

**RESOLUTION NO. Z-13-01 OF
THE WEST COUNTY BOARD OF ZONING ADJUSTMENTS
ADOPTED AT THE HEARING OF JANUARY 9, 2013
CONCERNING, CONDITIONAL USE PERMIT, PLN-2012-00103**

WHEREAS TIBURICO VASQUEZ HEALTH CENTER INCORPORATED has filed for CONDITIONAL USE PERMIT, PLN-2012-00103, to allow the construction and operation of a health care facility, in a TA (Transit Access) District according to the *Ashland and Cherryland Business District Specific Plan*, located at 16110 East 14th Street, east side, approximately, 150 feet north of 162nd Avenue, Ashland area of unincorporated Alameda County, with County Assessor's Parcel Number: 080-0057-040-00; and

WHEREAS the Board did hold a public hearing on said application at the hour of 6:00 p.m. on the 9th day of January, 2013, in the Alameda County Building, 224 West Winton Avenue, Public Hearing Room, Hayward, California; and

WHEREAS it satisfactorily appears from affidavits on file that proper notice of said public hearing was given in all respects as required by law; and

WHEREAS this application has been reviewed in accordance with the provisions of the California Environmental Quality Act and an Initial Study (IS) has been drafted for the proposed health care facility. The Initial Study resulted in a Mitigated Negative Declaration with *Less Than Significant Impacts with Mitigation*, and was available for public review for 30 days from November 19, 2012 through December 19, 2012; and

WHEREAS a Pre-Hearing Analysis was submitted recommending the application be conditionally approved; and

WHEREAS the Applicant and Representative appeared at said public hearing and presented testimony in support of the application; and

WHEREAS a Neighbor appeared at the said public hearing to offer testimony questioning if the use met the goals of the Ashland Cherryland Business District Specific Plan; and

WHEREAS the Board did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

NOW THEREFORE

BE IT RESOLVED that the Board finds that:

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- (a) The use is required by the public need as this health care facility would provide the needed service for the local community in unincorporated Alameda County. There is a need in the Ashland and Cherryland community for an out-patient clinic which will provide services at levels that are proposed with this application.
- (b) The use will be properly related to other land uses and transportation and service facilities in the vicinity as the health center is located in a mixed use retail/workplace commercial area on a major thoroughfare where the surrounding public streets and freeway access are adequate and all necessary improvements and services are available. The proximity to multiple transportation methods, improved sidewalks, and bicycle routes makes alternative transportation a viable option.
- (c) The use, if permitted, under all the circumstances and conditions of this particular case, will not materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injuries to property or improvements in the neighborhood as the health care facility will be properly reviewed, and inspected by specific agencies and department regulations and shall meet all applicable life-safety, and fire code requirements, with proper environmental health standards in place, and no adverse effects are otherwise anticipated.
- (d) The use will not be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered as the health care facility use is compatible with both the *Eden Area General Plan*, and the *Ashland and Cherryland Business District Specific Plan*, which establish the performance standards for this Community.

TA District Conditional Use Permit Findings:

1. Is the granting of the CUP necessary to allow development to occur?
 - a. Yes. Development of this site as a community health clinic does not meet the ACBD Specific Plan TA zone requirements for parking, FAR and retail uses. A health clinic use is a permitted use and the clinic will improve access to health care in the most underserved area of the County.
2. Does the project result in significant positive Economic Development impacts?
 - a. Yes. The clinic will provide 81 new jobs with wages and benefits bargained for under union contracts. More that 50% of TVHC's employees live within 15 miles

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of its clinics. TVHC has active contracts with local community colleges and career development agencies which seek to place their students/participants at TVHC. TVHC has hired staff from programs at Eden Area ROP, Merritt College, Chabot College, DeVry Institute, Western Career College, American College of Nursing and other local technical schools.

- b. The Ashland/Cherryland area has the highest teen birth rate in the County and some of the lowest rates of early prenatal care. It also has some of the highest rates of obesity, diabetes, heart disease and other chronic illness. There is only one clinic within a 14 mile radius and several primary care providers. However, more than 50% of these providers do not accept Medi-Cal and uninsured patients. 80% of these providers do not have the capacity to provide bilingual and bicultural services and they do not provide sliding scale payment. The Federal Statute for primary care providers is a maximum of 3,500 medically underserved patients to one provider. The ratio in Ashland/Cherryland is 4,891 to one provider. The Eden Area Livability Initiative for this community ranked a culturally appropriate health care clinic in Ashland/Cherryland as its number eight priority.
3. Are there project amenities and exceptional design features integrated into the project?
 - a. Yes. The project is proposing a solar array that could provide 85% of its electrical needs. These solar panels will be mounted on the roof and in the parking lot at the rear of the project as shown on the site plans. TVHC is working with Alameda County to find sources to finance this installation. Additionally, the project will provide trees in the parking lot to shade the pavement; provide bike parking at the entry; provide a welcoming pedestrian entry and plaza; provide for future EV plug-in stations; provide car pool spaces; provide shading of windows to reduce heat gain; provide exceptional natural lighting through multiple windows and energy efficient interior lighting; provide HVAC system that is energy efficient; use low VOC paint in the interior. The interior space has not been designed yet, but as the plan is developed there will be additional opportunities to add sustainable elements.
 4. Does the project promote the goals of the Eden Area General Plan regarding primary and secondary uses?
 - a. Yes. The Eden Area General Plan designates this site as General Commercial and states that the GC use must be located on the parcel. It encourages offices to enhance the employment base of the area. TVHC's clinic will bring 81 new jobs to the area. This use will be located in an area of high automobile access and a safe pedestrian environment. This project will advance a unified and coherent pattern of development and fill in a gap in the urban environment. It is designed

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with a minimum setback to create a consistent pedestrian oriented environment. The building has an active street face with windows and a welcoming pedestrian entry and plaza. The street presence is carried across the entire frontage of the site. Parking has been located to the side and rear of the facility further enhancing the street presence and stone accents at the base of the building and columns will set a standard for future developments.

5. Has the project been the subject of adequate environmental analysis?
 - a. Yes. An Initial Study per CEQA with a traffic analysis has been prepared and presented by Brandman Associates.

NOW THEREFORE

BE IT FURTHER RESOLVED that the Board does hereby accept and adopt the Mitigated Negative Declaration and approve the said application as shown by materials labeled Exhibit "B" on file with the Alameda County Planning Department subject to the following conditions:

1. This permit authorizes the construction and operation of a health care facility, located at 16110 East 14th Street, east side of the street, 150 feet north of 162nd Avenue, Ashland area of unincorporated Alameda County, County Assessor's Parcel Number: 080-0057-040-00.
2. The photovoltaic panels shall be installed as shown on approved plans marked "Exhibit B" prior to final occupancy, and made operational throughout the life of the project.
3. The bicycle parking area shall be installed as shown on approved plans marked "Exhibit B" prior to final occupancy, and made operational throughout the life of the project.
4. The use shall at all times be in compliance with these Conditions of Approval and standards, and drawings marked "Exhibit B", including materials and color boards, or this Conditional Use Permit shall be void. If found to be in violation of the Zoning Ordinance and citation or revocation proceedings may be commenced.
5. Owner or successor shall defend, indemnify, and hold harmless Alameda County or its agents, officers, and employees from any claim, action, or proceeding against Alameda County or its agents, officers or employees to attack, set aside, void, or annul Conditional Use Permit PLN-2012-00103 or any subsequent Conditional Use Permit. Such indemnification shall include, but not be limited to, an award of costs and attorney's fees incurred by Alameda County in its defense. The County shall promptly notify owner or successor of any such challenge.

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6. A maximum of 90 on-site parking spaces shall be provided at all times. Conduit for four electric vehicle charging stations shall be installed prior to occupancy. Prior to the activation of charging stations, the four parking spaces shall be designated solely for *hybrid/electric vehicle parking only*.
7. Prior to the issuance of building permits, the Applicant shall prepare a hazardous medical waste plan that identifies disposal methods in compliance with applicable federal, state, county, regulations including the Department of Toxic Substances Control (DTSC) regulations pertaining to hazardous medical waste. The hazardous medical waste plan shall be prepared pursuant to CUPA guidelines. Additionally, prior to the issuance or building permits, the Applicant shall prepare a hazardous material transportation program, and provide a copy of the contract to this file.
8. Building Permits shall be issued within one year of approval of this Conditional Use Permit, and construction shall commence within three years of approval of this Conditional Use Permit, or this permit shall of no force or effect.
9. Detailed Landscape Plans shall be submitted to the County for compliance the Water Efficient Landscape Ordinance (WELo). The landscaping shall be approved and installed to WELo standards and to the satisfaction of the Planning Director. The chain link fencing installed at the side and rear of the site shall be black in color.
10. Prior to final occupancy, the applicant shall provide written evidence to the satisfaction of the Planning Director that the health clinic shall provide, at its expense, for a minimum twenty (20) consecutive year period, encouragement and incentives for health clinic employees to take public transportation, or use of bicycle or pedestrian means of commuting, which may include but not be limited to: free or reduced cost AC Transit passes or BART tickets; free or reduced cost shuttle service to the nearest BART station; pre-tax option to purchase public transit pass(es) through the health clinic; or monetary credits for not driving to work.
11. The following Mitigation Measures shall be implemented for the TIBURCIO VASQUEZ HEALTH CENTER:

MM-AES-1: Prior to submittal of plans to the Building Inspection Division, the project sponsor shall ensure that building construction plans show exterior lighting and window treatments on the medical office building and associated parking lot that are designed to minimize glare and light spillover to adjacent properties.

The County shall ensure that final design plans include light fixtures that are down casting and low mounted to reduce light trespass onto adjacent properties. An exterior lighting and illumination plan will be required to show lumens on the lot and adjacent properties; lighting onsite shall not exceed by more than five (5)

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percent the Illuminating Engineering Society of North America (IESNA) published standards for the proposed activity. The final design plans shall also include glazing window treatments to minimize the intensity of daylight glare produced by the medical building.

MM-AIR-1 During construction activities, the following air pollution control measures identified in the BAAQMD CEQA Guidelines shall be implemented:

- Water all active construction areas at least twice daily.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
- Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
- Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
- Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.).
- Limit traffic speeds on unpaved roads to 15 mph.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Replant vegetation in disturbed areas as quickly as possible.
- Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.
- Install windbreaks, or plant trees/vegetative windbreaks at the windward side(s) of construction areas.
- Suspend excavation and grading activity when sustained winds exceed 25 mph.
- Limit the area subject to excavation, grading, and other construction activity at any one time.

MM BIO-1 Pursuant to the Migratory Bird Treaty Act and California Department of Fish and Game Code, removal of any trees, shrubs, or any other potential nesting habitat shall be conducted outside of the avian nesting season. The nesting season generally extends from early February through August, but can vary slightly from year to year based upon seasonal weather conditions. Construction generally occurs during the dry season in the spring and summer months (during nesting season) to avoid inclement weather. If construction is planned to start during the

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nesting season (between February and August), the Applicant shall conduct pre-construction presence/absence surveys to determine if any birds are nesting within or adjacent to the project site. A write-up regarding the survey findings shall be submitted to the County for approval prior to construction. A qualified biologist shall conduct a pre-construction survey for nesting migratory birds within all suitable habitat on the project site, and within 250 feet of the project site. The pre-construction survey shall be conducted within 15-days of the beginning of project related activities if construction starts within the nesting season. If an active nest is discovered during the pre-construction survey, the survey will propose species-specific mitigation measures to be utilized during instruction including but limited to the incorporation of appropriate buffers during construction. No construction activities shall encroach within the identified buffer. If construction activities must occur within the buffer with the active nest, a biological monitor will be required to be onsite during the construction phase to ensure no direct or incidental take of the active nest occurs. If the biological monitor determines that construction activities will result in take of the active nest, then all construction activities must halt within the established buffer for the nest.

MM CUL-1 It is always possible that ground-disturbing activities during construction may uncover previously unknown, buried historic resources. In the event that buried historic resources are discovered during construction, operations shall stop within 50 feet of the find and a qualified archaeologist shall be consulted to determine whether the resource requires further study. The County shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. The archaeologist shall make recommendations concerning appropriate measures that will be implemented to protect the resources, including but not limited to excavation and evaluation of the finds in accordance with Section 15064.5 of the CEQA Guidelines. Historic resources could consist of, but are not limited to, stone, wood, or shell artifacts, structural remains, privies, or historic dumpsites. Any previously undiscovered resources found during construction within the project area should be recorded on appropriate Department of Parks and Recreation (DPR) 523 forms and evaluated for significance in terms of CEQA criteria.

MM CUL-2 It is always possible that ground-disturbing activities during construction may uncover previously unknown, archaeological resources. In the event that archaeological resources are discovered during construction, operations shall stop within 50 feet of the find and a qualified archaeologist shall be consulted to determine whether the resource requires further study. The County shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. The archaeologist shall make recommendations concerning appropriate measures that will be implemented to protect the

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resources, including but not limited to, excavation and evaluation of the finds in accordance with Section 15064.5 of the CEQA Guidelines. Cultural resources could consist of, but are not limited to, stone, bone, wood, or shell artifacts or features, including hearths. Any previously undiscovered resources found during construction within the project area should be recorded on appropriate Department of Parks and Recreation (DPR) 523 forms and evaluated for significance in terms of CEQA criteria.

MM CUL-3 In the event a fossil is discovered during construction for the proposed project, excavations within 50 feet of the find shall be temporarily halted or delayed until the discovery is examined by a qualified paleontologist, in accordance with Society of Vertebrate Paleontology standards. The County shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. If the find is determined to be significant and if avoidance is not feasible, the paleontologist shall design and carry out a data recovery plan consistent with the Society of Vertebrate Paleontology standards.

MM CUL-4 In the event of the accidental discovery or recognition of any human remains, CEQA Guidelines § 15064.5; Health and Safety Code § 7050.5; Public Resources Code § 5097.94 and § 5097.98 must be followed. If during the course of project development there is accidental discovery or recognition of any human remains, the following steps shall be taken:

1. There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the County Coroner is contacted to determine if the remains are Native American and if an investigation of the cause of death is required. If the coroner determines the remains to be Native American, the coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours, and the NAHC shall identify the person or persons it believes to be the “most likely descendant” (MLD) of the deceased Native American. The MLD may make recommendations to the landowner or the person responsible for the excavation work within 48 hours, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC Section 5097.98.
2. Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity either in accordance with the recommendations of the most likely descendant or on the project site in a location not subject to further subsurface disturbance:

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- The NAHC is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 48 hours after being notified by the commission.
- The descendant identified fails to make a recommendation.
- The landowner or his authorized representative rejects the recommendation of the descendant, and mediation by the NAHC fails to provide measures acceptable to the landowner.

MM-GEO-1 Subject to review and approval by the County Public Works Agency, the following construction treatments are identified to address the potential for liquefaction: In order to increase the rigidity of the foundation, the continuous footings shall be reinforced either with two No. 5 rebars both top and bottom, or with stiffened grade beams with the same reinforcing. Floor slabs shall also be reinforced using No. 4 reinforcing bars 18 inch on center running in both directions with the slab securely connected to perimeter foundations using No. 5 rebars at 24-inch intervals.

MM-GEO-2 The Applicant shall address the related risks of differentials settlement and expansive soils by designing the foundations, structural bearing walls and beams, and underground utility connections to include the appropriate features. Design features include but are not limited to tying isolated column footings to concrete flatwork slabs, compacting subgrade soils to meet appropriate water-content guidelines, use of capillary breams and/or vapor barriers and similar measures. Pavement areas shall be designed to withstand severe seismic disruption, with appropriate compaction, site preparation, grading, drainage, utility trenching, pipe bedding, and concrete work. The contractor shall enable the authors of the geotechnical engineering study to review the final project plans prior to construction and report to the Department of Public Works on the adequacy of the plans.

MM-HAZ-1 Prior to the issuance of building permits, the Applicant shall prepare a hazardous medical waste plan that identifies disposal methods in compliance with applicable federal, state, county, regulations including the Department of Toxic Substances Control (DTSC) regulations pertaining to hazardous medical waste. The hazardous medical waste plan shall be prepared pursuant to CUPA guidelines. Additionally, prior to the issuance or building permits, the Applicant shall prepare a hazardous material transportation program.

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MM-USS-1 In order to ensure compliance with the Urban Water Management Planning Act the project applicant shall submit building plans to the East Bay Municipal Utility District for review and approval that identify and include the following indoor and outdoor water conservation measures:

- Separate metering of domestic water.
- Low-flow or ultra-low-flow toilets and urinals.
- Faucet aerators or low-flow faucets in bathrooms.
- Plans depicting details of irrigation and planting used for landscaping

12. All requirements of the following County and State agencies shall be met:

a) Building Inspection Department:

- Comply with California building codes in effective and submittal requirements at time of submitting for building permit.
- Building permit submittal shall include plumbing, mechanical, and electrical plans.
- A California licensed architect or engineer shall be designated as the design professional in responsible charge for the project submittal.
- Soils report and/or geological study will be required.
- This project is subject to Alameda County Green Building and C&D Ord. It has also to meet CalGreen Code requirements.
- New addresses may be required for the building site and suites.
- water requirements AC 15.08.190.
- A site permit will be required for onsite stormwater system, underground utilities, parking lot lighting, and accessible path of travel.

b) Fire Department:

- Approval needed for Fire Sprinkler System
- Approval needed for a Fire Alarm System
- Approval needed for a hydrant that is within 250 feet of the driveway
- A Knox Box
- Electric Gate
- Elevator Car
- A Pedestrian Gate to the public way will need to be provided with panic hardware

c) Public Works Agency:

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- Outstanding issues are more on the detailed engineering design of the storm drainage system and the water quality treatment measures, which for all intents and purposes will have to be addressed in the final improvement plan review stage.

d) Grading Department:

- A grading permit application will be required that will need to address the liquefaction hazards for the site, identified “undocumented fill”, respond to the issues identified in the Geotechnical Report, and the comments made by the Geotechnical Engineer.

13. Prior to Final Inspection, landscape shall be planted and inspected to the satisfaction of the Planning Director.

Preservation of Cultural Resources

14. Precautions shall be taken to insure that no disturbance of any human remains that may be located underneath the site, important in prehistory or history, shall occur during the implementation of the project. These precautions include compliance with the provisions of Section 7050.5 of the California State Health and Safety Code or, if the remains are determined to be Native American, Section 5097.98 of the California State Public Resources Code as per CEQA Section 15064.5(d).

15. A mandatory review shall be conducted at the end of 5 years on (January 9, 2018). As a result of the mandatory review, a permit for renewal and public hearing may be required to review the original conditions of approval to determine compliance with the findings that supported the original permit approval. Any condition of approval modified or added will ensure the activity continues in conformance with the intent and purpose of the zoning ordinance, and shall be of the same force and effect as if originally imposed. Review costs shall be borne by the applicant.

Pursuant to Section 17-52.050 of the Alameda County Zoning Ordinance said Conditional Use Permit shall be implemented within a term of three (3) years of its issuance or it shall be of no force or effect.

If implemented, said Conditional Use Permit shall undergo a mandatory review at the end of 5 years on (January 9, 2018), and shall remain revocable for cause in accordance with Section 17-54.030 of the Alameda County Zoning Ordinance.

**WEST COUNTY BOARD OF ZONING ADJUSTMENTS
ALAMEDA COUNTY PLANNING DEPARTMENT**