

CONDITIONS RELATED TO TRAFFIC

59. Petitioner's Obligations Related To Vehicular Traffic Exiting and Entering the Site

a. Petitioner's Residential and Office Vehicle Trips Obligation.

i. The number of vehicle trips that enter or exit the Project and that are associated with any residential or office use of the Project (the *Maximum Residential and Office Trip Count*) shall not exceed:

1. 262¹ vehicle trips during the weekday morning peak hours (7:00 am – 9:00 a.m.²);
2. 198 vehicle trips during the weekday evening peak hours (4:00 pm – 6:00 pm); and
3. 163 vehicle trips during the Saturday midday peak hours (11:00 am – 2:00 pm)

b. Petitioner's Total Vehicle Trip Obligation.

i. The total number of vehicle trips that enter or exit the Project (the *Maximum Total Trip Count*) shall not exceed:

1. 396³ vehicle trips during the weekday morning peak hours (7:00 am – 9:00 a.m.);
2. 487 vehicle trips during the weekday evening peak hours (4:00 pm – 6:00 pm); and
3. 558 vehicle trips during the Saturday midday peak hours (11:00 am – 2:00 pm)

c. The Petitioner shall prepare, submit and implement a *Transportation Demand Management Work Plan* (the “TDM Work Plan”), in accordance with the Conditions set forth herein, that includes strategies and measures necessary to

¹ See Amended Table 8, VHB Memo dated April 16, 2019, pps. 1-2, available as Exhibit D at <http://www.newtonma.gov/civicax/filebank/documents/96743>. This table shows projected vehicle counts with *Robust Shuttle Service* unlike Table 6 from VHB Memo dated March 28, 2019 (available at <http://www.newtonma.gov/civicax/filebank/documents/96175>), which shows projected vehicle trips with *Existing Mode Share* and which was first proposed to be the base for the vehicle traffic counts by Petitioner mid-summer, on July 26, 2019.

² See Northland Transportation Impact and Access Study, October 2018, p. 19, for definition of “Peak-Period”.

³ See Amended Table 8, VHB Memorandum Dated April 16, 2019, id, pps. 1-2. See also J. Caira Statement to Land Use Committee, April 30, 2019 at 10:38 et seq. (“We had a productive meeting with Northland ... to come to consensus on what projected traffic will be and trip generation rates... We are all in agreement ... Our focus is on the total trips.”)

comply with subsections (a) and (b) hereinabove establishing the Maximum Residential and Office Trip Count and the Maximum Total Trip Count.

- d. The Petitioner has the burden to demonstrate that it is in compliance with the Maximum Residential and Office Counts and the Maximum Total Trip Count. In order to demonstrate compliance, the Petitioner shall conduct continuous vehicle trip counts in accordance with the *Trip Count Methodology* and submit *TDM Monitoring Reports*, all in accordance with the Conditions set forth herein.
60. Commencement of Petitioner's Trip Reduction Obligation
- a. The Petitioner must comply with the Maximum Residential and Office Trip Count and the Maximum Total Trip Count beginning on the date of the issuance of a Certificate of Occupancy (temporary or final) for 50% of the residential units or for 25,000 square feet of commercial (office or retail) space, whichever occurs first.
 - i. The Maximum Residential and Office Trip Count and the Maximum Total Trip Count shall be adjusted in proportion with the percentage of the Project that has been issued a Certificate of Occupancy until all units have been issued a final Certificate of Occupancy.

Example: if the Project is 50% built, the Maximum Residential and Office Trip Count shall be 131, 99, and 82 vehicles for the weekday morning, weekday afternoon, and Saturday peak hours and the Maximum Total Trip Count shall be 198, 244, and 279 for the same periods.

61. Reporting Requirements

- a. Initial TDM Monitoring Report and Trip Count
 - i. The Petitioner shall commence continuous vehicle trip counts on the date of the issuance of a Certificate of Occupancy (temporary or final) for 50% of the residential units or for 25,000 square feet of commercial (office or retail) space, whichever occurs first and shall submit an initial TDM Monitoring Report within sixty (60) days of such date.
 - ii. The continuous vehicle trip counts must be conducted in accordance with the Trip Count Methodology set forth in Condition #63 and the initial

TDM Monitoring Report must be prepared and submitted in accordance with Condition #62.

b. Subsequent Periodic Reporting

- i. Following submission of the initial TDM Monitoring Report, the Petitioner shall thereafter submit TDM Monitoring Reports every three (3) months (the *Reporting Period*) from the date of submission of the initial report.
- ii. The Reporting Period shall change to every six (6) months only after the Petitioner/Project has been fully compliant with the Maximum Residential and Office Trip Count and the Maximum Total Trip Count for four (4) consecutive three-month reporting periods following 90% occupancy of all buildings in the Project, provided that:
 1. No subsequently submitted TDM Monitoring Report shows vehicle trips exceeding the Maximum Residential and Office Trip Count and/or the Maximum Total Trip Count.
 2. Upon any submitted TDM Monitoring Report showing vehicle trips exceeding the Maximum Residential and Office Trip Count and/or the Maximum Total Trip Count, the Reporting Period shall revert to every three (3) months.
- iii. The Reporting Period shall change to every twelve (12) months after the Petitioner/Project has been fully compliant with the Maximum Residential and Office Trip Count and the Maximum Total Trip Count for five (5) consecutive years following 90% occupancy of all buildings in the Project, provided that:
 1. No subsequently submitted TDM Monitoring Report shows vehicle trips exceeding the Maximum Residential and Office Trip Count and/or the Maximum Total Trip Count.
 2. Upon any submitted TDM Monitoring Report showing vehicle trips exceeding the Maximum Residential and Office Trip Count and/or the Maximum Total Trip Count, the Reporting Period shall revert to every three (3) months.

62. Submission of TDM Monitoring Reports

- a. The Petitioner shall submit the Initial TDM Monitoring Report as specified in Condition #61.a and shall submit all subsequent TDM Monitoring Reports to the Director of Planning and Development and the Commissioner of Public Works within ten (10) days after the end of each Reporting Period, as specified in Condition #61.b. Submission dates may be adjusted slightly at the discretion of the Director of Planning and Development.
- b. The TDM Monitoring Reports shall contain the results of the required continuous vehicle trip counts in accordance with Condition #63, a description of methodology, and the qualifications of the consultant(s) performing the counts and surveys.
- c. The Petitioner shall pay the reasonable fees of any consultants/peer reviews as necessary for the Director of Planning and Development or the Director of the Transportation Division to analyze the reports.
- d. In the event vehicle trips reported in a TDM Monitoring Report exceed the Maximum Residential and Office Trip Count and/or the Maximum Total Trip Count, subsequent TDM Monitoring Reports must include a certified financial accounting of how the TDM Investment Amount was allocated and spent on implementing the approved TDM Work Plan.
- e. In accordance with Condition #64, a TDM Work Plan shall also be submitted with every submission of a TDM Monitoring Report.

63. Trip Count Methodology

- a. Continuous vehicle trip counts shall be performed by a qualified professional firm, to be approved by the Director of Planning and Development.
- b. Continuous vehicle trip counts shall separately measure (i) all vehicles entering and exiting the project site and (ii) all residential and office vehicle trips, during the weekday morning and evening peak hours and the Saturday midday peak hours.
 - i. Trip counts shall be made with continuous permanent trip counting stations at every curb cut location⁴ and shall include a method to

⁴ See: Planning Department Memorandum to Land Use Committee, dated June 14, 2019, p. 5., available at <http://www.newtonma.gov/civicax/filebank/documents/98144>.

definitively determine whether a vehicle is entering or exiting the project site for residential or office use or whether the vehicle is entering or exiting the project site for any other use.

- c. Trip counts shall be conducted continuously, in real time.

64. Approval of the TDM Work Plan

- a. Prior to the issuance of the first building permit for any new vertical construction, the Petitioner shall submit an initial TDM Work Plan to the Director of Planning and Development and Commissioner of Public Works for review and approval.
 - i. The initial TDM Work Plan shall include a detailed plan for the phase-in of Transportation Demand Management (TDM) strategies and measures.
 - ii. As feasible, TDM strategies and measures, including potential transit subsidies and options for first/last mile connections, shall begin with initial occupancy permits.
 - iii. The initial TDM Work Plan shall be fully implemented before the issuance of a Certificate of Occupancy (temporary or final) for 50% of the residential units or for 25,000 square feet of commercial (office or retail) space, whichever occurs first.
 - iv. A full-time TDM Coordinator shall be hired and shall start work no later than the issuance of a Certificate of Occupancy (temporary or final) for 25,000 square feet of commercial (office or retail) space, 12 months after the issuance of the first residential building permit, or the issuance of the first Certificate of Occupancy (temporary or final) for any residential unit, whichever occurs first.
- b. The TDM Work Plan shall set forth sufficient TDM strategies and measures such that the Maximum Residential and Office Trip Count and Maximum Total Trip Count are not exceeded, including, but not limited to, last-mile connections to mass transit, subsidies for transit passes for employees and residents, a full-time TDM Coordinator, on-site support facilities and information, marketing and awareness programs, financial incentives, and car and bike share programs.
- c. The TDM Work Plan may change over time to respond to changing transportation needs and circumstances, with the objective of meeting the trip reduction goal

through compliance with the Maximum Residential and Office Trip Count and the Maximum Total Trip Count. All proposed changes to the TDM Work Plan must be reviewed and approved by the Director of Planning and Development prior to implementation.

- d. A TDM Work Plan shall also be submitted with every submission of a TDM Monitoring Report. The TDM Work Plan must include a comprehensive list of the measures proposed for the upcoming reporting period, and shall be based on best practices, results of prior vehicle counts and surveys, and additional data collected by the Petitioner.

65. Enforcement

- a. If a TDM Monitoring Report shows that the number of vehicles associated with residential or office use exceeded the Maximum Residential and Office Trip Count and/or the number of total vehicles exceeded the Maximum Total Trip Count for any consecutive three (3) days within the Reporting Period, the Petitioner shall be considered in breach of the TDM Work Plan. If the Petitioner is in breach of the TDM Work Plan:
 - i. Before the completion of construction of all buildings in the Project, then no further building permit or Certificate of Occupancy (temporary or final) shall be issued and any building permits already issued shall be suspended until the Petitioner submits three (3) consecutive TDM Monitoring Reports that show it is in compliance with its obligations under these Conditions.⁵
 - ii. After the completion of construction of all buildings in the Project, then Petitioner shall invest funds for implementation of its TDM Work Plan as follows:
 1. The Petitioner shall spend \$1,500,000.00 (the ***TDM Investment Amount***) to implement its TDM Work Plan during the twelve (12) month period following submission of the first TDM Monitoring Report showing that the Maximum Residential and

⁵ See: Planning Department Memorandum to Land Use Committee, dated June 14, 2019, p. 5., available at <http://www.newtonma.gov/civicax/filebank/documents/98144>.

Office Trip Count and/or the Maximum Total Trip Count was/were exceeded.

2. The TDM Investment Amount shall be adjusted annually from the date of commencement of Petitioner's obligations under Condition #62 based upon the Consumer Price Index (CPI).
3. The TDM Investment Amount shall further be increased by adding an ***Additional Investment Amount*** which shall be equal to the product of (i) the then-current TDM Investment Amount and (ii) the percentage of vehicle trips exceeding the Maximum Residential and Office Trip Count and/or the percentage of vehicle trips exceeding the Maximum Total Trip Count, whichever percentage is greater.

Example: if the TDM Investment Amount is \$1,500,000 and the number of total vehicle trips for the last-submitted TDM Monitoring Report was 20% more than the Maximum Total Trip Counts, and the number of total residential and office-related vehicle trips was only 10% more than the Maximum Residential and Office Trip Counts, the Additional Investment Amount is \$300,000 and the TDM Investment Amount is to be increased to \$1,800,000 (120% of 1,500,000).

- iii. There is no maximum cap on the TDM Investment Amount or the Additional Investment Amount.
 - iv. The TDM Investment Amount shall be expended annually until the Petitioner submits a TDM Monitoring Report demonstrating compliance with the Maximum Residential and Office Trip Count and the Maximum Total Trip Count for a period of twelve (12) consecutive months.
- b. If the Maximum Residential and Office Trip Count and/or the Maximum Total Trip Count is/are exceeded, the Petitioner must submit a revised TDM Work Plan for the next twelve (12) month period that shall include a narrative of how the changes to the TDM Work Plan will reduce the number of vehicular trips below the Maximum Residential and Office Trip Count and Maximum Total Trip Count limits and a detailed proposal of how the TDM Investment Amount will

be spent. The TDM Work Plan and the proposal for TDM expenditures shall be subject to review and approval by the Director of Planning and Development.

- c. The Petitioner agrees to and shall embody these financial commitments in a contractual agreement with the City to be entered into prior to the issuance of the first building permit for a residential building in the Project, which agreement shall allow for the remedy of specific performance.
- d. Failure to comply with the Maximum Residential and Office Trip Count and/or the Maximum Total Trip Count for five (5) consecutive Reporting Periods will constitute a violation of this Special Permit/Site Plan Approval.
- e. So long as the vehicle trips do not exceed the Maximum Residential and Office Trip Count and the Maximum Total Trip Count, there is no minimum TDM Investment Amount required.