

Exhibit J

Letter from Counsel Regarding Reconsideration of Conditions of
Approval for Trails - Americans with Disability Act and the Use of
Asphalt for Paths

May 26, 2022

City of Davis, California
Planning Commission
23 Russell Boulevard
Davis, California 95616

Re: Bretton Woods' Request for Reconsideration of Conditions of Approval for Trails

Dear Planning Commissioners:

We represent Bretton Woods, LLC in connection with the Bretton Woods development, formerly the West Davis Active Adult Community. We write to you to lay out some facts, opinions, and relevant authority regarding the surface materials and width to be used for the Perimeter and Greenway Trails ("Trails"). We respectfully request that you approve Bretton Woods' recommendations to use asphalt and to modify the width of the Trails.

As you know, this development has been designed to anticipate and to provide for the needs of its residents as they age. Initial residents will generally be between the ages of 72 to 78. This has not been a passive endeavor. Every element of the design and construction of Bretton Woods has been thoroughly considered, and the pros and cons weighed, in order to provide the greatest support and assistance to the largely senior population who will one day live in Bretton Woods.

Bretton Woods seeks the City's approval in order to slightly modify the construction material and widths of the Trails. Bretton Woods asked the City to consider approving asphalt instead of concrete for these Trails. These pedestrian/non-motorized vehicle Trails are an integral part of Bretton Woods' plan to maximize the opportunities for its residents to remain physically active through the "golden" years. These Trails have been carefully designed to ensure that all potential users, including those with wheelchairs, walkers, crutches, or canes, can fully enjoy the California weather and the beautiful views, sculptures, and shaded outdoor areas facing west as well as within Bretton Woods.

Concrete is considered by the construction industry to be a rigid pavement. Asphalt is considered a flexible pavement. Concrete is indeed harder than asphalt, as we will detail below.

In 2010, the United States Census Bureau reported¹ that nearly 1 in 5 people in the United States have a disability. Of those, about 30,600,000 had mobility challenges, including difficulty

¹ <https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html>

walking or climbing stairs. Many of these individuals need the assistance of a wheelchair, cane, crutches, or a walker. People age 80 and older were eight times more likely to have a disability than younger groups. This means many people, especially those who are older persons, experience disabilities which can impact not only the way they live their daily lives but also how safe they are in different environments. In order to best accommodate the needs of these individuals' health, accessibility and safety concerns should take precedence.

In the interest of health, safety, and accessibility, Bretton Woods seeks to use asphalt rather than concrete for its Trails. A hard (pun intended) fact is that concrete is 10 times harder than asphalt.² It is harder on an individual's joints and is more likely to cause over-use injuries in walkers, joggers, and runners.³ Moreover, asphalt is softer, and thus it follows safer, than concrete; the critical fall height of concrete is half the height of asphalt.⁴ This means an individual can fall from twice as high on asphalt before they have the same risk of injury that they would face falling on concrete.

This could be of critical import to seniors, perhaps the difference between a broken hip and a bruised hip. For seniors and those with compromised health, a broken hip is very sadly often the last injury they will have. Each year over 3,000,000 older people are treated in emergency departments for fall injuries.⁵ One out of five falls causes serious injuries, such as broken bones or a head injury.⁶ Each year, at least 300,000 older adults are hospitalized for hip fractures, and 95 percent of those fractures are caused by falling.⁷ Some of the risk factors that contribute to these catastrophic falls include lower body weakness, vitamin D deficiency, inactivity, and a lack of strength and balance exercises.⁸ All of these factors can be mitigated through outdoor activities, such as walking, biking, and jogging. These are the very activities that Bretton Woods, as an *active* adult community, seeks to promote through the creation of the Trails.

The Americans with Disabilities Act ("ADA") states the minimum standards for accessibility. Section 302 specifically addresses accessible surfaces, and it requires that ground and floor surfaces "shall be stable, firm, and slip-resistant."⁹ This standard is also reflected in related California Building Codes.¹⁰ This is the *minimum* threshold for accessibility. It says nothing about which materials are best or most appropriate in various settings. It leaves that decision in

² <https://www.marathontrainingacademy.com/running-surfaces#:~:text=Concrete%20or%20cement%E2%80%93%20Sidewalks%20by,10%20times%20harder%20than%20asphalt.>

³ Knobloch, K. Yoon, U. and Vogt, P., *Foot Ankle Int.* 2008 Jul; 29(7):671-6.

⁴ Shields, B. and Smith, G., *J. Athl. Train.* 2009 Nov-Dec; 44(6): 595-602.

⁵ <https://www.cdc.gov/falls/facts.html>

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ 2010 Standards, 36 C.F.R., Part 1191, App. D § 302.1.

¹⁰ https://www.dgs.ca.gov/-/media/Divisions/DSA/Publications/access/2019_CBC_Advisory_Manual.pdf

the hands of the engineers, designers, and developers who have made it their mission to provide the best experience for the individuals who will ultimately use the facilities.

Here, Bretton Woods has incorporated the Trails within the development in an effort to further the intent and spirit of the ADA, which is to ensure that all individuals, regardless of physical ability, are able to fully participate in every facet of their lives. As seniors become a larger portion of the United States' population, it is likely that the ADA's breadth will expand, in line with that intent, requiring cities and public and private entities to use the most senior-compatible construction materials and designs within Bretton Woods. Davis can be at the forefront. Further, Bretton Woods is already responsible for the installation and maintenance of the Trails. For these dual reasons, Bretton Woods should be allowed to use the surface material that will best facilitate the designer's intent, and the likely future scope, of the ADA.

Bretton Woods seeks to promote the health, wellness, and continued activity of its senior residents and visitors. We sincerely believe that it can best achieve that goal if it is allowed to use the most suitable surface material, asphalt, rather than the one that was initially approved. This is an opportunity for the City to take forward-looking action by approving the use of asphalt Trails. This would ensure that Bretton Woods exceeds the minimum threshold for accessibility, and also anticipates the needs of a changing, and aging, population.

Bretton Woods does not make this requested change lightly. This request comes after Bretton Woods' careful consideration and investigation of the suitability of concrete as a surface material for the Trails. Ultimately, Bretton Woods is intended to be a sanctuary that provides seniors and others the greatest opportunity to maintain their health and independence. The City can help Bretton Woods attain that goal by allowing it to use the most suitable surfacing material available for the needs of its intended residents.

Bretton Woods is very concerned about unfortunate, but foreseeable, falls and other accidents which may occur if the Trails are concrete. The true tragedy would be a life-altering or life-threatening injuries. We want to avoid this avoidable situation.

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In light of the multiple points enunciated above, we are respectfully requesting that the City grant the reconsideration request both as to the materials and the appropriate widths of the Perimeter and Greenway Trails.

Very truly yours,

BOUTIN JONES, INC.



Stephen F. Boutin

cc: Bretton Woods, LLC
Mike Webb, City Manager
Sherri Metzger, Planning Director
Bob Clark, Public Works Director
Dianna Jensen, City Engineer