

February 14, 2006

Honorable Bill Dodd, Chair
Napa County Board of Supervisors
1195 Third Street, Suite 310
Napa, CA 94559

Re: Villa Berryessa Subdivision
Permit Nos: 95070-UP, 95071-SUB, and P05-0301 MINMOD
Assessor's Parcel No. 019-080-003

Dear Chair Dodd and Supervisors:

This firm represents Tom Gamble, a landowner and rancher in Napa County. Mr. Gamble's family property is located near to the proposed Villa Berryessa Subdivision project referenced above (the "project"). We are writing to ask you to overturn the Zoning Administrator's administrative approval of a modified Use Permit for the project, P05-0301-MODMINOR, which occurred on November 23, 2005.

The primary question presented by this appeal is narrow: may the Zoning Administrator modify the conditions of a Tentative Map? The answer to this question is clearly no. As discussed in further detail below, the Code *explicitly forbids* the Zoning Administrator from modifying to the conditions of a Tentative Map.

A secondary question is also narrow: even if the Code did not prohibit the Zoning Administrator from making modifications to the conditions of a Tentative Map, may the Zoning Administrator make (i) modifications to the conditions of approval for a *Tentative Map* through (ii) the process of modifying a *Use Permit*? Again, the answer to this question is clearly no. Under both California law and Napa County Code (the "Code"), a *Tentative Map* and its conditions represent a *distinct* land use entitlement from a *Use Permit*.

As detailed in Section II below, despite the distinction between a *Tentative Map* and *Use Permit*, the Zoning Administrator approved modifications to the conditions of the project's Tentative Map under the guise of the Use Permit modification that is the subject of this appeal.

I. The Code Explicitly Disallows the Zoning Administrator From Modifying of the Conditions of a Tentative Map.

- The Code allows the Zoning Administrator to approve of "minor changes" to an approved Tentative Map under Code section 17.26.040 (Exhibit A).



- However, as shown in Exhibit B, the Code expressly states that a minor change *does not* include alterations to "improvements required in the Tentative Map and the conditions thereof." Napa County Code § 17.02.380. (emphasis added).
- The Zoning Administrator's approval of modifications to the conditions of the Tentative Map therefore expressly violates the Code.

II. The Zoning Administrator Incorrectly Approved Modifications to the Project's Tentative Map as Part of the Use Permit Modifications.

1. The Project's Tentative Subdivision Map and Use Permit are Distinct Permits.

- This distinction is evidenced by the fact that the County assigned the tentative subdivision map and the Use Permit distinct permit numbers.
 - As shown in Exhibit C, page 1, both the Use Permit and the Tentative Map were approved by the County on June 24, 1997.
 - Exhibit C, page 1 shows that the Use Permit was approved as #95070-UP, while the Tentative Map was approved as #95071-SUB.
 - Exhibit C additionally shows that Use Permit #95070-UP and Tentative Map #95071-SUB had different conditions of approval.
 - As shown in Exhibit C, page 9, the conditions of approval for the Tentative Map bear the designation #95071-SUB, which evidences the fact that the conditions are a part of the Tentative Map.
 - As provided in the attachment to Exhibit C, page 3 ("Revised Use Permit and Development Plan Conditions of Approval"), the conditions of approval for the Use Permit bear the designation #95070-UP, which evidences the fact that the conditions are a part of the Use Permit.
- This distinction is also evidenced by the fact that the processing and approval of Tentative Maps and Use Permits are governed by distinct chapters of the Code.



- Chapter 17 of the Code deals with the processing and approval of Tentative Maps, and, as shown in Exhibit A, the modification of Tentative Maps is governed by Code section 17.26.040(B).
- Chapter 18 of the Code deals with the processing and approval of Use Permits, and, shown in Exhibit D, the modification of Use Permits is governed by Code section 18.124.130.

2. The County's Public Notice for the Zoning Administrator's Hearing Stated that the Hearing Solely Pertained to a Modification of Use Permit #95070-UP.

- The public notice (Exhibit E) clearly indicates that the hearing pertains to a "Use Permit Modification Request."
 - Exhibit E shows that the "Request" at issue is the "approval of a minor modification to the *approved Use Permit (#95070-UP)*."
- Additionally, the staff report prepared for the hearing (Exhibit F) states that the "Project Request" represents "Use Permit Modification P05-0301-MODMINOR to approved Use Permit #95070-UP."
- Neither of these documents indicates that the hearing would involve the modification of Tentative Map #95071-SUB.
- California law requires that the notice given must adequately describe what action is being undertaken, because inadequate notice is equivalent to providing no notice at all. *Drum v. Fresno County Dep't of Public Works*, 144 Cal.App.3d 777, 782 (1982).
- In addition, the Ralph. M. Brown Act prohibits the Zoning Administrator from taking action on an item that does not appear on the agenda. Cal. Gov. Code § 54954.2.

3. After the Zoning Administrator's Hearing, the County Confirmed that The Zoning Administrator's Decision Solely Approved the Modification of Use Permit #95070-UP.

- As shown in Exhibit G, after the Zoning Administrator's hearing on November 23, 2005, the County sent confirmation to the project applicant stating that Zoning Administrator had approved a "Use Permit Modification" under "Napa County Code 18.124.130B."



- Again, as shown in Exhibit A, the modification of Tentative Maps is governed by Code section 17.26.040(B).

4. Despite the Clear Distinction Between a Tentative Map and a Use Permit, and the Fact that the Zoning Administrator's Determination Has Been Noticed Solely As a Use Permit Modification, the Zoning Administrator Approved Modifications to the Project's Tentative Map.

- Exhibit H shows the modifications made by the Zoning Administrator to the original Use Permit and Tentative Map conditions approved on by the County on June 24, 1997 (the original conditions of approval are shown in Exhibit C).
 - As shown beginning on page 7 of Exhibit H, the Zoning Administrator approved modifications to the conditions of Tentative Map #95071-SUB.
 - These Tentative Map conditions are distinct from the conditions of Use Permit #95070-UP, which begin on page 1 of Exhibit H.

5. The Zoning Administrator Therefore Incorrectly Approved Modifications to the Project's Tentative Map as Part of the Use Permit Modifications.

- The modifications made to the Tentative Map are incorrect considering the fact that the Zoning Administrator's hearing purportedly solely extended to the modification of the Use Permit.
- Both due process and the Brown Act require that the County accurately describe what action is undertaken by the Zoning Administrator.
- Again, Use Permit #95070-UP and subdivision map #95071-SUB are distinct permits under both California and Napa County law.
- Therefore, the modification of one of these permits may not automatically modify the other.

III. Finally, the Use Permit Modifications Approved by the Zoning Administrator Are Not Minor and Non-Controversial in Nature.

- As shown in Exhibit D, Code section 18.124.130 permits the Zoning Administrator to approve "minor, non-controversial modifications" to Use Permits, but only to the extent that the modifications "do not affect the overall concept, density, intensity, or environmental impact of . . . the project."



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- The modifications represent a major and controversial change to the land use of the property.
 - As shown in Exhibit C, page 3 and Exhibit I, page 2, the original Use Permit for the project permitted only *modular or mobile homes* to be built on the property.
 - The modified Use Permit allows *permanent, stick built homes* (Exhibit H, page 1).
- This modification of the project from development of mobile homes to permanent single family homes clearly represents a change to the "overall concept" of the development.
- Moreover, these modifications are controversial to our client, and therefore pursuant to Code section 18.124.130 cannot be considered minor in nature.

We appreciate the opportunity to express our concerns and look forward to the Board's decision on these matters.

Sincerely,

Jim M. Abrams

cc: Jeffrey Redding
Robert Westmeyer, Esq.
Patricia Tyrell, Esq.
Hillary Gitelman
Heather McCollister
Tom Gamble
Katherine Philippakis, Esq.

Exhibit A

17.26.040 Tentative map--Amendment after approval.

A. Except as otherwise provided in subsection (B) of this section, an approved tentative map which has not been recorded may be amended in whole or in part only by filing a new tentative map application.

B. A request for approval of a **minor change to an approved tentative map** is permitted and shall be filed with the director of planning. The advisory agency shall consider the matter within twenty days of filing, and render its decision within thirty days after hearing the matter. The decision of the advisory agency shall be final. A minor change shall not require a noticed public hearing; however, the advisory agency may, in its sole discretion, allow testimony to be given on the proposed change. The approval of the advisory agency of a minor change shall not affect or result in any extension of the time period within which the land divider must secure approval of the final or parcel map. (emphasis added).

Exhibit B

17.02.380 Minor change.

"Minor change" means a modification of a tentative map that involves a change of lot lines, lot shape, lot dimensions, street alignment, width or grade, grading proposals, or other elements that **do not change the basic design or improvements required in the tentative map and the conditions thereof.** A proposed increase in the number of lots or a proposal that will significantly alter the configuration of the proposed lots is not a minor change. (Ord. 854 § 2 (part), 1987: prior code § 11602.13 (b)). (emphasis added).

Exhibit C



NAPA COUNTY

CONSERVATION • DEVELOPMENT and PLANNING DEPARTMENT

Jeffrey Redding

Director

June 27, 1997

1195 Third Street, Room 210 • Napa, California 94559-3092

Telephone 707/253-4416

FAX 707/253-4336

Nick Petsas

1000 Dezerai Court

Napa, CA 94558

Re: Villa Berryessa, Inc. Use Permit #95070-UP and Tentative Subdivision Map #95071-SUB, A portion of APN 19-080-03

Dear Mr. Petsas:

Please be advised that on June 24, 1997, the Napa County Board of Supervisors approved your to construct a 100 unit residential development and one (1) common area lot as well as a recreation complex, private water system and treatment plant, private sewage system with three (3) effluent spray fields, located on 96 acres of land on the north side of Pope Canyon Road, approximately 2,000 feet west of its intersection with Berryessa-Knoxville Road, within a Planned Development (PD) zoning district. The approval requires compliance with the attached conditions of approval (SEE ATTACHED LIST OF CONDITIONS OF USE PERMIT AND TENTATIVE MAP APPROVAL). These conditions reflect the final action of the Board of Supervisors, but may have also been renumbered and reorganized for internal consistency.

APPROVAL DATE : June 24, 1997

EXPIRATION DATE: USE PERMIT #95070-UP: JUNE 24, 1999
TENTATIVE SUBDIVISION MAP #95071-SUB JUNE 24, 1999

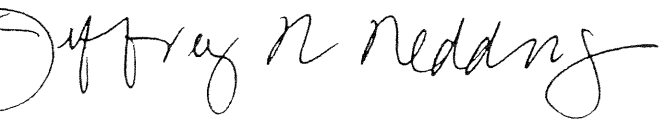
Pursuant to Section 18.124.080 of the Napa County Code, the use permit must be activated within two (2) years of the approval date or the use permit shall automatically expire and become void. A one year extension of time in which to activate the use permit may be granted by the County provided that such extension request is made in writing and within 90 days prior to the expiration date and provided that any modification of the permit has become final. A request for an extension of time is subject to the payment of the required filing fee in effect at the time the request for extension is made.

~~Subdivision regulations require that a Final Map be submitted for recordation with the Napa County Department of Public Works within a period of two (2) years from the approval date. All required conditions that must be met prior to recordation of the map must be satisfied prior to approval and recordation of the Final Map. An extension of time in which to record~~

the Final Map may be granted by the County provided that such extension request is made prior to the expiration date. A request for an extension of time is subject to the payment of the required filing fee in effect at the time the request for extension is made.

This letter serves as the only notice you will receive regarding the expiration dates of your use permit and tentative subdivision map or procedures for extension.

Sincerely,



Jeffrey R. Redding
Director

cc: John Tuteur, County Assessor
Ken Johanson, Director of Public Works
Gary Brewen, Building Codes Administrator
Dave Dickson, Napa Valley Housing Authority (w/partial list of conditions)

dm:petsas.ltr

REVISED
USE PERMIT AND DEVELOPMENT PLAN
CONDITIONS OF APPROVAL

Villa Berryessa Planned Development
(#95070-UP)

GENERAL USE PERMIT CONDITIONS

1. The permit shall be limited to approval of a development plan for a 100-unit, single family residential development and 3100± s.f. recreation unit complex, in two buildings in accordance with the site plan and letter dated May 22, 1997 submitted by Charles W. Shinnamon, except as may be specifically modified by these conditions. The final site plan, and tentative map, recorded pursuant to this site plan, shall be in substantial conformance with the Plan dated May 22, 1997. Only those changes specifically defined as 'minor' by the section 17.02.380 of the Napa County Code may be permitted without subsequent review by the Commission. Any other expansion or changes in use shall be by separate use permit submitted for Commission or Zoning Administrator consideration.
2. The final building design for all units shall be approved by the Zoning Administrator prior to recordation of the final map. Modular homes shall include a variety of types, but shall not exceed 1300 to 1700 s.f. in size. The design of all units, the recreation center and the required fire station shall incorporate similar design vocabulary. At his option, the Zoning Administrator may elect to approve sample designs for the modular units rather than individuals unit designs. Building design for individual modular units shall conform with these approved samples. The guiding principal for siting and design of all units, shall be to reduce cut and fill, preserve significant vegetation, preserve significant landforms and minimize visual impacts. The final floor elevations of the units shall be in substantial conformance with the floor elevations shown on the site plan dated May 22, 1997. Alterations to these elevations may be required by the Zoning Administrator to achieve the siting and design principles enumerated in this condition.
3. This approval also includes the following aspects of the project:
 - a. a private water system including the insulation of water tanks and treatment facilities;
 - b. a private sewage disposal system including treatment/evaporation ponds as shown on the May 22, 1997 and a maximum of two effluent spray fields. The size of the ponds and the spray fields shall be the minimum size required to comply with applicable state, local and/or federal standards. The final

design of the water system, sewage treatment system and all necessary related facilities shall be approved by the appropriate county or state agency prior to recordation of the final map.

- c. common open space areas.
 - d. storm water detention/siltation basin required by Mitigation Measure #8.
4. The final design of the access roads to the water tower, evaporation ponds and detention/siltation design shall be approved by the Director prior to recordation of the final map. The goals of this review shall be to minimize cut and fill and the visual impacts of the final graded slopes.
 5. Activation of this Use Permit pursuant to Section 18.124.080 will **VOID** Use Permit #U-637677 and all other prior approvals.
 6. The development plan shall be signed by the Chairman of the Commission. Signed copies of the plan shall be distributed to the office of the County Clerk and the County Engineer.
 7. This Use Permit shall automatically expire within 24 months following approval of this permit unless activated pursuant to Section 18.127.080 of the Napa County Code, unless extended pursuant to Section 18.48.140.
 8. The applicant shall make ten (10) residential units available for sale to comply with the affordable housing requirements of Napa County Code Chapter 15.60 in the manner described below. Two (2) of the units shall be affordable for sale to persons or households with annual incomes of 50% of median or below; two (2) of the units shall be affordable for sale to households or persons with an annual income between 50% and 80% of median; three (3) units shall be affordable for sale to households or persons with an annual income between 80% and 100% of median; and three (3) units shall be affordable for sale to households or persons with an annual income between 100% and 120% of median. Selling prices shall be based upon the most current figures available from the California Department of Housing and Community Development or as specified by the Napa Valley Housing Authority. Units shall be made available to the target households identified above so long as the applicant is able to obtain a subsidy from the Napa County Board of Supervisors acting through the Napa County Housing Trust Fund Board equivalent to the difference in selling price between a 3 bedroom unit at the 100% of median income selling price and the target sales price, with the per unit subsidy not to exceed \$80,000/unit or as approved by the Housing Trust Fund Board. If subsidies are not provided or are not available to the applicant to provide for units described above during the time period that this permit is in effect, including extensions, then the applicant shall be required only to comply with the provisions of Chapter 15.60

of the Napa County Code. No in-lieu fees (Sec. 15.60.210) shall be permitted. The Napa Valley Housing Authority shall be responsible for administering this condition including but not limited to providing the following services: qualifying applicants for sale and re sale; establishing and monitoring of re sale prices; monitoring annual income; and ensuring the recordation of necessary documents. Costs incurred by the Housing Authority to accomplish these required tasks shall be paid for by the applicant. Proof of compliance with this condition shall be provided to the Director prior to recordation of the final map. The Director is authorized to implement this condition including making any required changes to it, with the exception that no changes may be made by the Director relative to either the target population or number of units to be provided in accordance with this condition.

9. The recreation center complex shall include a maximum of 24 off-street parking spaces on a dust-free all weather surface approved by the Public Works Department. Final design of the complex and the number of parking spaces shall be approved by the Director prior to recordation of the final map.
10. The Common Open Space areas shall be permanently maintained in accordance with the approved Development Plan. This requirement shall be incorporated in to the project CC & R's.
11. Landscaping shall be permanently maintained in accordance with the approved Master Landscape Plan.
12. All emergency and secondary access roads shall be limited to emergency purpose use only. Any gating shall comply with CDF/Napa County Fire Department requirements.
13. The applicant shall comply with all applicable Building Codes, Zoning Standards, and requirements of County Departments, State and Federal Agencies, unless specifically provided otherwise in this permit, including but not limited to: a) the Department of Public Works requirements as stated in their letter of September 14, 1995; b) the requirements of the Department of Environmental Management as stated in their letter of September 11, 1995; c) the requirements Fire Department has stated in their letters of May 22, 1997; d) State Fish and Game Department requirements as stated in correspondence dated 9-14-95 and 10-29-96; e) State Regional Water Quality Control Board letter of 1-3-96; and f) Bureau of Reclamation letter of 8-28-95.
14. The applicant shall comply with the 31 signed Mitigation Measures in the Project Revision Statement signed by the applicant on October 9, 1996.

PRIOR TO ISSUANCE OF ANY PERMITS OR ANY GROUND-DISTURBING ACTIVITIES:

15. The applicant shall obtain the waste water discharge permit (or waiver) and the storm water discharge permit from the Central Valley Regional Water Quality

Control Board (Mitigation Measure #12). A copy of the approval (or waiver) of each permit shall be submitted to the Department of Conservation, Development and Planning (the **Department.**)

16. An erosion control plan prepared by a qualified professional and reviewed and approved by a registered professional geologist shall be submitted for review and approval in accordance with the County Conservation Regulations, pursuant to Mitigation Measures #9 and #10. Said plan shall also include temporary and permanent erosion control measures found necessary by Fish & Game for any work within the channel of the creek(s), pursuant to Mitigation Measure #11. The applicant shall post a bond or other form of security identified by section 17.38.030 to ensure that all temporary and permanent erosion control measures are installed and permanently maintained. This bond or other instrument shall be increased on an annual basis to cover increasing costs of installation and maintenance of required Erosion Control Measures.
17. All improvement plans, including erosion control plans, shall be reviewed and approved by a Certified Engineering-Geologist (CEG), pursuant to Mitigation Measures #1, #3 and #4. The plans shall be approved prior to submission to the Public Works Department.
18. The applicant shall submit a copy of the approved Department of Fish and Game Stream Alteration Agreement allowing stream alteration activities to the Department.
19. A **MASTER LANDSCAPING PLAN** (Mitigation Measures #19 & #20) shall be prepared for all portions of the site proposed for development and areas affected by earth moving activities, including access roads, the canyons and intermittent and perennial water courses as shown on the May 22, 1997 site plan and other areas required by the Director. The goal of this Plan is to both restore and enhance those areas that are to be disturbed as part of project development and those areas to remain undisturbed. This plan shall be submitted to and approved by both the Department and the Department of Fish and Game and shall meet the standards of DFG as outlined in its letter dated October 29, 1996. The greenbelt or fuel modification landscaping deemed necessary by the County Fire Department shall be incorporated into the Master Landscape Plan. Three copies of the plans shall be submitted, indicating the location, botanical name and size of the plant materials to be used, incorporating native and drought tolerant species to the greatest extent possible. Invasive and or non-native plants, intended for removal shall also be indicated. Invasive and non-native plants shall be removed from areas to be restored and enhanced to the maximum extent feasible. The plan shall also include the location, type and size of all street trees and any phasing and a time table for plantings. The common area lot proposed for the recreation center shall be landscaped so that it is screened from view from Pope Canyon Road and adjacent properties year-round by a visual barrier. Landscaping shall be included in the vicinity of the water tank to reduce visual impact.

A bond or other instrument of security authorized by section 17.38.030 shall be posed with the Department prior to recordation of the final map to ensure the installation and permanent maintenance of the materials and improvements installed pursuant to this Plan. The value of this security shall be increased on an annual basis to ensure that the materials can be maintained in perpetuity.

20. A copy of the approved re-vegetation and stream enhancement plan, prepared approved, in accordance with the requirements established by the Department of Fish and Game shall be incorporated into the Master Landscape Plan.

PRIOR TO ISSUANCE OF BUILDING PERMITS:

21. Prior to the issuance of any permits to construct the sewage disposal pond, the designs of the sewage disposal pond system shall be submitted to the Department of Environmental Management for review, and action pursuant to mitigation measures #5 & #6. The Department of Environmental Management must determine and so advise the Department that the design of the facilities will adequately avoid leakage; that overflow or leakage containment and the emergency containment plan can be implemented; and that design of the emergency back-up systems will provide adequate protection in the event of equipment or containment failure.
22. Prior to issuance of any building permit for either residences, clubhouse, water tank or accessory structures, the following must be completed:
 - a. Pursuant to Mitigation Measures #1, #2 and #3, certification by the Certified Engineering Geologist that all recommendations outlined in the Geo-Technical Reports relative to that specific structure and location have been met. They shall be included with the building plans.
 - b. Pursuant to Mitigation Measure #21 & #22, the color schemes and non-reflective materials to be used for each structure, including the color tint of glass residence; clubhouse parking; and landscape lighting, shall be submitted to the Department for review and approval. All lighting shall be low profile and cast the minimum lighting spread. All outdoor lighting shall be directed away from adjacent properties and streets.
 - c. Plans identifying the fire suppression systems to be utilized for compliance with Mitigation Measure #27 shall be included with the building permits.

PRIOR TO OCCUPANCY OF ANY RESIDENTIAL UNITS

23. Prior to occupancy of the first residential unit, the following must be completed:

- a. All emergency access roads shall have been improved to Napa County Fire Department standards, and all public safety measures recommended by the Fire Department shall have been developed and implemented (Mitigation Measures #26, #29 & #30)
 - b. The water and sewer systems shall be completed.
 - c. The garbage recycling plan shall be in place.
 - d. Access shall be provided to the waste water ponds that is acceptable to the Napa County Mosquito Abatement District pursuant to Mitigation Measure #31. The property owner and successors-in-interest shall comply with all guidelines established by the District for mosquito prevention, week control and maintenance.
 - e. The clubhouse, swimming pool and associated 24-space parking lot shall be completed.
24. All residential units and clubhouse shall be connected to the development's water and sewer systems.

Revised BOS 6/24/97

**REVISED
TENTATIVE SUBDIVISION MAP
CONDITIONS OF APPROVAL**

Villa Berryessa Planned Development
(#95071-SUB)

GENERAL CONDITIONS:

1. The subdivider shall comply with all applicable provisions of the Napa County Code and construct all improvements required by Section 17.14.150. Improvements required but deferred, shall be bonded to assure construction at a future date. No exceptions to road right-of-way widths are granted as part of this approval.
2. The subdivider shall dedicate a Public Utility Easement on the Final Map, if necessary, to insure that cable and telephone service is made available from the public street to a future building site. Prior to the issuance of any Building Permit, the applicant shall submit evidence that cable and telephone companies have been afforded an opportunity to construct service from the public street to the proposed building site.
3. All open space land parcels shall be labeled as "Common Open Space" on the Final Subdivision Map for the development, and may not be developed with residential structures.
4. All streets shown on the tentative map shall be offered for dedication to public use.
5. All utilities shall be placed underground. Any propane utility gas tank located in front of the residence shall be fully screened from adjacent parcels and the public right-of-way.
6. No building permits shall be issued for building sites created by this subdivision unless such plans comply with the requirements of the geo-technical Update of Soil and Geological Investigation report prepared by Terrasearch, Inc. dated January 26, 1990 and updated December 6, 1995, incorporated herein by reference.
7. Street trees shall be installed, prior to recordation of the map, with a maximum separation distance of 60 feet on center and shall conform with the types specified in the Master Landscape Plan. The street trees shall be located within the street right-of-way. Any modifications shall be submitted for review and approval by the Planning Director. Fronting street trees shall be installed by the subdivider or his successors-in-interest prior to the granting of an occupancy permit for the corresponding lot.

8. The subdivider shall post with the Napa County Public Works Department, prior to the start of construction, financial instruments of sufficient size to guarantee installation of the trees. The developer shall maintain said trees for the first two years from date installed until they are established and replace trees whenever necessary in that period.
9. All improvements including street lights but not limited to roads, and access ways, water and sewer systems, storm drainage, landscaping of common areas shall be maintained by the subdivider unless and until a Community Service District is established pursuant to state or local statute.
10. Street trees shall be maintained by the subdivider unless and until a Community Services District is established pursuant to the conditions above.
11. The subdivider shall comply with the 31 signed Mitigation Measures in the Project Revision Statement to the extent applicable.
12. The subdivider shall comply with the approved Conditions of Approval for Use Permit #95070 to the extent applicable.
13. The final map submitted for recordation shall be in substantial conformance with the site plan dated May 22, 1997 and any modifications required to comply; with conditions of approval required by the Board of Supervisors on June 24, 1997.

INFORMATION TO BE INCLUDED ON FINAL MAP OR RELATED DOCUMENTS

14. Additional information shall be recorded simultaneously with the final map and shall be prepared and submitted with the final map in accordance with Section 17.08.110 of the Napa County Subdivision Regulations. The following statements or an equivalent shall be included in **BOLD FACE CAPITAL LETTERS** in the document filed with the final/parcel Map:

"AS OF THE DATE OF RECORDATION OF THE FINAL MAP REFERRED TO HEREIN, SOME OR ALL OF THE PARCELS OF THE SUBDIVISION ARE LOCATED IN AREAS THAT ARE DESIGNATED AS SUBJECT TO SOIL INSTABILITY AND OR GEOLOGIC HAZARDS. COPIES OF THE REPORTS PREPARED BY TERRASEARCH INC., (DATED JANUARY 26, 1990 AND DECEMBER 6, 1995) IDENTIFYING THE EXTENT OF THE SOIL INSTABILITY OR GEOLOGIC HAZARDS CAN BE OBTAINED FROM THE NAPA COUNTY PLANNING DEPARTMENT."

"ALL RESIDENTIAL UNITS AND THE RECREATION CENTER SHALL BE CONNECTED TO THE DEVELOPMENTS WATER AND SEWER SYSTEMS. RESPONSIBILITY FOR THE MAINTENANCE, INSTALLATION AND REPAIR OF THESE SYSTEMS RESTS WITH THE HOMEOWNERS ASSOCIATION OF THIS

DEVELOPMENT UNLESS AND UNTIL A COMMUNITY SERVICES DISTRICT IS ESTABLISHED PURSUANT TO APPLICABLE LAW."

"ALL LAND SHOWN ON THIS SUBDIVISION MAP AS COMMON OPEN SPACE SHALL BE MAINTAINED BY THE DEVELOPER OR HIS SUCCESSORS-IN-INTEREST. THE COMMON USE AREAS SHALL BE MAINTAINED FOR THE BENEFIT OF THE SUBDIVISION AND MAY NOT BE DEVELOPED WITH RESIDENTIAL STRUCTURES"

15. In addition, the following statement setting forth the "right to farm" policy of the County containing substantially the following language shall be included in **BOLD FACE CAPITAL LETTERS** in the document filed with the final/parcel Map:

"NAPA COUNTY HAS DETERMINED THAT THE HIGHEST AND BEST USE FOR AGRICULTURAL LAND AS DEFINED BELOW IS TO DEVELOP OR PRESERVE SAID LANDS FOR THE PURPOSES OF AGRICULTURAL OPERATIONS AND IT WILL NOT CONSIDER THE INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL OPERATIONS TO BE A NUISANCE IF SUCH OPERATIONS ARE LEGAL, CONSISTENT WITH ACCEPTED CUSTOMS AND STANDARDS AND OPERATED IN A NON-NEGLIGENT MANNER.

IF PROPERTY YOU OWN OR ARE PURCHASING OR MAY PURCHASE IN THE FUTURE IS LOCATED CLOSE TO AGRICULTURAL LANDS OR WITHIN AGRICULTURAL LANDS, YOU MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORT ARISING FROM AGRICULTURAL OPERATIONS. SUCH DISCOMFORT OR INCONVENIENCES MAY INCLUDE, BUT ARE NOT LIMITED TO: NOISE, ODORS, DUST, CHEMICALS, SMOKE, INSECTS, OPERATION OF MACHINERY DURING ANY 24-HOUR PERIOD, AIRCRAFT OPERATION, AND STORAGE AND DISPOSAL OF MANURE. ONE OR MORE OF THE INCONVENIENCES DESCRIBED ABOVE MAY OCCUR EVEN IN THE CASE OF AN AGRICULTURAL OPERATION WHICH IS IN CONFORMANCE WITH EXISTING LAWS AND REGULATIONS AND LOCALLY ACCEPTED CUSTOMS AND STANDARDS. IF YOU LIVE NEAR AN AGRICULTURAL AREA, YOU SHOULD BE PREPARED TO ACCEPT SUCH INCONVENIENCES OR DISCOMFORT AS A NORMAL AND NECESSARY ASPECT OF LIVING IN A COUNTY WITH A STRONG RURAL CHARACTER AND A HEALTHY AGRICULTURAL SECTION.

"AGRICULTURE" MEANS THE RAISING OF CROPS OR LIVESTOCK AND INCLUDES THE FOLLOWING:

- (a) GROWING AND RAISING TREES, VINES, SHRUBS, BERRIES, VEGETABLES, NURSERY STOCK, HAY, GRAIN, AND SIMILAR FOOD CROPS AND FIBER CROP;
- (b) GRAZING OF LIVESTOCK AND FEEDING INCIDENTAL THERETO;
- (c) ANIMAL HUSBANDRY, INCLUDING, WITHOUT LIMITATION, THE BREEDING AND RAISING OF CATTLE, SHEEP, HORSES, GOATS, PIGS, RABBITS AND POULTRY AND EGG PRODUCTION;

(d) SALE OF AGRICULTURAL PRODUCTS GROWN, RAISED OR PRODUCED ON THE PREMISES. (SECTION 18.08.040, NAPA COUNTY CODE)".

16. A note shall be included on the recorded map that affordable housing requirements, pursuant to Napa County Code Chapter 15.60 and Use Permit #95070 Condition #8, are applicable to all residential construction within the subdivision.
17. All required notices shall be recorded separately with all transfers of land from this subdivision.

PRIOR TO RECORDATION

18. All proposed street names shall be submitted to the Department for review and approval.
19. Pursuant to Napa County Code Section 18.48.120.E, an agreement setting forth the plan for permanent maintenance of common use space, recreational areas and commonly owned facilities shall be submitted to and approved by the office of the County Counsel. If a common use space is deeded to a homeowner's association, such legal instrument may take the form of a declaration of covenants and restrictions.
20. The CC&R's be approved as to form and content by County Counsel and shall be reviewed and approved by the Department to ensure that applicable conditions of approval are included. The CC&R's shall be recorded concurrently with the final map
21. Pursuant to Mitigation Measure #21, the street lights proposed for installation shall be reviewed by the Planning Department to ensure they include shields that direct the illumination downward.
22. The improvement plans for the emergency access road shall be submitted to and approved by the County Fire Department pursuant to Mitigation Measure #26.

Exhibit D

**18.124.130 Use Permit and small winery exempt modifications--Procedure--
Size limitation.**

A. Except as otherwise provided in subsection (B) of this section, modifications to an approved small winery exemption certificate and to an existing use permit shall be processed in the same manner and in compliance with the procedures set forth herein for use permits and appeals, including notice and the payment of applicable permit application fees.

B. Upon receipt of a written request from the holder of a small winery exemption certificate or a use permit, the zoning administrator may approve **minor, non-controversial modifications** to the exemption certificate or approved use permit with public notice, but without a public hearing in regard to project design or permit conditions which **do not affect the overall concept, density, intensity or environmental impact of, or substantially alter or delete any environmental mitigation measure for the project.** If any member of the public requests a public hearing during the comment period, then the zoning administrator will properly notice and conduct a hearing. The zoning administrator may approve changes in location of approved structures or portions thereof, so long as the total square footage of the structures is less than or equal to the total square footage approved as part of the use permit or the small winery exemption certificate. However, the zoning administrator shall not consider or approve a minor modification if the result of the approval of the requested minor modification would result in any structure, except for an approved relocation as described in this paragraph, being increased more than twenty-five percent in size or one story in height based on the size approved under the original exemption certificate or use permit. Equipment enclosures whose permanent installation outdoors was approved by the original exemption certificate or use permit are not subject to this size limitation. (emphasis added).

Exhibit E

PUBLIC NOTICE

NOTICE OF ZONING ADMINISTRATOR HEARING

On Wednesday morning, the 23rd day of November, 2005 at 9:00 a.m. in the County Administration Building, 1195 Third Street, Suite 305, Top Floor, Napa, California, a hearing will be conducted by the Zoning Administrator of the County of Napa regarding the proposal identified below. All interested persons may attend the hearing and be heard.

**NICK & HELEN PETSAS TR / MICHAEL RICE-USE PERMIT MODIFICATION
REQUEST #P05-0301-MODMINOR**

CEQA STATUS: Addendum to a Supplemental Mitigated Negative Declaration to Environmental Impact report - FEIR-038 prepared (State CEQA guidelines 15164 for minor changes to the project as approved by the Villa Berryessa Use Permit (95070-UP) and Tentative Map (95071-SUB)).

REQUEST: Approval of a minor modification to the approved use permit (#95070-UP) to permit stick built units or modular units, adjust the approved lot configuration, adjust the overall layout and street alignment, change the amounts of grading work, and relocate the water intake system to comply with the applicable conditions and mitigation measures as approved by the Napa County Board of Supervisors in 1997. Additionally, some conditions of approval require minor changes in the timing of implementation. The project is located on a ±141.84 acre parcel, on the north side of Pope Canyon Road approximately 1,500 feet west of its intersection with Berryessa-Knoxville Road, within a PD (Planned Development) zoning district. (Assessor's Parcel #: 019-080-003).

Comments regarding the proposal are solicited and should be presented at the hearing on the proposal.

Copies of all documents which relate to the above described proposal may be examined at, and comments not submitted at the hearing may be sent to, the Office of the Conservation, Development and Planning Department, 1195 Third Street, Suite 210, Napa, California.

Appeals to decisions of the Zoning Administrator must be filed in writing with the Clerk of the Board of Supervisors, County Administration Building, 1195 Third Street, Suite 310, within ten (10) working days from the date final action is taken.

DATED: November 9, 2005

HILLARY GITELMAN, Zoning Administrator

Publish: Friday, November 11, 2005 - Napa Valley Register

Exhibit F



COUNTY of NAPA

OFFICE OF CONSERVATION, DEVELOPMENT & PLANNING

PLANNING DIVISION

HILLARY GITELMAN
Director

PATRICK LYNCH, AICP
Assistant Director

STEVE LEDERER
Deputy Director

JOHN MCDOWELL
Project Manager

ROBERT NELSON
Supervisor

HEATHER
MCCOLLISTER
Principal Planner

SEAN TRIPPI
Principal Planner

BARBARA ABATE
Planner

TRISH HORNISHER
Planner

NANCY JOHNSON
Planner

SUZIE GAMBILL
Planning Technician

C. RENEE LEDERER
Planning Administrative
Specialist

DATE OF HEARING: November 23, 2005

AGENDA ITEM# _____

SUMMARY FOR: ZONING ADMINISTRATOR

CASE: Nick Petsas (Villa Berryessa) Use permit modification #P05-00301-MINMOD

LOCATION: Located on a ±141.84 acre parcel, on the north side of Pope Canyon Road approximately 1500 feet west of its intersection with Berryessa-Knoxville Road (Assessor's Parcel Number #019-080-003).

PROJECT REQUEST: Request for Use Permit Modification P05-0301-MODMINOR to approved Use Permit #95070-UP (Assessor Parcel No. 019-080-003)

OWNER: Nick Petsas

APPLICANT: Michael Rice; Miller-Sorg Group

REPRESENTATIVE: Jeff Redding, Applicant Representative

ZONING: Planned Development (PD)

GENERAL PLAN DESIGNATION: Urban Residential (UR)

CASE HISTORY/BACKGROUND: The use permit and tentative map were approved by the Board of Supervisors in 1997. The project as approved could not be constructed today to comply with Federal and State regulations. The applicant has applied for all necessary permitting through the Federal and State agencies. The applicant received comments from the various agencies requesting redesign of some of the public facilities and infrastructure. The applicant has worked with these agencies to design a project that better conforms to today's Federal and State guidelines including but not limited to the design of the water intake structure, reducing the impacts to stream crossings, reducing the amount of earth disturbance, reducing the amount of wetland disturbance, eliminating the previous requirement to import fill dirt and reducing the amount of impacts to other waters as defined by the Army Corp of Engineers.

The changes listed above require minor reconfiguration to the lot layout, which includes some of the lots being larger in lot size, but with "no disturbance areas" included and therefore the development area meets the lot sizes as approved. Additional changes to the timing of required improvements are proposed to correspond to the time of development. The above changes warrant a minor use permit modification application. The final map as submitted has been found in substantial conformance with the approved tentative map, with minor changes, by the Department of Public Works.

STAFF RECOMMENDATION: Approval of the environmental determination and the use permit modification based on the findings in the staff report.

1195 THIRD STREET
SUITE 210

NAPA, CALIFORNIA
94559

TELEPHONE:
707-253-4417

FAX:
707-253-4336

WWW.CO.NAPA.CA.US

Exhibit G



COUNTY of NAPA

OFFICE OF CONSERVATION, DEVELOPMENT & PLANNING

PLANNING DIVISION

November 23, 2005

Delivered via e-mail

Michael Rice
710 Kellogg Street
Suisun, CA 94585

RE: Request for Use Permit Modification P05-0301-MODMINOR to approved Use Permit #95070-UP (Assessor Parcel No. 019-080-009)

Dear Mr. Rice:

Per Napa County Code 18.124.130.B, please be advised that **Use Permit Modification Application #P05-0301-MODMINOR** has been **APPROVED** by the Zoning Administrator on November 23, 2005 based on the submitted information and revised conditions of approval.

The permit becomes effective ten (10) working days from the approval date unless appealed to the Napa County Board of Supervisors pursuant to Chapter 2.88 of the Napa County Code, including payment of applicable fees. You may appeal the conditions of approval. If an appeal is filed by another, you will be notified.

Please contact Public Works at (707) 253-4351 for questions related to the processing of the final map application.

Should you have any questions, please contact Heather McCollister at (707) 299-1348 or via e-mail at hmccolli@co.napa.ca.us.

Sincerely,

Heather McCollister, Principal Planner

cc: file
Hillary Gitelman, Director
John Tuteur, Assessor (via e-mail)
Larry Bogner, Public Works (via e-mail)
Dennis Henry, Public Works (via e-mail)
Christine Secheli, Environmental Management (via e-mail)
Mike Wilson, County Fire Department (via e-mail)
Jeff Redding: Applicant representative (via e-mail)

HILLARY GITELMAN
Director
PATRICK LYNCH, AICP
Assistant Director
STEVE LEDERER
Deputy Director
JOHN MCDOWELL
Project Manager
ROBERT NELSON
Supervisor
HEATHER MCCOLLISTER
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Principal Planner
BARBARA ABATE
Planner
TRISH HORNISHER
Planner
NANCY JOHNSON
Planner
RONALD GEE
Planner
FLOYD MCGREGOR
Planner/ITS
SUZIE GAMBILL
Planning Technician

1195 THIRD STREET
SUITE 210
NAPA, CALIFORNIA
94559
TELEPHONE:
707-253-4417
FAX:
707-253-4336

WWW.CO.NAPA.CA.US

Exhibit H

REVISED
USE PERMIT AND DEVELOPMENT PLAN
CONDITIONS OF APPROVAL

Villa Berryessa Planned Development
(#95070-UP)& P05-0301 MINMOD

GENERAL USE PERMIT CONDITIONS

1. The permit shall be limited to approval of a development plan for a 100-unit, single family residential development and 3100 +/- s.f. recreation unit complex, in two buildings in accordance with the site plan and letter dated July 5, 2005 and prepared by Riechers Spence, except as may be specifically modified by these conditions. The final site plan, and tentative map, recorded pursuant to this site plan, shall be substantial conformance with the Plan dated as revised and dated July 5, 2005. Only those changes specifically defined as 'minor' by the section 17.02.380 of the Napa County Code may be permitted without subsequent review by the Commission. Any other expansion or changes in use shall be by separate use permit submitted for Commission or Zoning Administrator consideration.
2. The final building design for all units shall be approved by the Zoning Administrator prior to recordation of the final map. Standard construction of stick built or modular homes shall include a variety of types, but shall not exceed 1300 to 1700 s.f. in size. Attached or detached garages are permitted within the development areas. The design of all units, the recreation center and the required fire station shall incorporate similar design vocabulary. At his option, the Zoning Administrator may elect to approve sample designs for the units rather than individuals unit designs. Building design for individual units shall conform with these approved samples. The guiding principal for siting and design of all units, shall be to reduce cut and fill, preserve significant vegetation, preserve significant landforms and minimize visual impacts. The final floor elevations of the units shall be in substantial conformance with the floor elevations shown on the site plan dated as revised and dated July 5, 2005. Alterations to these elevations may be required by the Zoning Administrator to achieve the siting and design principles enumerated in this condition.
3. Prior to recordation of the final map, those lots that are larger than the originally approved plan, shall designate the additional lot area as a no development area. This is defined as no structures, including but not limited to landscaping shall be permitted in this area.
4. This approval also includes the following aspects of the project:
 - a. a private water system including the insulation of water tanks and treatment facilities;
 - b. a private sewage disposal system including treatment/evaporation ponds as shown on the revised plan dated July 5, 2005 plan and a maximum of two effluent spray fields. The size of the ponds and the spray fields shall be the minimum size required to comply with applicable state, local and/or federal standards. The final design of the water system, sewage

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treatment system and all necessary related facilities shall be approved by the appropriate county or state agency prior to recordation of the final map.

c. Common open space areas.

d. Storm water detention/siltation basin required by Mitigation Measure #8.

5. The final design of the access roads to the water tower, evaporation ponds and detention/siltation design shall be approved by the Director prior to recordation of the final map. The goals of this review shall be to minimize cut and fill and the visual impacts of the final graded slopes.

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6. Activation of this Use Permit pursuant to Section 18.124.080 will VOID Use Permit #U-637677 and all other prior approvals.

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7. The development plan shall be signed by the Chairman of the Commission. Signed copies of the plan shall be distributed to the office of the County Clerk and the County Engineer.

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8. This Use Permit shall automatically expire unless activated pursuant to Section 18.124.080/090 of the Napa County Code.

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9. The applicant shall make ten (10) residential units available for sale to comply with the affordable housing requirements of Napa County Code Chapter 15.60 in the manner described below. Two (2) of the units shall be affordable for sale to persons or households with annual incomes of 50% of median or below; two (2) of the units shall be affordable for sale households or persons with annual income between 50% and 80% of median; three (3) units shall be affordable for sales to households or persons with an annual income between 80% and 100% of median; and three (3) units shall be affordable for sale to households for persons with an annual income between 100% and 120% of median. Selling prices shall be based upon the most current figures available from the California Department of Housing and Community Development or as specified by the Napa Valley Housing Authority. Units shall be made available to the target households identified above so long as the applicant is able to obtain a subsidy from the Napa County Board of Supervisors acting through the Napa County Housing Trust Fund Board equivalent to the difference in selling price between a 3 bedroom unit at the 100% of median income selling price and the target sales price, with the per unit subsidy not to exceed \$80,000/unit or as approved by the Housing Trust Fund Board. If subsidies are not provided or are not available to the applicant to provide for units described above during the time period that this permit is in effect, including extensions, then the applicant shall be required only to comply with the provisions of Chapter 15.60 of the Napa County Code. No in-lieu fees (Sec. 15.60.210) shall be permitted. The Napa Valley Housing Authority shall be responsible for administering this condition including but not limited to providing the following services: qualifying applicants for sale and re sale; establishing and monitoring or re sale prices; monitoring annual income; and ensuring the recordation of necessary documents. Costs incurred by the Housing Authority to accomplish these required tasks shall be paid for by the applicant. Proof of compliance with this

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condition shall be provided to the Director prior to recordation of the final map. The Director is authorized to implement this condition including making any required changes to it, with the exception that no changes may be made by the Director relative to either the target population or number of units to be provided in accordance with this condition.

10. The recreation center complex shall include a maximum of 24 off-street parking spaces on a dust-free all weather surface approved by the Public Works Department. Final design of the complex and the number of parking spaces shall be approved by the Director prior to recordation of the final map.

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11. The Common Open Space areas shall be permanently maintained in accordance with the approved Development Plan. This requirement shall be incorporated in to the project CC & R's.

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12. Landscaping shall be permanently maintained in accordance with the approved Master Landscape Plan, however, Napa County Fire Department's requirements for a Vegetation Management Plan shall prevails where conflicting regulations exists

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13. All emergency and secondary access roads shall be limited to emergency purpose use only. Any gating shall comply with CDF/Napa County Fire Department requirements.

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14. The applicant shall comply with all applicable Building Codes, Zoning Standards, and requirements of County Department, State and Federal Agencies, unless specifically provided otherwise in this permit, including but not limited to: a) the Department of Public Works requirements as stated in their letter of September 14, 1995; b) the requirements of the Department of Environmental Management as stated in their letter of September 11, 1995; c) the requirements Fire Department has stated in their letters of May 22, 1997; d) State Fish and Game Department requirements as stated in correspondence dated September 14, 1995, September 14, 1995, October 29, 199, June 29, 1996 and October 6, 2005 (Application # 1600-2004-0338-3); e) State Regional Water Quality Control Board letter of January 3, 1996 and Sept 7, 2005 (05/WDID#5A28CR00006); and f) Bureau of Reclamation letter of August 28, 2005; g) Army Corp of Engineers requirements as stated in correspondence dated October 25, 2005 (Permit #28878N); and all subsequent correspondence, as specified under P05-0301-MINMOD.

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15. The applicant shall comply with the 31 signed Mitigation Measures in the Project Revision Statement signed by the applicant on October 9, 1996.

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PRIOR TO ISSUANCE OF ANY PERMITS OR ANY GROUND-DISTURBING ACTIVITIES:

16. The applicant shall obtain the waste water discharge permit (or waiver) and the storm water discharge permit from the Central Valley Regional Water Quality Control Board (Mitigation Measure #12). A copy of the approval (or waiver) of

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each permit shall be submitted to the Department of Conservation, Development and Planning (the Department) and the Department of Public Works.

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17. An Storm Water Management Plan as required under Napa County Code 1240-Stormwater Management and Discharge Control shall be prepared by a qualified professional and reviewed and approved by a registered professional geologist shall be submitted for review and approval in accordance with the County Conservation Regulations and the Department of Public Works, pursuant to Mitigation Measures #9 and #10. Said plan shall also include temporary and permanent erosion control measures found necessary by Fish & Game for any work within the channel of the creek(s), pursuant to Mitigation Measure #11. The applicant shall post a bond or other form of security identified by section 17.38.030 to ensure that all temporary and permanent erosion control measures are installed and permanently maintained. This bond or other instrument shall be increased on an annual basis to cover increasing costs of installation and maintenance of required Erosion Control Measures.

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18. All improvement plans, including Storm Water Management Plans, shall be reviewed and approved by a Certified Engineering Geologist (CEG), pursuant to Mitigation Measures #1, #3 and #4. The plans shall be approved prior to submission to the Public Works Department.

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19. The applicant shall submit a copy of the approved Department of Fish and Game Stream Alteration Agreement allowing stream alteration activities to the Department.

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20. A MASTER LANDSCAPING PLAN (Mitigation Measures #19 and #20) shall be prepared for all portions of the site proposed for development and areas affected by earth moving activities, including access roads, the canyons and intermittent and perennial water courses as shown on the as revised and dated July 5, 2005 and other areas required by the Director. The goal of this Plan is to both restore and enhance those areas that are to be disturbed as part of project development and those areas to remain undisturbed. This plan shall be submitted to and approved by both the Department and the Department of Fish and Game and shall meet the standards of DFG as outlined in its letter dated October 29, 1996 and October 6, 2005. The greenbelt or fuel modification landscaping deemed necessary by the County Fire Department shall be incorporated into the Master Landscape Plan. Should conflict exists between the landscape plan and the Vegetation Management Plan, the Vegetation Management Plan shall prevail. Three copies of the plans shall be submitted, indicating the location, botanical name and size of the plan materials to be used, incorporating native and drought tolerant species to the greatest extent possible. Invasive and non-native plants shall be removed from areas to be restored and enhanced to the maximum extent feasible. The plan shall also include the location, type and size of all street trees and any phasing and a time table for plantings. The common area lot proposed for the recreation center shall be landscaped so that it is screened from view from Pope Canyon Road

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and adjacent properties year-round by a visual barrier. Landscaping shall be included in the vicinity of the water tank to reduce visual impact.

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A bond or other instrument of security authorized by section 17.38.030 shall be posed with the Department prior to recordation of the final map to ensure the installation and permanent maintenance of the material sand improvements installed pursuant to this Plan. The value of this security shall be increased on an annual basis to ensure that the materials can be maintained in perpetuity.

21. A copy of the approved re-vegetation and stream enhancement plan, prepared, approved, in accordance with the requirements established by the Department of Fish and Game shall be incorporated into the Master Landscape Plan.

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PRIOR TO ISSUANCE OF BUILDING PERMITS:

22. Prior to the issuance of any permits to construct the sewage disposal pond, the designs of the sewage disposal pond system shall be submitted to the Department of Environmental Management for review, and action pursuant to mitigation measures #5 & #6. The Department of Environmental Management must determine and so advise the Department that the design of the facilities will adequately avoid leakage; treat overflow or leakage containment and the emergency containment plan can be implemented; and that design of the emergency back-up systems will provide adequate protection in the event of equipment or containment failure.

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23. Prior to issuance of any building permit for either residences, clubhouse, water tank or accessory structures, the following must be completed:

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- a. Pursuant to Mitigation Measures #1, #2 and #3, certification by the Certified Engineering Geologist that all recommendations outlined in the Geo-Technical Reports relative to that specific structure and location have been met. They shall be included with the building plans.
- b. Pursuant to Mitigation Measure #21 & #22, the color schemes and non-reflective materials to be used for each structure, including the color tint of glass residence; clubhouse parking; and landscape lighting, shall be submitted to the Department for review and approval. All lighting shall be low profile and cast the minimum lighting spread. All outdoor lighting shall be directed away from adjacent properties and streets.
- c. Plans identifying the fire suppression systems to be utilized for compliance with Mitigation Measure #27 shall be included with the building permits.

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PRIOR TO OCCUPANCY OF ANY RESIDENTIAL UNITS

24. Prior to occupancy of the first unit, the following must be completed:
- a. All emergency access roads shall have been improved to Napa County Fire Department standards, and all public safety measures recommended by the Fire Department shall have been developed and implemented (Mitigation Measures #26, #29 & #30).

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- b. The water and sewer systems shall be completed.
- c. The garbage recycling plan shall be in place.
- d. Access shall be provided to the waste water ponds that is acceptable to the Napa County Mosquito Abatement District pursuant to Mitigation Measure #31. The property owner and successors-in-interest shall comply with all guidelines established by the District for mosquito prevention, week control and maintenance.
- e. The clubhouse, swimming pool and associated 24-space parking lot shall be completed.

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25. All residential units and clubhouse shall be connected to the development's water and sewer systems.

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REVISED
TENTATIVE SUBDIVISION MAP
CONDITIONS OF APPROVAL

Villa Berryessa Planned Development
(#95071-SUB)

GENERAL CONDITIONS:

1. The subdivider shall comply with all applicable provisions of the Napa County Code and construct all improvement required by Section 17.14.150. Improvements required but deferred, shall be bonded to assure construction at a future date. No exceptions to road right-of-way widths are granted as part of this approval.
2. The subdivider shall dedicate a Public Utility Easement on the Final Map, if necessary, to insure that cable and telephone service is made available from the public street to a future building site. Prior to the issuance of any Building Permit, the applicant shall submit evidence that cable and telephone companies have been afforded an opportunity to construct service from the public street to the proposed building site.
3. All open space land parcels shall be labeled as "Common Open Space" on the Final Subdivision Map for the development, and may not be developed with residential structures.
4. All streets shown on the tentative map shall be offered for dedication to public use.
5. All utilities shall be placed underground. Any propane utility gas tank located in front of the residence shall be fully screened from adjacent parcels and the public right-of-way.
6. No building permits shall be issued for building sites created by this subdivision unless such plans comply with the requirements of the geo-technical Update of Soil and Geological Investigation report prepared by Terrasearch, Inc. dated January 26, 1990 and updated December 6, 1995, incorporated herein by reference.
7. Street trees shall be installed, prior to issuance of the first temporary occupancy or final occupancy for the first unit, clubhouse or fire station, whichever occurs first. A maximum separation distance for each tree shall be 60 feet on center and shall conform with the types specified in the Master Landscape Plan. The street trees shall be located within the street right-of-way. Should the developer phase the project, prior to temporary occupancy or final occupancy for the first unit of that phase, all street trees shall be installed for that phase, however the street trees at the entrance and along the main access road shall be installed prior to the first temporary or final occupancy of the first unit for the development. Any modifications shall be submitted for review and approval by the Planning Director.

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Fronting street trees shall be installed by the subdivider or his successors-in-interest prior to the granting of occupancy permit for the corresponding lot. Street trees shall be maintained by the subdivider unless and until a Community Services District is established pursuant to the conditions above.

8. The subdivider shall post with the Napa County Public Works Department, prior to the start of construction, financial instruments of sufficient size to guarantee installation of the trees. The developer shall maintain said trees for the first two years from date installed until they are established and replace trees whenever necessary in that period.

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9. All improvements including street lights but not limited to roads, and access ways, water and sewer systems, storm drainage, landscaping of common areas shall be maintained by the subdivider unless and until a Community Service District is established pursuant to state or local statute. All improvements shall comply with Title 24, Parts 1 & 6, Building Energy Efficiency Standards, in effect as of October 1, 2005.

10. The subdivider shall comply with the 31 signed Mitigation Measure sin the Project Revision Statement to the extent applicable.

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11. The subdivider shall comply with the approved Conditions of Approval for Use Permit #95070 and as modified under P05-0301-MINMOD to the extent applicable.

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12. The final map submitted for recordation shall be in substantial conformance with the site plan dated as revised and dated on July 5, 2005 and any modifications required to comply; with conditions of approval required by the Board of Supervisors on June 24, 1997.

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INFORMATION TO BE INCLUDED ON FINAL MAP OR RELATED DOCUMENTS

13. Additional information shall be recorded simultaneously with the final map and shall be prepared and submitted with the final map in accordance with Section 17.08.110 of the Napa County Subdivision Regulations. The following statements or an equivalent shall be included in **BOLD FACE CAPITAL LETTERS** in the document filed with the final/parcel Map:

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"AS OF THE DATE OF RECORDATION OF THE FINAL MAP REFERRED TO HEREIN, SOME OR ALL OF THE PARCELS OF THE SUBDIVISION ARE LOCATED IN AREAS THAT ARE DESIGNATED AS SUBJECT TO SOIL INSTABILITY AND OR GEOLOGIC HAZARDS. COPIES OF THE REPORTS PREPARED BY TERRASEARCH INC., (DATED JANUARY 26, 1990 AND DECEMBER 6, 1995) IDENTIFYING THE EXTENT OF THE SOIL INSTABILITY OR GEOLOGIC HAZARDS CAN BE OBTAINED FROM THE NAPA COUNTY PLANNING DEPARTMENT."

"ALL RESIDENTIAL UNITS AND THE RECREATION CENTER SHALL BE

CONNECTED TO THE DEVELOPMENTS WATER AND SEWER SYSTEMS. RESPONSIBILITY FOR THE MAINTENANCE, INSTALLATION AND REPAIR OF THESE SYSTEMS RESTS WITH THE HOMEOWNERS ASSOCIATION OF THIS DEVELOPMENT UNLESS AND UNTIL A COMMUNITY SERVICES DISTRICT IS ESTABLISHED PURSUANT TO APPLICABLE LAW.

"ALL LAND SHOWN ON THIS SUBDIVISION MAP AS COMMON OPEN SPACE SHALL BE MAINTAINED BY THE DEVELOPER OR HIS SUCCESSORS-IN-INTEREST. THE COMMON USE AREAS SHALL BE MAINTAINED FOR THE BENEFIT OF THE SUBDIVISION AND MY NOT BE DEVELOPED WITH RESIDENTIAL STRUCTURES."

15. In addition, the following statement setting forth the "right to farm" policy of the County containing substantially the following language shall be included in **BOLD FACE CAPITAL LETTERS** in the document filed with the final/parcel Map:

"NAPA COUNTY HAS DETERMINED THAT THE HIGHEST AND BEST USE FOR AGRICULTURAL LAND AS DEFINED BELOW IS TO DEVELOP OR PRESERVE SAID LANDS FOR THE PURPOSES OF AGRICULTURAL OPERATIONS AND IT WILL NOT CONSIDER THE INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL OPERATIONS TO BE A NUISANCE IF SUCH OPERATIONS ARE LEGAL, CONSISTENT WITH ACCEPTED CUSTOMS AND STANDARDS AND OPERATED IN A NON-NEGLIGENT MANNER.

IF PROPERTY YOU OWN OR ARE PURCHASING OR MAY PURCHASE IN THE FUTURE IS LOCATED CLOSE TO AGRICULTURAL LANDS OR WITHIN AGRICULTURAL LANDS, YOU MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORT ARISING FROM AGRICULTURAL OPERATIONS. SUCH DISCOMFORT OR INCONVENIENCES MAY INCLUDE, BUT ARE NOT LIMITED TO: NOISE, ODORS, DUST, CHEMICALS, SMOTE, INSECTS, OPERATION OF MACHINERY DURING ANY 24-HOUR PERIOD, AIRCRAFT OPERATION, AND STORAGE AND DISPOSAL OF MANURE. ONE OR MORE OF THE AGRICULTURAL OPERATION WHICH IS IN CONFORMANCE WITH EXISTING LAWS AND REGULATIONS AND LOCALLY ACCEPTED CUSTOMS AND STANDARDS. IF YOU LIVE NEAR AN AGRICULTURAL AREA, YOU SHOULD BE PREPARED TO ACCEPT SUCH INCONVENIENCES OR DISCOMFORT AS A NORMAL AND NECESSARY ASPECT OF LIVING IN A COUNTY WITH A STRONG RURAL CHARACTER AND A HEALTHY AGRICULTURAL SECTION.

"AGRICULTURE" MEANS THE RAISING OF CROPS OR LIVESTOCK AND INCLUDES THE FOLLOWING:

- (a) GROWING AND RAISING TREES, VINES, SHRUBS, BERRIES, VEGETABLES, NURSERY STOCK, HAY, GRAIN, AND SIMILAR FOOD CROPS AND FIBER CROP;
- (b) GRAZING OF LIVESTOCK AND FEEDING INCIDENTAL THERETO;
- (c) ANIMAL HUSBANDRY, INCLUDING, WITHOUT LIMITATION, THE

BREEDING AND RAISING OF CATTLE, SHEEP, HORSES, GOATS, PIGS, RABBITS AND POULTRY AND BEEF PRODUCTION;

(d) SALE OF AGRICULTURAL PRODUCTS GROWN, RAISED OR PRODUCED ON THE PREMISES. (SECTION 18.08.040, NAPA COUNTY CODE)."

16. A note shall be included on the recorded map that affordable housing requirements, pursuant to Napa County Code Chapter 15.60 and Use Permit #95070 Condition #8, are applicable to all residential construction within the subdivision.
17. All required notices shall be recorded separately with all transfers of land from this subdivision.

PRIOR TO RECORDATION

18. All proposed street names shall be submitted to the Department for review and approval.
19. Pursuant to Napa County Code Section 18.48.120.E, an agreement setting forth the plan for permanent maintenance of common use space, recreational areas and commonly owned facilities shall be submitted to and approved by the office of the County Counsel. If a common use space is deeded to a homeowner's association, such legal instrument may take the form of a declaration of covenants and restrictions, the CC&R's be approved as to form and content by County Counsel and shall be reviewed and approved by the Department to ensure that applicable conditions of approval are included. The CC&R's shall be recorded concurrently with the final map.
20. Pursuant to Mitigation Measure #21, the street lights proposed for installation shall be reviewed by the Planning Department to ensure they include shields that direct the illumination downward and in compliance with Title 24 Uniform Building Code, Parts 1 and 6; Building Energy Efficiency Standards.
21. The improvement plans for the emergency access road shall be submitted to and approved by the County Fire Department pursuant to Mitigation Measure #26.

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Exhibit I

NAPA COUNTY
CONSERVATION, DEVELOPMENT & PLANNING COMMISSION

1195 Third Street, Room 210, Napa, California, 94559 · (707) 253-4416

RECEIVED

AUG 21 1995

AMENDED
APPLICATION FOR USE PERMIT

NAPA CO. CONSERVATION
DEVELOPMENT & PLANNING DEPT.

FOR OFFICE USE ONLY

ZONING DISTRICT: PD

FILE NO: 95070-up

REQUEST: to establish a 130-unit
manufacture home planned development on a
97.3 acre parcel, North side of Pope Canyon
Road, west of its intersection with Berryessa-Kingst
Berryessa Knoxville Road in the Lake Berryessa
area

Date Submitted: August 21, 1995

Date Complete: _____

Date Published: _____

ZA CDPC BS APPEAL

Hearing _____

Action _____

TO BE COMPLETED BY APPLICANT
(please print or type)

Applicant's Name: Villa Berryessa, Inc.

Telephone #: (707) 255-4554

Address: c/o 1000 Dezerai Court Napa California 94558
No Street City State ZIP

Status of Applicant's Interest in Property: Owner

Property Owner's Name: Nick & Helen Petsas

Telephone #: (707) 255-4554

Address: 1000 Dezerai Court Napa CA 94558
No Street City State ZIP

Site Address (if any): Pope Canyon Road Lake Berryessa
No Street City

Assessor's Parcel #: Portion of 19-080-03

Existing Parcel Size: 97.3 acs

I certify that all the information contained in this application, including but not limited to the information sheet, water supply/waste disposal information sheet, site plan, plot plan, floor plan, building elevations, water supply/waste disposal system plot plan and toxic materials list, is complete and accurate to the best of my knowledge. I hereby authorize such investigations including access to County Assessor's Records as are deemed necessary by the County Planning Division for preparation of reports related to this application, including the right of access to the property involved.

Nick Petsas 8.10.95
Signature of Applicant Date

Nick Petsas 8.10.95
Signature of Property Owner Date

TO BE COMPLETED BY CONSERVATION, DEVELOPMENT AND PLANNING DEPARTMENT

\$1081.00 Receipt # 13708

Received by: Wally McMan Bal

Date 8/21/95

CDPDX(12-17-92)

Receipt #1283 100% Done +

INFORMATION SHEET

I. USE

- A. **Description of Proposed Use (including where appropriate product/service provided)** A 130 lot single family home subdivision, with private clubhouse and common open space. See attached project statement.
- B. **Project Phases:** ☐ one ☐ two ☒ more than two (please specify) 3
- C. **Estimated Completion Date for Each Phase:** **Phase 1:** Summer 1996 **Phase 2:** Summer 1999
Phase 3: Summer 1998
- D. **Actual Construction Time Required for Each Phase:** ☐ less than 3 months
☒ More than 3 months
- E. **Related Necessary On- And Off-Site Concurrent or Subsequent Projects:** Development of off-site water systems and on-site wastewater collection and treatment facility
- F. **Additional Licenses/Approval Required:** N/A
- District: _____ Regional: _____
 State: _____ Federal: _____

II. BUILDINGS

- A. **Floor Area of Project (in square ft):** N/A **proposed total floor area on site:** N/A
 new construction: See development plan
 existing structures or portions thereof to be utilized: none
 existing structures or portions thereof to be removed: none
- B. **Floor Area Devoted to each separate use (in square ft):** N/A - see development plan
 living: _____ storage/warehouse: _____ offices: _____
 sales: _____ other (): _____
- C. **Maximum Building Height:** existing structures: N.A. new construction: 20'
- D. **Type of New Construction (e.g., wood-frame):** Modular-Wood Frame
- E. **Type of Exterior Night Lighting Proposed:** Typical Street Lights

III. PARKING

- | | Existing | Proposed |
|---|-------------|--------------------------------------|
| A. Total On-Site Parking Spaces: | <u>none</u> | <u>2 covered spaces per dwelling</u> |
| B. Customer Parking Spaces: | _____ | _____ |
| C. Employee Parking Spaces: | _____ | _____ |
| D. Loading Areas: | _____ | _____ |