisbane hereby makes the findings attached herein as Exhibit A in connection with the Design Permit and Use Permit.

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of September 22, 2011, did resolve as follows:

Design Permit Application DP-3-11 and Use Permit Application UP-12-11 are denied per the findings attached herein as Exhibit A.

ADOPTED this twenty-second day of September, 2011, by the following vote:

AYES:
NOES:
ABSENT:

JAMEEL MUNIR
Chairman

ATTEST:

JOHN SWIECKI, Community Development Director

**DRAFT
EXHIBIT A**

Action Taken: Deny Design Permit DP-3-11 and Use Permit UP-12-11, per the agenda reports with attachments, via adoption of Resolution DP-3-11/UP-12-11 with Exhibit A containing the findings.

Findings:

Design Permit DP-3-11

1. Although the proposed development is consistent with the 1994 General Plan, it is not fully consistent with the future zoning proposed in the 2007-2014 Housing Element, as detailed in the 9/8/11 agenda report.
2. The proposal maintains a balance of scale, form and proportion, uses design components that are harmonious and materials and colors that complement the project, and integrates well with elements of the site plan and of surrounding areas, as detailed in the 9/8/11 agenda report.
3. The orientation and location of buildings, structures, open spaces and other features maintain a compatible relationship to adjacent development, as detailed in the 9/8/11 agenda report.
4. Where a proposal abuts or is in close proximity to uses other than that proposed, the plan takes into account its effect on and maintains the quality of the other land uses, as detailed in the 9/8/11 agenda report.
5. For hillside development, the proposal respects the topography of the site and is designed to minimize its visual impact, and significant public views of San Francisco Bay, the Brisbane Lagoon and San Bruno Mountain State and County Park are preserved, as detailed in the 9/8/11 agenda report.
6. The site plan minimizes the effects of traffic on abutting streets through careful layout of the site with respect to location, dimensions of vehicular and pedestrian entrances and exit drives, and through the provision of adequate off-street parking; there is an adequate circulation pattern within the boundaries of the development; parking facilities are

adequately surfaced, landscaped and lit, given the conditions of approval, as detailed in the 9/8/11 agenda report.

7. The proposal encourages alternatives to travel by automobile where appropriate, through the provision of facilities for pedestrians and bicycles, public transit stops and access to other means of transportation, as detailed in the 9/8/11 agenda report.
8. The site provides open areas and landscaping to complement the buildings and structures; landscaping is also used to separate and screen service and storage areas, break up expanses of paved area and define areas for usability and privacy; and landscaping is generally water conserving and is appropriate to the location, with attention given to habitat protection and wildland fire hazard as appropriate, given the conditions of approval as detailed in the 9/8/11 agenda report.
9. The proposal takes reasonable measures to protect against external and internal noise, given the conditions of approval as detailed in the 9/8/11 agenda report.
10. Consideration has been given to avoiding offsite glare from lighting and reflective building materials, as detailed in the 9/8/11 agenda report.
11. Attention is given to the screening of utility structures, mechanical equipment, trash containers and rooftop equipment, as detailed in the 9/8/11 agenda report.
12. Signage is appropriate in location, scale, type and color, and is effective in enhancing the design concept of the site, given the conditions of approval as detailed in the 9/8/11 agenda report.
13. Provisions have been made to meet the needs of employees for outdoor space, given the conditions of approval as detailed in the 9/8/11 agenda report.

Use Permit UP-12-11

1. Although the proposed development is consistent with the 1994 General Plan, it is not fully consistent with the future zoning proposed in the 2007-2014 Housing Element, as detailed in the 9/8/11 agenda report.
2. The establishment, maintenance and operation of the use applied for, under the circumstances, will not be detrimental to the health, safety, morals, comfort and general welfare of persons residing or working in the neighborhood, nor will it be injurious or detrimental to property or improvements in the neighborhood or the general welfare of the City, as detailed in the 9/8/11 agenda report.

3. Adequate measures have been taken to protect workers and residents from the twenty-four (24) hour noise generated by traffic on Bayshore Boulevard, as detailed in the 9/8/11 agenda report.
4. The design for projects with residential uses has incorporated measures to buffer the units from potential adverse impacts from nearby and adjacent non-residential uses, as detailed in the 9/8/11 agenda report.
5. The design for projects with residential uses includes outdoor areas, such as courts, yards or decks, securely separated from the street, as detailed in the 9/8/11 agenda report.
6. The improvements have been designed in a manner that will make adequate provision for on-site parking and traffic circulation and safe ingress to and egress from the site, per the conditions of approval as detailed in the 9/8/11 agenda report.
7. The improvements have been designed to be compatible with the topography and soils of the hillside, as detailed in the 9/8/11 agenda report.
8. Strict enforcement of the specified regulation is not required by either present or anticipated future traffic volume or traffic circulation on the site, as detailed in the 9/8/11 agenda report.
9. The granting of the use permit will not result in the parking of vehicles on public streets in such a manner as to interfere with the free flow of traffic on the streets or to create or intensify a shortage of on-street parking spaces, as detailed in the 9/8/11 agenda report.

ALTERNATIVE DRAFT
RESOLUTION DP-3-11/UP-12-11

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
CONDITIONALLY APPROVING DESIGN PERMIT DP-3-11 AND USE PERMIT UP-12-11
TO PERMIT A SHOWROOM/OFFICE/WAREHOUSE
WITH TWO DWELLING UNITS ABOVE AND UNCOVERED/CARPORT PARKING
AT 3836 BAYSHORE BOULEVARD

WHEREAS, Joseph Xu, the applicant, had applied to the City of Brisbane for Design Permit and Use Permit approval for a showroom/office/warehouse with three 2-bedroom dwelling units above and uncovered parking at 3836 Bayshore Boulevard, such applications being identified as Design Permit DP-6-07 and Use Permits UP-8-07 & UP-9-07; and

WHEREAS, on February 26, 2009, the Planning Commission approved a Mitigated Negative Declaration and Mitigation Monitoring Program for the project, found that the proposed development of the subject property (HCP Administrative Parcel 2-03-20) complied with the terms of the San Bruno Mountain Area Habitat Conservation Plan Agreement and Section 10(a) Permit, given the conditionally approved Operating Program, and conditionally approved the Design Permit and Use Permits; and

WHEREAS, the applicant now proposes to revise the project with two 3-bedroom units and carport parking, as well as uncovered parking; and

WHEREAS, on September 8 and 22, 2011, the Planning Commission conducted public hearings of the revised applications, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and considered the agenda reports relating to said applications, the plans and photographs, the written and oral evidence presented to the Planning Commission in support of and in opposition to the applications; and

WHEREAS, the Planning Commission of the City of Brisbane hereby makes the findings attached herein as Exhibit A in connection with the Design Permit and Use Permit.

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of September 22, 2011, did resolve as follows:

Design Permit Application DP-3-11 and Use Permit Application UP-12-11 are approved per the findings and conditions attached herein as Exhibit A.

ADOPTED this twenty-second day of September, 2011, by the following vote:

AYES:
NOES:
ABSENT:

JAMEEL MUNIR
Chairman

ATTEST:

JOHN SWIECKI, Community Development Director

**DRAFT
EXHIBIT A**

Action Taken: Conditionally approve Design Permit DP-3-11 and Use Permit UP-12-11, per the agenda reports with attachments, via adoption of Resolution DP-3-11/UP-12-11 with Exhibit A containing the findings and conditions of approval.

Findings:

Design Permit DP-3-11

1. The proposed development is consistent with the 1994 General Plan, as detailed in the 9/8/11 agenda report, in that the 2007-2014 Housing Element has yet to be implemented through amendment to the Land Use Element of the General Plan and the Zoning Ordinance, as explained in the 9/22/11 agenda report.
2. The proposal maintains a balance of scale, form and proportion, uses design components that are harmonious and materials and colors that complement the project, and integrates well with elements of the site plan and of surrounding areas, as detailed in the 9/8/11 agenda report.
3. The orientation and location of buildings, structures, open spaces and other features maintain a compatible relationship to adjacent development, as detailed in the 9/8/11 agenda report.
4. Where a proposal abuts or is in close proximity to uses other than that proposed, the plan takes into account its effect on and maintains the quality of the other land uses, as detailed in the 9/8/11 agenda report.
5. For hillside development, the proposal respects the topography of the site and is designed to minimize its visual impact, and significant public views of San Francisco Bay, the Brisbane Lagoon and San Bruno Mountain State and County Park are preserved, as detailed in the 9/8/11 agenda report.
6. The site plan minimizes the effects of traffic on abutting streets through careful layout of the site with respect to location, dimensions of vehicular and pedestrian entrances and exit drives, and through the provision of adequate off-street parking; there is an adequate circulation pattern within the boundaries of the development; parking facilities are

adequately surfaced, landscaped and lit, given the conditions of approval, as detailed in the 9/8/11 agenda report.

7. The proposal encourages alternatives to travel by automobile where appropriate, through the provision of facilities for pedestrians and bicycles, public transit stops and access to other means of transportation, as detailed in the 9/8/11 agenda report.
8. The site provides open areas and landscaping to complement the buildings and structures; landscaping is also used to separate and screen service and storage areas, break up expanses of paved area and define areas for usability and privacy; and landscaping is generally water conserving and is appropriate to the location, with attention given to habitat protection and wildland fire hazard as appropriate, given the conditions of approval as detailed in the 9/8/11 agenda report.
9. The proposal takes reasonable measures to protect against external and internal noise, given the conditions of approval as detailed in the 9/8/11 agenda report.
10. Consideration has been given to avoiding offsite glare from lighting and reflective building materials, as detailed in the 9/8/11 agenda report.
11. Attention is given to the screening of utility structures, mechanical equipment, trash containers and rooftop equipment, as detailed in the 9/8/11 agenda report.
12. Signage is appropriate in location, scale, type and color, and is effective in enhancing the design concept of the site, given the conditions of approval as detailed in the 9/8/11 agenda report.
13. Provisions have been made to meet the needs of employees for outdoor space, given the conditions of approval as detailed in the 9/8/11 agenda report.

Use Permit UP-12-11

1. The proposed development is consistent with the 1994 General Plan, as detailed in the 9/8/11 agenda report, in that the 2007-2014 Housing Element has yet to be implement through amendment to the Land Use Element of the General Plan and the Zoning Ordinance, as explained in the 9/22/11 agenda report.
2. The establishment, maintenance and operation of the use applied for, under the circumstances, will not be detrimental to the health, safety, morals, comfort and general welfare of persons residing or working in the neighborhood, nor will it be injurious or detrimental to property or improvements in the neighborhood or the general welfare of the City, as detailed in the 9/8/11 agenda report.

3. Adequate measures have been taken to protect workers and residents from the twenty-four (24) hour noise generated by traffic on Bayshore Boulevard, as detailed in the 9/8/11 agenda report.
4. The design for projects with residential uses has incorporated measures to buffer the units from potential adverse impacts from nearby and adjacent non-residential uses, as detailed in the 9/8/11 agenda report.
5. The design for projects with residential uses includes outdoor areas, such as courts, yards or decks, securely separated from the street, as detailed in the 9/8/11 agenda report.
6. The improvements have been designed in a manner that will make adequate provision for on-site parking and traffic circulation and safe ingress to and egress from the site, per the conditions of approval as detailed in the 9/8/11 agenda report.
7. The improvements have been designed to be compatible with the topography and soils of the hillside, as detailed in the 9/8/11 agenda report.
8. Strict enforcement of the specified regulation is not required by either present or anticipated future traffic volume or traffic circulation on the site, as detailed in the 9/8/11 agenda report.
9. The granting of the use permit will not result in the parking of vehicles on public streets in such a manner as to interfere with the free flow of traffic on the streets or to create or intensify a shortage of on-street parking spaces, as detailed in the 9/8/11 agenda report.

Conditions of Approval:

- A. **The supports for the carports shall be set back a minimum of 5 ft. from the side property line.**
- B. The property owner shall comply with the Operating Program drafted by TRA Environmental Sciences for the subject property (Management Unit 2-03-20) and the following:
 1. HCP Agreements: Prior to issuance of a Building/Grading Permit for the project as required by the County of San Mateo (as Plan Operator), the property owner shall become a signatory to the San Bruno Mountain Area Habitat Conservation Plan Agreement by signing an "Agreement to Comply with Terms and Conditions of the Agreement with Respect to the San Bruno Mountain Area Habitat Conservation Plan and Section 10(a) Permit" and shall record a Declaration of Covenants and Restrictions per Exhibit G of the Agreement with Respect to the San Bruno Mountain Area Habitat Conservation Plan.

2. HCP Funding Program: Upon occupancy of the building, the Landowner shall pay an annual assessment of \$10.00 (1982 dollars, adjusted for inflation each year) per 1,000 sq. feet of gross commercial floor area to the San Bruno Mountain Conservation Fund, in addition to \$20.00 (1982 dollars, adjusted for inflation each year) per dwelling unit on the property.
 3. Conserved Habitat Easement: **Per the recorded Conserved Habitat easement** to the City of Brisbane over the western 25 ft. of the property, the property owner **shall be prohibited from** planting any additional trees or shrubs within the easement, **shall be required** to remove French broom and other invasive vegetation from the easement on an annual basis and to plant native perennial species including *Mondadella villosa* (Coyote Mint), *Salvia spathacea* (Red-Pitcher Sage), *Dichelostemma* (Blue-Dicks), *Iris douglasiana* (Douglas Iris), *Lomatium caruifolium* (Alkali Parsnip), *Lomatium utriculatum* (Bladder Parsnip), *Horkelia californica* (California Horkelia), *Eriogonum latifolium* (Chalk Buckwheat), *Eriogonum nudum* (Buckwheat), *Phacelia californica* (California Phacelia) and/or *Heterotheca sessiliflora bolanderi/Chrysopsis villosa bolanderi* (Golden Aster) in their place, and **shall be prohibited from removing** or trimming of any existing trees or shrubs within the easement between February 15 to August 31, except as determined by a qualified biologist not to have an adverse impact upon protected nesting raptor or passerine birds. The easement shall not limit the Fire Department's authority to require appropriate fire hazard reduction measures within the easement. **The recorded easement** shall run with the property, so as to require that future owners observe these provisions regarding protection of the Conserved Habitat.
- C. **Per the submitted plans**, use of the commercial space shall be limited to a showroom and sales office with incidental warehouse storage (not to exceed 499 gross sq. ft.).
- D. A minimum of 14 parking spaces, **including 5 carport spaces, shall be provided on site as proposed.**
- E. **The plans issued with the Building Permit shall provide for the following:**
1. Reduction of the size of the first floor to no more than 1,649 gross sq. ft. of showroom/office and no more than 499 gross sq. ft. of warehouse floor area.
 2. A minimum of 20 ft. of clearance on the south side of the new building.
 3. A bench or picnic table for use as an employee outdoor break area.
 4. A bike rack for the new building.
- F. Prior to issuance of the Building Permit, the landscape plan shall be revised to the satisfaction of the Community Development Director to:
1. Replace the proposed Chinese Pistache trees along the frontage of the property with a low-growing, water-conserving, non-deciduous species of tree.

2. Specify that any trees along north side of the property shall be located so as not to block satellite dish reception of mobilehomes next door.
 3. Note that all existing French broom and any other invasive vegetation on the site shall be removed prior to final inspection.
- G. Street improvement plans, including details for installation of sidewalk, **4 ft. wide planting strip behind the curb with trees and short shrubs**, and irrigation systems within the public right-of-way, shall be submitted for approval by the City Engineer prior to the issuance of a building permit. Details on driveway/street connections shall be included. The minimum curb cut widths for the driveways shall be 18 ft. per Brisbane Municipal Code Section 12.24.015.C, and the curb cuts shall be located so as to preserve as much on-street parking as feasible per BMC Section 12.24.015.A. An Encroachment Permit shall be required for any work within the public right-of-way.
- H. The street improvement plans shall specify installation of “No Left Turn” signs at the outbound driveway lanes, a raised median in Bayshore Boulevard along the frontage of the property, and modification of the Bayshore Boulevard/Van Waters Road intersection to add a left/U-Turn queue, including necessary signal changes, to the satisfaction of the City Engineer.
- I. **The property owner shall comply with the recorded agreement with the City** to provide a fair share contribution toward signalization of the Bayshore Boulevard/San Bruno Avenue intersection.
- J. A licensed geotechnical engineer, civil engineer, soils engineer engineering geologist or testing agency shall inspect and certify that **the recommendations of the submitted soils engineering report and engineering geology report** have been properly implemented.
- K. All grading shall be contained on the site and shall comply with the provisions of Brisbane Municipal Code Chapter 15.01, with National Pollution Discharge Elimination System permit construction and post-construction best management practices for storm water discharge [per BMC Section 13.04.620(c)] and Bay Area Air Quality Management District’s standard dust control measures (BAAQMD CEQA Guidelines, Table 2), including watering active construction areas at least twice daily, covering all trucks hauling loose materials or requiring them to maintain at least 2 ft. of freeboard, sweeping staging areas daily, and sweeping streets if visible soil material tracked onto them. Prior to construction, all Best Management Practice improvements necessary to prevent stormwater pollution per NPDES shall be in place and shall be maintained thereafter to the satisfaction of the Public Works Department.
- L. Prior to issuance of a Building Permit, the plans shall include water and sanitary sewer service and storm drainage details as required by the City Engineer. The plans shall specify that each unit shall be served by a separate water meter.

- M. The plans submitted for a Building Permit shall comply with the requirements of the Brisbane Municipal Code, California Fire Code, California Building Code and the California Code of Regulations.
- N. A Demolition Permit shall be obtained to demolish the existing structures, subject to compliance with the City of Brisbane's construction and demolition debris recycling program (Brisbane Municipal Code Chapter 15.75) and the Bay Area Air Quality Management District's permitting requirements and dust emission standards.
- O. The plans submitted for Building Permit approval shall comply with the accessibility requirements in California Building Code Chapter 11A. In lieu of an elevator, the stairway on the north side of the building may be reconfigured to include a ramp to the residential units' parking located upslope of the building.
- P. Prior to issuance of a Building Permit, a professionally-prepared acoustical analysis report shall be submitted, showing that the proposed design will limit exterior noise to 45 dB in any habitable room per California Code of Regulations, Title 24, Appendix Chapter 35 (California Noise Insulation Standards).
- Q. A fire sprinkler system, fire alarm system and smoke detectors shall be provided per plans approved by the North County Fire Authority.
- R. The plans submitted for Building Permit approval shall indicate the distance to the nearest existing fire hydrant. If it is more than 250 ft., a new hydrant with adequate water supply shall be provided to the satisfaction of the North County Fire Authority.
- S. Any driveway gates shall be subject to the approval of the North County Fire Authority.
- T. **The property owner shall comply with the recorded** agreement including a covenant running with the land and enforceable by the City whereby the owner waives the right to protest the inclusion of the property within an underground utility district.
- U. Plans submitted for the building permit shall include details as to how all new exterior equipment, including public utility meters, shall be screened, fenced, painted or landscaped to mitigate off-site visibility to the satisfaction of the Community Development Director. **The plans shall include an enclosed recycling area in compliance with the requirements of Brisbane Municipal Code Section 17.16.040.I.1.**
- V. The plans shall specify that a 2" conduit be provided from the service pole to the building minimum point of entry (BMPOE) for Comcast services.
- W. The plans shall include a Neighborhood Delivery Cluster Box Unit (NDCBU) mailbox as approved by the Brisbane Post Office.

- X. Per the recorded landscape maintenance agreement with the City, properly trained personnel shall be used to remove French broom and other invasive vegetation in conformance with the San Bruno Mountain Area Habitat Conservation Plan.
- Y. Total sign area on the site shall not exceed 100 sq. ft. per Brisbane Municipal Code Chapter 17.36. The Community Development Director may approve Sign Review applications for signs up to 50 sq. ft. in area. Any larger signs shall require Zoning Administrator approval. No pole signs shall be permitted; although, appropriately-sized signage may be approved for mounting on the front fence. Any signage advertising the apartments shall not exceed 20 sq. ft. In addition to Sign Review approval for all advertising signs, a Building Permit shall be obtained through the Brisbane Building Department for signage exceeding 6 ft. in height. A separate permit application is required, with submission of three sets of plans, the necessary fees, and additional information as required by the Building Department.
- Z. The use shall comply with the performance standards for outside storage, noise, glare and hours of operation, established in Brisbane Municipal Code Sections 17.16.050 & 17.16.070.
- AA. The required parking spaces shall not be used or converted to any other use that would impair their basic use as parking for motor vehicles per Brisbane Municipal Code Section 17.34.020.A.
- BB. Prior to final inspection, a report on the relative success of the mitigation measures required per the Mitigated Negative Declaration shall be forwarded to the Planning Commission for its information.
- CC. Minor modifications may be approved by the Community Development Director in conformance with all requirements of the Municipal Code.
- DD. The Design Permit and Use Permit shall expire two years from their effective date (at the end of the appeal period) if a building permit has not yet been issued for the approved project and construction commenced per Brisbane Municipal Code Section 17.42.060(a).
- EE. The Applicant agrees to indemnify, defend and hold the City and its officers, officials, boards, commissions, employees and volunteers harmless from and against any claim, action or proceeding brought by any third party to attack, set aside, modify, or annul the approval, permit or other entitlement given to the Applicant, or any of the proceedings, acts or determinations taken, done or made prior to the granting of such approval, permit or entitlement.
- FF. The proposed 6 ft. tall redwood plank screening fence shall be provided along the southern property line shared with Assessor's Parcel No. 007-553-160, excluding the

southern boundary of the habitat easement, designed to preserve privacy while not blocking any wildlife corridors, subject to the approval of the Community Development Director. Any fencing around the habitat easement shall be comparable to the 6 ft. tall steel tubing fences with approximately 4 inch openings approved at Landmark at the Ridge in compliance with California Building Code Section 1013.3.

- GG. Prior to final inspection for the approved project, the gas and electrical service to the existing single-family residence shall be inspected for any health and safety hazards.