To : Merced City Council and City Attorney

From : :Michael Belluomini

Reference : Appeal CUP 1238 Apartments at McKee & Yosemite Ave

The developer proposing 214 apartments at the corner of McKee & Yosemite Ave by Conditional Use Permit 1238 is asserting that approving the project at 24 units per acre is in violation of the California Housing Accountability Act (HAA) .

The law prohibits the city from conditioning the project "in a manner that renders the housing development project infeasible for development for the use of ...moderate - income households" It seems that the developer needs to provide a financial pro forma demonstrating that with the 24 units per acre alternative design of 144 apartments that the project is infeasible financially. I understand he paid $500,000 for the site, so seems like he should be able to make a profit with 144 apartments.

The law prohibits the city from disapproving a housing development project unless it""would have a specific adverse impact upon public health or safety and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate -income households..." The proposes mitigation to avoid adverse impacts is the reduction of density and the redesign to improve "defensible space" using apartment design standards in the zoning ordinance. The specific adverse impacts upon public health and safety are the extreme traffic congestion to level of service E on the surrounding streets and the anonymity that comes with high density apartments on long isolated corridors fosters environments where crimes against persons and property are more likely (Defensible Space by Oscar Newman 1972)

The law prohibits the city from disapproving a housing development project unless it "is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan ..." . As proposed this project is High Density (Over 24 units/acre). The General Plan page 3-78 states "HD areas may be designated in close proximity to employment centers and UC Merced, the Downtown area of Merced or other suitable sites near public transportation and services" This project does not meet any of those criteria for HD. Further the General Plan defines CN Neighborhood Commercial designation on page 3-80 as "To provide sites for retail shopping areas, primarily in shopping centers containing a wide variety of businesses...to serve residential neighborhoods" No mention of housing in the CN designated area. This same section lists seven existing CN shopping centers in the city none of which contain apartments. This project is inconsistent with the General Plan for HD and for CN.

The zoning ordinance page 172 section H "Safety and Defensible Space" establishes five design standards to make apartments safer and enjoyable. These include arrangement of windows and doors to facilitate neighbors watching out for other neighbors. Limiting the number of apartments using the same hallway to increase being familiar with your neighbors. Designing common recreational areas for the apartments that can view the playground to facilitate a sense of community. This project's design fails all these. The

zoning ordinance page 172 section I establishes a design standard that every apartment have access to a patio/balcony of a minimum of 5 feet by 8 feet in size. This project design fails all these. These apartment design standards express the requirement as "should " rather than "shall" because the city wanted to avoid a burdensome variance process when the practicality of designing an apartment project necessitated not complying with the design standards for a few units. "Should " does not mean "Optional" This project is inconsistent with the zoning ordinance.

The alternative actions for the city council are spelled out in the zoning ordinance page 262 section F as follows:

"1. During the appeal hearing, the review authority may take action on the specific basis for the appeal, or may reconsider the project in its entirety ("de novo" review). The review authority shall make its own decision supported by findings. In doing so, it may:

a. Affirm, affirm in part, or reverse the action that is the subject of the appeal; or,

b. Adopt additional conditions of approval that address the matter appealed; or,

c. Remand the appeal for further review, recommendation, or action to the previous review authority.

2. The review authority's action shall be based upon findings of fact about the particular case. The findings shall identify the reasons for the action on the appeal and verify the compliance of the subject of the appeal with the Zoning Ordinance. "

3. Continue the matter

4. Let decision of previous reviewing authority stand.

The Planning Commission considered my alternative of 24 units per acre (144 apartments) and rejected it. So it is up to the council. I urge you to make a motion that follows section 1. b above "adopt additional conditions of approval that address the matter appealed " as follows:

I move to deny the appeal (approving the project) contingent on the adoption of additional conditions of approval including the reduction of density to 24 units per acre (144 apartments) , no three story buildings, and compliance with the city design standards for apartment development (the Belluomini alternative); with staff to provide appropriate findings , conditions, and environmental documentation for approval at the council meeting of July 6,2020.

May 29, 2020

To : Merced City Council

From : Michael Belluomini

Ref : Appeal of CUP 1238

At the May 5th meeting some were interested in reducing the density to medium (24 units/ acre) which is 144 apartments instead of the 214 proposed. Attached are the plans for the apartments at McKee & Yosemite Ave so modified. To achieve 144 apartments it was necessary to allow ground floor apartments. The redesign still eliminated all third floor apartments and still emphasized the neighborhood commercial nature of the ground floor . Buildings 1, 2, and 3 face Yosemite Ave or McKee Rd providing high visibility for the businesses on the ground floor. Building 4 by contrast faces a parking lot and is across from housing. Therefore the redesign maintained the ground level apartments proposed for building 4.

The redesign provides a commons courtyard area exclusive to the tenants for every floor. Each such commons courtyard occupies the area of three apartments. All the apartments are shown with a 5 ft. deep balcony the width of the apartment . Please don't allow the apartment design standards that are in the zoning code to be trivialized. The developer should be following them exactly unless there is some unusual compelling reason not to. A burglar alarm and better locks is not a substitute for design that promotes neighborhood watch and a sense of watching out for the welfare of your neighboring tenants.

Finally all of the ground floor of building 3 is proposed as offices. The redesign changes the southern half of the ground floor to 10 apartments . This totals to 143 but substituting two smaller apartments for a large one achieves 144.

Please approve CUP 1238 on the condition that it conforms to these design changes.

May 29, 2020

JENNIFER, PLEASE SHOW FLOOR PLAN SLIDES AS NUMBERED WHEN READING OUT LOUD THE MEMO TO COUNCIL. THANK YOU. Michael Belluomini

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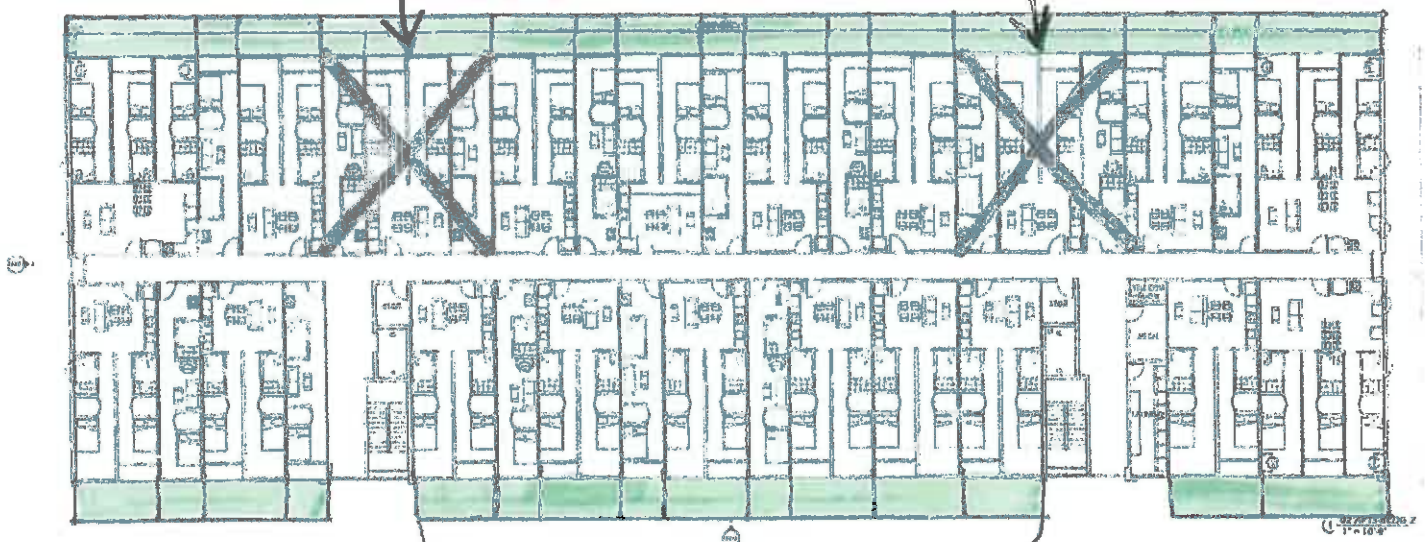
Legend

- EFFICIENCY UNIT
- 2 BED/2 BATH
- 3 BED/3 BATH
- COMMON

TENANTS COMMONS COURTYARDS

BUILDING 2 2ND FLOOR

28 UNITS



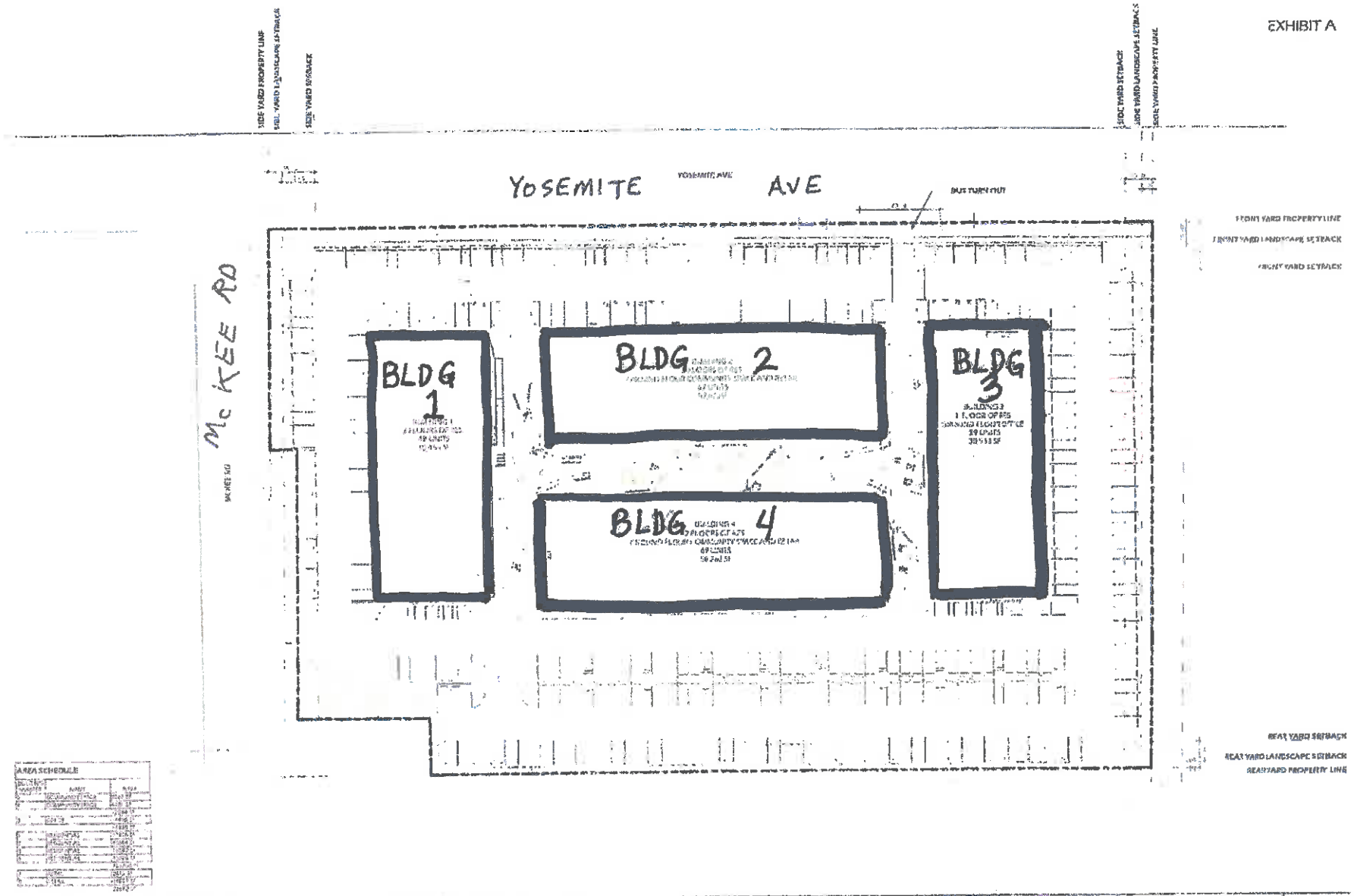
5 FT DEEP BALCONY TYPICAL FOR ALL UNITS

M BELLUOMINI MAY 10, 2020

02 APT - BLDG 2

1

EXHIBIT A



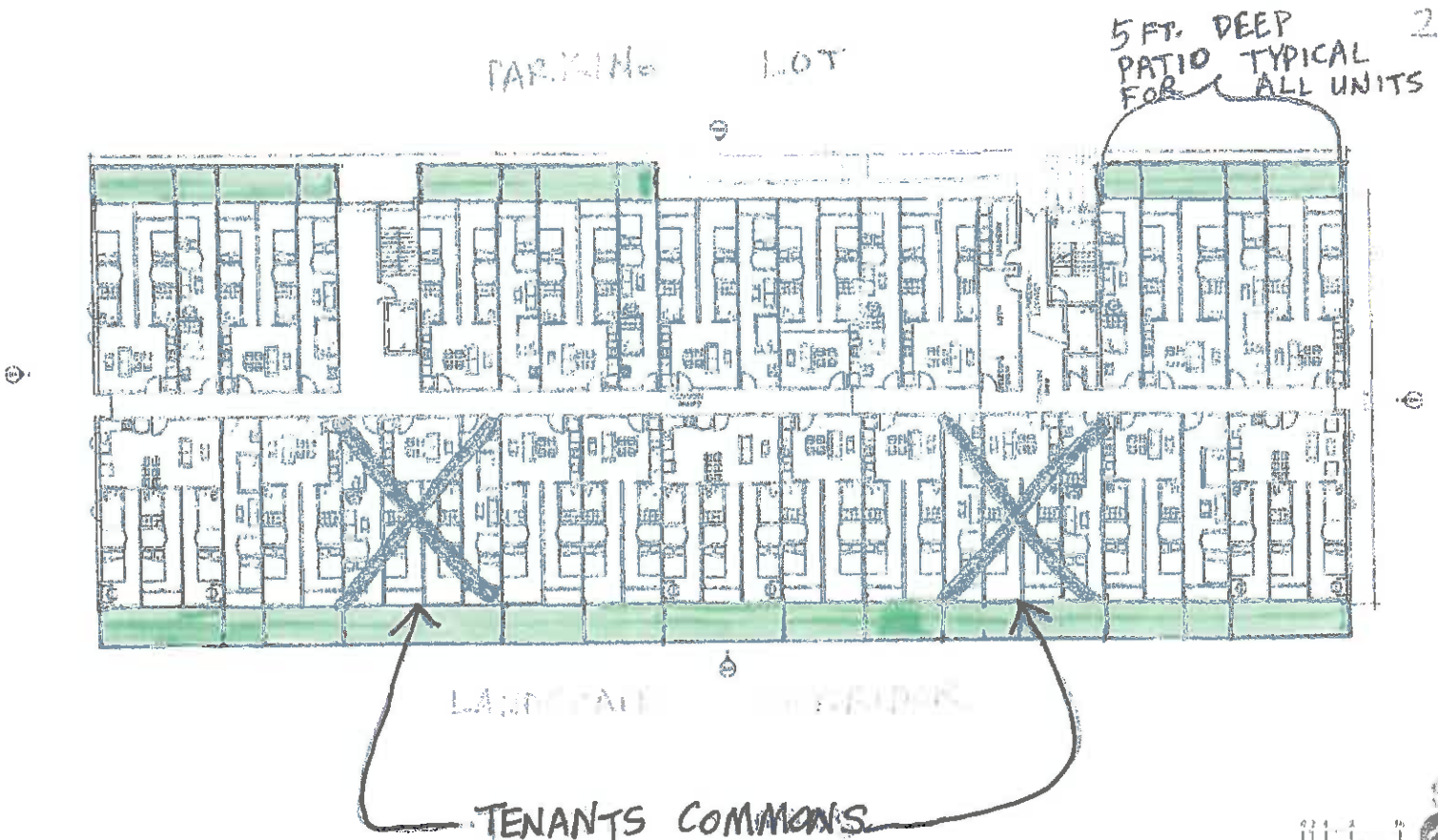
ATTACHMENT 2

ferrierArchitectureStudio

2

BUILDING 4 GROUND FLOOR

Legend
- EFFICIENCY UNIT
- 2 BED/2 BATH
- 3 BED/3 BATH
- COMMON



M.BELLUOMINI
MAY192020

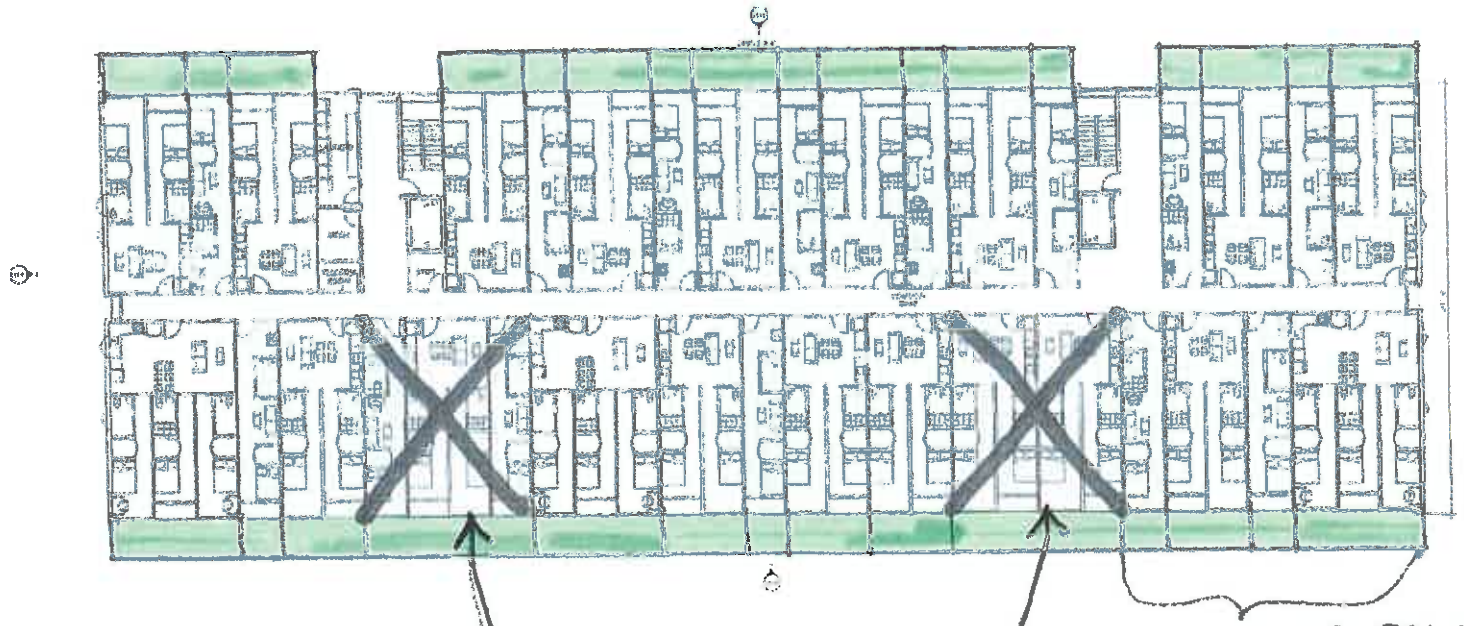
3

Legend

- EFFICIENCY UNIT
- 2 BED/2 BATH
- 3 BED/3 BATH
- COMMON

29 UNITS

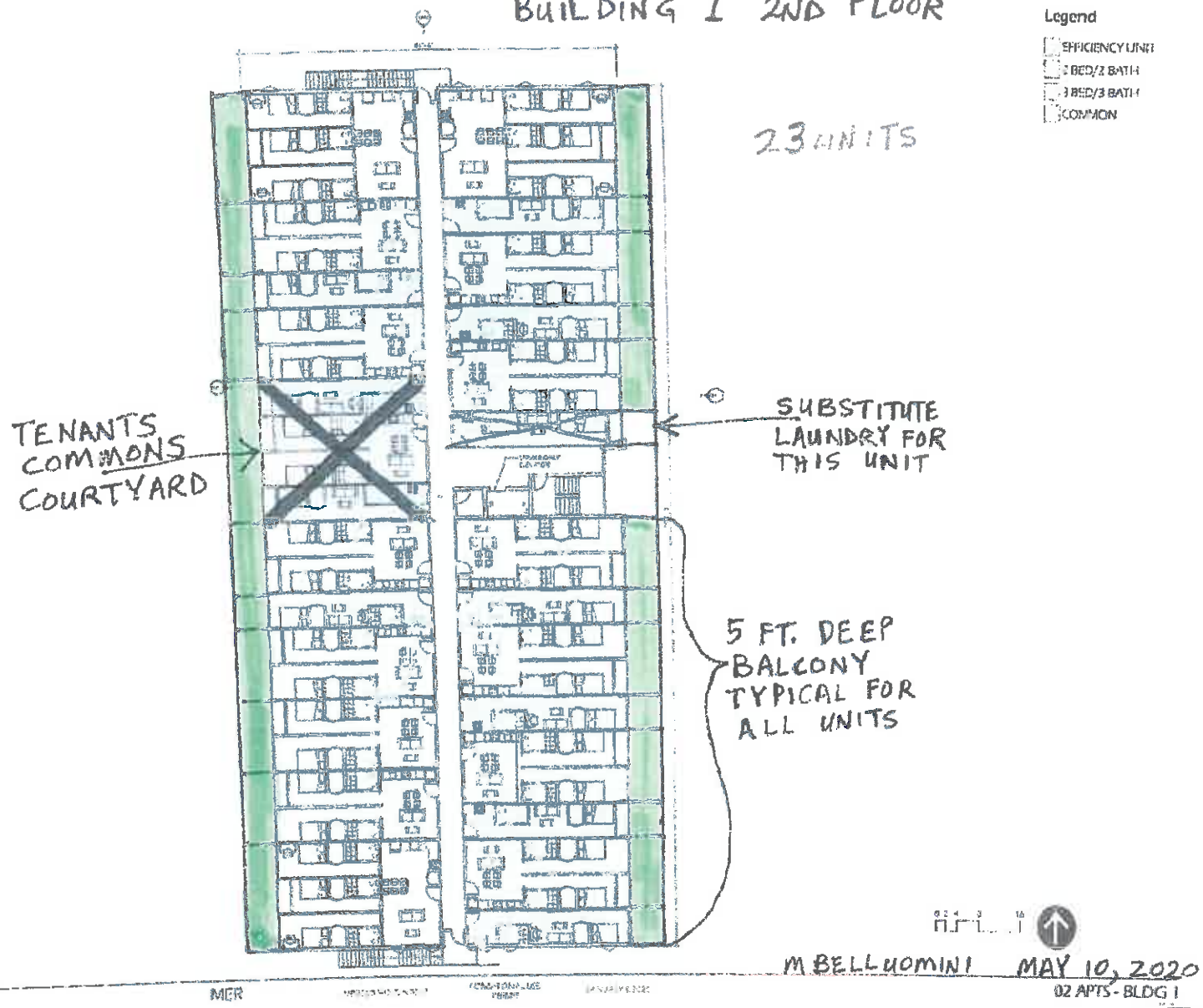
BUILDING 4 2ND FLOOR



M BELLUOMINI
MAY 10, 2020

4

BUILDING 1 2ND FLOOR



M BELLUOMINI MAY 10, 2020

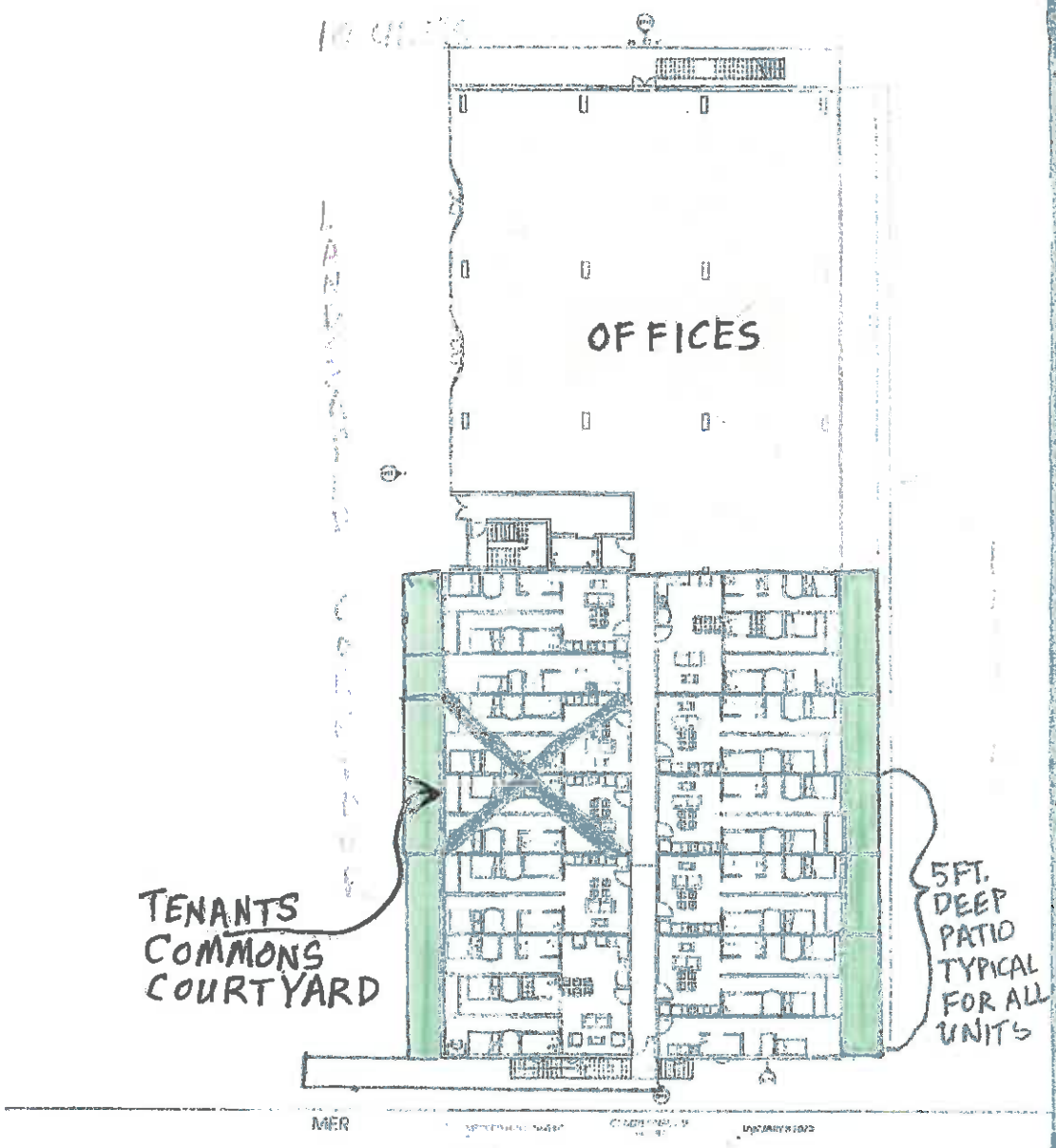
02 APTS - BLDG 1

ATTACHMENT 5 - Page 2

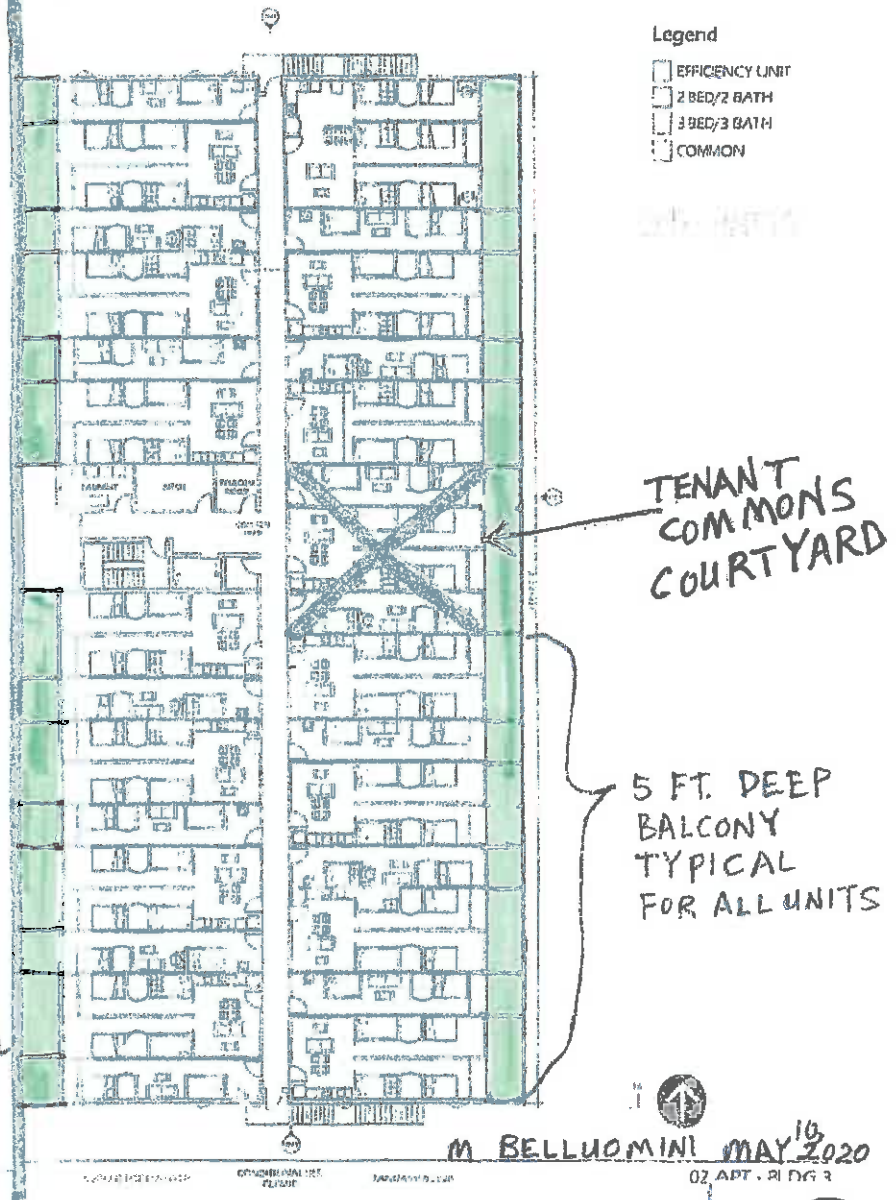
ferrierArchitectureStudio

5

BUILDING 3 GROUND FLOOR



BUILDING 3 2ND FLOOR



M BELLUOMINI MAY 10 2020

6

GlaserWeil

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19th Floor
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310.553.3000 TEL
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Elisa L. Paster

Direct Dial
310.556.7855
Direct Fax
310.843.2655
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epaster@glaserweil.com

June 1, 2020

VIA E-MAIL

Mayor Murphy & Councilmembers
City of Merced
678 West 18th Street
Merced, CA 95340
cityclerk@cityofmerced.org

Re: Requested continuance of Agenda Item J.1 (Appeal of Conditional Use Permit (CUP) #1238 and Site Plan Review #455)

Dear Mayor Murphy & Councilmembers:

We have recently been retained by Merced Holdings, LP ("Applicant") with regards to the appeal of Conditional Use Permit (CUP) #1238 and Site Plan Review #455 and the associated CEQA clearances to allow construction of a Mixed-Use Development, including 214 Apartments, approximately 22,000 square feet of Retail Commercial Space, and approximately 14,000 square feet of Office Space (the "Project") on a 5.94-Acre parcel generally located at the southeast corner of Yosemite Avenue and McKee Road. **We respectfully request that this item be continued to July 20, 2020 by the City Council.** The reasons for the requested continuance are set forth herein.

A continuance is necessary because the Applicant did not receive proper notice of the June 1, 2020 hearing in accordance with Merced Municipal Code (MMC) Section 20.70.020. That section requires notice to be mailed or delivered to Applicant or Applicant's representative at least ten days prior to the scheduled hearing. Neither Applicant nor Applicant's representative were given such notice. Instead, Applicant simply received a phone call from a member of the planning department on May 26, 2020. This type of notification does not meet the City's requirements, nor was a date certain decided upon and announced at the May 4, 2020 City Council meeting. As such, another notice was required to be given by the City. Therefore, a continuance is required under the City's own laws.

A continuance is also necessary because the Applicant is unable to attend the June 1, 2020 City Council meeting in person due to the ongoing Covid-19 health pandemic. The Applicant is an emergency room physician in Los Angeles, and in an

abundance of caution, as a first responder, Applicant is not travelling as a matter of safety. The Applicant was easily able to participate in the last meeting because it was held by electronic means and did not necessitate the Applicant or its representatives to travel during the health crisis. Applicant and its representatives are located in Southern California, and travelling to the June 1, 2020 meeting is not viable at this time. This is particularly problematic given the lack of notice given to Applicant. Because of these concerns alone, a continuance is merited.

Moreover, Applicant is now further inhibited from travelling by the local curfew due to civil unrest.

A continuance is also necessary to give Applicant the opportunity to try to find common ground with the appellants and to obviate the need for an appeal hearing. Avoiding the appeal will preserve municipal resources and process. Moreover, should the appeal go forward, it is highly likely that the losing party would file litigation against the City to overturn the City Council's decision. The Applicant seeks to avoid the time and cost to the City of litigation. Doing so is in all parties' best interest, especially during this time of diminished municipal revenues.

A continuance will provide our Firm with sufficient time to get up to speed on the issues raised in the appeal and to help broker a compromise. Upon our initial review of the file, there are a number of issues that raise concerns. Particularly, the request by appellant that the Applicant reduce the number of housing units in the Project, even after Applicant already did so. Such reduction potentially violates the State's Housing Accountability Act. We are similarly concerned with the City requiring the Applicant to provide greater setbacks, open space, parking and landscaping than is required by the objective standards in the Zoning Code. We also have concerns about statements by the City Attorney relating to the applicability of the Housing Accountability Act to my client's project and appreciate a continuance to allow us to fully analyze those statements and positions. California is facing a severe housing shortage and reduction of housing units in any project is of great concern. The Housing Accountability Act provides for significant damages and fees to be awarded to successful litigants. The Applicant seeks to avoid such litigation and a continuance will provide Applicant with the time necessary to potentially do so.

We also seek to understand the rationale and process for the City's requirement that, after the initial approval by the Planning Commission, an additional approval be processed relating to MMC Section 20.32. It is unclear why the Applicant was required to obtain this approval after years of processing.

Finally, we seek to work with the City to ensure that the administrative record fully and accurately responds to all issues raised on appeal by appellants. Again, given our Firm's recent retention, we appreciate the City providing a continuance to allow coordination to occur.

For all of the reasons discussed above, we respectfully request that the City continue Agenda Item J.1 to July 20, 2020. The Applicant seeks to avoid potential litigation, something which is in the best interest of all the parties. It does not make sense for the City to rush to a decision that might put the City and the greatly needed housing at risk. Therefore, we hope that the City Council will vote to continue this item.

Please do not hesitate to contact myself or the Applicant with any questions.

Sincerely yours,

Elisa Paster

ELISA L. PASTER
of GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

ELP:ep

cc: Scott McBride, Merced Planning Department, McBrideS@cityofmerced.org
Julie Nelson, Merced Planning Department, NelsonJ@cityofmerced.org
Phaedra Norton, Merced City Attorney, nortonp@cityofmerced.org

Levesque, Jennifer

From: Michelle Morgante <michellemorgante@gmail.com>
Sent: Monday, June 01, 2020 2:58 PM
To: cityclerk
Subject: Item 20-238 of June 1, 2020 meeting

Dear City Council members,

I wish to comment on item 20-238 of tonight's agenda, concerning the project proposed for the corner of Yosemite Ave and McKee Road.

As proposed, this project remains far too dense to be appropriate for this Merced neighborhood, which is where I live with my family.

The developers wish to build 218 units on a parcel of less than 6 acres. The design squeezes as many units as possible onto the land without serious regard for the quality of life of its future occupants or nearby homeowners.

Traffic studies do not account for the increased traffic flow at McKee Road and Silverstone Drive, which is the primary outlet for the families living in the Summer Creek development and the southern portion of the Moraga neighborhood. This intersection, which lacks traffic control along McKee, is increasingly dangerous for my family and my neighbors. I encourage you to consider how the addition of a busy apartment complex will affect traffic on McKee at this corner.

I also urge the council to press the developers to come up with floor plans that are more appropriate for the graduate students they claim they intend to house. Graduate students are older than undergrads. They are more likely to have their own cars, to be married and to have children. These units as designed are minimal in size, with little natural light. A one-bedroom would be as small as 276 square feet; a two-bedroom is 576 square feet, and a three-bedroom would be just 876 square feet. Compare that to the units being built nearby at Merced Station. There, the smallest two-bedroom unit is 909 square feet, and a three-bedroom is 1,279 square feet.

If the developers want to attract graduate students, there needs to be more green space, a play area for children or even a dog walk, such as the one proposed for Merced Station, which also boosts a fitness center, a pool and a basketball court.

It would be unwise for the council to approve this crowded project of narrow, dormitory-like apartments. Developers want to pack their less-than 6-acre parcel with 218 units, or about 36 per acre. They need to follow the example of Merced Station, which has 270 units on more than 17 acres, or less than 16 per acre.

I support the development of a student housing project at the location, but not one that maximizes profit at the expense of quality of life.

Sincerely,

Michelle Morgante - homeowner in Merced

[**NOTICE:** This message originated outside of City of Merced -- **DO NOT CLICK** on **links** or open **attachments** unless you are sure the content is safe.]

Levesque, Jennifer

From: Dan Aleman and Janet Hughes <DANANDJANET@yahoo.com>
Sent: Monday, June 01, 2020 1:22 PM
To: cityclerk
Subject: City Council Meeting Agenda Item, Public Hearing, Reports, J.1, 20-238

City Council Meeting Agenda Item, Public Hearing, Reports, J.1, 20-238

I am opposed to the Mixed-Use Development on proposed located at the Southeast Corner of Yosemite Avenue and McKee Road and request the City Council disapprove the project for many reasons, including but not limited to:

1) Sewer On-Site Storage and Pumping
2) High Traffic on Yosemite Avenue and McKee Road
3) Too many apartments units on this small of a property, 5.94 acres
4) City Water Pressure in our neighborhood is poor
5) Access to site is very limited and will create additional congestion and delays on Yosemite Avenue and McKee Road.
6) Bus stops will also cause congestion and traffic delays.
7) Not enough on-site parking to accommodate the number of apartments, commercial, and office spaces.
8) Several of the studies used during the evaluation of the project and the Conditional Use Permit were too old and should be redone.
9) UC Merced has updated their 10 year plan since this project was first considered and submitted for Conditional Use Permit.

We support the UC Merced and understand the need for housing but this is not the right location for a project of this type.

Janet Hughes Aleman
Spanish Bay Court
Merced, California

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GlaserWeil

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Elisa L. Paster

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epaster@glaserweil.com

June 1, 2020

VIA E-MAIL

Mayor Murphy & Councilmembers
City of Merced
678 West 18th Street
Merced, CA 95340
cityclerk@cityofmerced.org

Re: Requested continuance of Agenda Item J.1 (Appeal of Conditional Use Permit (CUP) #1238 and Site Plan Review #455)

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Elisa Paster

ELISA L. PASTER
of GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

ELP:ep

cc: Scott McBride, Merced Planning Department, McBrideS@cityofmerced.org
Julie Nelson, Merced Planning Department, NelsonJ@cityofmerced.org
Phaedra Norton, Merced City Attorney, nortonp@cityofmerced.org

Greene, Kirk

From: Levesque, Jennifer
Sent: Monday, June 01, 2020 11:03 AM
To: Greene, Kirk
Subject: FW: APPEAL OF CUP 1238 TONIGHT'S COUNCIL MEETING
Attachments: CUP 1238 APPEAL TO JENNIFER.pdf; CUP 1238 JUNE 2020 APPEAL & SLIDES.pdf; CUP 1238 APPEAL REDESIGN 2020.docx

FYI Meeting backup.

From: Michael Belluomini <mbelluomini50@yahoo.com>
Sent: Sunday, May 31, 2020 10:23 PM
To: Levesque, Jennifer <LevesqueJ@cityofmerced.org>
Cc: Tresidder, John <TresidderJ@cityofmerced.org>
Subject: APPEAL OF CUP 1238 TONIGHT'S COUNCIL MEETING

Dear Jennifer
Attached is the memo I wrote to council to be read out loud at the appeal on apartments at McKee & Yosemite Ave at tonight's council meeting. Also attached are the six slides that go with the memo , like a power point presentation. Please provide council the memo and slides. Also attached is a copy of the memo for you with numbers in the text of the memo indicating when you should display the slide with that number while reading the memo out loud. Finally also attached is a word document of the memo to prove that it is less than 300 words. Thank you for all your help. Michael Belluomini

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May 29, 2020

To : Merced City Council

From : Michael Belluomini

Ref : Appeal of CUP 1238

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To : Merced City Council

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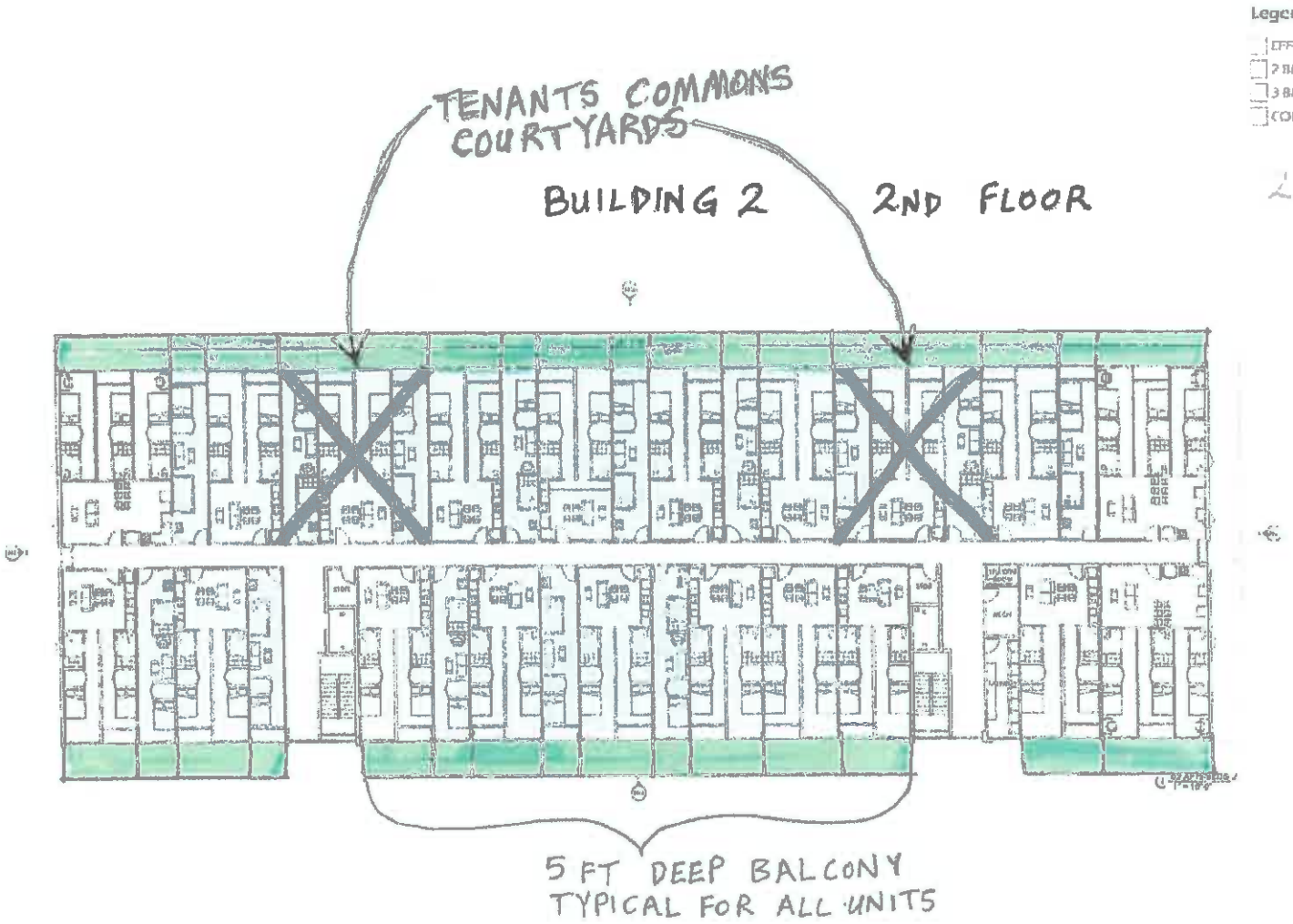
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At the May 5th meeting some were interested in reducing the density to medium (24 units/ acre) which is 144 apartments instead of the 214 proposed. 1 Attached are the plans for the apartments at McKee & Yosemite Ave so modified. To achieve 144 apartments it was necessary to allow ground floor apartments. The redesign still eliminated all third floor apartments and still emphasized the neighborhood commercial nature of the ground floor . 2 Buildings 1, 2, and 3 face Yosemite Ave or McKee Rd providing high visibility for the businesses on the ground floor. 3 Building 4 by contrast faces a parking lot and is across from housing. Therefore the redesign maintained the ground level apartments proposed for building 4.

4 The redesign provides a commons courtyard area exclusive to the tenants for every floor. Each such commons courtyard occupies the area of three apartments. 5 All the apartments are shown with a 5 ft. deep balcony the width of the apartment . Please don't allow the apartment design standards that are in the zoning code to be trivialized. The developer should be following them exactly unless there is some unusual compelling reason not to. A burglar alarm and better locks is not a substitute for design that promotes neighborhood watch and a sense of watching out for the welfare of your neighboring tenants.

6 Finally all of the ground floor of building 3 is proposed as offices. The redesign changes the southern half of the ground floor to 10 apartments . This totals to 143 but substituting two smaller apartments for a large one achieves 144.

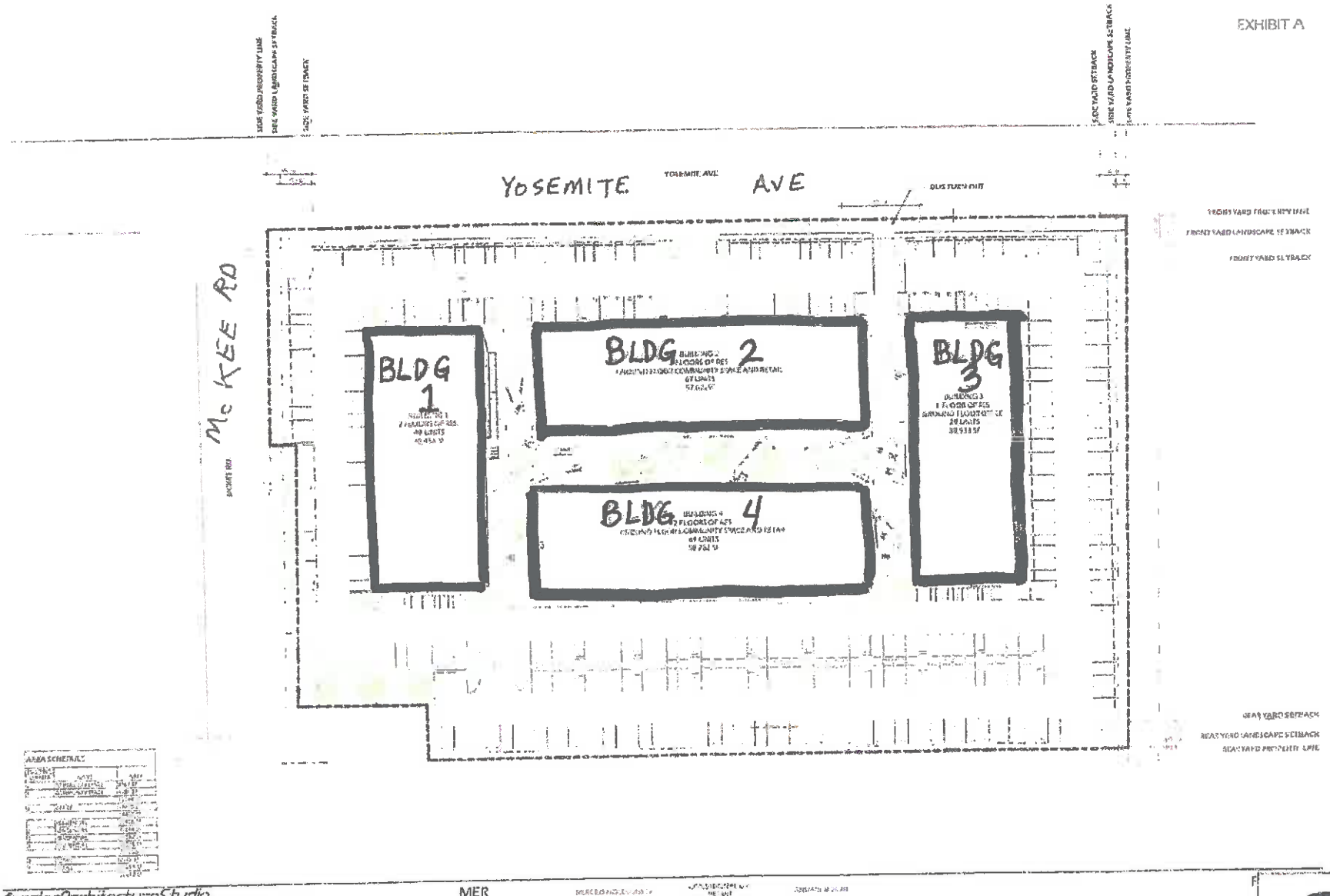
Please approve CUP 1238 on the condition that it conforms to these design changes.



M BELLUOMINI MAY 10,2020

1

EXHIBIT A

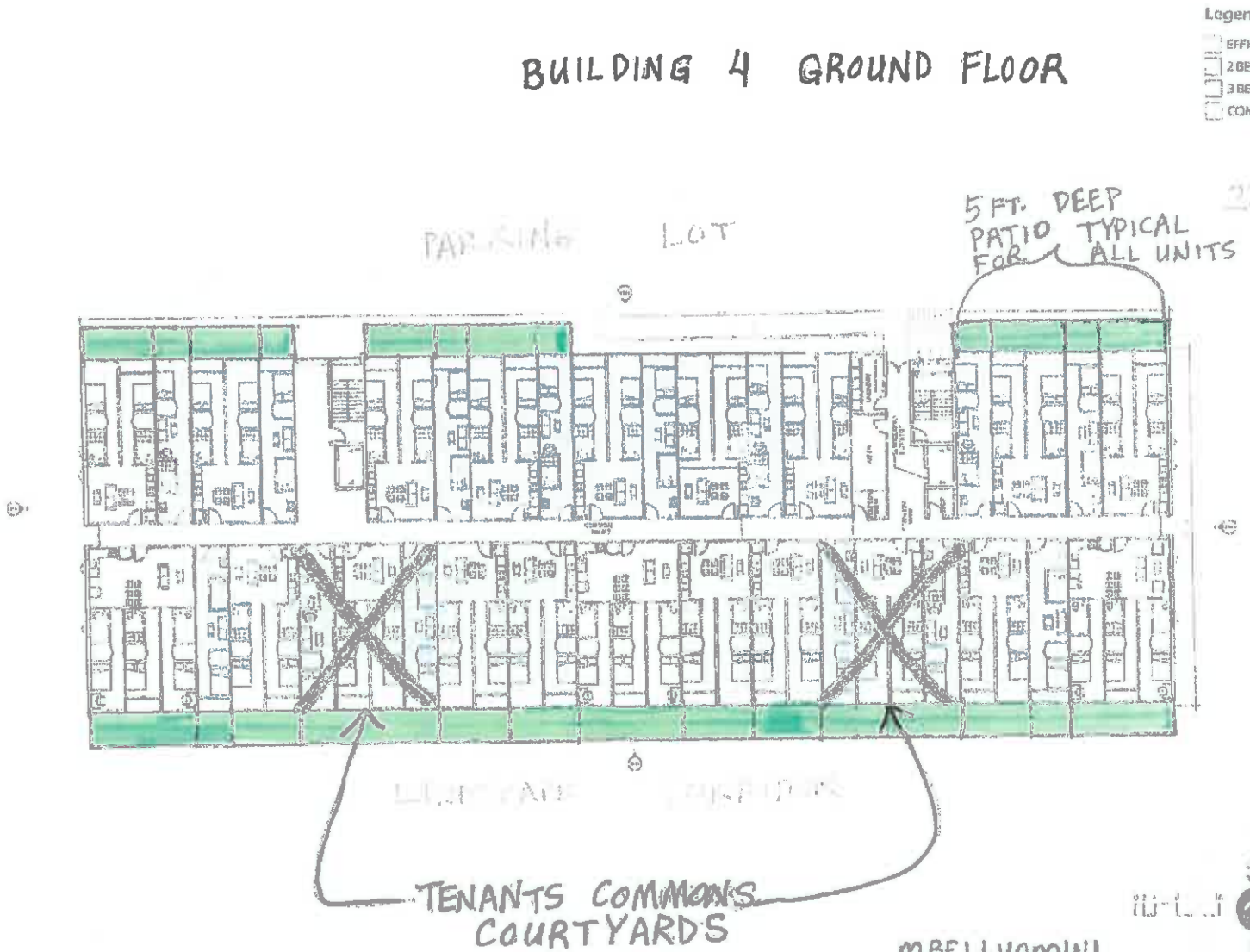


ATTACHMENT 2

ferrierArchitectureStudio

2

BUILDING 4 GROUND FLOOR



M.BELLUOMINI
MAY 19 2020

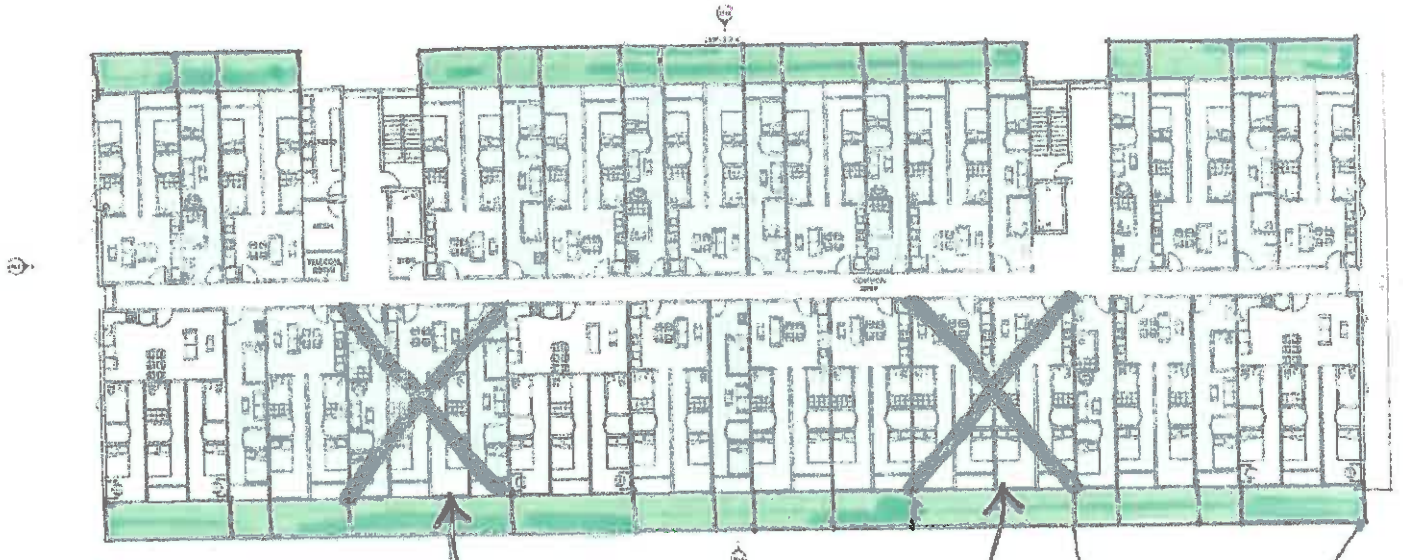
3

Legend

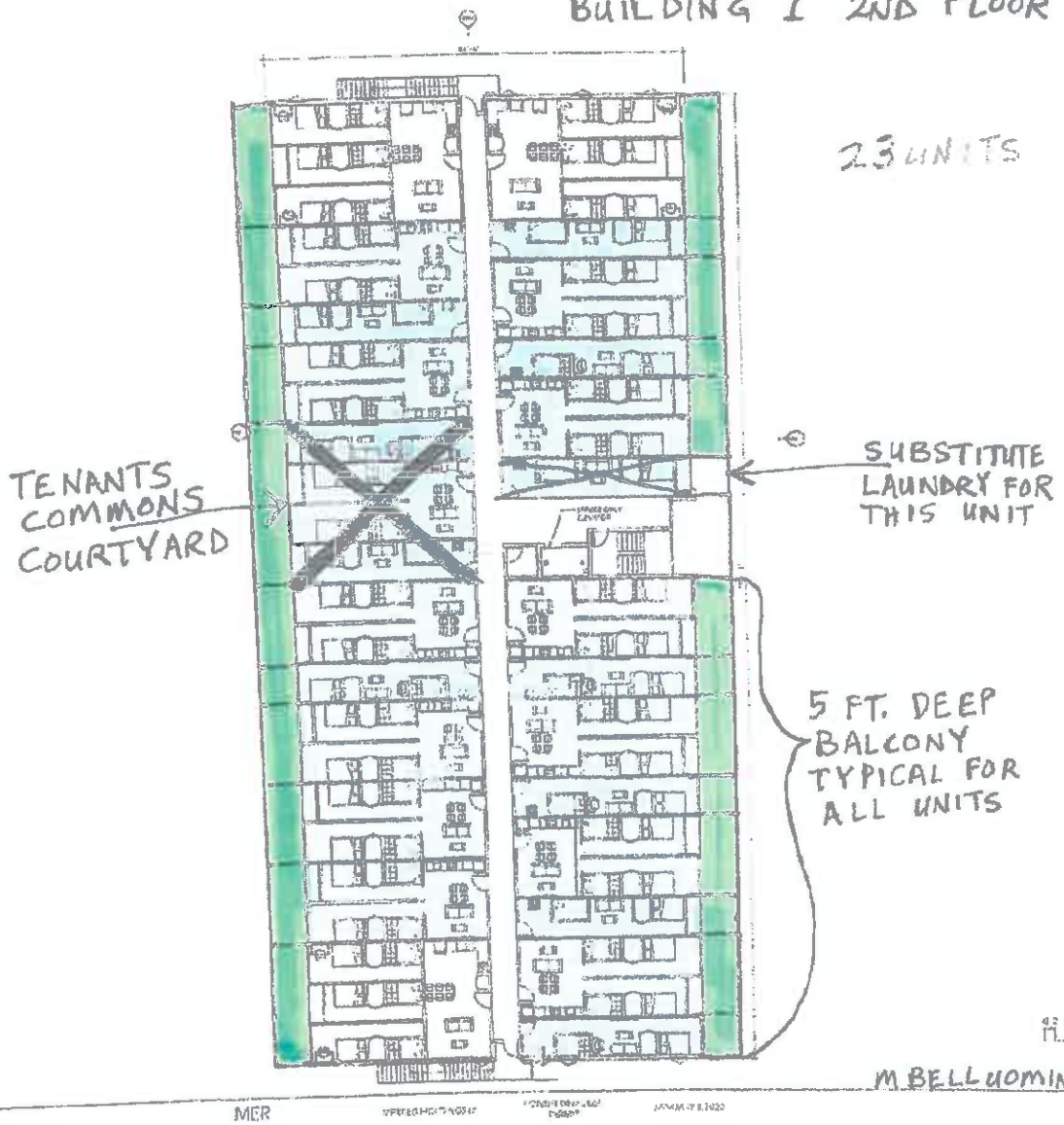
- EFFICIENCY UNIT
- 2 BED/2 BATH
- 3 BED/3 BATH
- COMMON

29 UNITS

BUILDING 4 2ND FLOOR



BUILDING 1 2ND FLOOR



M BELLUOMINI MAY 10, 2020

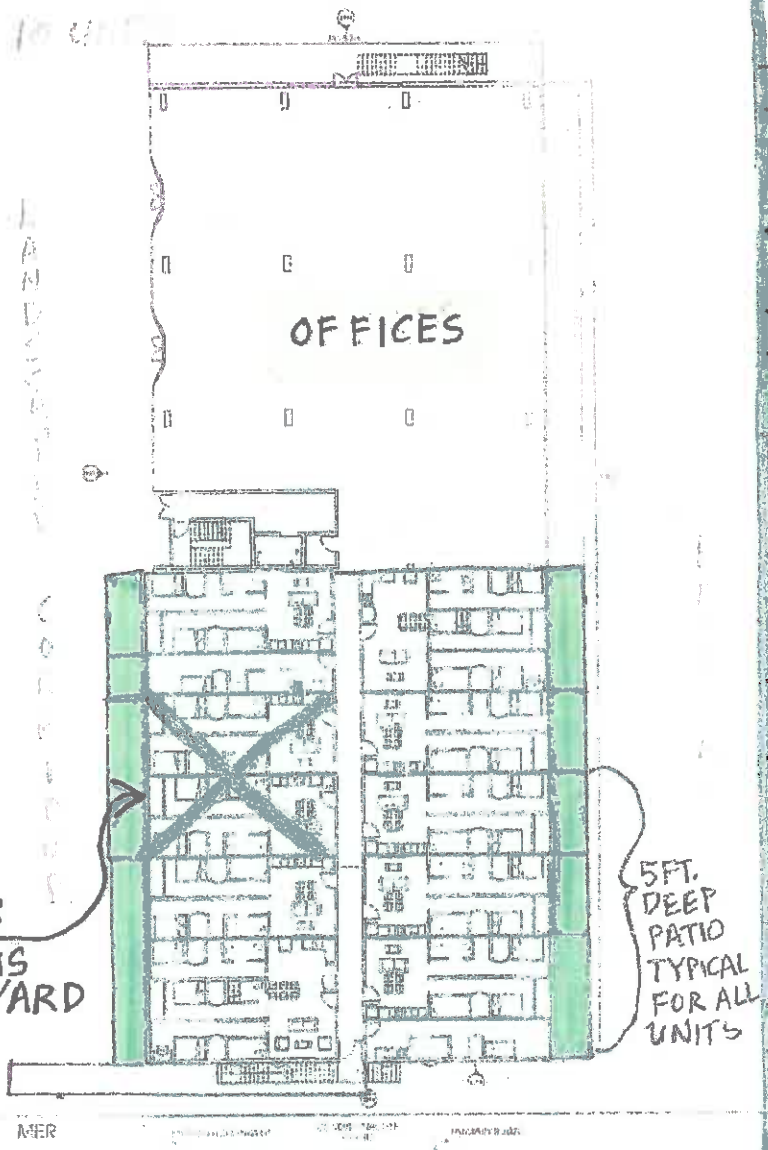
02 APTS - BLDG 1

ferrierArchitectureStudio

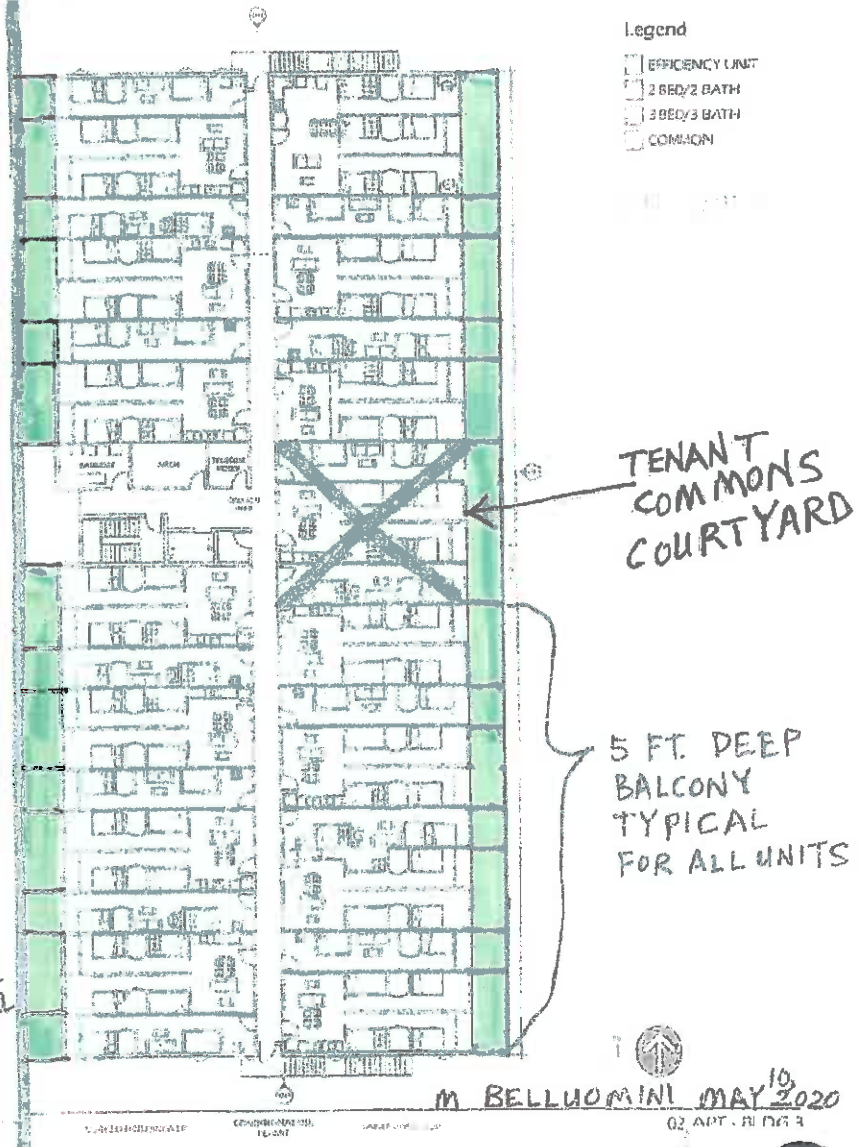
ATTACHMENT 5 - Page 2

5

BUILDING 3 GROUND FLOOR



BUILDING 3 2ND FLOOR



M BELLUOMINI MAY 10 2020

6

CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

File #: 20-238 **Meeting Date:** 6/1/2020

Report Prepared by: Julie Nelson, Associate Planner, Planning Department

SUBJECT: Appeal of Conditional Use Permit (CUP) #1238 and Site Plan Review #455 Which Would Allow the Construction of a Mixed-Use Development, Including 218 Apartments, Approximately 22,000 s.f. of Retail Commercial Space, and Approximately 14,000 s.f. of Office Space on a 5.94-Acre Parcel Generally Located at the Southeast Corner of Yosemite Avenue and McKee Road

REPORT IN BRIEF
Considers an appeal of the Planning Commission's approval of Conditional Use Permit (CUP #1238) and Site Plan Review #455.

RECOMMENDATION
City Council - Adopt a motion:

A. Providing direction to approve or disapprove Environmental Review #19-37 (Mitigated Negative Declaration) for Conditional Use Permit #1238 and Environmental Review #20-05 (CEQA Section 15162 Findings) for Site Plan Review #455.

B. Providing direction to staff regarding findings to grant or deny the appeal, with or without prejudice; and,

ALTERNATIVES
1. Approve one of the resolutions; or,
2. Refer back to staff for reconsideration of specific items as requested by Council; or,
3. Continue item to a future council meeting (date and time to be specified in City Council motion).

AUTHORITY
City of Merced Zoning Ordinance Section 20.74 - Appeals addresses the procedure for appealing a decision made by the Planning Commission.

DISCUSSION
Summary

On May 4, 2020, the City Council held a public hearing regarding the appeal of the Planning Commission's approval of Conditional Use Permit #1238 and Site Plan Review #455. At the public hearing, the City Council received a report from staff and heard testimony from Richard Harriman on

behalf of the appellants and Raj Joshi and Joe Englanoff on behalf of the project applicant. Additionally, there were two e-mails read into the record and one voicemail played for the City Council to consider. One e-mail and the voicemail were opposed to the project and one e-mail was supportive of the project if modified to make the project more compatible with the area.

After hearing all the testimony, the City Council closed the public hearing and began its deliberation on the matter. After some discussion, the City Council voted to continue their deliberations to a future meeting. Although not its primary purpose, the continuance would also provide an opportunity for the appellant and the applicant to further discuss the project, if they so choose, potentially seeking a resolution of the appeal.

The previous Administrative Report is provided for reference at Attachment 6. The correspondence that was presented to the Council on May 4, 2020, is provided at Attachment 1. A letter from Joe Englanoff that was provided to Council, but not read into the record on May 4, 2020, is provided at Attachment 2, and an e-mail from Rosemary Duran, received after the deadline for the May 4th meeting, is provided at Attachment 3.

Other Projects in the Area

At the City Council meeting on May 4, 2020, the height of the buildings was a concern. Director of Development Services, Scott McBride, advised that the buildings currently under construction east of this site for the Merced Station Project (south side of Yosemite Avenue at Lake Road - refer to the Site Plan at Attachment 4) has three-story buildings. The building height for these buildings is 35 feet, but the building elevations have "wings" on each end of the building that extend up to 38 feet (Attachment 5). The City Council approved a General Plan Amendment and Zone Change for this project in 2017. The Zone Change created Planned Development #76 which allows for a maximum height of 45 feet for residential buildings.

Additionally, City staff is working on an annexation at the northeast corner of Yosemite Avenue and Gardner Road. The proposed buildings for the residential portion of this development would also be three-stories tall (no exact height has been determined at this point).

City Council Action

The City Council is asked to provide direction to staff, along with Findings to either approve or deny the appeal. Staff will prepare a Resolution based on that direction and Findings and return at a future Council meeting for Council to take final action on the appeal.

- Should the City Council provide direction to grant the appeal, thus over-turning the Planning Commission's decision on Conditional Use Permit #1238 and Site Plan Review #455, City Council should provide direction as to whether the approval is with or without prejudice as well as providing specific objective reasons why the Council is approving the appeal and thus denying the project.
    - If the decision is made with prejudice, the applicant would be precluded from re-

applying for the same or similar project within one year of the decision.

- If the decision is made without prejudice, the applicant could re-apply with no time limit.

- Should the City Council vote to deny the appeal, thus upholding the Planning Commission's approval of CUP #1238 and Site Plan Review #455, staff recommends City Council direction include the Findings for Conditional Use Permit approval per MMC 20.68.020, the Findings for Site Plan Review approval per MMC 20.68.050 and the Conditions of approval contained in Planning Commission Resolutions #4035 and #4036 along with any recommended changes to the findings and conditions.

City Council should also provide direction to either approve or deny Environmental Review #19-37 (Mitigated Negative Declaration) for Conditional Use Permit #1238 and Environmental Review #20-05 (CEQA Section 15162 Findings) for Site Plan Review #455.

IMPACT ON CITY RESOURCES

The project would be required to annex into the City's Community Facilities District for Services and pay all required Public Facility Financing Program Impact Fees. Payment of these fees and ongoing payment of the CFD taxes would mitigate any expected impacts on City resources.

ATTACHMENTS

1. Correspondence presented on May 4, 2020
2. Letter from Joe Englanoff
3. E-mail from Rosemary Duran
4. Site Plan for Merced Stations
5. Building Elevations for Merced Stations
6. Administrative Report #20-87

From: cityclerk
Sent: Mon May 04 16:01:05 2020
To: Greene, Kirk; Levesque, Jennifer
Subject: FW: Permit # 1238 Site Plan Review #455
Importance: Normal

Meeting Backup

-----Original Message-----
From: Dene Silveira [redacted]
Sent: Sunday, May 03, 2020 12:11 PM
To: cityclerk <cityclerk@cityofmerced.org>
Subject: Permit # 1238 Site Plan Review #455

Dear City Council,

I reside on Pebble Beach Ct. directly across from the proposed site. I have previously attended meetings and have written response to Planning Commission special meeting held on April 13,2020. At and on each of those occasions I have voiced opposition to proposed site plan development changes. I still stand in opposition to these proposed changes with regard to the density of entire build. These proposed apartment units are extremely compact in size with each requiring parking. I cannot see the need in Merced to "guinea pig" this project on such a small parcel of land adjacent to an already busy intersection at Yosemite Ave. and McKee Rd. I urge the City Council to take into consideration neighborhood concerns. As a neighboring resident I am not against developing said parcel for the good of ALL concerned and hope the city council enforces the already in place zoning ordinance and deny this proposed change. This certain project as designed would be better suited within walking distance of campus, not here. It very well may not be leased to only students and potentially could be a problem in later years. Do what is favorable to all. There should be a fair compromise here.

Sincerely, Daralene Silveira

[redacted]
Merced, CA 95340

[NOTICE: This message originated outside of City of Merced -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

ATTACHMENT 1

From: cityclerk
Sent: Mon May 04 16:11:33 2020
To: Greene, Kirk; Levesque, Jennifer
Subject: FW: PUBLIC COMMENT ON CUP 1238 TONIGHT'S MEETING
Importance: Normal
Attachments: Planning Commission CUP 1238 SHORTENED.docx

backup

From: Michael Belluomini [redacted]
Sent: Monday, May 04, 2020 12:33 PM
To: cityclerk <cityclerk@cityofmerced.org>; Tresidder, John <TresidderJ@cityofmerced.org>; Levesque, Jennifer <LevesqueJ@cityofmerced.org>
Subject: PUBLIC COMMENT ON CUP 1238 TONIGHT'S MEETING

Attached is my comment to be read at the public hearing for CUP 1238 at tonight's city council meeting.
Michael Belluomini
[**NOTICE:** This message originated outside of City of Merced -- **DO NOT CLICK** on **links** or open **attachments** unless you are sure the content is safe.]

Date: May 4, 2020

To: Merced City Council Members

From: Michael Belluomini, former Council Member

Ref: CUP #1238 for 214 Apartments

I am writing you to urge you to approve CUP #1238 contingent on several significant changes.

Density - The project is still too dense at 214 units. Traffic congestion and insufficient parking are problems. The General Plan designation of Medium Density Housing is a more appropriate density for this project at 24 units per acre instead of the High Density use of 36 units per acre. Therefore, I recommend the Council reduce the density and number of apartments to 24 units per acre to yield a project of 144 units instead of 214, (70 less) as follows:

1) Building #1 Convert the ground floor apartments to neighborhood commercial shops or offices. This decreases project apartments by 22.

2) Delete the third floor. This decreases the project apartments by 34 units.

3) Unit Sizes - Reduce the number of the one bedroom units to achieve a maximum of 144 apartments.

4) Delete some units to create tenant common courtyards (explained in 5 & 6 below)

Safe and Healthy Environment - In 2016, the City Council approved a major revision of the zoning ordinance. After much discussion, the council approved Residential Design Standards for Multi-Family Dwellings as part of the zoning ordinance (pages 171 and 172) Section 20.46.030 (Attached). These Design Standards are critical to making apartments safe, healthy and an enjoyable living environment for citizens of Merced. Therefore, I urge you to change the design of the apartment portion of the project as follows:

5) Building #1 Create common courtyard for tenants at the landing of the apartment stairs by converting three apartments to a courtyard. Convert one apartment area to a laundry. (See Attached Plan)

6) Building #2 and #3 Similarly, create a common courtyard for tenants at the landing of the apartment stairs by converting three apartments to a courtyard.

7) Change the design so that EVERY apartment has a balcony of a minimum size of 5 feet by 8 feet..

Shops and Services - Though the developer has designed this project for UC student tenants, you as City Council members must have a long-term view and broader view to all the citizens of Merced using this project. The site is designated a Neighborhood Commercial Center because it meets the General Plan Policy spacing of being one mile from the nearest shopping center of the Promenade/Raley's. Therefore, I urge you to designate the ground floor of all buildings to be retail businesses or offices as follows:

8) Building #2 Convert the ground floor, non-business uses to retail commercial shops or business offices.

The role of the City Council is to allow the land developer to succeed in a profitable project ***while protecting*** the citizens of Merced .

RECOMMENDATION - I recommend you approve CUP #1238 with the addition of Items 1 through 8 above as conditions of approval for the project.

Date: May 4th, 2020

To: Merced City Council Members

On behalf of Merced Holdings

Re: Appeal of CUP #1238 and Appeal of Site plan review #455 for "The Hub" on Yosemite

VIA EMAIL TRANSMISSION

Merced City Council

City of Merced

678 W. 18th Street

Merced, CA 95340

Dear Mayor Murphy, Mayor Pro Tempore Serrato, and members of the Merced City Council,

The Hub at Yosemite is in full compliance with the City of Merced's General Plan and zoning ordinances. The City of Merced's General Plan encourages the development of Mixed-Use projects and with the Commercial Neighborhood (C-N) designation, allows for residential uses. IF the intent of the City Council and the General plan was to exclude certain residential uses in C-N zoning, the City would have expressly done so.

Impact of traffic has been a vocal concern. We are glad to report that Merced Holdings has worked vigorously to minimize any developmental traffic impacts, including conducting multiple traffic studies (all with favorable conclusions) and proposing several reasonable mitigation measures.

In response to community concerns, two ENTIRE buildings were reduced by an ENTIRE floor, and building set-backs were substantially increased from the required 20' set back to over 75'-125' setbacks. Further, extensive very mature foliage will be planted around the perimeter to beautify the development and an 8' solid wall will be built on the south side of the property to further respect surrounding neighbors privacy. Our project height is completely in line with recently approved similar projects. As an example. the fifteen- 3 story buildings of the development know as "Merced Station" and the five- 3 story buildings of the Childs and B street development—are both approved and of equal (Or greater) heights than our approved buildings.

The waste-water collection and disposal plan was developed in conjunction with the City of Merced's Department of Public works and the City has testified that the concept and process is in compliance with the City guidelines. Final designs must be approved by the Department of Public works and oversight is both expected and welcomed.

ATTACHMENT 2

All procedural requirements surrounding the process of obtaining our 7-0 unanimous approvals of CUP #1238 and our obtaining another 7-0 unanimous approval for Site Plan #455 have been met. "The Hub" is the only development since the interfacing regulations were enacted in 2016, that was required to submit to secondary interface hearings and diligently complied.

Furthermore, at the prior council meeting it was stressed that a "partnership" with UC Merced would "go a long way." We are glad to report that we have had several high-level discussions with UC Merced about our project. There is tremendous interest on their part to utilize our development as a "Hub" for their graduate student program. UC Merced currently has just under 1,000 graduate students and not a single bed to offer them. Hence, the UC have graciously provided us a "Letter of Interest" and are anxiously awaiting the green light from this body so we can finalize the partnership. Everyone values the imperativeness to foster growth at the University and what it means to the City of Merced. Our project is right in line with those goals.

Despite the additional time, energy and great cost levied on this project, due to appeals and procedural concerns, we stand before you today committed, not only to this project but to the City of Merced overall. We truly hope and believe this will be the first of many projects within the City and look forward to being a long-term partner.

One last comment that relates to our current national status is warranted. In these times of unimaginable uncertainty, skyrocketing unemployment, numbers reminiscent of the great depression, and impending economic collapse, you, the Members of the City Council have a fiduciary responsibility to the citizens of Merced and the City as a whole--to support job growth and development. This responsibility extends to the over 84,900 voices you did NOT hear from who are relying on all of you to make the right decision for the betterment, protection and economic survival of the WHOLE City. With over 30 Million Americans out of work and counting, OUR PROJECT can bring desperately vital near-term jobs to the area, boost tax revenue and commerce while alleviating some of the current and future housing burdens Merced is and will be facing.

We respectfully request, Mayor Murphy, Mayor Pro Tempore Serratto and ALL the honorable Members of the Merced City Council to uphold the Merced City Planning Commission's unanimous multiple decisions and deny the appeals before you.

Thank You for time,

Sincerely,

Joseph Englanoff, Trustee

Merced Holdings

From: cityclerk
Sent: Tue May 05 09:34:48 2020
To: Greene, Kirk
Subject: FW: City Council Agenda 5/4/20 Public Hearing I.1 20-087 Appeal of Conditional Use Use Permit 5.94 Acres Parcel Southeast Corner of Yosemite Avenue and McKee Road
Importance: Normal

backup

-----Original Message-----
From: RoseMary Duran [redacted]
Sent: Monday, May 4, 2020 3:45 PM
To: cityclerk <cityclerk@cityofmerced.org>
Cc: Ben Duran [redacted]
Subject: City Council Agenda 5/4/20 Public Hearing I.1 20-087 Appeal of Conditional Use Use Permit 5.94 Acres Parcel Southeast Corner of Yosemite Avenue and McKee Road

Dear City Council:
We are asking you to consider modifying the permit to reflect Michael Belluomini's Opinion Article published in today's Merced Sun Star: Former Merced city council member says too units planned in apartment project. We believe the Permit is a violation of the General Plan and would create congestion and noise in a residential area. Specifically, we are asking the Council to follow the General Plan which allows for 24 units per acre and not to allow a third story on any of the buildings.
Thank you for your consideration,
Benjamin & RoseMary Duran
[redacted]
Merced, CA 95340
Sent from my iPad
[NOTICE: This message originated outside of City of Merced – DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

ATTACHMENT 3

CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

File #: 20-087 Meeting Date: 5/4/2020

Report Prepared by: Julie Nelson, Associate Planner, Planning Department

SUBJECT: Appeal of Conditional Use Permit (CUP) #1238 and Site Plan Review #455 Which Would Allow the Construction of a Mixed-Use Development, Including 218 Apartments, Approximately 22,000 s.f. of Retail Commercial Space, and Approximately 14,000 s.f. of Office Space on a 5.94-Acre Parcel Generally Located at the Southeast Corner of Yosemite Avenue and McKee Road

REPORT IN BRIEF
Considers an appeal of the Planning Commission's approval of Conditional Use Permit (CUP #1238) and Site Plan Review #455.

RECOMMENDATION
City Council - Adopt a motion:

A. Open the Public Hearing and hear all testimony regarding the appeal; and,

B. Close the Public Hearing; and,

C. Provide direction to staff regarding findings to grant or deny the appeal, with or without prejudice.

ALTERNATIVES
1. Continue the public hearing to a future meeting (date and item to be specified in the motion).

AUTHORITY
City of Merced Zoning Ordinance Section 20.74 - Appeals addresses the procedure for appealing a decision made by the Planning Commission.

DISCUSSION
Appeal

Conditional Use Permit #1238 was approved by the Planning Commission on January 22, 2020, to allow the construction of a mixed-use development with 214 apartment units and approximately 37,117 square feet of commercial uses within four buildings (two 2-story buildings and two 3-story buildings) on an approximately 5.94-acre parcel, generally located at the southeast corner of Yosemite Avenue and McKee Road (refer to the Location Map at Attachment 1 and the Site Plan at Attachment 2).

ATTACHMENT 4

On April 13, 2020, the Planning Commission held a special meeting via teleconference and considered Site Plan Review #455 to review the proposed project in relation to the City's Interface Regulations found in Section 20.32 of the City of Merced Zoning Ordinance. The Planning Commission unanimously approved Site Plan Review #455.

In compliance with Section 20.74 - Appeals of the City's Zoning Ordinance, Casey Steed filed an appeal of the Planning Commission's approval of Conditional Use Permit (CUP) #1238 on January 29, 2020. Mr. Steed submitted the information provided at Attachment 3 outlining the reasons for his appeal.

On April 20, 2020, Richard Harriman, on behalf of Casey Steed, filed an appeal of Site Plan Review #455. This appeal is provided at Attachment 4.

The following information will provide the City Council with details regarding the project, background on the project site, compliance with the General Plan and Zoning Ordinance (including the specific findings necessary to approve a Conditional Use Permit and Site Plan Review), information regarding the traffic generated by the proposed project, sewer capacity, and Neighborhood Impact/Interface.

Project Description

As shown on the Site Plan Attachment 2, the proposed project includes four buildings. Building 1 is a two-story building containing a total of 49 apartment units. Building 2 is a three-story building with a combination of community space for the residential tenants and retail space on the first floor and a total of 67 apartment units on the second and third floors. Building 3 is a two-story building with office space on the first floor and 29 apartments on the second floor. Building 4 is a three-story building with a combination of community space and retail space on the first floor and 69 apartments on the second and third floors. The project would provide a total of 127,206 square feet of residential living space, 12,544 square feet of community space for the residential tenants, 12,255 square feet of office space, and 22,672 square feet of retail commercial space. The floor plans for each building are provided at Attachment 5. The elevations and renderings are provided at Attachment 6.

The residential units would include one, two, and three-bedroom units. The development would have 82 - 1 bedroom/1bath units; 112 - 2 bedroom/2 bath units; and, 20 - 3 bedroom/3 bath units. The one -bedroom units would vary in size depending on whether the unit includes a balcony. A one-bedroom unit with a balcony would have 276 square feet and without a balcony, it would have 300 square feet. The two-bedroom units would be 576 square feet with a 24-square-foot balcony, and the three-bedroom units would be 876 square feet with a 24-square-foot balcony. The floor plans for each unit type are provided at Attachment 7. The table below provides an overview of the proposed buildings.

BUILDING DETAILS						
Building No.	**Stories**	**1st Floor**	**2nd Floor**	**3rd Floor**	**Total Square Feet**	**Height (to top of parapet)**
1	2	22 units	27 units	n/a	30,456	26' 1-1/8"
2	3	Retail/Resid Space	34 units	33 units	57,622	35' 7-7/8"
3	2	Office	29 units	n/a	30,533	26' 1-1/8"
4	3	Retail/Resid Space	34 units	35 units	58,262	35' 7-7/8"
TOTAL UNITS		214			176,873	

The project site is zoned Neighborhood Commercial (C-N). Per Table 20.10-1 of the Zoning Ordinance, commercial uses are allowed in a C-N zone and multi-family uses are allowed with the approval of a Conditional Use Permit. The zoning ordinance does not specifically address mixed-use developments within a C-N zone, but because both commercial and residential uses are allowed in the C-N zone, they may be combined into one project.

The General Plan envisions mixed-use development in newer growth areas, however, it is not precluded from existing areas. The General Plan states that application of mixed-use, pedestrian- and transit-friendly design principles will be encouraged in all new growth areas of the City and that these same principles can also be applied to developed areas, as feasible, when new development or redevelopment is proposed.

No specific tenants have been identified for the retail portions of the project located within Buildings 2 and 4. However, the Floor Plans for Buildings 2 and 4 identify the types of tenants the developer envisions for this project (Attachment5). These uses could include service-related uses such as barbershops and nail salons, general retail uses, and restaurant/food uses. The first floor of Building 3 is designated for office space. The developer has been working with UC Merced to occupy the office space. They have received a letter of interest from the UC and talks are ongoing regarding the UC occupying the office space. The developer is also in talks with UC Merced regarding using at least a portion of the residential units to provide off-campus housing for Graduate and Post-Graduate students.

The apartment complex would have an on-site manager and would use a key-fob entry system to increase security and allow better monitoring of the number of tenants residing in the complex. Each apartment would be issued a certain number of key-fobs which would give them access to the buildings, their apartment, and the common areas. The key-fobs would also be required to enable power to the units which would make it more difficult for an unregistered tenant to stay in the unit.

The common/community areas in Buildings 2 and 4 would include amenities such as a gym, a kitchen/community area for gatherings and events, a meditation room, a study area, a media room, indoor bike storage area, laundry facilities, and a management office, mailroom, and office center for tenants. Building 2 also provides a roof-top deck area to provide additional outdoor open space for the tenants (Attachment 8). This area would provide an additional outdoor area for tenants to lounge

and socialize. The lounge area would be located near the center of the roof and would include tables, chairs, etc. for the tenants to use while in this area. There would be a 42-inch-high railing around the lounge area separating it from the rest of the roof-top area for safety purposes. Condition #37 of Planning Commission Resolution #4035 restricts the hours of operation for the roof-top deck to 7:00 a.m. to 10:00 p.m. daily.

The site design places parking around the perimeter of the site with the building concentrated near the middle of the site with a promenade area between the buildings (refer to the Site Plan at Attachment 2).

The front building (Building 2) is set back approximately 75 feet from Yosemite Avenue. Building 1 is approximately 85 feet from McKee Road (increased from approximately 50 feet in the previous design), Building 3 is approximately 82 feet from the eastern property line near Whitewater Way (an increase from 55 feet), and Building 4 is approximately 125 feet from the southern property line. A minimum eight-foot tall block wall would separate the project from the residential uses to the south of the site (Condition #32 of Planning Commission Resolution #4035).

Distance to Adjacent Residential Uses

As previously discussed, the project would contain two and three-story buildings. The two-story buildings would have a height of approximately 26 feet. Buildings 2 and 4 are three-story buildings and would have a height of just over 35 feet (35' 7-7/8"). On the roof of each of the buildings there would be an elevator shaft and screening for the mechanical equipment that would extend above the roof line.

The table below shows the setback of each building and the distance from each building to the nearest home. The site itself would be closer than the distances shown. The measurements shown are an approximate distance from the proposed buildings to the existing homes. Refer to Attachment 9 for an aerial photo showing the approximate distances.

Building	Setback from Nearest Property Line	Distance to Nearest Existing Home
1	85'	160'
2	75'	370'
3	82'	125'
4	125'	197'

For context, page 2 of Attachment 9 shows the distances around the block where City Hall is located.

As described in the Finding H of the Planning Commission Staff Report #20-01 (Attachment 12), the site would be provided with dense landscaping to help buffer the surrounding uses from noise and lights and to help provide privacy between the uses.

Background

The project site was annexed to the City in 2003 as part of the Hunt Farms Annexation. The project site is currently vacant but was previously occupied by two single-family dwellings (these were demolished in 2017). The site is currently zoned Neighborhood Commercial (C-N). The subject site consists of two individual lots [Assessor's Parcel Numbers (APN's): 008-310-053 and -038 totaling 5.94 acres]. Recently, 22,670 square feet of lot area was acquired from the neighboring property to the south. On October 7, 2019, the City Council approved a General Plan and Zone Change changing the land use designation for this newly acquired area consistent with the rest of the site (C-N).

In 2014, the owner applied for a General Plan Amendment and Zone Change to change the entire site from Low Density Residential (LD) and R-1-6 to Neighborhood Commercial (CN). At that time, the owner proposed the construction of a 62,000-square-foot retail commercial center that would have included a small grocery store, a fast-food restaurant (with a drive-through), and other retail uses appropriate to the Neighborhood Commercial (C-N) zone. The City Council approved the General Plan Amendment and Zone Change to Neighborhood Commercial in 2015.

When the General Plan Amendment and Zone Change were approved in 2015, the City Council had two options for the Shopping Center design on the project site. One option included providing direct access to Whitewater Way from Yosemite Avenue, and the other option did not provide access other an entrance-only service road to serve commercial uses proposed on the site. The City Council voted to prohibit direct access from Yosemite Avenue to Whitewater Way and instead, approved the option with an entrance-only service road.

When the City Council approved the General Plan Amendment and Zone Change on October 7, 2019, they also considered the appeal of the Planning Commission's denial of Conditional Use Permit (CUP) #1231 to allow a mixed-use project consisting of 428 Efficiency Dwelling Units and approximately 18,000 square feet of retail commercial space. The City Council upheld the Planning Commission's denial of CUP #1231 based on density, traffic congestion, and concerns regarding sewer capacity.

On November 25, 2019, the owner submitted a revised project for the site. The revised project remained a mixed-use development, but reduced the number of units to 214 units, added office space, reduced the building heights, and increased the setbacks. The Planning Commission considered this application (CUP #1238) on January 22, 2020, and voted unanimously to approved CUP #1238 (refer to Planning Commission Resolution #4035 at Attachment 10). An excerpt from the Planning Commission minutes of January 22, 2020, are provided at Attachment 11 and Planning Commission Staff Report #20-01 is provided at Attachment 12.

Subsequent to the Planning Commission meeting of January 22, 2020, it was determined that in order to comply with the Interface Regulations of Section 20.32, the required findings for a Site Plan Review must be made. Because the Planning Commission had already acted on the Conditional Use Permit, staff felt it best to have the Planning Commission act on the Site Plan Review application as well. Therefore, the Planning Commission held a special meeting on April 13, 2020, to consider Site Plan Review #455. The Planning Commission voted unanimously to approve Site Plan #455 (refer to Attachment 13 for Planning Commission Resolution #4036). An excerpt of the Draft

Planning Commission Minutes for April 13, 2020, is available at Attachment 14 and Planning Commission Staff #20-03-Addendum is provided at Attachment 15.

Findings

Below are the required Findings made by the Planning Commission to approve Conditional Use Permit #1238 and Site Plan Review #455 in compliance with Zoning Ordinance Sections 20.68.020 and 20.68.050.

General Plan Compliance

The proposed mixed-use project complies with the General Plan designation of Neighborhood Commercial (CN) and the Zoning classification of Neighborhood Commercial (C-N). The proposed commercial uses comply with the General Plan designation of Neighborhood Commercial (CN). The CN designation is intended to provide shopping areas and services to serve residential neighborhoods. As demonstrated by the policies below, mixed-use development is encouraged by the General Plan and providing housing above retail uses is specifically stated by Implementing Action 1.2.b.

Although the General Plan encourages mixed-use developments, it does not specifically address the density allowed within a commercial zone for a mixed-use project. The *Merced Vision 2030 General Plan* includes two classifications for higher density residential uses - High-Medium Density (HMD) and High Density (HD). The High-Medium designation allows 12 to 24 units per acre, while the High-Density designation allows 24 to 36 units per acre. The proposed project has a density of 36 units per acre, which is consistent with the High Density (HD) designations. Therefore, because there is no definitive designation for a mixed-use project and there are General Plan policies that encourage higher density and alternate housing types (see below), the City has relied upon the High-Density designation to determine compliance with the General Plan. Based on this designation, the proposed multi-family portion of the project would comply with the General Plan.

The Housing Element of the *Merced Vision 2030 General* Plan includes policies supporting affordable housing, mixed-use development, and higher densities. The General Plan Land-Use section also has policies to encourage mixed-use development. The proposed project would meet the following goals and policies of the Land Use and Housing Elements of the *Merced Vision 2030 General Plan*:

Land Use Policy

Policy L-1.1 Promote Balanced Development Which Provides Jobs, Services, and Housing.

Implementing Action 1.1.a: Promote mixed use development combining compatible employment, service and residential elements.

Implementing Action 1.1.c: Determine the types of housing opportunities needed for the type of employment opportunities being created in the City.

Policy L-1.2 Encourage a Diversity of Building Types, Ownership, Prices, Designs, and Site Plans For Residential Areas Throughout The City.

Implementing Action 1.2.b Encourage residential and/or office above retail in the downtown area and in neighborhood commercial cores.

Policy L3.2 Encourage In-fill Development and a Compact Urban Form

Implementing Action 3.2.a: Encourage infill of vacant parcels.

Implementing Action 3.2.b: Encourage projects that increase pedestrian activity and mixed-uses.

Housing Element Policy
Policy H-1.1 Support Increased in Residential Zoning Districts

Although the proposed project would not be located within a residential zone, it does provide an opportunity for a higher density project to provide needed housing within the City.

Policy H 1.1.c Encourage Mixed Use Development

The proposed project would provide a mixture of retail commercial uses to serve the neighborhood and the multi-family dwelling units.

Policy 1.1.e Encourage Alternate Housing Types

The proposed project would include one, two, and three-bedroom apartments. The units range in size from 276 square feet for a one-bedroom unit with a balcony, to 876 square feet for a 3-bedroom unit. This mixture provides a variety of different housing types to meet the growing need of housing within the community and supports this policy of providing alternate housing types.

Policy 1.8b Prioritize City efforts to encourage residential development by focusing on in-fill development and densification within the existing City Limits.

The proposed project is on an in-fill site and meets the density requirements of the City's highest density classification.

Zoning Ordinance Compliance - Conditional Use Permit Required Findings

Section 20.68.020 sets forth specific Findings that must be made for the Planning Commission or City Council (on appeal) to approve a Conditional Use Permit. The Planning Commission agreed with the Findings as outlined below and therefore, approved Conditional Use Permit #1238.

1. *The proposed use is consistent with the purpose and standards of the zoning district, the General Plan, and any adopted area or neighborhood plan, specific plan, or community plan.*

   The purpose of a Neighborhood Commercial (C-N) zone is to provide areas for shopping centers and other commercial uses that serve the day-to-day needs of a residential

neighborhood. The C-N zone allows a variety of commercial uses and residential uses, subject to approval of a Conditional Use Permit. The proposed project would provide a variety of retail and restaurant uses to serve the tenants of the project as well as the surrounding neighborhood. With the approval of the requested Conditional Use Permit, the project would comply with the requirements and purpose of the C-N Zone.

As described in "General Plan Compliance" section above, the project meets the requirements of the General Plan. There are no other area, specific, or neighborhood plans for this area.

2. *The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the subject property.*

As previously stated, the commercial uses are allowed within a C-N zone. The proposed multi-family component of the project is a conditional use. The developer has revised the project to address some of the concerns expressed with the previously proposed project. The building heights have been reduced for the buildings on the east and west side of the site closest to the existing residential uses. Buildings 1 and 3 are 26' 1-1/2" tall to the top of the parapet and Buildings 2 and 4 are 35' 7-7/8" tall to the top of the parapet. The maximum height limit within the C-N zone when adjacent to a residential zone is 35', unless otherwise approved through a Site Plan Review process (Table 20.10-2, footnote 3). The Planning Commission considered the height of Buildings 2 and 4 when they considered the projects compliance with the Interface Regulations at a special meeting on April 13, 2020 and approved the height of Buildings 2 and 4 as proposed.

The setbacks have been increased for those buildings as well in an effort to reduce impacts on the surrounding neighborhood. The site is surrounded by residential uses and a church to the north. Therefore, residential uses are common in this area. Another apartment complex is currently under construction east of this site at the corner of Yosemite and Lake Road, in the same general vicinity, which provides a mixture of housing units for the area. Given the proximity to the UC, multi-family uses are appropriate for this area. Therefore, through the implementation of the conditions of approval, the proposed apartment project (as part of the overall mixed-use project) would be compatible with the existing and future land uses in the vicinity.

3. *The proposed use will not be detrimental to the public health, safety, and welfare of the City.*

The proposed project does not include any uses that would be detrimental to the public health, safety, and welfare of the City. The project would be required to annex to the City's Community Facilities District to pay for costs related to police and fire safety. Implementation of the conditions of approval and adherence to all Building and Fire Codes, and City Standards would prevent the project from having any detrimental effect on the health safety, and welfare of the City.

4. *The proposed use is properly located within the City and adequately served by existing or planned services and infrastructure.*

The project site is an in-fill site near the edge of the City's eastern boundary, surrounded by residential uses. The project would be adequately served by the City's water system. Through the implementation of the conditions of approval, the project would be adequately served by the City's sewer and storm water systems. Additionally, the project would be required to pay Public Facilities Impact Fees to help pay for future improvements needed to the City's infrastructure.

Zoning Ordinance Compliance - Mandatory Site Plan Review Findings

The proposed project is subject to MMC Section 20.32 - Interface Regulations. As such, a Site Plan Review Permit is required for this project. MMC Section 20.32 does not specify findings be made regarding interface, but MMC Section 20.68.050 (F) requires specific findings for a Site Plan Review Permit to be approved. Therefore, in order for the Planning Commission (or City Council on appeal) to approve or deny a site plan review permit, they must consider the following criteria and make findings to support or deny each criteria. The Findings required by MMC Section 20.68.050 (F) "Findings for Approval for Site Plan Review Permits" are provided below along with recommended reasons to support each finding. On April 13, 2020, the Planning Commission approved the following findings.

1. *The proposed project is consistent with the General Plan, and any adopted area or neighborhood plan, specific plan, or community plan.*

   As described in Finding A of Planning Commission Staff Report #20-03-Addendum and under the "General Plan Compliance" section of Administrative Report #20-087, the project meets the requirements of the General Plan. There are no other area, specific, or neighborhood plans for this area.

2. *The proposed project complies with all applicable provisions of the Zoning Ordinance and Municipal Code.*

   Merced Municipal Code Section 20.46.030 provides general design standards for multi-family dwellings. Section 20.46.040 provides specific standards for multi-family dwellings. Planning staff has reviewed the proposed project with both sets of standards and found it to be in compliance with the majority of these standards. The level of detail provided at the entitlement stage of a project is much less than would be required at the construction phase. Such things as trash enclosure details, landscape and sprinkler plans, and addressing are part of the Standards that will be reviewed at the building permit phase. Condition # 9 of Planning Commission Resolution #4036 (Attachment 13) requires the project to comply with all applicable design standards listed in these sections. Planning Staff will ensure the standards are met through the building permit review process.

   As described above, the proposed mixed-use project is subject to the approval of a Conditional Use Permit and a Site Plan Review Permit. The Planning Commission approved the Conditional Use Permit on January 22, 2020, and the Site Plan Permit on April 13, 2020. Approval of the Site Plan Review Permit and implementation of the

conditions of approval for CUP #1238 and Site Plan Review #455 would bring the project into compliance with the applicable provisions of the Zoning Ordinance and Municipal Code.

3. *The design and layout of the proposed project will not interfere with the use and enjoyment of existing and future neighboring properties and structures.*

The project site is zoned Neighborhood Commercial (C-N) which is appropriate for the proposed mixed-use development. The residential component of the project was subject to Conditional Use Permit approval and received approval on January 22, 2020. The setbacks exceed the minimum standards of the C-N zone, which requires a minimum 20-foot setback from exterior property lines. As shown on the site plan at Attachment 2, the front building (Building 2) is set back approximately 75 feet from Yosemite Avenue. Building 1 is approximately 85 feet from McKee Road, Building 3 is approximately 82 feet from the eastern property line near Whitewater Way, and Building 4 is approximately 125 feet from the southern property line.

The maximum building height within the C-N zone is 35 feet when adjacent to a residential zone. However, through the Site Plan Review process, an exception may be granted to allow heights in excess of 35 feet (per Table 20.10-2, footnote 3). Through the CUP process there were several changes made to the plans and elevations. The plans provided in the staff report were the correct plans, but the information provided in the staff report was based on a previous version of the plans, which showed all buildings being less than 35 feet. Unfortunately, the final version of the plans had buildings heights that exceed 35 feet for Buildings 2 and 4. The building heights at the top of the building parapet for Buildings 2 and 4 are just over 35 feet at 35 feet, 7-7/8 inches. The height to the mechanical enclosure is 37 feet, 1-7/8 inches, and to the top of the roof-top access is 43 feet, 5 inches. It should also be noted that the roof deck for Building 2 is at a height of 32 feet 1-7/8 inches. This is the floor height for the roof-top deck tenant common area on the top of Building 2. There is approximately a 4-foot difference between the floor of the roof-top deck and the parapet as well as a set back of approximately 25 feet from the building edge to the roof-top tenant space. The roof-top access and mechanical enclosure are also set back from the building edge. Given the increased setback of the buildings (75 feet from Yosemite Avenue for Building 2 and 125 feet from the southern property line for Building 4), the fact that the highest point of the buildings are only a small area, not the entire building, and that the highest point would also be set back from the building edge, the additional height over 35 feet does not appear intrusive or an element that would prevent the adjacent neighbors from enjoying their property. The Planning Commission approved the additional height for Buildings 2 and 4 through Condition #11 of Planning Commission Resolution #4036 (Attachment 13).

Buildings 1 and 3 are under 35 feet to the top of the parapet, the top of the mechanical enclosure, and the top of the roof-top access.

With the implementation of the proposed conditions of approval and the conditions approved with CUP #1238, the proposed project is in compliance with the design

standards for multi-family dwellings (MMC Sections 20.46.030 and 20.46.040).

The project has been designed to have the retail uses mixed throughout Buildings 2, 3, and 4. The retail uses will provide services that will not only serve the residential tenants but will also serve the surrounding neighborhood.

Building 2 includes a roof-top deck to provide the tenants with additional outdoor space. This area would provide an additional outdoor area for tenants to lounge and socialize. The lounge area would be located near the center of the roof and would include tables, chairs, and landscaping, (including trees). The lounge area would be approximately 25 feet from the north and south edges of the building and approximately 70 feet from the east and west areas. There would be a 42-inch-high railing around the lounge area separating it from the rest of the roof-top area for safety purposes. Conditions of approval adopted with CUP #1238 restrict access to the roof-top deck to 7:00 a.m. to 10:00 p.m. daily.

It should also be noted that the site is surrounded by residential uses and a church to the north. Therefore, residential uses are common in this area. Another apartment complex is currently under construction east of this site at the corner of Yosemite and Lake Road, in the same general vicinity, which provides a mixture of housing units for the area. Given the proximity to the UC, multi-family uses are appropriate for this area.

The proposed project meets the minimum design and zoning standards. Therefore, with the implementation of the conditions of approval, the proposed project would not interfere with the enjoyment of the existing and future land uses in the vicinity.

4. *The proposed architectural design makes use of appropriate materials, texture, and color, and will remain aesthetically appealing and appropriately maintained.*

   The building design includes a mixture of materials, textures, and colors. The building façade would consist of composite cement panels, metal storefronts for buildings 2, 3, and 4, metal window frames for the residential units, and metal railings. The architecture of the buildings includes clean lines with a modern flair. Although this style is different that the homes in the area, it is consistent with the multi-family project currently under construction at Yosemite Avenue and Lake Road as well as Yosemite Church to the north across Yosemite Avenue. Condition #10 of Planning Commission Resolution #4036 (Attachment 13) requires that the buildings be maintained to remain aesthetically appealing.

5. *Any proposed landscaping design, including color, location, size, texture, type, and coverage of plan materials, as well as provisions for irrigation, maintenance, and protection of landscaping elements, will complement structures and provide an attractive environment.*

   The project includes approximately 29,500 square feet of outdoor greenspace and promenade area. As shown on the site plan, the four buildings would surround a large promenade area. This area would be used by customers of the commercial uses and the residential tenants. In addition, the project would be required to comply with the landscape standards called out in MMC Section 20.46.040 requiring 1 tree for each 3 units as well as

"foundation plantings", the parking lot landscape standards requiring 1 parking lot tree for each 6 parking spaces, and Condition #11 of Planning Commission Resolution #4035 (Attachment 10) requiring a minimum of 15% of the site to be covered with landscaping.

6. *The proposed design will not be materially detrimental to the public health, safety, or welfare, or be injurious to the property or improvements in the vicinity of the proposed project.*

   The proposed project does not include any uses that would be detrimental to the public health, safety, and welfare of the City. The project would be required to annex to the City's Community Facilities District to pay for costs related to police and fire safety. Implementation of the conditions of approval and adherence to all Building and Fire Codes, and City Standards would prevent the project from having any detrimental effect on the health safety, and welfare of the City.

Traffic and Circulation

The project site is located at the southeast corner of Yosemite Avenue and McKee Road. Yosemite Avenue, east of Parsons Avenue is designated as a "Special Street Section" in the *Merced Vision 2030 General Plan*. As such, the ultimate right-of-way for this road is 94 feet. McKee Road is a Collector Road with an ultimate right of way of 74 feet. The project would have access from Yosemite Avenue (right-in/right-out only) and McKee Road (full access). Both the intersections of Yosemite Avenue and McKee Road and Yosemite Avenue and Via Moraga (approximately 0.3 miles east of McKee Road) are signalized.

Yosemite Avenue Access

The primary access on Yosemite Avenue would be a driveway that is located approximately 320 feet east of the intersection of Yosemite Avenue and McKee Road (refer to the Site Plan at Attachment 2). This driveway would provide right in/right out access only. The existing median in Yosemite Avenue would remain unchanged along the project site frontage. No other access to the site would be provided on Yosemite Avenue.

McKee Road Access

The primary access on McKee Road would be through a driveway located approximately 195 feet south of the intersection of Yosemite Avenue and McKee Road. This driveway would allow both left and right turning movements.

Whitewater Way

No access is proposed to Whitewater Way from the project site, unless the Fire Department requires an emergency access per Condition #22 of Planning Commission Resolution #4035.

Traffic Impact Analysis

A traffic analysis was prepared for the proposed project by K2 Traffic Engineering, Inc. The traffic

analysis determined that the proposed project would generate a total of 1,876 Average Daily Trips (ADT's). After standard reductions are given for transit and bicycle use, pass-by traffic, and internal capture, the total net ADT's are 1,184. The trip generation numbers are provided on page 13 of the traffic analysis (Appendix D of the Initial Study at Attachment K of Planning Commission Staff Report #20-01-Attachment 12)

Based on the analysis of impacts on the roadways and intersections, the traffic study recommended the following mitigation measures:

TRA-01 Pay a proportionate share of the cost of the traffic signal at the intersection of Yosemite Avenue and Parsons/Gardner Avenue.

TRA-02 Pay a proportionate share of the cost of the traffic signal at the intersection of McKee Road and Olive Avenue.

Additional mitigation measures were adopted with the General Plan Amendment and Zone Change approved in 2019. The development would be required to comply with the applicable mitigation measures as determined by the City Engineer.

In addition to contributing to the cost of the traffic signals, the project would be providing access to alternate forms of transportation to reduce the impacts from the project. The developer would provide on-site pick-up/drop-off areas for Uber and Lyft, provide bicycles for tenants to use, and possibly provide Zip cars and/or scooters that could be used by the tenants.

In comparison to the previously proposed mixed-use project, the ADT's are reduced from 2,215 ADT's to 1,876 ADT's (gross, with no reductions given) and 1,146 net. It should also be noted that this amount is less than the estimated traffic generation for the proposed shopping center that was approved for this site in 2014.

Additional mitigation measures were adopted with the General Plan Amendment and Zone Change approved in 2019. The development would be required to comply with the applicable mitigation measures as determined by the City Engineer.

Parking

Based on the ratios required in the Zoning Ordinance, the residential portion of this project would require 339 parking spaces, the office portion would require 49 spaces, and the retail 64 spaces, for a total of 452.

The project site provides a total of 386 parking spaces which includes 25 motorcycle parking stalls. In addition, the project provides 70 bicycle parking spaces. Although the total number of spaces required is 452, the Zoning Ordinance allows reductions based on certain criteria. If the project site is located within 400 feet of an approved bus stop, a 5% reduction may be given. Up to a 30% reduction may be given for mixed use developments with the approval of a parking demand study approved by the Director of Development Services. Based on the current design and number of parking spaces provided, the project would need the 5% reduction for a transit stop and a 15%

reduction for the mixed-uses granted to comply with the parking requirements.

The developer will be working with UC Merced to move the bus stop near Yosemite Avenue and Via Moraga closer to their site, so they could qualify for the 5% reduction previously described. In addition, the developer will be providing pick-up/drop-off locations for Uber and Lyft to encourage ride sharing, offering bicycles, and possibly Zip cars and scooters for their tenants to use to reduce the actual number of parking spaces needed. Also, because this is a mixed-use project, it is likely there would be commercial uses that would not need parking in the evenings, which would leave additional spaces open for the other uses during these hours. Condition #30 of Planning Commission Resolution #4035 requires the developer to provide a parking demand analysis demonstrating that a reduction is warranted prior to the issuance of a building permit. The developer submitted this analysis and it is currently being reviewed by staff. Without the approval of the parking analysis, the project would not meet the parking requirements. The review of the parking analysis would be completed prior to the building permit phase as allowed by the Zoning Code.

As previously mentioned, the project will also provide indoor bicycle storage facilities as well as bicycle parking for the commercial uses. The site has easy access to the bicycle trail system which could encourage the use of bicycles rather than cars.

Sewer

A 6-inch sewer force main line exists in Yosemite Avenue which flows to G Street, then continues out to the Waste Water Treatment Plant. There is no sewer line in McKee Road. Due to constrictions in the Yosemite Avenue line, the project site is limited to discharging a maximum of 8,000 gallons per day of wastewater during peak hours. Additional wastewater shall be contained onsite and discharged at off-peak hours (refer to Conditions #9 and #10 of Planning Commission Resolution #4035 - Attachment 10). Condition #10 of Planning Commission Resolution #4035 also requires a monitoring system to allow the City to monitor the flow and requires the developer to ensure the onsite storage tank doesn't emit objectionable odors.

At the Planning Commission meeting of January 22, 2020, the Public Works Director explained to the Planning Commission that although specific plans have not been approved for the proposed on-site storage, the concept is acceptable and would work. He further explained that the City would review and approve the final proposal prior to installation of the tank and construction of the project. While this is a new concept for the City, it is a creative way to address the issue of sewer capacity for this project and is similar in concept to a City pump station.

Neighborhood Impact

The project site is surrounded by residential uses to the east, west, and south. There are additional residential uses to the north across Yosemite Avenue as well as Yosemite Church and Providence School (refer to the location map at Attachment 1).

As previously described in this report, the setbacks for the project have been increased and the building heights lowered from the original project to reduce the impacts on the surrounding neighborhood.

As described in the traffic section of this report, the developers will have to implement some mitigation measures to address the projects impacts. However, it should be noted that the proposed project cannot be held accountable for the existing traffic conditions. A project can only be made to mitigate any additional impacts caused by the project itself. Based on the traffic study, the traffic generated by this project would be less than what was estimated for the shopping center proposed at this site in 2014. It should also be noted that automobile delay may not be treated as a significant environmental impact. According to a recent court ruling in the case of Citizens for Positive Growth & Preservation v. City of Sacramento (2019), the court ruled that in regard to CEQA Guidelines Section 15064.3. Level of Service (LOS) which measures traffic congestion could not constitute a significant environmental impact.

On January 14, 2020, the developer held community outreach meetings to provide information to the neighborhood about the project and give the neighborhood a chance to voice their concerns.

On January 22, 2020, the Planning Commission held a public hearing on this matter. At that time, there were a total of 15 speakers opposed to the project and 4 speakers, including the two applicants in favor of the project. Additionally, prior to the meeting 4 letters/emails were received in opposition of the project and 1 letter of support were received (Attachment 17). The speakers opposed to the project cited the following reasons:

- Too many apartments;
- Traffic is already bad in this area; the addition of apartments would make it worse;
- Not enough parking;
- Noise and parties;
- Don't want people on the roof-top deck seeing into their backyards;
- Uncomfortable with the proposed on-site sewer retention, could cause possible odors or other problems;
- Prefer the originally proposed shopping center on this site;
- No way to be sure only students would live in the apartments.

The developer has tried to address some of the neighborhoods concerns by reducing the number of units from the original proposal, increasing the setbacks, adding office space instead of all retail, and increasing the amount of open space and promenade area. A side-by-side comparison of the previous project and the project currently being proposed is provided at Attachment 16. Additionally, the Planning Commission added a condition limiting the hours the roof-top deck could be used.

On April 13, 2020, the Planning Commission held a special meeting to consider Site Plan Review #455 to address Interface Regulations as required by Zoning Ordinance Section 20.32. Prior to that hearing, staff received two e-mails and a letter in opposition to the project. At the time of the public hearing one person, Richard Harriman spoke in opposition to the Site Plan Review. All correspondence was provided to the Planning Commission for consideration and is provided at Attachment 17 of this report. After the public hearing, the Planning Commission voted unanimously to approve Site Plan Review #455.

Environmental Review

The Planning staff has conducted an environmental review (Initial Study # 19-37) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Draft Mitigated Negative Declaration (i.e., no significant effects in this case because of the mitigation measures and/or modifications described in Initial Study #19-37) is being recommended (Attachment K of Planning Commission Staff Report #20-01 - Attachment 12).

State Housing Laws

The state of California has passed a series of laws that limits a City's ability to deny a housing project. The information at Attachment 18 provides information on the laws specific to the approval or denial of housing projects. This information was provided to the Planning Commission prior to their meeting on December 4, 2019, in preparation for training on the objective standards for reviewing housing projects. The information was not part of the official record for the review of Conditional Use Permit #1238 or Site Plan Review #455. At the Planning Commission meeting of December 4, 2019, the City Attorney's office provided training to the Planning Commission members regarding this legislation as well as the specific findings necessary to approve a Conditional Use Permit.

Appeals - Zoning Ordinance Section 20.74.030 (F)

The Zoning Ordinance provides guidance on the review authority for an appeal of a Planning Commission Action. Zoning Ordinance Section 20.74.030 (F) states the following:

1. The review authority may take action on the specific basis for the appeal, or may reconsider the project in its entirety ("de novo" review). The review authority shall make its own decision supported by findings. In doing so, it may:

   a. Affirm, affirm in part, or reverse the action that is the subject of the appeal; or,

   b. Adopt additional conditions of approval that address the matter appealed; or,

   c. Remand the appeal for further review, recommendation, or action t the previous review authority.

2. The review authority's action shall be based upon findings of fact about the particular case. The findings shall identify the reasons for the action on the appeal and verify the compliance of the subject of the appeal with the Zoning ordinance.

3. A matter being heard on appeal may be continued for good cause (e.g., additional CEQA review is required).

4. If the hearing body is unable to reach a decision on the matter appealed, the decision of the previous review authority shall remain in effect.

Planning Commission Action

As described in the "Background" and "Neighborhood Impact" sections of this report, the Planning Commission held a duly noticed public hearing regarding Conditional Use Permit #1238. At that time, 15 people spoke in opposition to the project and 4 people spoke in support of the project. The Planning Commission voted unanimously to approve CUP #1238. Planning Commission Resolution #4035, a minute excerpt from the meeting, and Staff Report #20-01 are provided at Attachments 10, 11, and 12, respectively.

Also described in the previous sections, the Planning Commission held a special meeting on April 13th to hear and consider Site Plan Review #455. At that time, three pieces of written correspondence in opposition to the project were provided to the Commission and one person who submitted a letter in opposition, also spoke at the meeting. There was one person who spoke in favor of the project. The Planning Commission voted unanimously to approve Site Plan Review #455. Planning Commission Resolution #4036, a draft minute excerpt from the meeting, and Staff Report #20-03-Addendum are provided at Attachments 13, 14, and 15, respectively.

City Council Action

The City Council is asked to provide direction to staff, along with Findings to either approve or deny the appeal. Staff will prepare a Resolution based on that direction and Findings and return at a future Council meeting for Council to take final action on the appeal.

- Should the City Council provide direction to grant the appeal, thus over-turning the Planning Commission's decision on Conditional Use Permit #1238 and Site Plan Review #455, City Council should provide direction as to whether the approval is with or without prejudice.
    - If the decision is made with prejudice, the applicant would be precluded from re-applying for the same or similar project within one year of the decision.
    - If the decision is made without prejudice, the applicant could re-apply with no time limit.

- Should the City Council vote to deny the appeal, thus upholding the Planning Commission's approval of CUP #1238 and Site Plan Review #455, staff recommends City Council direction include the Findings for Conditional Use Permit approval per MMC 20.68.020, the Findings for Site Plan Review approval per MMC 20.68.050 and the Conditions of approval contained in Planning Commission Resolutions #4035 and #4036 along with any recommended changes to the findings and conditions.

IMPACT ON CITY RESOURCES

The project would be required to annex into the City's Community Facilities District for Services and pay all required Public Facility Financing Program Impact Fees. Payment of these fees and ongoing payment of the CFD taxes would mitigate any expected impacts on City resources.

ATTACHMENTS

1. Location Map
2. Site Plan

3. Appeal Letter from Casey Steed (CUP #1238)
4. Appeal Letter from Richard Harriman (SP #455)
5. Building Floor Plans
6. Elevations
7. Apartment Floor Plans
8. Roof-top Deck
9. Distance Comparison of Surrounding Uses
10. Planning Commission Resolution #4035 (CUP #1238)
11. Planning Commission Minute Excerpt for 1-22-20 (CUP #1238)
12. Planning Commission Staff Report #20-01(CUP #1238)
13. Planning Commission Resolution #4036 (SP #455)
14. Draft Planning Commission Minute Excerpt for 4-13-20(SP #455)
15. Planning Commission Staff Report #20-03-Addendum (SP #455)
16. The HUB 2.0 Comparison
17. Correspondence Received re: SP #455
18. Memo regarding state housing laws
19. Draft Presentation

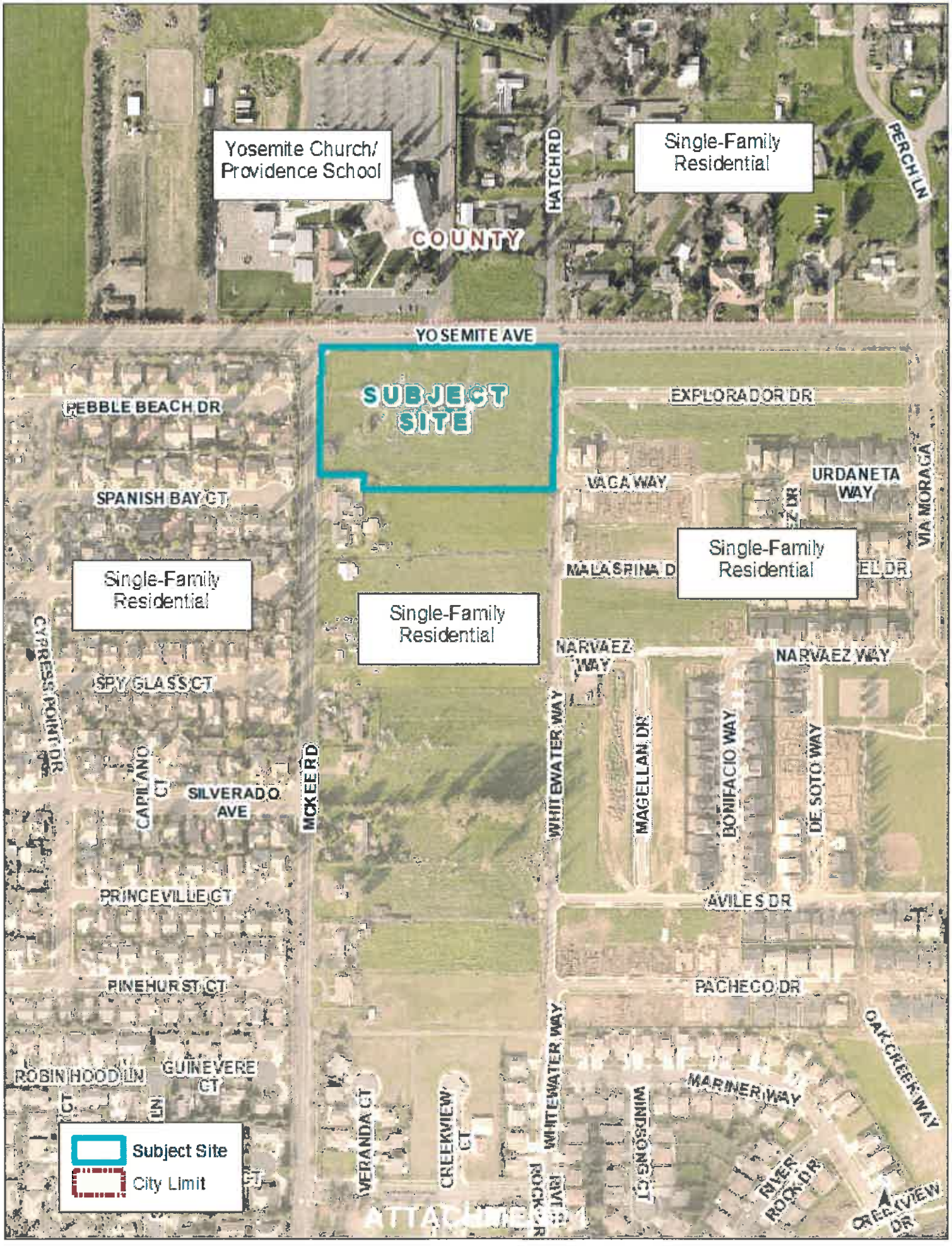
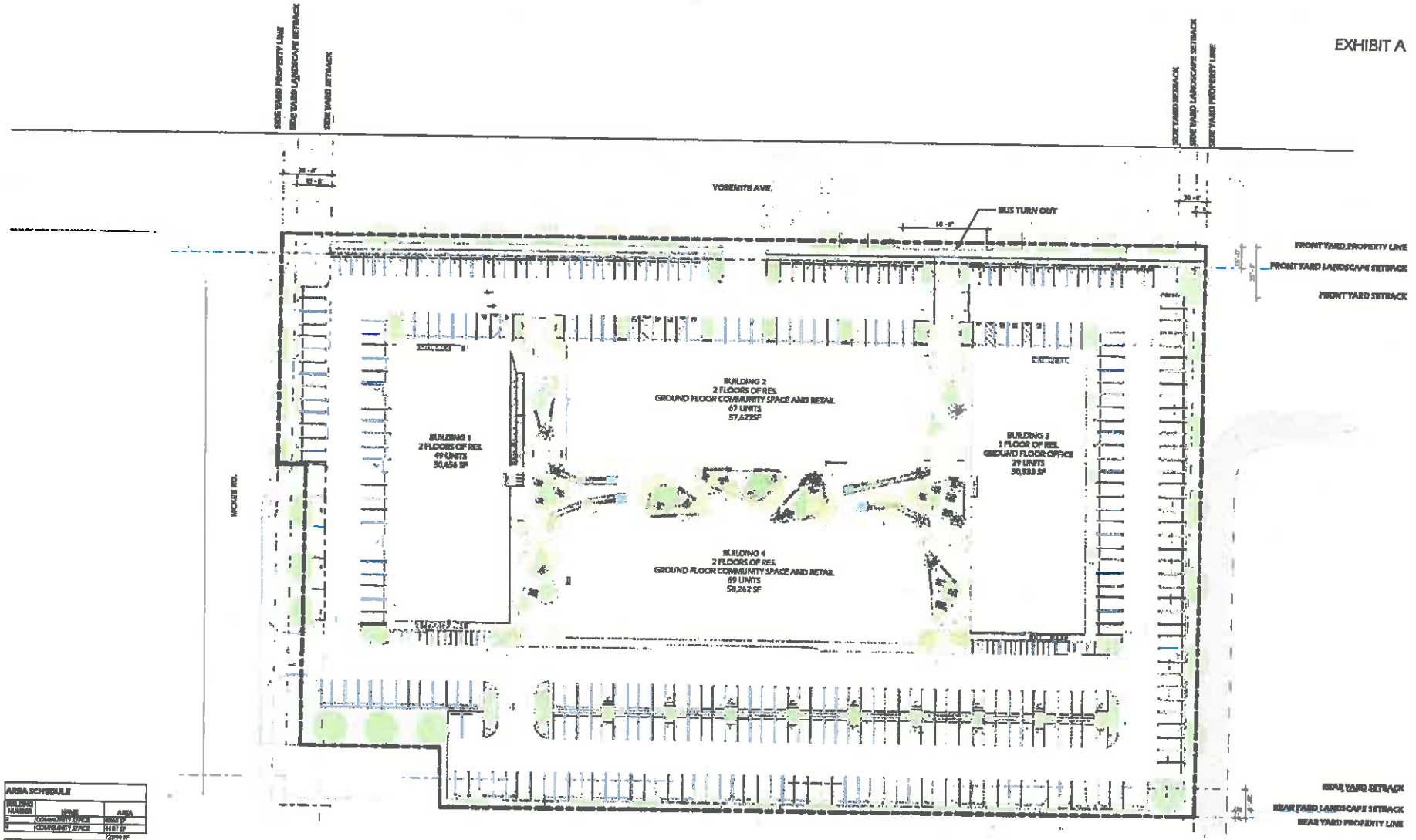

Yosemite Church/
Providence School
HATCH RD
Single-Family
Residential
PERCH LN
COUNTY
YOSEMITE AVE
SUBJECT
SITE
EXPLORADOR DR
PEBBLE BEACH DR
VACA WAY
URDANETA
WAY
VIA MORAGA
SPANISH BAY CT
Single-Family
Residential
MALASPINA D
EL DR
Single-Family
Residential
Single-Family
Residential
NARVAEZ
WAY
NARVAEZ WAY
CYPRESS POINT DR
SPY GLASS CT
WHITEWATER WAY
MAGELLAN DR
BONIFACIO WAY
DE SOTO WAY
CAPILANO
CT
SILVERADO
AVE
MCKEE RD
AVILES DR
PRINCEVILLE CT
PACHECO DR
PINEHURST CT
OAK CREEK WAY
ROBIN HOOD LN
GUINEVERE
CT
MARINER WAY
VERANDA CT
CREEKVIEW
CT
WHITEWATER WAY
WINDSONG CT
RIVER
ROCK DR
CREEKVIEW
DR
Subject Site
City Limit

EXHIBIT A



AREA SCHEDULE

BUILDING NUMBER	NAME	AREA
1	COMMUNITY SPACE	6000 SF
1	COMMUNITY SPACE	6481 SF
		12481 SF
2	OFFICE	14,938 SF
		14,938 SF
3	RESIDENTIAL	30456 SF
3	RESIDENTIAL	30456 SF
3	RESIDENTIAL	30456 SF
3	RESIDENTIAL	30456 SF
		121,824 SF
4	RETAIL	6616 SF
4	RETAIL	14937 SF
		21,553 SF

ATTACHMENT 2

ferrierArchitectureStudio

MER

MERCED HOLDINGS LP

CONDITIONAL USE PERMIT

JANUARY 6,2020

PLOT PLAN

2019

1" = 30'-0"

RECEIVED
By City of Merced at 2:54 pm, Jan 29, 2020

January 29th, 2020

Casey Steed

PO Box 3453

Merced, Ca 95344

Director of Development Services

City of Merced

678 W 18th Street

Merced, Ca 95340

Subject: Request for appeal hearing. Merced City Planning Commission meeting of Jan 22nd 2020 and subsequent approval of agenda item 4.1 "The Hub2.0" project. SE corner of Yosemite Ave and McKee Rd. Conditional Use Permit #1238, Initial Study 19-37. City of Merced Planning Commission resolution #4035. Previous CUP #1231. CEQA review and reports. Owner: Merced Holdings, LP.

Dear Director of Development Services,

The submission of this letter along with the appropriate fees will serve as our request to schedule an appeal hearing of the Merced City Planning Commissions approval on Jan 22nd 2020 of the above subject project CUP. Please advise if additional information is required for the submission of this appeal request and fees. Additionally advise when the written transcript of the subject planning commission meeting will be available. Please call if you have any questions.

Best Regards,

Casey Steed

(209)406-8728

RECEIVED
By City of Merced at 4:25 pm, Jan 29, 2020

January 29th, 2020

Casey Steed

PO Box 3453

Merced, Ca 95344

Director of Development Services

C/O Julie Nelson

City of Merced

678 W 18th Street

Merced, Ca 95340

Subject: Request for appeal hearing. Merced City Planning Commission meeting of Jan 22nd 2020 and subsequent approval of agenda item 4.1 "The Hub2.0" project. SE corner of Yosemite Ave and McKee Rd. Conditional Use Permit #1238, Initial Study 19-37. City of Merced Planning Commission resolution #4035. Previous CUP #1231. CEQA review and reports. Owner: Merced Holdings, LP.

Dear Director of Development Services/ Julie Nelson,

Thank you for accepting our request for an appeal of the Merced city Planning Commission decision on the above subject project. As we discussed, we will forward additional suggested mitigation measures, environmental, traffic, density and other information we are concerned about by this coming Friday. Today we are submitting a five pages of hand written notes, "Project Notes-The Hub" dated 01-22-2020 addressing some but not necessarily all of our concerns with the project and our appeal. . Thank you for your time this afternoon. Please call if you have any questions.

Best Regards,

Casey Steed

(209)406-8728

CASEY STEED
P.O. BOX 3453
MERCED, CA 95340

STAFF REPORT
20-01
CUP # 1238

PROJECT NOTES - THE HUB 1/22/2020 1 OF 5

- WANT TO SEE POSITIVE DEVELOPMENT
- ORIGINALLY ZONED R-1 WHEN ANNEXED INTO CITY

- 2014 - THE SHOPPES @ UNN VILLAGE. RE-ZONE TO CN - SHOPPING CTR 62K □ 216 PARKING SPACES

- 2019 - CUP - 428 UNITS ALL 1 BEDROOM W/ A BATH - PLANNING COMM DENIED CITY COUNCIL 10/7 UPHELD DENIAL - REASONS FOR DENIAL 4 REASONS FINDINGS OF DENIAL OF CUP #1231 EXHIBIT A-C W/O PREJUDICE - WAIT 1 YEAR - CAN'T
- NEW PROJECT - CUP DEFINITION - BROAD INTERPRET
  - 366 DORMS - REDUCTION OF 62 BEDROOMS FROM PREVIOUS 428. CITY BASED DENSITY ON 1 BEDROOM = 1 UNIT. DESIGN HAS NOT SUBSTANTIALLY CHANGED. UNIT PER ACRE CALCS SHOULD BE SIMILAR. ONLY COMMON HALL/KITCHEN IN MULTI-BEDROOM UNITS. REDUCTION OF KITCHENS.

- MERCED STATION 290 UNITS 19 AC = 15 UNITS/AC
  - 80% OF FLOOR SPACE IS FOR RESI USE
  - 20% ↓ ↓ ↓ ↓ ↓ OFFICE/RETAIL USE
    - (13% OF □ IS RETAIL □
    - NOT MUCH □ FOR CN

THE HUB 1-22-2020 2 OF 5

- UCM PARTICIPATION - PAGE 6 OF STAFF REPORT.
  35 MIN CONVO WITH TUE 1/21/20 9AM
  - VICE CHANCELLOR MCLEOD - NOT A LETTER OF INTENT. LETTER OF INTEREST. DOES NOT RISE TO INTENT LEVEL
  - 49% MAX SET ASIDE FOR UCM
  - NO GUARANTEE TO NEGOTIATE
  - UCM IS CUSTOMER - PROVIDES NO BLDG SERVICES OR SECURITY
  - NOT PLANNING ON RENTING OFFICE - HOURS OF OPERATION 5PM
  - UCM JUST COMPLETED 2000 BEDS
  - DEMAND BASED ON ENROLLMENT (CANT FORCE PEOPLE TO RENT)
  - CURRENTLY HAVE AGREEMENT W/ HERITAGE APARTMENTS - SECURITY
  - SAYS STAFF REPORT IS NOT CORRECT PAGE 6
  - LAST PARAGRAPH DISCLAIMER
  - COULD BE STUDENTS &/OR FACULTY
  -
  - LAST PARAGRAPH DISCLAIMER - GOOD NEIGHBOR LETTER

THE HUB 1-22-2020 3 OF 5

GO TO SECURITY

- NO SECURITY CAMERAS - TALK ABOUT 100 MONITORED BY OTHERS. KEY FOB POWER TO UNIT. CALL BOXES - 911 - PATROLS

GO TO PARKING

- PARKING - ON SITE DROP OFF USER/ RIDE SHARING. RENTAL CARS - TAKE AWAY FROM PARKING. SHOULD HAVE A TRANSIT STOP ON SITE.

- # OF PARKING SPOTS NOT ENOUGH 30% REDUCTION + 5% FOR TRANSIT STOP CREDIT - TOO MUCH. TRASH ENCL TAKE PARKING - WILL PARK OFFSITE
- TRAFFIC STUDY - BUS STOP BOTH SIDES OF YOSEMITE - NORTH SIDE HARD TO FIT

TRAFFIC STUDY

- MOVE EXIST UCM BUS STOP @ VIA MORAGA TO THIS PROJECT. WHAT ABOUT THAT STOP - NOW WALK TO THIS ONE?
- NEED ON SITE TRANSIT STOP. PED TRAFFIC TO GET TO THIS ONE.
- HOW DO YOU PREVENT UNAUTHORIZED PARKING
- INTERSECTIONS IN AREA LOS "F"
- POSSIBLE PARKING STRUCTURE - ABOVE GROUND OR BELOW GROUND.

OFFSITE PARKING A PROBLEM NOW. VIA MORAGA.

BUILDINGS

- BLDG #2 - ROOF TOP DECK - NO
- HOURS OF OPERATION
  USE SHOWS DINING FIRE PIT, SEATING FOR ALL FOUR BUILDINGS.
- NOISE, LIGHT POLLUTION - LOUD PARTIES - NOISE CARRIES UP HIGH.
- NO RESTROOMS FOR COMMON AREAS - GROUND FLOOR OR ROOF. TENANT TO PROVIDE.
- LAUNDRY ON 1 FLOOR NOT ALL

- TRASH CHUTE - COLLECTION WALK ALL THE WAY TO DUMPSTER

- NEIGHBORS WANTED COMM USE - BAY & NIGHT USES/ REST, COFFEE ETC. NEED TO DESIGNATE PARKING FOR RETAIL/COMM USERS.

- PROJECT GENERATES LOTS OF TRAFFIC, WASTEWATER, OCCUPANCY CONCERNS. HIGH DENSITY IN THE MIDDLE OF LOW DENSITY RESIDENTIAL REASON 4 DENIAL. INFILL DEVELOPMENT, NOT OVERFULL DEVELOPMENT.

THE HUB 1-22-2020 5 OF 5

- IF ALL DORMS HAVE 4 PER [redacted] - OCCUPANCY IS OVER 1400 PEOPLE NOT COUNTING COMM/ RETAIL USE & VISITORS

- VISUAL BLIGHT FROM SOLAR PANEL ARRAYS. ANY PARKING LOT SOLAR. POSSIBLE HEAT ISLAND WITH SUCH LITTLE GREENSPACE.

- ENVIRO / CEQA / NEG MITIGATED DEC. SHOULD HAVE A COMPLETE NEW PROJECT EIR DUE TO NUMEROUS CHANGES. APPENDIX "C" TOO OLD. GHG ANALYSIS 2014. ALSO TRAFFIC STUDY SHOULD TAKE IN CAMPUS PARKWAY IMPACT
- MUST ASK TO DENY BASED ON THE LARGE # OF UNANSWERED QUESTIONS AND INSUFFICENT CEQA REVIEW.

Received by
City of Merced
Planning Department
April 20, 2020 at 3:25

Law Offices of
Richard L. Harriman
1078 Via Verona Drive
Chico, California 95973-1031
Telephone: (530) 343-1386
Email: harrimanlaw1@sbcglobal.net

April 20, 2020

VIA EMAIL TRANSMISSION AND HAND DELIVERY
[planningweb@cityofmerced.org]

Director of Development Services
c/o Julie Nelson
City of Merced
678 W. 18th Street, 1st Fl.
Merced, CA 95340

Attention: Kim Espinosa, Planning Manager, and Julie Nelson, Associate Planner

Re: Appeal of Site Plan Review #455
Merced Holdings LP Project at Yosemite Avenue and McKee Road
Planning Commission Hearing Approval Date: April 13, 2020
Agenda Item 4.1
[Pursuant to City of Merced Zoning Ordinance Chapter 20.74]

Dear Gentlepersons:

Pursuant to the authorization and direction of my client, Casey Steed, I am hereby filing an Appeal of the Planning Commission's Approval of Site Plan Review #455 and of the Mitigated Negative Declaration identified as Initial Study #19-37for this project which was relied upon by the Planning Commission for its approval of Site Plan Review #455.

In addition my clients, Merced Smart Growth Advocates (MSGA), a California unincorporated association, and the San Joaquin Valley Environmental Defense Center, a California non-profit corporation, join in, and support this appeal.

Preliminary Procedural Objections to Approval of Site Plan Review #455

At the outset, Appellants raise two preliminary procedural objections to the approval of the above-referenced project.

1. Appellants object to the consideration of or approval of this Site Plan Review, based on the fact Conditional Use Permit #1238, which was approved by the City Planning

Commission on January 22, 2020, was applied for by the Applicant prior to the expiration of less than one (1) year from the denial of what Applicant characterizes as substantially the same project by the City Council's grant of Appellant's appeal of the same project on or about October 7, 2019. This objection is based on the fact that there is no evidence in the record before the Commission and the Council that the grant of Mr. Steed's previous appeal of the Planning Commission's previous approval of the same project within less than a year was made "without prejudice" to the Applicant.

2. Appellants object to the Commission's approval of the Site Plan Review #455 based on the fact that the hearing on CUP #1238, which was timely appealed on January 29, 2020, by Mr. Steed, was not heard with the Site Plan Review #455 on January 22, 2020. [[Merced Municipal Code (MCC) Section 20.32].The grounds for this objection are that the Appellants and other members of the public were denied their right to meaningful participation in the environmental review process required by the California Environmental Quality Act [Public Resources Code section 21000 et seq.] and the California Environmental Quality Act Guidelines [California Code of Regulations, title 14, section 15000 et seq. (CCR)] See, CEQA Guidelines, section 15201 (*Concerned Citizens of Costa Mesa v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929).

Appellants hereby appeal the CEQA determination to the City Council, pursuant to PRC section 21151, subd. (c) to be reviewed in its entirety based on all facts and evidence produced at the time of the hearing on this Appeal, including, without limitation, the following grounds.

Additional Grounds for Appeal of Approval of Site Plan Review #455

1. Appellants hereby incorporate by reference all of the grounds set forth in Appellants' Appeal of the Planning Commission approval of CUP #1238, dated January 29, 2020, as supplemented by his letter of January 31, 2020.

2. Under "**FINDINGS/CONSIDERATIONS",** Staff Report #20-03 states,:
"Although the General Plan encourages mixed-use developments, it does not specifically address the density allowed within a commercial zone for a mixed-use project." [p. 6, para. A]
Since neither High-Medium Density (HMD) and High Density (HD) is expressly included in the Neighborhood Commercial (CN) land use designation nor in the zoning classification of Neighborhood Commercial (C-N) Commercial, The proper legal inference should be that the City Council did not intend to include either HMD nor HD within the CN land use nor the C-N zoning designation. Absent express language to the contrary, the Applicant needs to apply for a General Plan Amendment and a Zoning Amendment to include express language to provide internally consistency between the General Plan Land Use Element and the Zoning Ordinance, before the Site Plan may rely upon either HD or HMD entitlement sought by the Applicant. The Commission abused its discretion by making this finding.

3. The Planning Commission proceeded in a manner not in compliance with law by

making findings and approving Site Plan Review #455 and adopting the environmental review characterized as the adoption of a Mitigated Negative declaration and Mitigation Monitoring Program regarding Environmental Review #19-37 based on the fact that the Traffic fails to disclose, analyze, discuss and consider adequately the cumulative impacts to traffic congestion and safety by making the assumption that only students will be residents in the a single units identified as such by Applicant. There is no evidence in the record that the Applicant or ultimate owners of the proposed project will be able to limit such single units and by failing to identify the right hand turns from the parking lot onto northbound McKee Road and the congestion and safety hazards caused by non-student drivers turning left on Yosemite Avenue and McKee during peak a.m. hours when families are dropping their children off at the Providence Christian School on the north side of Yosemite Avenue (westbound), when non-student traffic is turning right on Yosemite and exiting the parking lot eastbound onto Yosemite Avenue and making a U-turns onto westbound Yosemite Avenue we [K2 Traffic Engineering, Inc. Traffic Impact Study, Exhibits 4-6] Relying on the inadequate Traffic Study constitutes an abuse of discretion under CEQA. [Public Resources Code section 21168,5]

4. The Traffic Study included in the Mitigated Negative Declaration relied on by Staff for the environmental review for this project does not include an internal circulation plan nor disclose, analyze, or mitigate the potentially significant cumulative adverse impacts to peak a.m. traffic safety and congestion caused by right turns from the curb cut on Yosemite Avenue.[MCC Section 20.68,050 (F)(6)]

5. The grounds stated in paragraphs 3 and 4, above, are compounded by the terms of COA No. 14, included in CUP #1238, which is on appeal, due the fact that COA No. 14 defers the determination and dedication of the necessary right-of-way along the property frontage is not identified, disclosed, or discussed and is improperly deferred to the issuance of the first building permit. But, the Site Plan cannot be found consistent with CUP #1238, because the future upgrade of Yosemite Avenue between McKee Road and Campus Parkway to 118' shown in Table 4.1, at page 4.3 of the City's Transportation and Circulation Element of the General Plan and the Circulation map.[MCC Sections 20.68.050 (F)(1) and (6)] This issue regarding the correct ROW must be analyzed and determined prior to the approval of the Site Plan Review and identified on Site Plan #455. This should not be deferred.

6. The Planning Commission proceeded in a manner not in compliance with law by making findings and approving Site Plan Review #455 and adopting the environmental review characterized as the adoption of a Mitigated Negative declaration and Mitigation Monitoring Program regarding Environmental Review #19-37 based on the fact that CUP #1238 (which was timely appealed to the City Council) includes and relies upon an insufficiently specific and unenforceable mitigation measure incorporated into the Conditions of Approval (COA 8) set forth in COA 10, which provides:

> "The developer shall provide an operations and maintenance plan for the on-site wastewater storage tank to address the timing of the off-peak discharge, emergency procedures for breakdowns and repairs, and odor control. The plan shall include steps to ensure ongoing objectionable odors do not affect the site or surrounding

area. The operations and maintenance plan shall be approved by the City Public Works Director and/or City Engineer."

This "Mitigation Measure" and "Condition of Approval" is insufficiently specific to be Enforceable, and the non-public exercise of discretion by City Staff deprives the Appellants and the general public of their right to meaningful participation in the exercise of discretion. Therefore, this provision constitutes an improper delegation of discretion and constitutes an abuse of discretion under CEQA. [PRC section 21168.5]

7. There appears to be a similar problem with Initial Study #19-37, with respect to Mitigation Measure HYDRO-4, which provides: "Additionally, at the time of construction, the developer would be required to provide calculations to demonstrate that the proposed on-site retention and the City's storm water system would be able to accommodate the additional run-off from the site.".(p.54)

8. Similarly, COA No. 30, which provides for the preparation of a "parking demand analysis" as "COA" or a "deferred mitigation measure" constitutes an impermissible delegation of discretion and deprives the Appellants and the general public of their right to meaningful participation in the public decision-making process and the right to open public decision making. Therefore, the inclusion of this "COA" or "mitigation measure" constitutes a failure to proceed in the manner required by law and an abuse of discretion by the Planning Commission

9. The Site Plan provides no identification of the location of the 43,000-gallon underground waste water storage facility to be designed and constructed on site (Conditions 9 and 10 and mitigation measure) to store and pump untreated effluent in the Yosemite Avenue sewer main during off-peak hours. This infrastructure and the location of the storm water discharge point into the Merced Irrigation District irrigation canal adjacent to the project need to be identified in the Site Plan. [MCC Sections 20.68,050 (F)(3) and (6)] This information should also be disclosed, analyzed, discussed, and considered in the environmental review documentation for the proposed project.

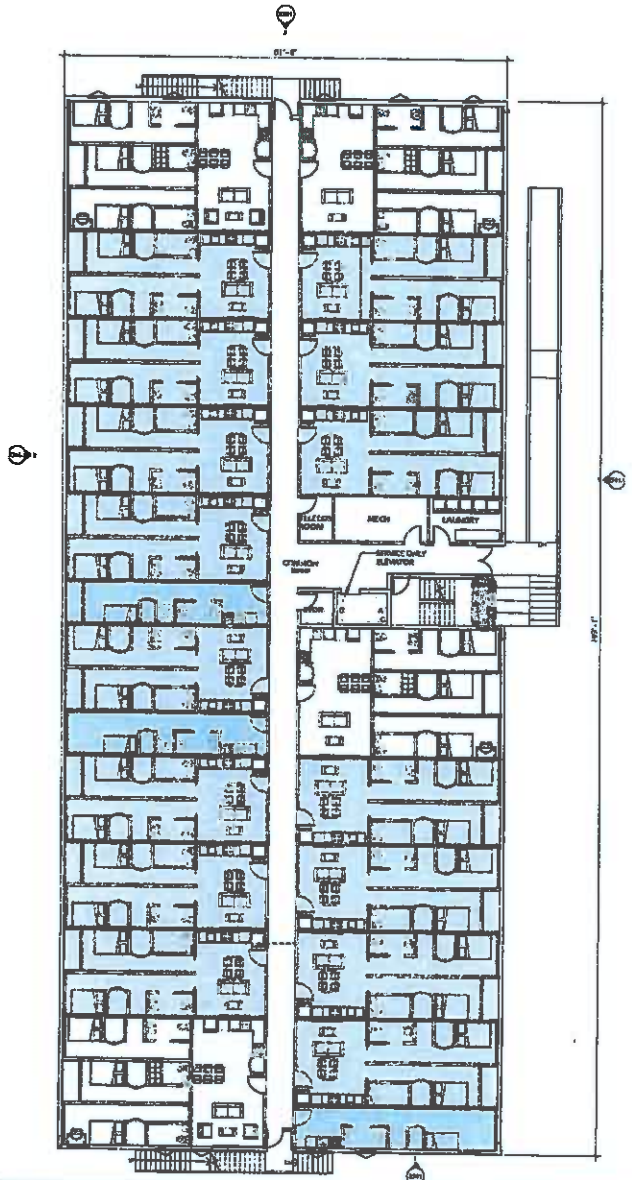
Conclusion

Based on the foregoing deficiencies in the Site Plan Review #455 process before the Planning Commission, Appellants request the City Council to grant this Appeal and to deny the proposed project with prejudice.

Respectfully submitted,

/s/ *Richard L. Harriman*
RICHARD L. HARRIMAN
Attorney at Law

ATTACHMENT 5 - Page 1



Legend

- EFFICIENCY UNIT
- 2 BED/2 BATH
- 3 BED/3 BATH
- COMMON

0 2 4 8 16

ferrierArchitectureStudio

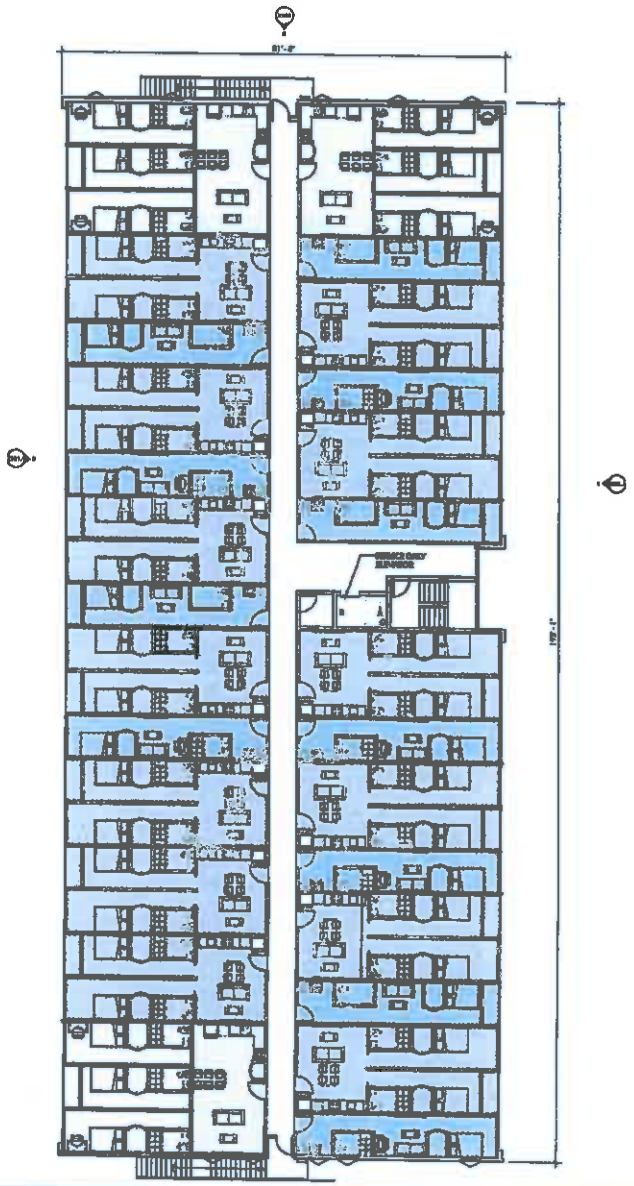
MER

MERCED HOLDINGS LP

CONDITIONAL USE PERMIT

JANUARY 8, 2020

01 APTS - BLDG 1



Legend

- EFFICIENCY UNIT
- 2 BED/2 BATH
- 3 BED/3 BATH
- COMMON

0 2 4 8 16

ATTACHMENT 5 - Page 2

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MER

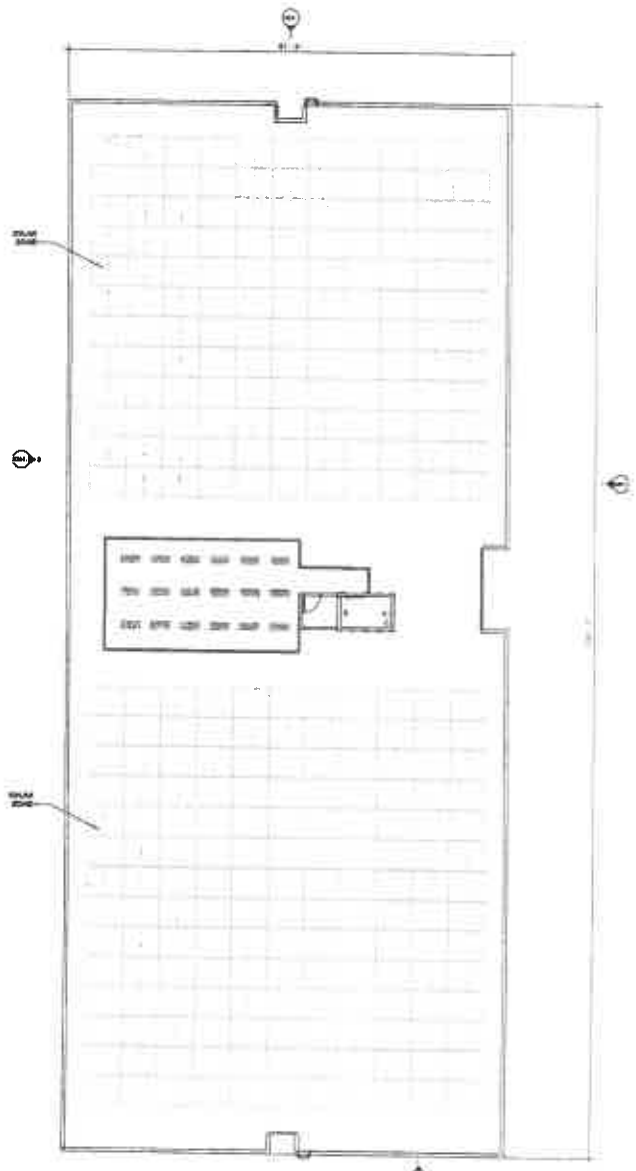
MERCED HOLDINGS LP

CONDITIONAL USE PERMIT

JANUARY 8,2020

02 APTS - BLDG 1

Z101.2



0 2 4 8 16

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MER

MERCED HOLDINGS LP

CONDITIONAL USE PERMIT

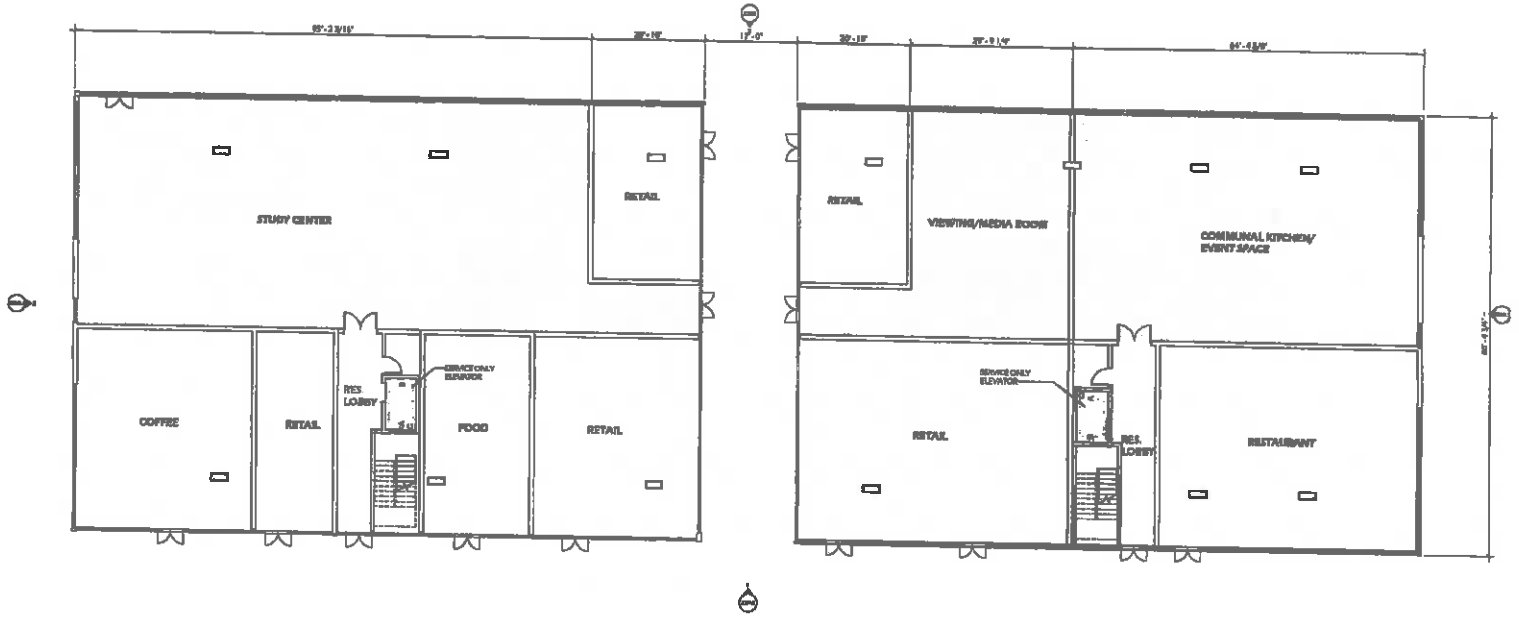
JANUARY 6, 2020

03 APTS - BLDG 1 & 3

ATTACHMENT 5 - Page 3

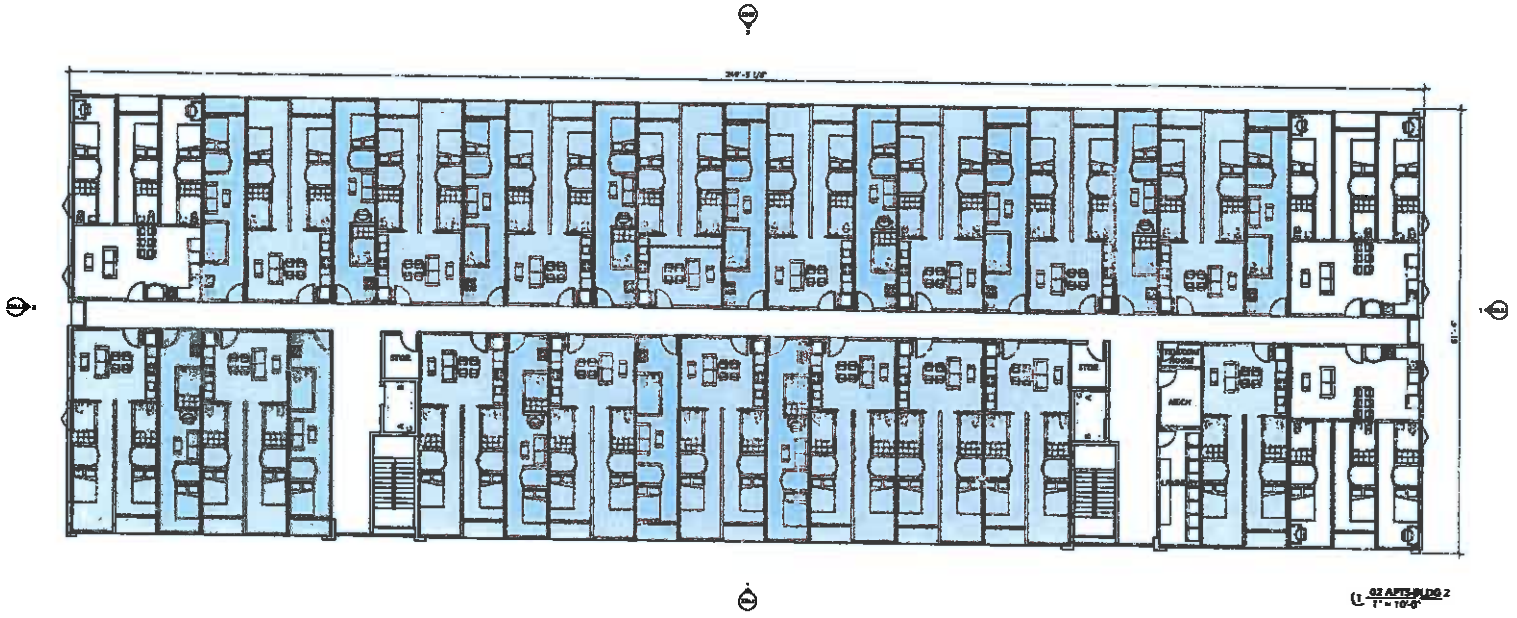
LEGEND

- COMMON
- COMMUNITY SPACE
- RETAIL



Legend

- EFFICIENCY UNIT
- 2 BED/2 BATH
- 3 BED/3 BATH
- COMMON

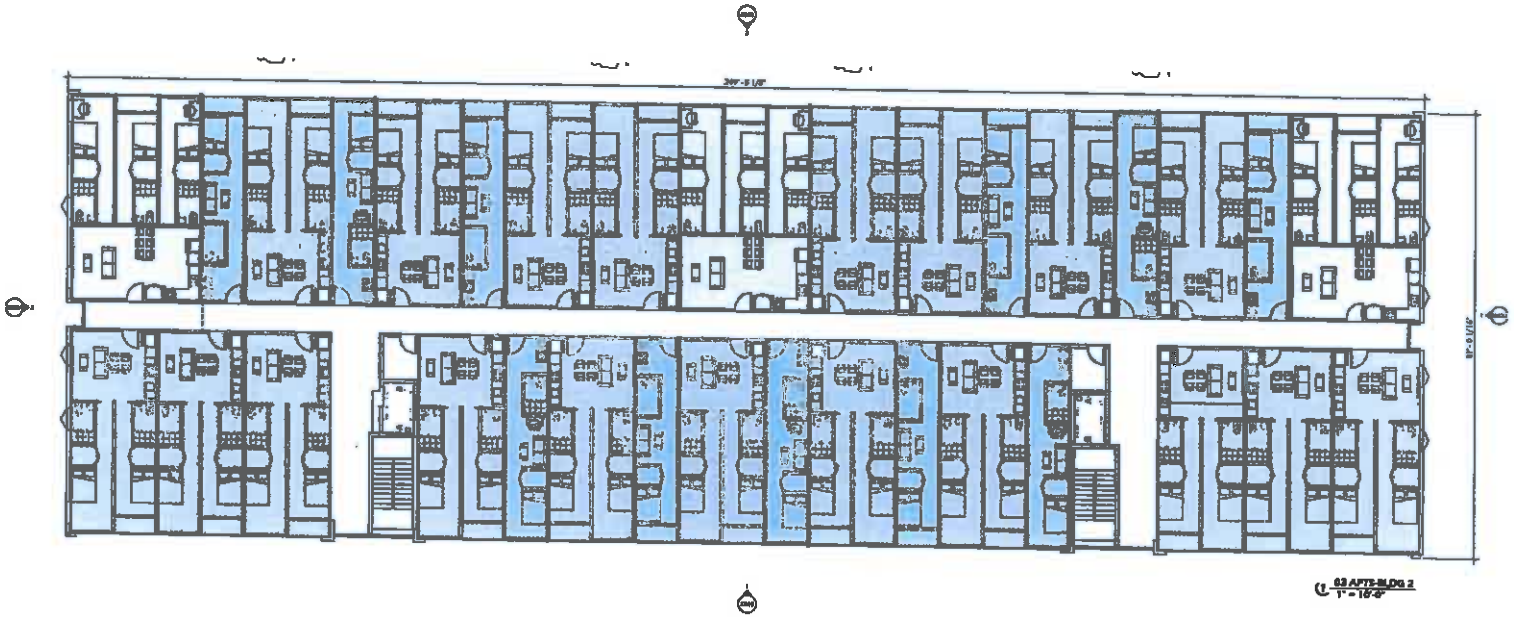


0 2 4 8 16

ATTACHMENT 5 - Page 5

Legend

- EFFICIENCY UNIT
- 2 BED/2 BATH
- 3 BED/3 BATH
- COMMON



03 APTS-BLDG 2
1" = 16'-0"

0 2 4 8 16

ferrierArchitectureStudio

MER

MERCED HOLDINGS LP

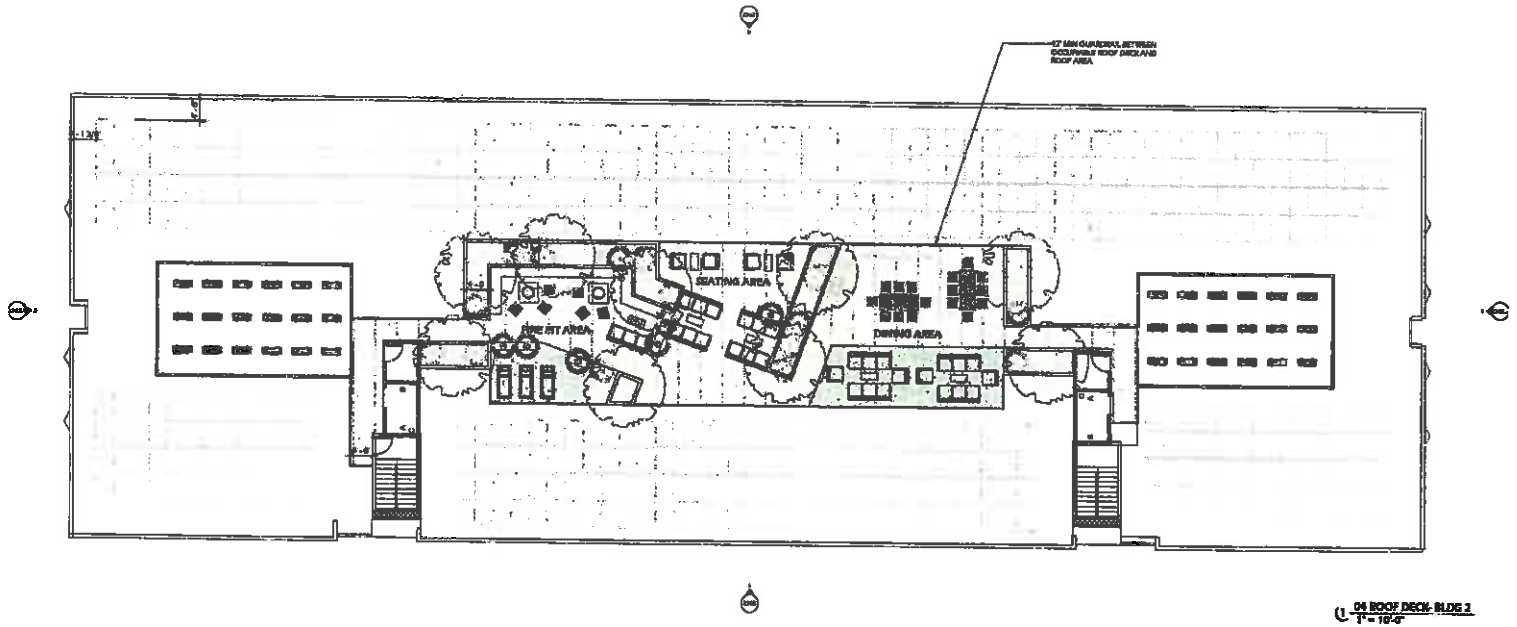
CONDITIONAL USE PERMIT

JANUARY 8,2020

03 APT - BLDG 2

21103.3

1" = 16'-0"



04 ROOF DECK- BLDG 2
1" = 10'-0"

ATTACHMENT 5 - Page 7

FerrierArchitectureStudio

MER

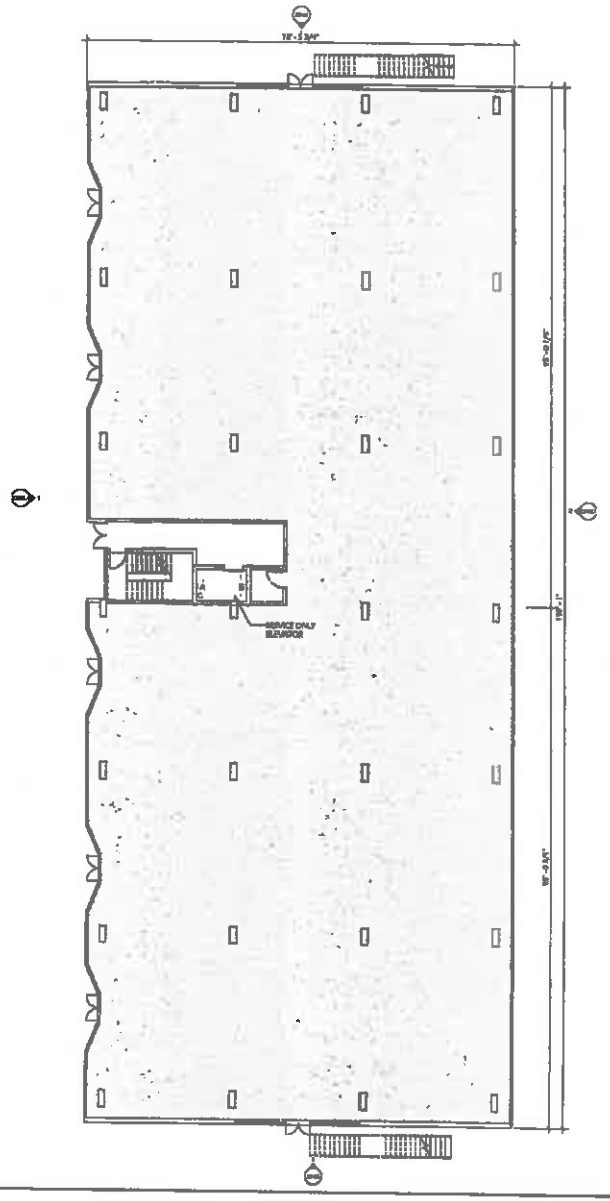
MERCED HOLDINGS LP

CONDITIONAL USE PERMIT

JANUARY 8,2020

ROOFTOP DECK

Z102.4



Legend

- ☐ COMMON
- ☐ OFFICE

ATTACHMENT 5 - Page 8

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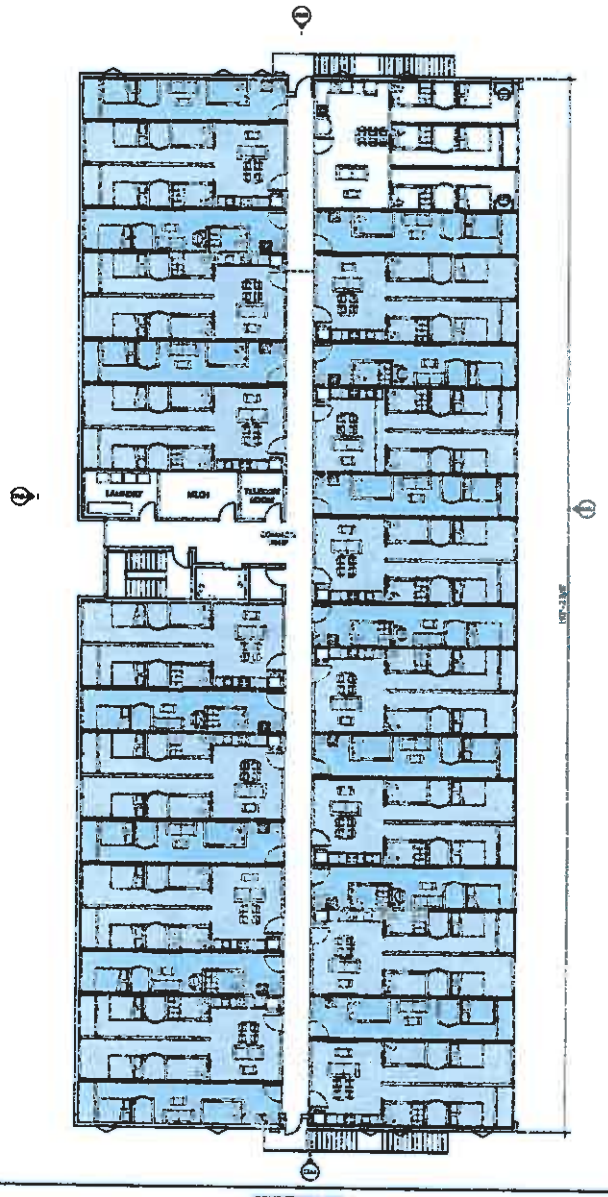
MER

MERCED HOLDINGS LP

CONDITIONAL USE PERMIT

JANUARY 9,2020

01 OFFICE-BLDG 3



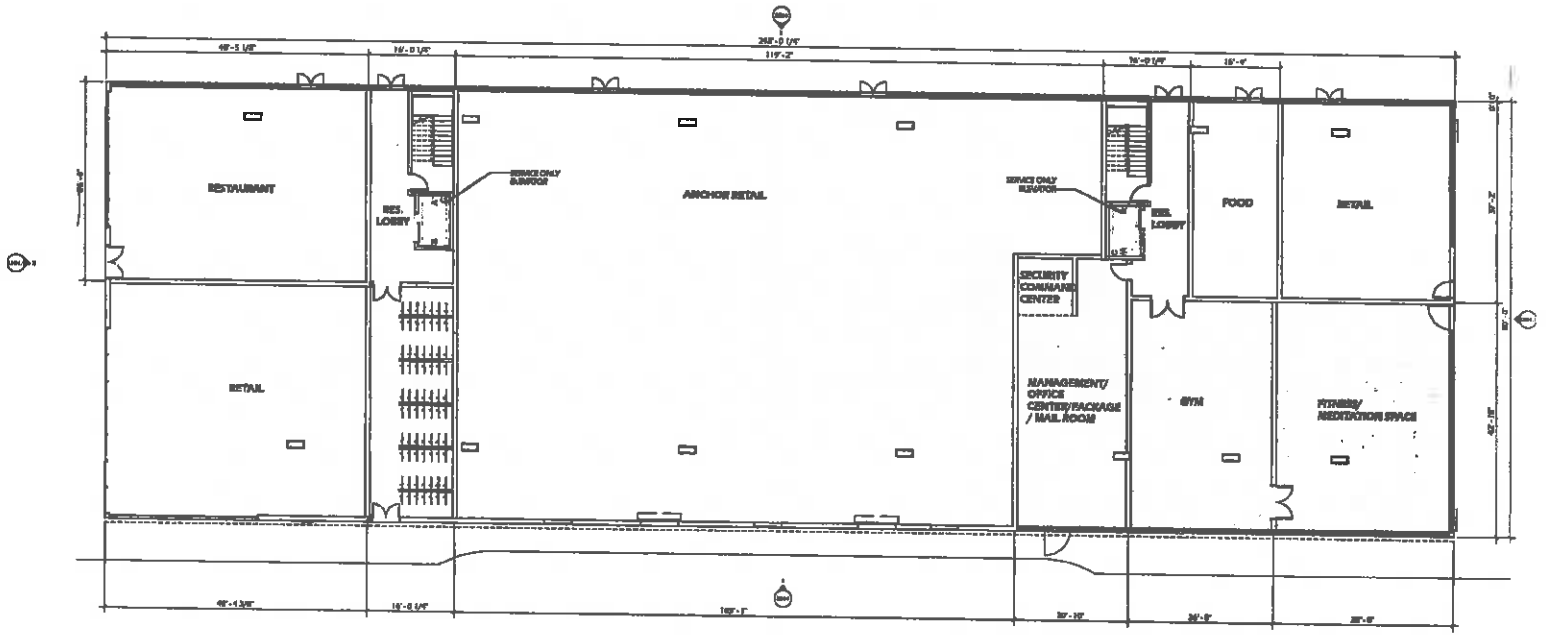
Legend

- EFFICIENCY UNIT
- 2 BED/2 BATH
- 3 BED/3 BATH
- COMMON

0 2 4 8 16

LEGEND

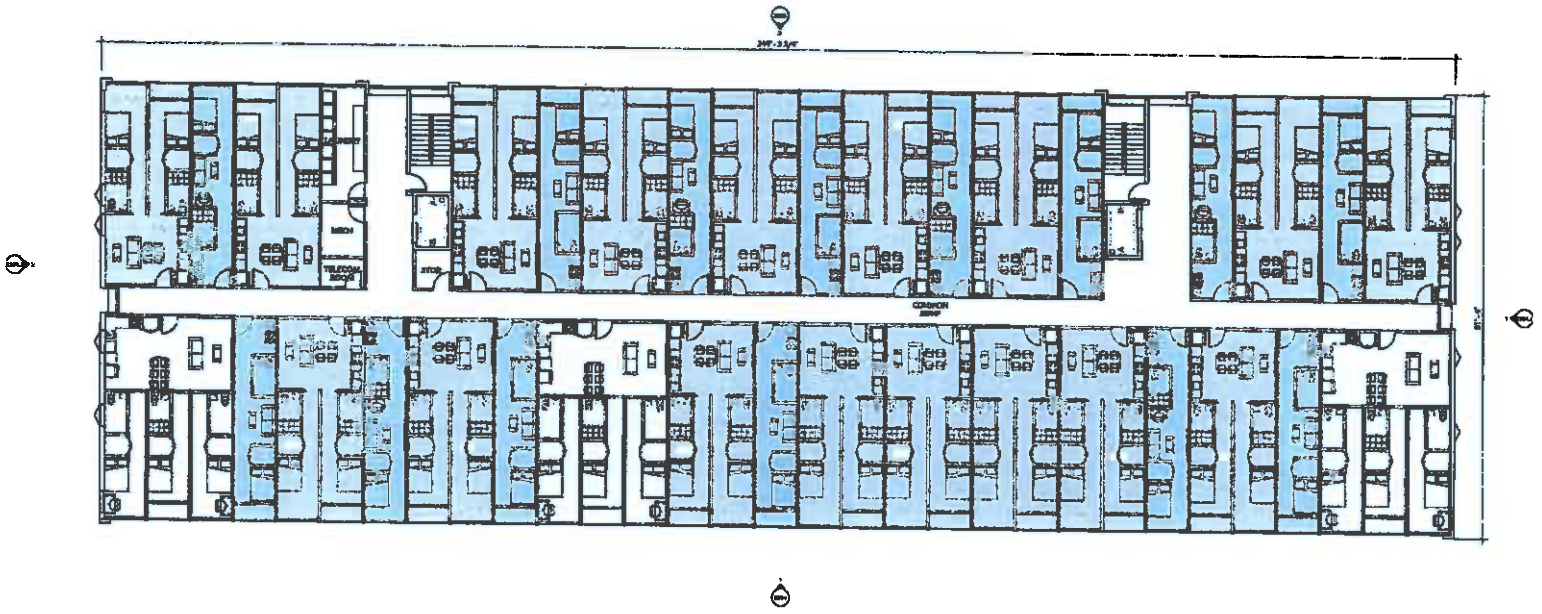
- ☐ COMMON
- ☐ COMMUNITY SPACE
- ☐ RETAIL



0 2 4 8 16

Legend

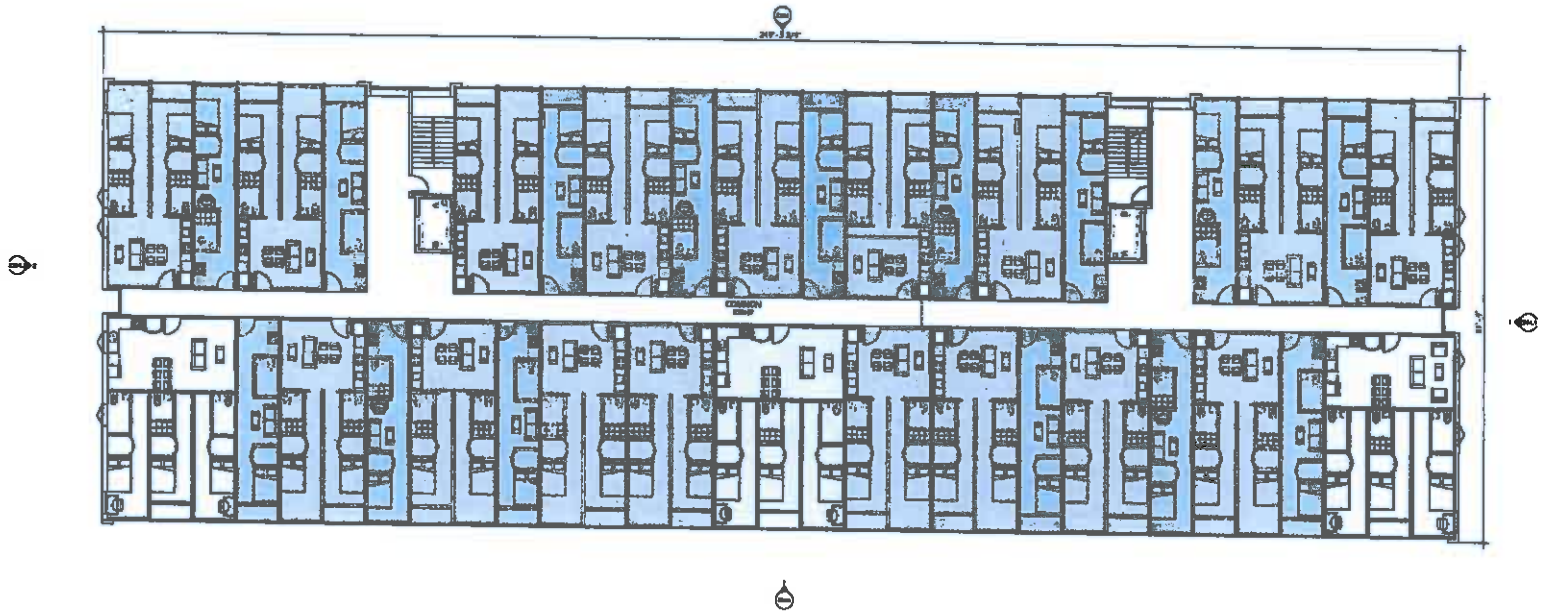
- EFFICIENCY UNIT
- 2 BED/2 BATH
- 3 BED/3 BATH
- COMMON



0 2 4 8 16

Legend

- EFFICIENCY UNIT
- 2 BED/2 BATH
- 3 BED/3 BATH
- COMMON



0 2 4 8 16

ATTACHMENT 5 - Page 12



1 EQUITONE PANEL OR EQV



2 COMMERCIAL STOREFRONT



3 RESIDENTIAL WINDOWS



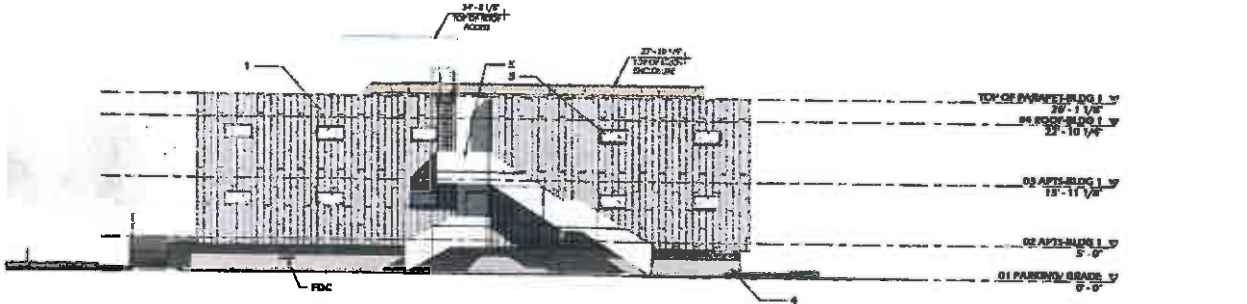
4 BOARD FORM CONCRETE

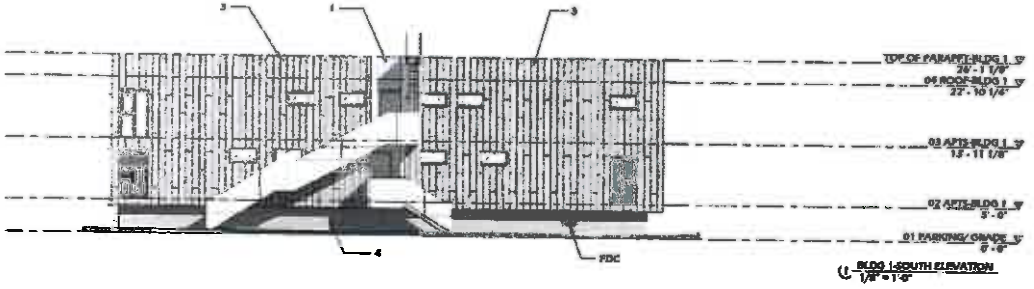


5 METAL PANEL RAILING



6 BRAKE METAL STOREFRONT





ATTACHMENT 6 - Page 1



1 EQUITONE PANEL OR EQV



2 COMMERCIAL STOREFRONT



3 RESIDENTIAL WINDOWS



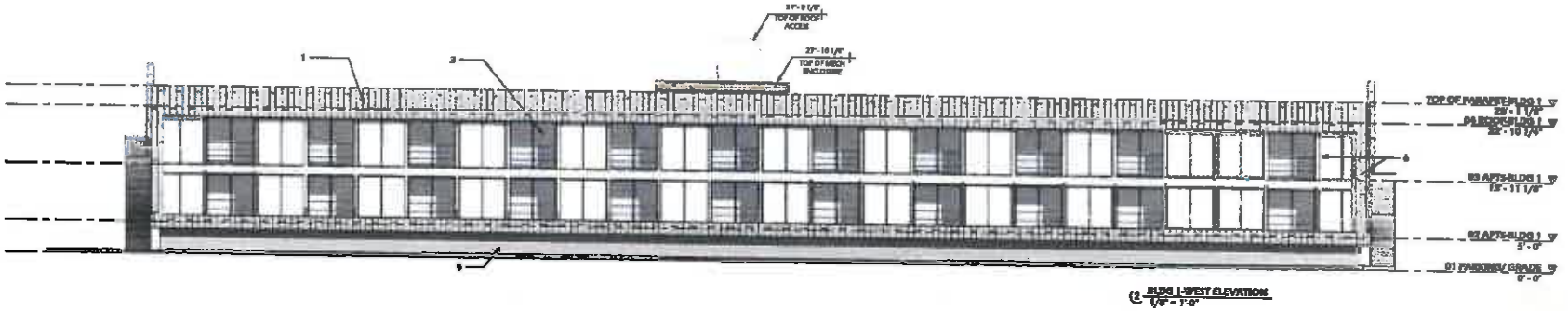
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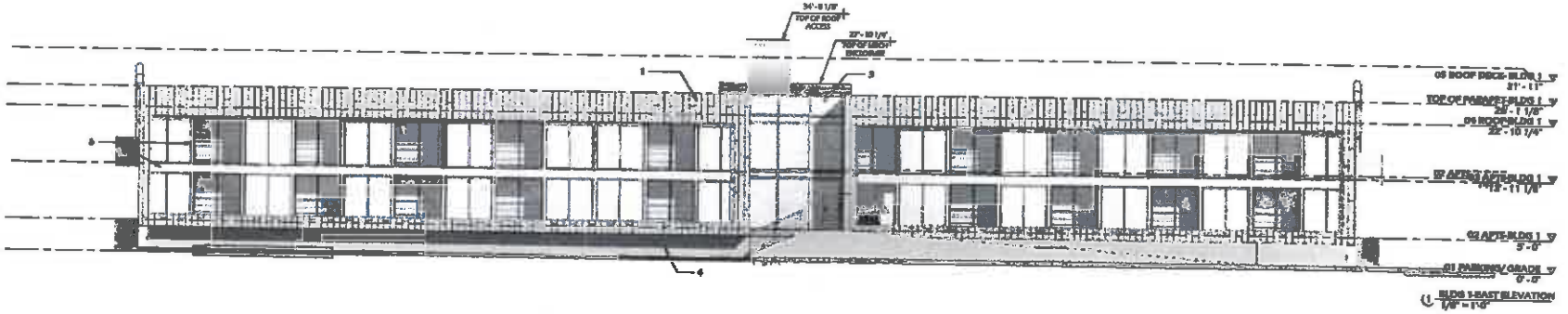
5 METAL PANEL RAILING



6 BRAKE METAL STOREFRONT



2 BLDG 1-WEST ELEVATION
1/8" = 1'-0"



1 BLDG 1-EAST ELEVATION
1/8" = 1'-0"

ATTACHMENT 6 - Page 2



1 ECLITONE PANEL OR EQV



2 COMMERCIAL STOREFRONT



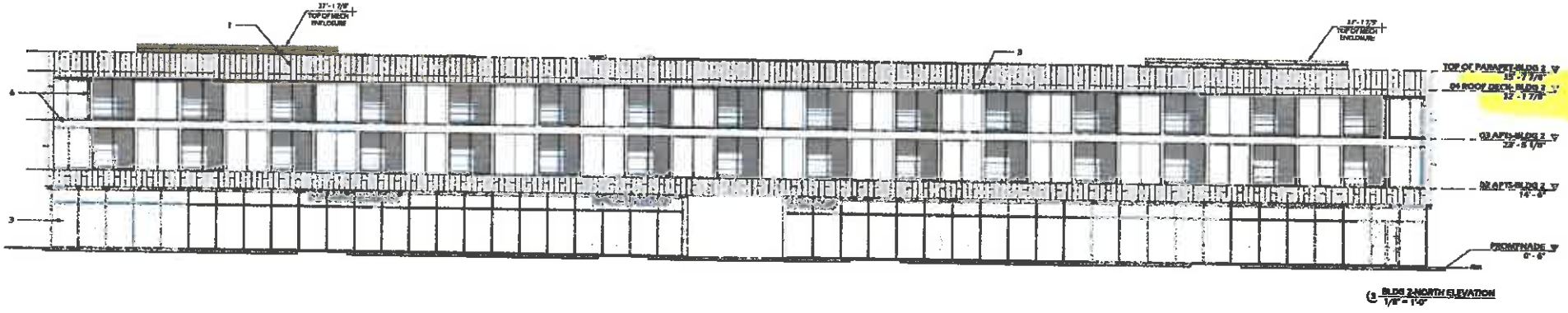
3 RESIDENTIAL WINDOWS



4 BOARD FORM CONCRETE



5 METAL FLASHING



BLDG 2-NORTH ELEVATION
1/8" = 1'-0"



BLDG 2-SOUTH ELEVATION
1/8" = 1'-0"



1 EQUITONE PANEL OR EQV



2 COMMERCIAL STOREFRONT



3 RESIDENTIAL WINDOWS



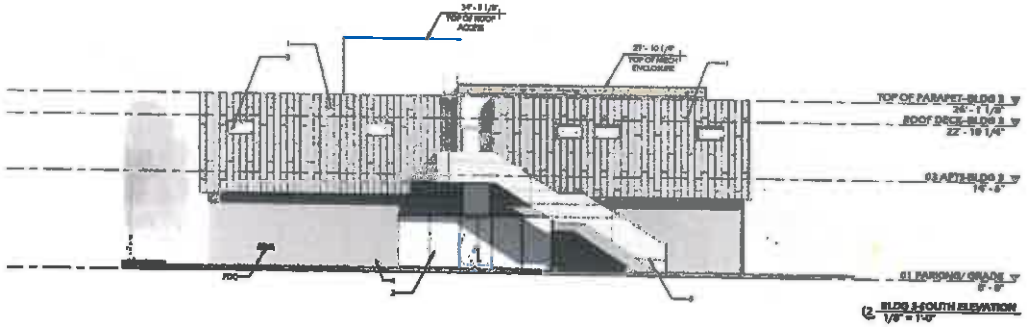
4 BOARD FORM CONCRETE



5 METAL PANEL RAILING



6 BRAKE METAL STOREFRONT



ATTACHMENT 6 - Page 5



1 EQUITONE PANEL OR EQV



2 COMMERCIAL STOREFRONT



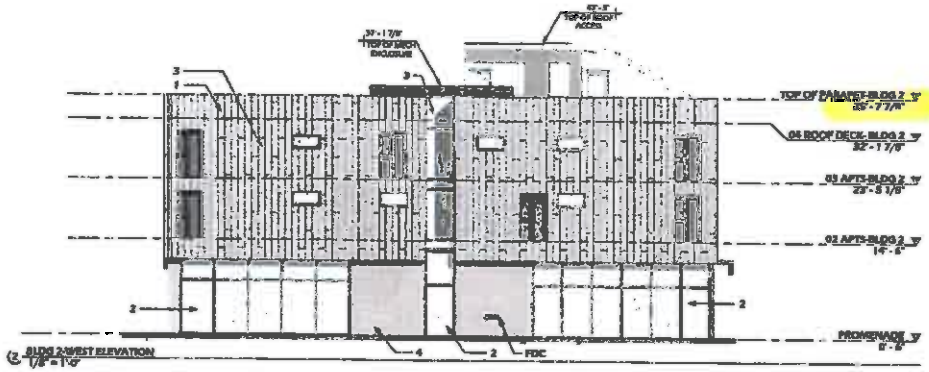
3 RESIDENTIAL WINDOWS

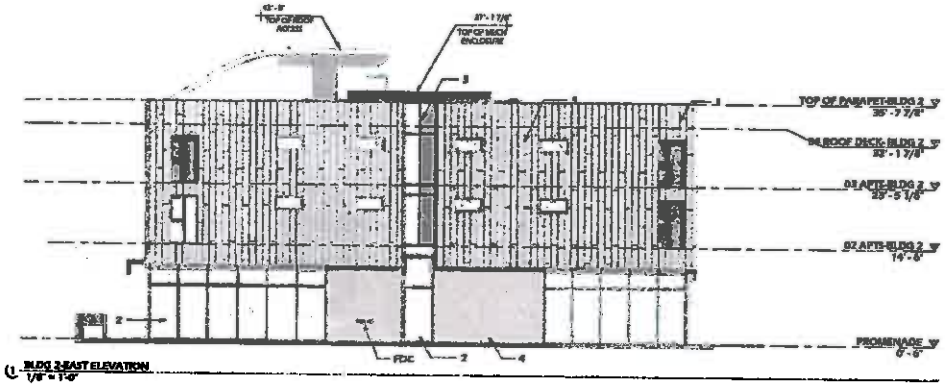


4 BOARD FORM CONCRETE



6 BRAKE METAL STOREFRONT





ATTACHMENT 6 - Page 4



1 EQUITONE PANEL OR EQV



2 COMMERCIAL STOREFRONT



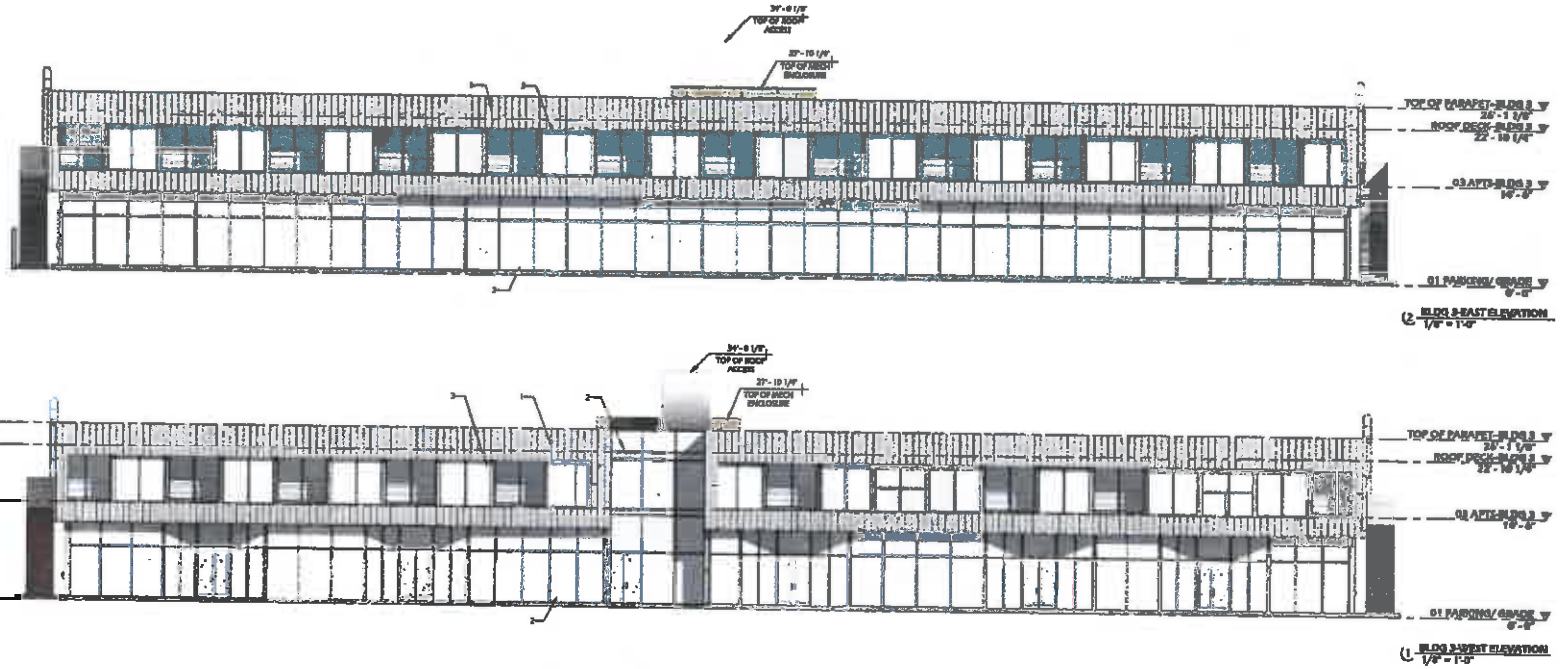
3 RESIDENTIAL WINDOWS



4 BOARD FORM CONCRETE



6 BRAKE METAL STOREFRONT





1 EQUITONE PANEL OR EQV



2 COMMERCIAL STOREFRONT



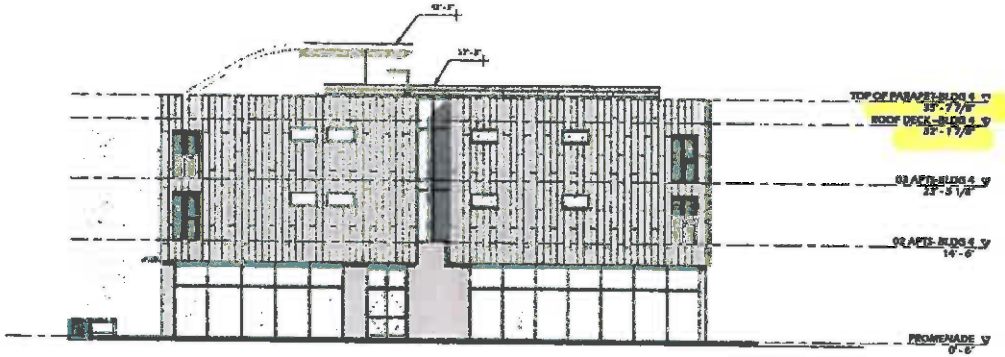
3 RESIDENTIAL WINDOWS



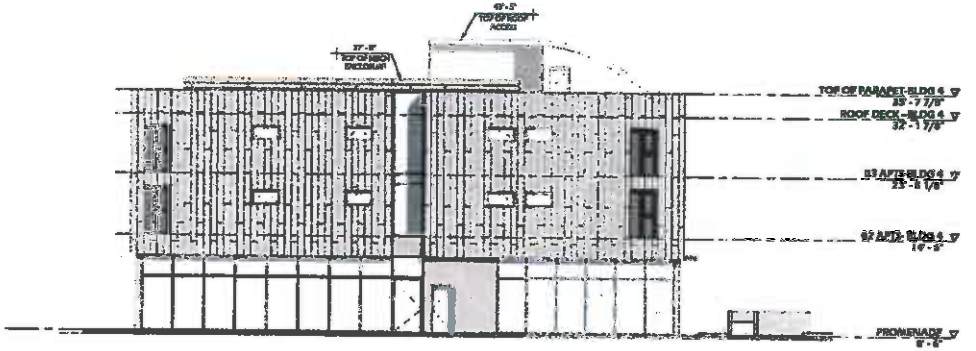
4 BOARD FORM CONCRETE



6 BRAKE METAL STOREFRONT

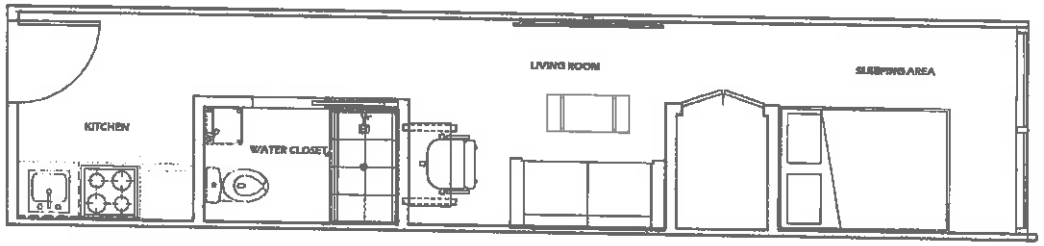


BLDG 4-WEST ELEVATION
1/8" = 1'-0"

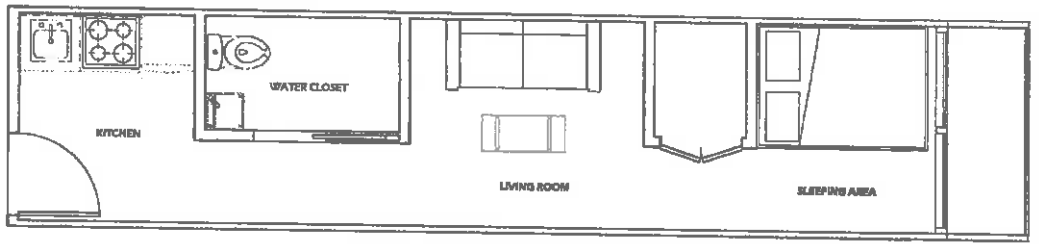


BLDG 4-EAST ELEVATION
1/8" = 1'-0"

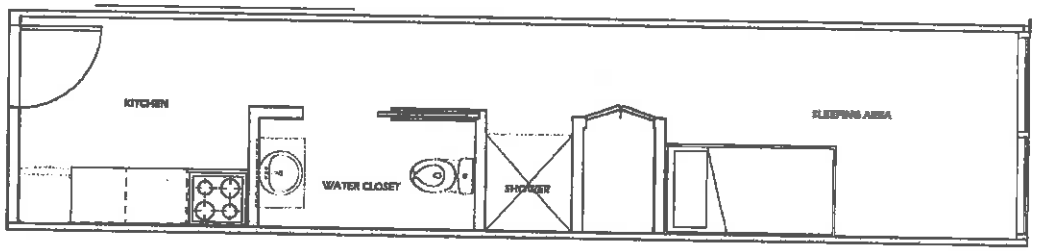
ATTACHMENT 6 - Page 8



STUDIO W/O BALCONY



STUDIO W/ BALCONY



ACC. STUDIO

ATTACHMENT 7 - Page 1

ferrierArchitectureStudio

MER

MERCED HOLDINGS LP

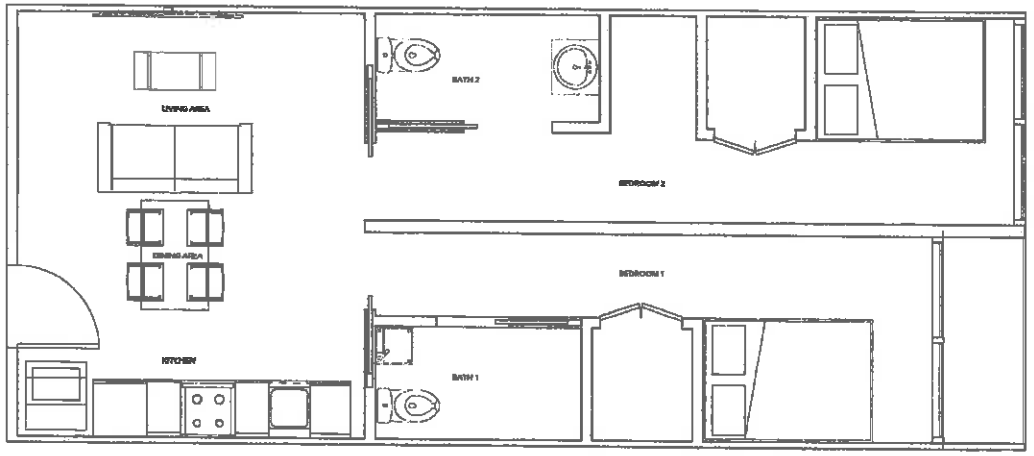
CONDITIONAL USE PERMIT

JANUARY 8,2020

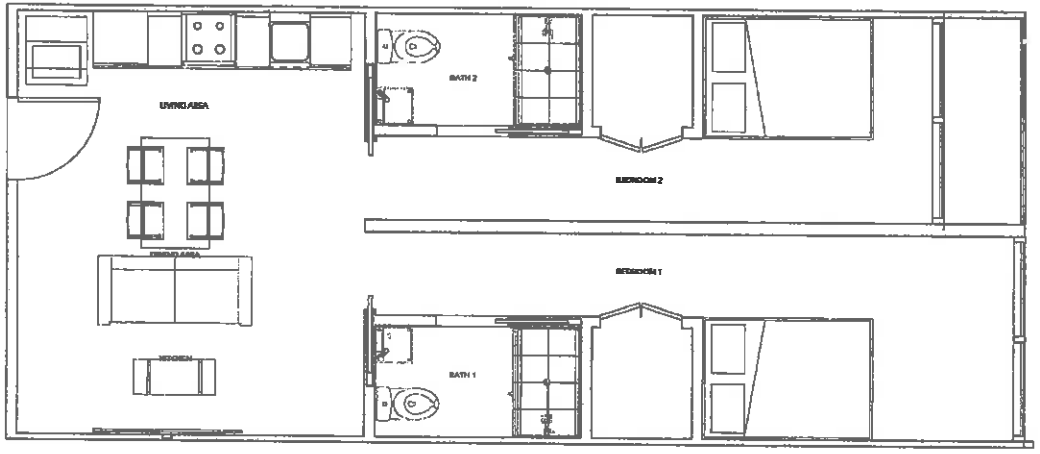
ENLARGED TYPICAL FLOOR PLAN

2110

1/2" = 1'-0"



2 BED/2 BATH NONACCESSIBLE

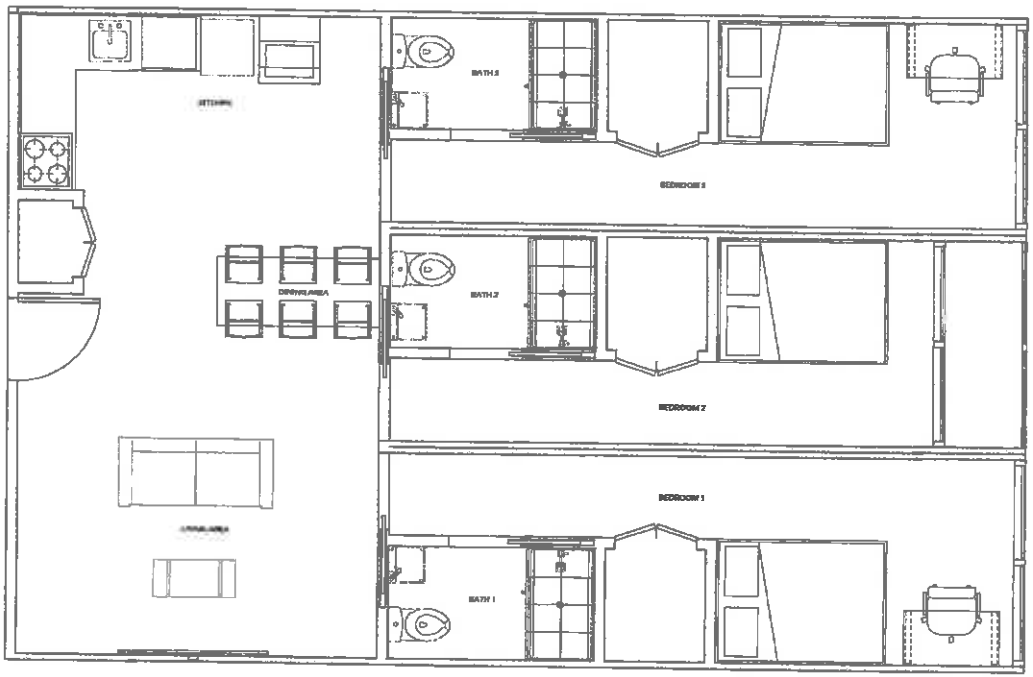


2 BED/2 BATH ACCESSIBLE

ATTACHMENT 7 - Page 2

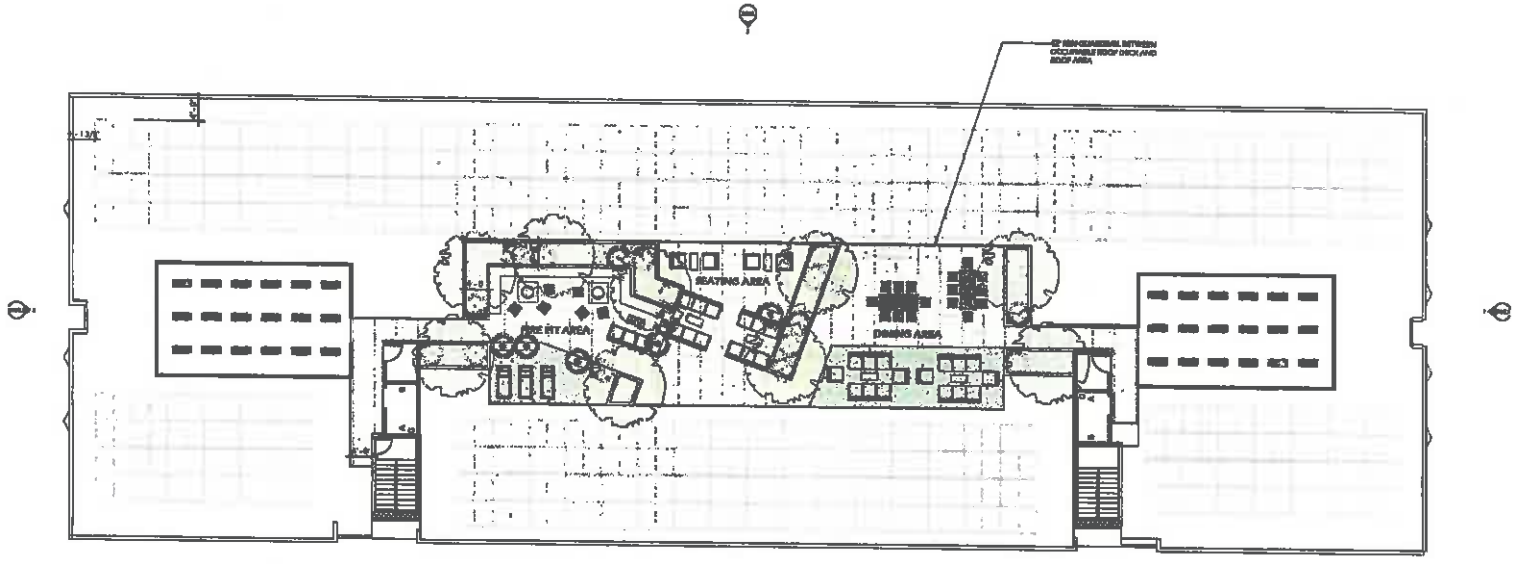


3 BED/3 BATH ACCESSIBLE



3 BED/3 BATH NON ACCESSIBLE

ATTACHMENT 7 - Page 4



04 ROOF DECK- BLDG 2
1" = 10'-0"

ATTACHMENT 8

FerrierArchitectureStudio

MER

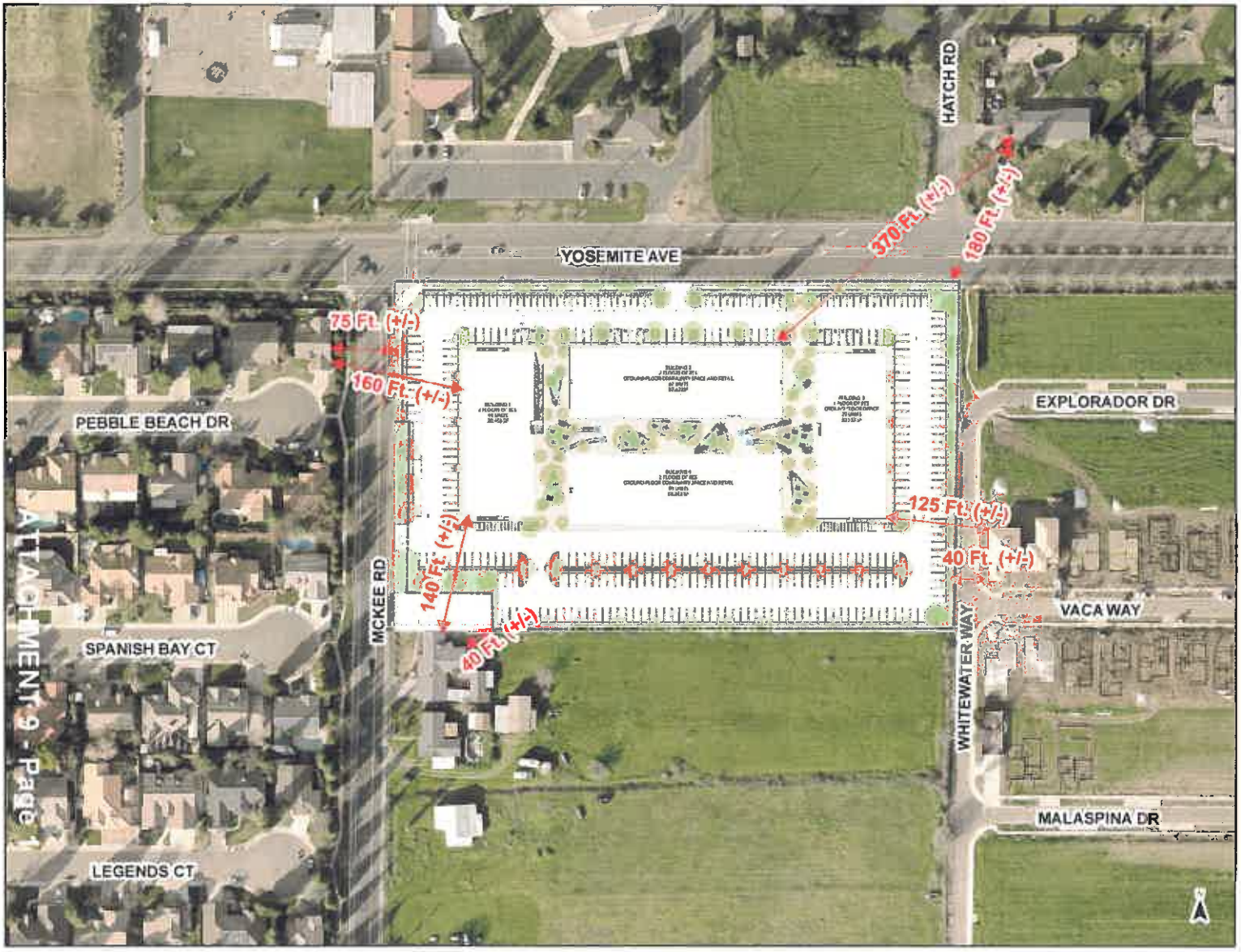
MERCED HOLDINGS LP

CONDITIONAL USE PERMIT

JANUARY 8,2020

ROOFTOP DECK

Z102.4


YOSEMITE AVE
HATCH RD
370 Ft. (+/-)
180 Ft. (+/-)
75 Ft. (+/-)
160 Ft. (+/-)
PEBBLE BEACH DR
EXPLORADOR DR
125 Ft. (+/-)
40 Ft. (+/-)
140 Ft. (+/-)
40 Ft. (+/-)
MCKEE RD
VACA WAY
SPANISH BAY CT
WHITEWATER WAY
MALASPINA DR
LEGENDS CT
ATTACHMENT 6 - Page 1


19TH ST
M ST
153'
408'
18TH ST
100'
370'
N ST
MAIN ST

CITY OF MERCED
Planning Commission

Resolution #4035

WHEREAS, the Merced City Planning Commission at its regular meeting of January 22, 2020, held a public hearing and considered **Conditional Use Permit #1238**, initiated by Merced Holdings, LP, property owner. This application involves a request to construct a mixed-use development with 214 apartment units and approximately 37,000 square feet of commercial uses within four buildings (two 2-story buildings and two 3-story buildings) on two parcels totaling approximately 5.94 acres, generally located at the southeast corner of Yosemite Avenue and McKee Road. The property has a General Plan designation of Neighborhood Commercial (CN) and is zoned Neighborhood Commercial (C-N); also known as Assessor's Parcel Numbers (APN) 008-310-053 and 008-310-038; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through L (Exhibit B) of Staff Report #20-01; and,

WHEREAS, the Merced City Planning Commission concurs with the Findings for Conditional Use Permits in Merced Municipal Code Section 20.68.020 (E) and other Considerations as outlined in Exhibit B; and,

NOW THEREFORE, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to adopt a Mitigated Negative Declaration and Mitigation Monitoring Program (Exhibit C) regarding Environmental Review #19-37, and approve Conditional Use Permit #1238, subject to the Conditions set forth in Exhibit A and the Mitigation Monitoring Program set forth in Exhibit C attached hereto and incorporated herein by this reference.

Upon motion by Commissioner RASHE, seconded by Commissioner WHITE, and carried by the following vote:

AYES:	Commissioners Butticci, Camper, Delgadillo, Dylina, Rashe, White and Chairperson Harris
NOES:	None
ABSENT:	None
ABSTAIN:	None

Adopted this 22nd day of January 2020

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:
Exhibit A – Conditions of Approval
Exhibit B – Findings
Exhibit C – Mitigation Monitoring Program

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Conditions of Approval
Planning Commission Resolution # 4035
Conditional Use Permit #1238

1. The proposed project shall be constructed/designed in substantial compliance with the Site Plan, Floor Plan, Elevations; and Renderings (Attachments B, C, D, and E of Planning Commission Staff Report #20-01), except as modified by the conditions.
2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
3. The Project shall comply with the applicable conditions set forth in Planning Commission Resolution #3049 for General Plan Amendment #14-06 and Zone Change #421 and Planning Commission Resolution #4025 for General Plan Amendment #19-02 and Zone Change #426 previously approved for this site.
4. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the

defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

7. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map approval or issuance of a building permit, whichever comes first. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.

8. The project shall comply with all mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #19-37 (Exhibit B of Planning Commission Resolution #4035 - Attachment K of Planning Commission Staff Report #20-01) and all applicable mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #14-32 (Appendix A of Initial Study #19-37, Attachment K of Staff Report #20-01).

9. Due to constraints in the existing sewer collection system, the project shall be allowed to release wastewater into the City's system at a rate of 8,000 gallons per day (gpd) during peak hours. All wastewater in excess of this amount shall be stored on-site in an approved wastewater storage tank or other method approved by the Public Works Director and/or City Engineer to be released during off-peak hours. A flow monitor shall be installed with a telemetry or SCADA system approved by the Public Works Director and/or City Engineer to monitor the flow and ensure compliance with this requirement. The City shall periodically monitor the flow. Should the flow exceed

8,000 gpd during peak hours, the City may use any legal remedies available to gain compliance with this condition.

10. The developer shall provide an operations and maintenance plan for the on-site wastewater storage tank to address the timing of the off-peak discharge, emergency procedures for breakdowns and repairs, and odor control. The plan shall include steps to ensure ongoing objectionable odors do not affect the site or surrounding area. The operations and maintenance plan shall be approved by the City Public Works Director and/or City Engineer.

11. A minimum of 15% of the site shall be covered with landscaping as required by Section 20.36 (Table 20.36-1) of the Zoning Ordinance. Landscaping and irrigation shall be required to meet the City's Water Efficient Landscape Ordinance and the requirements of Zoning Ordinance Section 20.36.040.

12. All signs shall comply with the North Merced Sign Ordinance and Section 20.62.040 (B)(2) of the City's Zoning Ordinance for signs in a Neighborhood Commercial (C-N) zone. Illuminated signs may be illuminated until 10:00 p.m. or the end of the business day, whichever is later.

13. The applicant shall construct all missing improvements along the property frontage on Yosemite Avenue and McKee Road including, but not limited to, sidewalk, curb, gutter, street lights, and street trees. Any existing improvements that are damaged or that do not meet current standards shall be repaired or replaced as required by the City Engineer.

14. All necessary right-of-way along the property frontage, including Yosemite Avenue, McKee Road, and Whitewater Way, needed for public improvements shall be dedicated prior to the issuance of the first building permit.

15. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access.

16. Parking lot trees shall be installed per City Parking Lot Landscape Standards and Section 20.38.070 (F). At a minimum, parking lot trees shall be provided at a ratio of one tree for every six parking spaces. Trees shall be a minimum of 15-gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list).

17. All projects on this site shall comply with Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).

18. All storm water shall be contained on-site for a minimum of 48 hours, then released into the City's storm water system at a rate not to exceed the 2-year pre-development flow or as approved by the City Engineer.

19. Prior to issuance of the first grading/building permit for any project on the site, the applicant shall demonstrate compliance with San Joaquin Valley Air Pollution Control District Rule 9510 to the Planning Department. Changes to the site plan resulting from compliance with Rule 9510 are subject to review by City Staff or the Planning Commission, as determined by the Director of Development Services.

20. Bicycle parking for all projects on the site shall meet the minimum requirements of the California Green Building Code and Merced Municipal Code Section 20.38.080.

21. All landscaping in the public right-of-way shall comply with the most recently adopted water regulations by the State and City addressing water conservation measures. If turf is proposed to be installed in medians or park strips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.

22. If it is determined by the Fire Department that emergency vehicle access to Whitewater Way is needed to adequately serve the site or the surrounding area, the developer shall work with the City to provide such access, including an emergency gate with appropriate knox boxes, etc. as required by the Fire Department.

23. For buildings over 30 feet tall, a minimum 26-foot-wide drive aisle shall be provided for emergency vehicle access. The developer shall work with the Fire Department to determine the areas that need the 26-foot-wide drive aisle.

24. A fire control room may be required for the buildings on the site. The applicant shall work with the Fire Department to determine the location of the fire control room. Additional fire control rooms may be required at the discretion of the Fire Chief.

25. Each building shall be provided with a Fire Department Connection.

26. Buildings that do not provide an elevator (other than a freight elevator) shall be provided with an additional exit. The developer shall work with the Chief Building Official to determine the number of exits required for each building.

27. A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access must be provided throughout the project site or as required by the Fire Department.

28. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.

29. All parking lot and other exterior lighting shall be oriented in such a way so that is does not spill over onto adjacent properties.

30. In order to comply with the parking requirements for this project, a parking demand analysis would be required in order for the project to qualify for the mixed-use reduction allowed by Section 20.38.050 (F). This study shall be provided at the time of building permit submittal and shall be approved by the Director of Development Services. In no case shall the reduction be greater than 30% as allowed by the Zoning Ordinance.

31. Containers for refuse and recycled goods shall be stored in enclosures that are designed with colors compatible with the buildings and shall be constructed to meet City Standards. At the Building Permit stage, the developer shall work with the City Refuse Department to determine the best location for these enclosures to ensure proper access is provided for City Refuse Trucks as well as the number of containers needed to adequately serve the site. Use of a trash compactor should be considered to reduce the number of pick-ups per week.

32. A minimum 8-foot high concrete block wall shall be installed along the southern property line. A minimum five-foot wide landscaping area adjacent to the wall shall be provided to allow for the planting of vines or other appropriate landscape material.

33. Drive-thru uses, bars, nightclubs, and large convenience markets similar to a 7-Eleven type store are not allowed. Small convenience markets intended to serve the tenants or the immediate neighborhood

could be allowed. Restaurants serving alcohol could be allowed with Conditional Use Permit approval.

34. All construction activity shall be conducted between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday.

35. All walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment.

36. All mechanical equipment shall be screened from public view.

37. Hours for use of the rooftop deck shall be limited to from 7:00 a.m. to 10:00 p.m. daily.

N:\SHARED\PLANNING\PC RESOLUTIONS\RESOLUTIONS\#4035 Exhibit A CUP #1238.docx

Findings and Considerations
Planning Commission Resolution # 4035
Conditional Use Permit #1238

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

A) The proposed mixed-use project complies with the General Plan designation of Neighborhood Commercial (CN) and the Zoning classification of Neighborhood Commercial (C-N). The proposed commercial uses comply with the General Plan designation of Neighborhood Commercial (CN). Although the General Plan encourages mixed-use developments, it does not specifically address the density allowed within a commercial zone for a mixed-use project. The *Merced Vision 2030 General Plan* includes two classifications for higher density residential uses – High-Medium Density (HMD) and High Density (HD). The High-Medium designation allows 12 to 24 units per acre, while the High Density designation allows 24 to 36 units per acre. The proposed project has a density of 36 units per acre, which is consistent with the High Density (HD) designations. Therefore, because there is no definitive designation for a mixed use project and there are General Plan policies that encourage higher density and alternate housing types (see below), the City has relied upon the High Density designation to determine compliance with the General Plan. Based on this designation, the proposed multi-family portion of the project would comply with the General Plan.

The Housing Element of the *Merced Vision 2030 General Plan* includes policies supporting affordable housing, mixed-use development, and higher densities.

Policy H-1.1 *Support Increased in Residential Zoning Districts*

Although the proposed project would not be located within a residential zone, it does provide an opportunity for a higher density project to provide needed housing within the City.

Policy H 1.1.c *Encourage Mixed Use Development*

The proposed project would provide a mixture of retail commercial uses to serve the neighborhood and the multi-family dwelling units.

Policy 1.1.e *Encourage Alternate Housing Types*

The proposed project would include one, two, and three-bedroom apartments. The units range in size from 276 square feet for a one-bedroom unit with a balcony, to 876 square feet for a 3 bedroom unit. This mixture provides a variety of different housing types to meet the growing need of housing within the community and supports this policy of providing alternate housing types.

Policy 1.8b *Prioritize City efforts to encourage residential development by focusing on in-fill development and densification within the existing City Limits.*

The proposed project is on an in-fill site and meets the density requirements of the City's highest density classification.

The following are Land Use Policies and Implementing Actions of the General Plan that could be met with the proposed project.

Policy L-1.1 *Promote Balanced Development Which Provides Jobs, Services, and Housing.*

Implementing Action 1.1.a: *Promote mixed use development combining compatible employment, service and residential elements.*

Implementing Action 1.1.c: *Determine the types of housing opportunities needed for the type of employment opportunities being created in the City.*

The Zoning Ordinance does not specify a density for multi-family housing allowed within a C-N zone, it merely states that multi-family uses are allowed within the C-N zone as a Conditional Use. Therefore, approval of the proposed Conditional Use Permit would bring the project into compliance with the Zoning Ordinance.

Zoning Ordinance Compliance – Conditional Use Permit Required Findings

B) Section 20.68.020 sets forth specific Findings that must be made in order for the Planning Commission to approve a Conditional Use Permit. These Findings are provided below.

1. *The proposed use is consistent with the purpose and standards of the zoning district, the General Plan, and any adopted area*

or neighborhood plan, specific plan, or community plan.

The purpose of a Neighborhood Commercial (C-N) zone is to provide areas for shopping centers and other commercial uses that serve the day-to-day needs of a residential neighborhood. The C-N zone allows a variety of commercial uses and residential uses, subject to approval of a Conditional Use Permit. The proposed project would provide a variety of retail and restaurant uses to serve the tenants of the project as well as the surrounding neighborhood. With the approval of the requested Conditional Use Permit, the project would comply with the requirements and purpose of the C-N Zone.

As described in Finding A above, the project meets the requirements of the General Plan. There are no other area, specific, or neighborhood plans for this area.

2. *The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the subject property.*

   As described above, the commercial uses are allowed within a C-N zone. The proposed multi-family component of the project is a conditional use. The developer has revised the project to address some of the concerns expressed with the previously proposed project. The building heights have been reduced for the buildings on the east and west side of the site closest to the existing residential uses. The setbacks have been increased for those buildings as well in an effort to reduce impacts on the surrounding neighborhood. The site is surrounded by residential uses and a church to the north. Therefore, residential uses are common in this area. Another apartment complex is currently under construction east of this site at the corner of Yosemite and Lake Road, in the same general vicinity, which provides a mixture of housing units for the area. Given the proximity to the UC, multi-family uses are appropriate for this area. Therefore, through the implementation of the conditions of approval, the proposed apartment project (as part of the overall mixed-use project) would be compatible with the existing and future land uses in the vicinity.

3. *The proposed use will not be detrimental to the public health, safety, and welfare of the City.*

   The proposed project does not include any uses that would be detrimental to the public health, safety, and welfare of the City. The project would be required to annex to the City's Community Facilities District to pay for costs related to police and fire safety. Implementation of the conditions of approval and adherence to all Building and Fire Codes, and City Standards would prevent the project from having any detrimental effect on the health safety, and welfare of the City.

4. *The proposed use is properly located within the City and adequately served by existing or planned services and infrastructure.*

   The project site is an in-fill site near the edge of the City's eastern boundary, surrounded by residential uses. The project would be adequately served by the City's water system. Through the implementation of the conditions of approval, the project would be adequately served by the City's sewer and storm water systems. Additionally, the project would be required to pay Public Facilities Impact Fees to help pay for future improvements needed to the City's infrastructure.

Traffic/Circulation

C) The project site is located at the southeast corner of Yosemite Avenue and McKee Road. Yosemite Avenue, east of Parsons Avenue is designated as a "Special Street Section" in the *Merced Vision 2030 General Plan*. As such, the ultimate right-of-way for this road is 94 feet. McKee Road is a Collector Road with an ultimate right of way of 74 feet. The project would have access from Yosemite Avenue (right-in/right-out only) and McKee Road (full access). Both the intersections of Yosemite Avenue and McKee Road and Yosemite Avenue and Via Moraga (approximately 0.3 miles east of McKee Road) are signalized.

Yosemite Avenue Access

The primary access on Yosemite Avenue would be a driveway that is located approximately 320 feet east of the intersection of Yosemite Avenue and McKee Road (refer to the Site Plan at Attachment B of

Planning Commission Staff Report #20-01). This driveway would provide right in/right out access only. The existing median in Yosemite Avenue would remain unchanged along the project site frontage. No other access to the site would be provided on Yosemite Avenue.

McKee Road Access

The primary access on McKee Road would be through a driveway located approximately 195 feet south of the intersection of Yosemite Avenue and McKee Road. This driveway would allow both left and right turning movements.

Whitewater Way

No access is proposed to Whitewater Way from the project site, unless the Fire Department requires an emergency access per Condition #22 of the Conditional Use Permit Conditions.

Traffic Impact Analysis

A traffic analysis was prepared for the proposed project by K2 Traffic Engineering, Inc. This analysis studied the following roadway segments:

1. Yosemite Avenue between Parsons Avenue and McKee Road.
2. McKee Road between Yosemite Avenue and Silverado Road.

The following intersections were also studied:

1. Yosemite Avenue at Parsons Avenue/Gardner Avenue
2. Yosemite Avenue at McKee Road
3. Yosemite Avenue at Hatch Road
4. McKee Road at Olive Avenue

The analysis looked at six different scenarios to determine the impact of the project. The scenarios included:

1. Existing Conditions
2. Existing Conditions plus Project
3. Existing plus Approved Conditions
4. Existing plus Approved Conditions, plus Project
5. Cumulative Year (2035) without Project Conditions
6. Cumulative Year (2035) with Project Conditions

The traffic analysis determined that the proposed project would generate a total of 1,876 Average Daily Trips (ADT's). After

standard reductions are given for transit and bicycle use, pass-by traffic, and internal capture, the total net ADT's are 1,184. The trip generation numbers are provided on page 13 of the traffic analysis (Appendix D of the Initial Study at Attachment K of Planning Commission Staff Report #20-01)

The *Merced Vision 2030 General Plan* establishes an acceptable Level of Service (LOS) as LOS D for intersection and roadway operations. The traffic study found that, under existing conditions, the LOS for the intersection at Yosemite Avenue and Parsons/Gardner Avenue currently operates at an LOS F for AM Peak Hour traffic and an LOS E for PM Peak Hour traffic. Additionally, the intersection of McKee Road and Olive Avenue operate at an LOS E and LOS D, respectively. The other two intersections studied (Yosemite Avenue at McKee Road and Yosemite Avenue at Hatch Road) operate at acceptable levels of service (LOS B or better).

With the addition of the proposed project, the intersection at Yosemite Avenue and Parsons/Gardner Avenue, the level of service would be reduced to LOS F and LOS E for the AM and PM peak hours, respectively. The level of service for McKee Road and Olive Avenue would remain an LOS E for the AM peak hour traffic. All other intersections would retain an LOS D or better rating. Under the Cumulative 2035 with project scenario, these same intersections are reduced to an LOS F for both AM and PM peak hours.

The traffic study also conducted a Peak Hour Signal Warrant Analysis and found that signal warrants are satisfied for signals at the intersections of Yosemite Avenue and Parsons/Gardner Avenue and McKee Road and Olive Avenue.

The traffic study recommended the following mitigation measures:

TRA-01 Pay a proportionate share of the cost of the traffic signal at the intersection of Yosemite Avenue and Parsons/Gardner Avenue.

TRA-02 Pay a proportionate share of the cost of the traffic signal at the intersection of McKee Road and Olive Avenue.

Because these intersections are currently operating at a level of service below LOS D (the standard established by the General Plan), and the project impacts are not the cause of the existing problems with

these intersections, the project would only be required to contribute a fair share to the cost of the traffic signals. The fair share contribution is based on the projects impacts, which in this case would be 2.4% of the cost of the traffic signal at Yosemite Avenue and Parsons/Gardner Avenue and 1.4% of the cost of the signal at McKee Road and Olive Avenue. The applicants would be eligible for reimbursement for up to 100% of the cost for the Yosemite Avenue and Parsons/Gardner Avenue traffic signal, which is an arterial/arterial intersection, through the City's Public Facilities Financing Program (PFFP). The McKee Road and Olive Avenue intersection would be eligible for up to 50% reimbursement through the PFFP as an arterial/collector intersection. The other 50% would be reimbursed if the owners of the 4 corners do any improvements that would require them to provide mitigation. The City would collect the money for reimbursement for up to 15 years.

In addition to contributing to the cost of the traffic signals, the project would be providing access to alternate forms of transportation to reduce the impacts from the project. The developer would provide on-site pick-up/drop-off areas for Uber and Lyft, provide bicycles for tenants to use, and possibly provide Zip cars and/or scooters that could be used by the tenants.

In comparison to the previously proposed mixed-use project, the ADT's are reduced from 2,215 ADT's to 1,876 ADT's (gross, with no reductions given) and 1,146 net. It should also be noted that this amount is less than the estimated traffic generation for the proposed shopping center that was approved for this site in 2014.

Additional mitigation measures were adopted with the General Plan Amendment and Zone Change approved in 2019. The development would be required to comply with the applicable mitigation measures as determined by the City Engineer.

Parking

D) The Zoning Ordinance requires 1.75 spaces of parking for each multi-family unit up to 30 units, plus an additional 1.5 spaces for each unit over 30. There is also an increase in the number of spaces required based on the number of bedrooms and bathrooms in a unit. Based on this calculation, the residential portion of this project would require 339 parking spaces.

Parking for the commercial portion of the project would be based on the actual uses. When the parking requirements are based on the square footage of the tenant space, the Zoning Ordinance allows a reduction in the floor area for non-public space. In this case, a standard 15% reduction was applied when calculating the parking requirements for the office and retail portions of the project. General office uses require one parking space for every 250 square feet of floor area and retail spaces generally require one space for every 300 square feet of floor area (not including restaurant uses). Based on these requirements, the required parking for the office portion would be 49 spaces and for the retail portion, 64 spaces. This brings the total number of required parking spaces to 452.

The project site provides a total of 386 parking spaces which includes 25 motorcycle parking stalls. In addition, the project provides 70 bicycle parking spaces. Although the total number of spaces required is 452, the Zoning Ordinance allows reductions based on certain criteria. If the project site is located within 400 feet of an approved bus stop, a 5% reduction may be given. Up to a 30% reduction may be given for mixed use developments with the approval of a parking demand study approved by the Director of Development Services. Based on the current design and number of parking spaces provided, the project would need the 5% reduction for a transit stop and a 15% reduction for the mixed-uses granted to comply with the parking requirements. However, it should be noted that through the building permit process, the number of stalls may change given the need to provide trash enclosures and other possible minor site modifications, which could increase the reduction amount. In no case would the reduction be greater than 30% as allowed by the Zoning Ordinance.

The developer will be working with UC Merced to move the bus stop near Yosemite Avenue and Via Moraga closer to their site, so they could qualify for the 5% reduction previously described. In addition, the developer will be providing pick-up/drop-off locations for Uber and Lyft to encourage ride sharing, offering bicycles, and possibly Zip cars and scooters for their tenants to use to reduce the actual number of parking spaces needed. Also, because this is a mixed-use project, it is likely there would be commercial uses that would not need parking in the evenings, which would leave additional spaces open for the other uses during these hours. Condition #30 requires

the developer to provide a parking demand analysis demonstrating that a reduction is warranted prior to the issuance of a building permit.

As previously mentioned, the project will also provide indoor bicycle storage facilities as well as bicycle parking for the commercial uses. The site has easy access to the bicycle trail system which could encourage the use of bicycles rather than cars.

Although the Zoning Ordinance allows for parking reductions, it is important that sufficient parking still be maintained on the site to prevent parking from spilling out into the adjacent neighborhoods.

Public Improvements/City Services

E) *Water*

There is a 16-inch water line in Yosemite Avenue and another 16-inch line in McKee Road to serve the project site. The City's water supply would be sufficient to serve the proposed project.

Sewer

A 6-inch sewer force main line exists in Yosemite Avenue which flows to G Street, then continues out to the Waste Water Treatment Plant. There is no sewer line in McKee Road. Due to constrictions in the Yosemite Avenue line, the project site is limited to discharging a maximum of 8,000 gallons per day of wastewater during peak hours. Additional wastewater shall be contained onsite and discharged at off-peak hours (refer to Conditions #9 and #10). This condition also requires a monitoring system to allow the City to monitor the flow and requires the developer to ensure the onsite storage tank doesn't emit objectionable odors.

Stormwater

An 18-inch storm drain exists in Yosemite Avenue. The project would be required to comply with the State Post Construction Standards and to retain storm water on-site and meter it into the City's system (Conditions #17 and 18).

Building Design

F) The proposed building designs would be similar to the style of the buildings at UC Merced. The buildings would have clean lines and use a variety of building materials to provide interest. The balconies on the upper floors are staggered to add additional interest. Buildings

1 and 3 are two-story buildings and Buildings 2 and 4 are three-story buildings. The elevations are provided at Attachment D of Planning Commission Staff Report #20-01. The table below provides a breakdown of each building by the number of stories, uses and number of residential units, and building height.

BUILDING DETAILS

Building No.	Stories	1st Floor	2nd Floor	3rd Floor	Total Square Feet	Height (to top of parapet)
1	2	22 units	27 units	n/a	30,456	26' 1 1/8"
2	3	Retail/Resident Space	34 units	33 units	57,622	33' 11"
3	2	Office	29 units	n/a	30,533	26' 1 1/8"
4	3	Retail/Resident Space	34 units	35 units	58,262	33' 11"
TOTAL UNITS		214			176,873	

The development would have 82 - 1 bedroom/1bath units, 112 - 2 bedroom/2 bath units, and 20 - 3 bedroom/3 bath units. The one-bedroom units would vary in size depending on whether the unit includes a balcony. A one-bedroom unit with a balcony would have 276 square feet and without a balcony it would have 300 square feet. The two-bedroom units would be 576 square feet with a 24-square-foot balcony, and the three bedroom units would be 876 square feet with a 24-square-foot balcony. Access to all the units would be through an interior corridor, which would increase safety for the tenants.

Building 1 is a two-story building with residential units on both floors. Buildings 2 and 4 are three-story buildings with commercial space and common areas for the residential tenants on the first floor and residential units on the second and third floors. Building 3 is a two-story building with office space on the first floor and residential units on the second floor.

The floor plans for each building are provided at Attachment C of Planning Commission Staff Report #20-01. These plans show the residential units as well as the areas for commercial uses and common/community areas for the residential tenants. The floor plans at Attachment E of Planning Commission Staff Report #20-01 show the layout of each of the different unit types.

The common/community areas in Buildings 2 and 4 would include amenities such as a gym, a kitchen/community area for gatherings and events, a meditation room, a study area, a media room, indoor bike storage area, laundry facilities, and a management office, mailroom, and office center for tenants. Building 2 also provides a roof-top deck area to provide additional outdoor open space for the tenants (Attachment H of Planning Commission Staff Report #20-01). This area would provide an additional outdoor area for tenants to lounge and socialize. The lounge area would be located near the center of the roof and would include tables, chairs, etc. for the tenants to use while in this area. There would be a 42-inch-high railing around the lounge area separating it from the rest of the roof-top area for safety purposes.

Security

The building and the site have been designed to incorporate security features for the safety of the tenants and the surrounding area. The buildings have been designed with linear hallways to ensure line of site as residents enter and exist their units. Access to the buildings and individual units would be through a key-fob security system. Each tenant on the lease would be issued a key-fob. This key-fob would not only allow access to the buildings and individual units, but would also have to be in the unit in order for the power to come on. This means of access and security helps to ensure only the tenants listed on the lease are staying in the units and also provides security against unwanted guests. There will be emergency call boxes placed throughout the site that will connect directly to the Police Department in case of emergency. There will also be an on-site manager to deal with emergency and security issues.

Site Design

G) The project site is located at the southeast corner of Yosemite Avenue and McKee Road. The site is designed to keep the buildings near the center of the site away from the residential uses. The front building (Building 2) is set back approximately 75 feet from Yosemite Avenue. Building 1 is approximately 85 feet from McKee Road (increased from approximately 50 feet in the previous design), Building 3 is approximately 82 feet from the from the eastern property line near Whitewater Way (an increase from 55 feet), and Building 4 is approximately 125 feet from the southern property line.

Parking is provided around the perimeter of the site and between the buildings. Bicycle parking is provided inside Building 4.

A promenade area is provided between Buildings 2 and 4 (refer to the Site Plan at Attachment B of Planning Commission Staff Report #20-01) which will include landscaping, tables, and chairs/benches to provide an open space area for the tenants and customers of the commercial uses. The developers envision this area would be used by customers of the food establishments and other retail uses as well as the residential tenants.

A minimum eight-foot tall block wall would separate the project from the residential uses to the south of the site (Condition #32).

Distance to Adjacent Residential Uses

The previous project design included all three-story buildings. The applicant has revised the design and reduced Buildings 1 and 3 to two-story buildings. The two-story buildings would have a height of approximately 26 feet. Buildings 2 and 4 are three-story buildings and would have a height of approximately 34 feet. On the roof of each of the buildings there would be an elevator shaft and screening for the mechanical equipment that would extend above the roof line. The homes on the west side of McKee Road are approximately 75 feet from the western property line of the project site. Building 1 is located closest to McKee Road and would be set back approximately 85 feet from the western property line of the project site, making the closest home approximately 160 feet away from Building 1. Refer to Attachment I of Planning Commission Staff Report #20-01.

The nearest home across Yosemite Avenue is approximately 180 feet

from the project site. The distance from Building 2 to the nearest home across Yosemite Avenue would be approximately 370 feet and from Building 3 it would be approximately 300 feet.

The homes to the east across Whitewater Way are approximately 40 feet from the project site. Building 3 would be approximately 125 feet from these homes.

The nearest home to the south is located approximately 40 feet from the southern property line of the project site. The proposed site design has been considerate of the proximity of this home and includes a larger landscape buffer in the area immediately adjacent to this home. The nearest building to this home would be Building 1 which would be approximately 140 feet away. It should be noted that the owner of the property to the south recently sold the developer approximately ½ acre of land in order for this development to expand to the south. This ½ acre was the subject of the recent General Plan Amendment and Zone Change approved in October 2019.

For context, the block where City Hall is located between M and N Streets is approximately 400 feet long. The distance from the corner of 18th and M Streets to the edge of the alley between 18th Street and Main Street is approximately 150 feet. Therefore, the nearest home across McKee Road would be approximately equal to the distance from the corner of 18th Street and M Street to the northern edge of the alley. The nearest home across Yosemite Avenue would be over half a City Block from the nearest building on the site. The homes on Whitewater Way would be close to the distance between City Hall and the UC Merced Building across 18th Street (refer to Page 2 of Attachment I).

As described below in the Landscaping Section (Finding H), the site would be provided with dense landscaping to help buffer the surrounding uses from noise and lights and to help provide privacy between the uses.

Landscaping

H) As shown on the site plan at Attachment B of Planning Commission Staff Report #20-01, a 15-foot landscape area is provided along Yosemite Avenue. The landscape area along McKee Road is over 14 feet wide and along Whitewater Way, the landscape area is approximately 7.5 feet wide. The landscape area along the southern

property line is 5 feet wide, but would also have a concrete block wall to provide a separation from the adjacent residential uses.

As described above, the promenade area between Buildings 2 and 4 has been increased from 11,300 square feet to 28,500 square feet. This area would be landscaped to create a welcoming outdoor area. Parking lot trees would be provided throughout the site in compliance with the City's Parking Lot Landscape Standards.

According to Table 20.36-1 of the Zoning Ordinance, the site is required to provide a minimum landscape area equal to 15% of the project site. Landscaping and irrigation shall be required to meet the City's Water Efficient Landscape Ordinance. Compliance with these requirements is also included in Condition #11.

Neighborhood Impact/Interface

I) As previously described, the project site is surrounded by residential uses as well as Yosemite Church and Providence School to the north across Yosemite Avenue. The developer held two neighborhood meetings on January 14, 2020, at Yosemite Church. The afternoon (3:00 p.m.) meeting was attended by approximately 10 people and the evening meeting (6:00 p.m.) was attended by approximately 25-30 people.

The neighbors had questions regarding the on-site sewer storage, the density, the parking, the tenants expected for the retail portion of the project, whether the units would be for college students, and traffic impacts.

Raj Joshi, the developer's representative, addressed the questions and explained that they are looking to develop this site in order to serve the UC and are working with the UC on an agreement to house graduate, doctorate, and post-doctorate students. He explained that this site is the closest vacant site to the UC that has access to City facilities, (i.e., sewer and water). He further explained that he has been working with the City's Public Works Director, Ken Elwin, on the sewer capacity and on-site storage issues. Mr. Joshi pointed out the incentives they would be implementing to reduce the need for vehicles such as providing bicycles and bicycle parking, providing Uber and Lyft drop-off/pick-up areas, installing a bus stop in front of their site, and possibly providing Zip cars for the tenants. In addition,

there could be a reduction in rent if the tenant agrees not to have a vehicle. He explained that the traffic study done for this project recommended that this project pay a proportionate share of the cost of traffic signals at Yosemite Avenue & Parsons/Gardner Avenue and Olive Avenue and McKee Road. Additionally, they would be required to modify the striping at these intersections to help with the existing congestion at in these areas. It should be noted that a development is only required to mitigate the impacts related to their project. The existing conditions are not the responsibility of the development.

During the review process for the previous proposal, the neighborhood voiced concerns regarding having bars and nightclubs in this project. The developer agreed that they would not allow bars and/or nightclubs to be located within their project. Refer to Condition #33 for the restrictions placed on the uses selling alcoholic beverages.

Public hearing notices are typically sent to all property owners within 300 feet of the project site. In this case, notices were sent to all property owners within 500 feet of the site as well as an extended area on McKee and Hatch Roads. To date, staff has not had any comments other than those heard at the community meetings held by the developer.

Signage

J) All signs on the site would be required to comply with the North Merced Sign Ordinance and the Neighborhood Commercial sign regulations. As such, with illuminated signs may be required to shut off at 10:00 p.m. (Condition #12).

Land Use/Density Issues

K) The project proposes to construct a mixed-use project to include 214 multi-family dwelling units and approximately 37,117 square feet of commercial space (retail and office). As described in Finding A, the proposed land uses are allowable under the current Zoning designation of Neighborhood Commercial, with the residential portion requiring Conditional Use Permit approval. The residential portion of the project has a density of 36 units per acre. This density is consistent with the General Plan designation of High Density

Residential (HD) which allows 24 to 36 units per acre. The density of the project is consistent with the density requirements of the High Density Residential (HD) designation which allows 24 to 36 units per acre.

The Neighborhood Commercial (C-N) zone allows a variety of commercial uses. The table at Attachment J of Planning Commission Staff Report #20-01 provides a list of the types of uses allowed. As mentioned above in the Neighborhood Impact section, the developer has agreed to limitations on the types of uses.

Environmental Clearance

L) The Planning staff has conducted an environmental review (Initial Study # 19-37) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Draft Mitigated Negative Declaration (i.e., no significant effects in this case because of the mitigation measures and/or modifications described in Initial Study #19-37) is being recommended (Attachment K of Planning Commission Staff Report #20-01).

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ENVIRONMENTAL REVIEW #19-37
Mitigation Monitoring Program

MITIGATION MONITORING CONTENTS

This mitigation monitoring program includes a brief discussion of the legal basis and purpose of the mitigation monitoring program, a key to understanding the monitoring matrix, a discussion of noncompliance complaints, and the mitigation monitoring matrix itself.

LEGAL BASIS AND PURPOSE OF THE MITIGATION MONITORING PROGRAM

Public Resource Code (PRC) 21081.6 requires public agencies to adopt mitigation monitoring or reporting programs whenever certifying an environmental impact report or mitigated negative declaration. This requirement facilitates implementation of all mitigation measures adopted through the California Environmental Quality Act (CEQA) process.

The City of Merced has adopted its own "Mitigation Monitoring and Reporting Program" (MMC 19.28). The City's program was developed in accordance with the advisory publication, *Tracking CEQA Mitigation Measures*, from the Governor's Office of Planning and Research.

As required by MMC 19.28.050, the following findings are made:

1) The requirements of the adopted mitigation monitoring program for the Conditional Use Permit #1238 shall run with the real property. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

MITIGATION MONITORING PROCEDURES

In most cases, mitigation measures can be monitored through the City's construction plan approval/plan check process. When the approved project plans and specifications, with mitigation measures, are submitted to the City Development Services Department, a copy of the monitoring checklist will be attached to the submittal. The Mitigation Monitoring Checklist will be filled out upon project approval with mitigation measures required. As project plans and specifications are checked, compliance with each mitigation measure can be reviewed.

In instances where mitigation requires on-going monitoring, the Mitigation Monitoring Checklist will be used until monitoring is no longer necessary. The Development Services Department will be required to file periodic reports on how the implementation of various mitigation measures is progressing or is being maintained. Department staff may be required to conduct periodic inspections to assure compliance. In some instances, outside agencies and/or consultants may be required to conduct necessary periodic inspections as part of the mitigation monitoring program. Fees may be imposed per MMC 19.28.070 for the cost of implementing the monitoring program.

General Plan Mitigation Measures

As a second tier environmental document, Initial Study #19-18 incorporates some mitigation measures adopted as part of the *Merced Vision 2030 General Plan Program Environmental Impact Report* (SCH# 2008071069), as mitigation for potential impacts of the Project.

Noncompliance Complaints

Any person or agency may file a complaint asserting noncompliance with the mitigation measures associated with the project. The complaint shall be directed to the Director of Development Services in written form providing specific information on the asserted violation. The Director of Development Services shall cause an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall cause appropriate actions to remedy any violation. The complainant shall receive written confirmation indicating the results of the investigation or the final action corresponding to the particular noncompliance issue. Merced Municipal Code (MMC) Sections 19.28.080 and 19.28.090 outline the criminal penalties and civil and administrative remedies which may be incurred in the event of noncompliance. MMC 19.28.100 spells out the appeals procedures.

Monitoring Matrix

The following pages provide a series of tables identifying the mitigation measures proposed specifically for Conditional Use Permit #1238. The columns within the tables are defined as follows:

Mitigation Measure:	Describes the Mitigation Measure (referenced by number).
Timing:	Identifies at what point in time or phase of the project that the mitigation measure will be completed.
Agency/Department Consultation:	This column references any public agency or City department with which coordination is required to satisfy the identified mitigation measure.
Verification:	These columns will be initialed and dated by the individual designated to verify adherence to the project specific mitigation.

Conditional Use Permit #1238
Mitigation Monitoring Checklist

Project Name:_____ **File Number:**_____
Approval Date:_____ **Project Location** _____
Brief Project Description_____

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City of Merced's Mitigation Monitoring Requirements (MMC 19.28) with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6).

5) Cultural Resources				
Impact	***Mitigation Measures***	***Timing***	***Agency or Department***	***City Verification (date and initials)***
d	AQ-1 The developer shall provide an operations and maintenance plan for the on-site wastewater storage tank to address the timing of the off-peak discharge, emergency procedures for breakdowns and repairs, and odor control. The plan shall include steps to ensure ongoing objectionable odors do not affect the site or surrounding area. The operations and maintenance plan shall be approved by the City Public Works Director and/or City Engineer.	Building Permit	Engineering/ Public Works	
5) Cultural Resources				
a	CUL-1) If unknown pre-contact or historic-period archaeological materials are encountered during project activities, all work in the immediate vicinity of the find shall halt until a qualified archaeologist can evaluate the find and make recommendations. Cultural resources materials may include pre-contact resources such as flaked and ground stone tools and debris, shell, bone, ceramics, and fire-affected rock, as well as historic resources such as glass, metal, wood, brick, or structural remnants. If the qualified archaeologist determines that the discovery represents a potentially significant cultural resource, additional investigations shall be required to mitigate adverse impacts from the project implementation. *(continued on next page)*	Building Permits	Planning Department	

a		These additional studies may include, but are not limited to, recordation, archaeological excavation, or other forms of significance evaluations. The applicant shall inform its contractor(s) of the sensitivity of the project site for archaeological deposits, and include the following directive in the appropriate contract documents: "The subsurface of the construction site is sensitive for archaeological deposits. If archaeological deposits are encountered during project subsurface construction, all ground-disturbing activities within 25 feet shall be redirected and a qualified archaeologist shall assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. Project personnel shall not collect or move any archaeological materials. Archaeological deposits can include, but are not limited to, shellfish remains; bones, including human remains; and tools made from, obsidian, chert, and basalt; mortars and pestles; historical trash deposits containing glass, ceramics, and metal artifacts; and structural remains, including foundations and wells." The City shall verify that the language has been included in the grading plans prior to issuance of a grading permit or other permitted project action that includes ground-disturbing activities on the project site.			

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
b	CUL-2) Implementation of Mitigation Measure CUL-1.	Building Permits	Planning Department	
c	CUL-3) If human remains are identified during construction and cannot be preserved in place, the applicant shall fund: 1) the removal and documentation of the human remains from the project corridor by a qualified archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology, 2) the scientific analysis of the remains by a qualified archaeologist, should such analysis be permitted by the Native American Most Likely Descendant, and 3) the reburial of the remains, as appropriate. All excavation, analysis, and reburial of Native American human remains shall be done in consultation with the Native American Most Likely Descendant, as identified by the California Native American Heritage Commission.	Building Permits	Planning Department	
6) Engergy				
a	ENE-1) The applicant shall comply with all applicable California Energy Code, AB 341, and San Joaquin Valley Air Pollution Control District rules and regulations regulating energy efficiency and waste.	Building Permits	Building Department	
b	ENE-2) Implementation of Mitigation Measure ENE-1.	Building Permits	Building Department	

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
7) Geology and Soils				
b	GEO-1) The project shall comply with all requirements of the State Water Resources Board (SWRCB) and obtain a General Construction Activity Stormwater Permit.	Building/ Encroachment Permits	Engineering Department	
	GEO-2) The project shall comply with all applicable mitigation measures for Expanded Initial Study #02-27 for General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02.	Building/ Encroachment Permits	Engineering Department	
8) Hydrology and Water Quality				
a	HYDRO-1) To minimize any potential short-term water quality effects from project-related construction activities, the project contractor shall implement Best Management Practices (BMPs) in conformance with the California Storm Water Best Management Practice Handbook for Construction Activity. In addition, the proposed project shall be in compliance with existing regulatory requirements, including the Water Pollution Control Preparation (WPCP) Manual. In addition, implementation of a Storm Water Pollution Prevention Plan (SWPPP) would be required under the National Pollutant Discharge Elimination System (NPDES) to regulate water quality associated with construction activities.	Building/ Encroachment Permits	Engineering Department	

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
a	HYDRO-2 If any storm drainage from the site is to drain into MID facilities, the developer shall first enter into a "Storm Drainage Agreement" with MID and pay all applicable fees.	Building/ Encroachment Permits	Engineering Department	
a	HYDRO-3) To reduce the potential for degradation of surface water quality during project operation, a SWPPP shall be prepared for the proposed project. The SWPPP shall describe specific programs to minimize stormwater pollution resulting from the proposed project. Specifically, the SWPPP shall identify and describe source control measures, treatment controls, and BMP maintenance requirements to ensure that the project complies with post-construction stormwater management requirements of the RWQCB.	Building/ Encroachment Permits	Engineering Department	
c	HYDRO-4 Prior to issuance of a building permit or as required by the City Engineer, the developer shall demonstrate to the City that storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City Standards and the City's Storm Drain Master Plan.	Building/ Encroachment Permits	Engineering Department	

13) Noise				
Impact No.	***Mitigation Measures***	***Timing***	***Agency or Department***	***City Verification (date and initials)***
	NOI-1) To reduce potential construction noise impacts, the following multi-part mitigation measure shall be implemented for the project: • The construction contractor shall ensure that all internal combustion engine-driven equipment is equipped with mufflers that are in good condition and appropriate for the equipment. • The construction contractor shall locate stationary noise-generating equipment as far as feasible from sensitive receptors when sensitive receptors adjoin or are near a construction disturbance area. In addition, the project contractor shall place such stationary construction equipment so that emitted noise is directed away from sensitive receptors nearest the project site. *(continued on next page)*			

13) Noise				
Impact No.	***Mitigation Measures***	***Timing***	***Agency or Department***	***City Verification (date and initials)***
a	• The construction contractor shall prohibit unnecessary idling of internal combustion engines (i.e., idling in excess of 5 minutes is prohibited). • The construction contractor shall locate, to the maximum extent practical, on-site equipment staging areas so as to maximize the distance between construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction. • The construction contractor shall limit all noise producing construction activities, including deliveries and warming up of equipment, to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No such work shall be permitted on Sundays or federal holidays without prior approval from the City.	Building Permit	Building Department	

17) Transportation and Traffic				
Impact No.	***Mitigation Measures***	***Timing***	***Agency or Department***	***City Verification (date and initials)***
	TRA-01 Pay a proportionate share of the cost of the traffic signal at the intersection of Yosemite Avenue and Parsons/Gardner Avenue. **The following mitigation measures were adopted with Initial Study #19-18 and would apply, unless deemed unnecessary by the City Engineer.**	Building Permit	Planning/ Engineering Department	
a	The westbound lane of Yosemite Avenue at Parsons Avenue shall be modified to accommodate an additional 200-foot shared thru/right turn lane. In addition, the existing shared left/thru/right lane shall be restriped to be a shared left/thru lane. (The Traffic Analysis recommended an additional 100 foot lane be installed. The City Engineer recommends the length of the lane be increased to 200 feet.) -or- The applicant shall be required to pay for their proportionate share of the above improvement as determined by the City Engineer.			

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
a	**TRA-02** Pay a proportionate share of the cost of the traffic signal at the intersection of McKee Road and Olive Avenue. **The following mitigation measures were adopted with Initial Study #19-18 and would apply, unless deemed unnecessary by the City Engineer.** The following modifications to the intersection of Olive Avenue and McKee Road shall be made: <u>Southbound Approach:</u> • Remove the adjacent on-street parking for 100 feet on the southbound approach. • Re-stripe the approach as shared left/thru lane and share right/thru lane. • Remove the adjacent on-street parking for 100 feet on the southbound receiving lane and stripe it as a lane drop. <u>Northbound Approach</u> • Remove the adjacent on-street parking for 100 feet on the north bound approach. • Re-stripe the approach as shared left/thru lane and shared right/thru lane. • Remove the adjacent on-street parking for 100 feet on the northbound receiving lane and stripe it as a lane drop. The City Engineer shall determine if this measure is feasible due to the location of residential driveways in this area.	Building Permit	Planning/ Engineering Department	

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
b	**TRA-03** The developer shall work with the Transit Joint Powers Authority of Merced County (The Bus) to locate a bus stop within ½-mile of the project site.	Building Permit	Planning/ Engineering Department	
19) Utilities and Service Systems				
c	**UTI-01)** The project shall provide for on-site storage of wastewater in an underground storage tank, then release the wastewater into the City's system during off-peak hours or an alternative approved by the City Engineer. Details to be worked out with the City Engineer prior to construction.	Building Permit	Engineering Department	

Certificate of Completion:
By signing below, the environmental coordinator confirms that the required mitigation measures have been implemented as evidenced by the Schedule of Tasks and Sign-Off Checklist, and that all direct and indirect costs have been paid. This act constitutes the issuance of a *Certificate of Completion.*

_____ _____

Environmental Coordinator Date

Planning Commission Minutes Excerpt
JANUARY 22, 2020

*Secretary's note:

Prior to the reading of Item 4.1, Commissioners CAMPER, DELGADILLO, DYLINA, WHITE, and Chairperson HARRIS disclosed that they had attended a community meeting regarding Conditional Use Permit #1238.

4.1 Conditional Use Permit #1238, initiated by Merced Holdings, LP, property owner. This application involves a request to construct a mixed-use development with 214 apartment units and approximately 37,117 square feet of commercial uses within four buildings (two 2-story buildings and two 3-story buildings) on an approximately 5.94-acre parcel, generally located at the southeast corner of Yosemite Avenue and McKee Road. The property has a General Plan designation of Neighborhood Commercial (CN) and is zoned Neighborhood Commercial (C-N).

Associate Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #20-01. Staff also received three letters in opposition to the project prior to the meeting from Richard and Karen ALBRIGHT, Judith L. HOWERTON, and Rick TELEGAN. During the meeting staff received one letter in opposition from Casey STEED, as well as one letter in support of the project from Michael BELLUOMINI.

Public testimony was opened at 7:49 p.m.

Speakers from the Audience in Favor:

RAJ JOSHI, Applicant, Los Angeles
JOE ENGLENOFF, Applicant, Los Angeles
CARY COBURN, Merced
MICHAEL BELLUOMINI, Merced

Speakers from the Audience in Opposition:

CASEY STEED, Merced
MARK WALKER, Merced
JOE CORVELLO, Merced

CURTIS PAPINEAU, Merced
PAULA DEMANETT, Merced
JANET HUGHES, Merced
DARALENE SILVEIRA, Merced
CURTIS GORMAN, Merced
DAN ALEMAN, Merced
JOHN MCMILLEN, Merced
EARL WELCH, Merced
MICHAEL STRASSER, Merced
SALLY STRASSER, Merced
JOEL MOSES, Merced
RONALD G. MYERS, Merced

Public testimony was completed at 9:16 p.m.

M/S RASHE-WHITE, and carried by the following vote, to adopt a Mitigated Negative Declaration and Mitigation Monitoring Program regarding Environmental Review #19-37, and approve Conditional Use Permit #1238, subject to the Findings and thirty-six (36) Conditions set forth in Staff Report #20-01, with the addition of Condition #37 as follows (RESOLUTION #4035):

(New language underlined, deleted language ~~strike-through~~.)

"37. Hours for use of the rooftop deck shall be limited to from 7:00 a.m. to 10:00 p.m. daily."

AYES: Commissioners Butticci, Camper, Delgadillo, Dylina, Rashe, White, and Chairperson Harris
NOES: None
ABSENT: None
ABSTAIN: None

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT:	**#20-01**	**AGENDA ITEM:**	**4.1**
FROM:	Kim Espinosa, Planning Manager	**PLANNING COMMISSION MEETING DATE:**	Jan. 22, 2020
PREPARED BY:	Julie Nelson, Associate Planner		

SUBJECT: **Conditional Use Permit #1238,** initiated by Merced Holdings, LP, property owner. This application involves a request to construct a mixed-use development with 214 apartment units and approximately 37,117 square feet of commercial uses within four buildings (two 2-story buildings and two 3-story buildings) on an approximately 5.94-acre parcel, generally located at the southeast corner of Yosemite Avenue and McKee Road. The property has a General Plan designation of Neighborhood Commercial (CN) and is zoned Neighborhood Commercial (C-N). *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify

1) Environmental Review #19-37 (Mitigated Negative Declaration)
2) Conditional Use Permit #1238

SUMMARY

The proposed project would be located on a 5.94-acre parcel at the southeast corner of Yosemite Avenue and McKee Road (Attachment A). The project is a mixed-use project consisting of 214 dwelling units and approximately 37,117 square feet of commercial space (retail and office). These uses would be contained within four separate buildings on the site (refer to the Site Plan at Attachment B). This number was reduced from 224 units subsequent to the public hearing notice for the project being published. Buildings 1 and 3 would be 2-story buildings and Buildings 2 and 4 would be 3-story buildings. Building 1 would contain residential units on both floors of the building. Buildings 2 and 4 would have a combination of retail space and common area for the residents. Building 3 would have office uses on the first floor and residential uses on the second floor. The project would provide a total of 127,206 square feet of residential living space, 12,544 square feet of community space for the residential tenants, 12,255 square feet of office space, and 22,672 square feet of retail commercial space. The floor plans for each building are provided at Attachment C. The elevations and renderings are provided at Attachment D.

The residential units would include one, two, and three bedroom units. The development would have 82 - 1 bedroom/1bath units; 112 - 2 bedroom/2 bath units; and, 20 - 3 bedroom/3 bath units. The one bedroom units would vary in size depending on whether the unit includes a balcony. A one bedroom unit with a balcony would have 276 square feet and without a balcony, it would have

300 square feet. The two-bedroom units would be 576 square feet with a 24-square-foot balcony, and the three bedroom units would be 876 square feet with a 24-square-foot balcony. The floor plans for each unit type are provided at Attachment E.

Within a C-N zone, multi-family uses are allowed with approval of a Conditional Use Permit (CUP). Additionally, Section 20.32 of the Zoning Ordinance sets out the requirements for interface regulations to help integrate potentially incompatible zones. This section requires Site Plan Review approval be obtained prior to construction on a parcel with a Neighborhood Commercial (C-N) zone when it is adjacent to or across the street from an R-1-6 zone or property zoned Planned Development (P-D) containing uses that are similar to those permitted in an R-1-6 zone. Instead of requiring two separate processes for the project, the Conditional Use Permit will also address the interface regulations. The C-N zone allows commercial uses such as most retail uses, personal service uses, and offices.

The Planning Commission reviewed a similar project for this site on August 21, 2019, as part of a General Plan Amendment and Zone Change. The project at that time included 428 efficiency dwelling units and 18,000 square feet of commercial space. The Planning Commission recommended approval of the General Plan Amendment and Zone Change, but denied the Conditional Use Permit to approve the project. The City Council also denied the Conditional Use Permit on appeal, but approved the General Plan Amendment and Zone Change making the land use designations consistent for the entire site.

The applicant has worked with staff to revise the project in a way that would meet the General Plan requirements and address some of the concerns from the neighborhood. The table provided at Attachment F shows a comparison of the previous project to the new project, which includes reducing the number of units, adding office space, reducing the height of Buildings 1 and 3, increasing the setbacks for Buildings 1 and 3, increasing the size of the promenade area, and committing to constructing the project to meet the standards for LEED (Leadership in Energy and Environmental Design) certification (Silver level or higher). Additionally, the developer has been in negotiations with UC Merced and has received a Letter of Intent (LOI) from the UC indicating their intent to continue negotiations for a program to house UCM graduate students, post doctorate students, and visiting faculty (Attachment G). They are considering negotiations for a master lease for some portion of the residential units and office space. Because the project complies with General Plan and Zoning regulations, Planning staff is recommending approval of the project.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #19-37 (Mitigated Negative Declaration) and Conditional Use Permit #1238, subject to the following conditions (and the Draft Resolution at Attachment L of Planning Commission Staff Report #20-01):

*1) The proposed project shall be constructed/designed in substantial compliance with the Site Plan, Floor Plan, Elevations, and Renderings (Attachments B, C, D, and E of Planning Commission Staff Report #20-01), except as modified by the conditions.

*2) The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.

*3) The Project shall comply with the applicable conditions set forth in Planning Commission

Resolution #3049 for General Plan Amendment #14-06 and Zone Change #421 and Planning Commission Resolution #4025 for General Plan Amendment #19-02 and Zone Change #426 previously approved for this site.

*4) All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.

*5) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

*6) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

*7) Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map approval or issuance of a building permit, whichever comes first. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.

*8) The project shall comply with all mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #19-37 (Exhibit B of Planning Commission Resolution #4035 - Attachment K of Planning Commission Staff Report #20-01) and all applicable mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #14-32 (Appendix A of Initial Study #19-37, Attachment K of Staff Report #20-01).

*9) Due to constraints in the existing sewer collection system, the project shall be allowed to release wastewater into the City's system at a rate of 8,000 gallons per day (gpd) during

peak hours. All wastewater in excess of this amount shall be stored on-site in an approved wastewater storage tank or other method approved by the Public Works Director and/or City Engineer to be released during off-peak hours. A flow monitor shall be installed with a telemetry or SCADA system approved by the Public Works Director and/or City Engineer to monitor the flow and ensure compliance with this requirement. The City shall periodically monitor the flow. Should the flow exceed 8,000 gpd during peak hours, the City may use any legal remedies available to gain compliance with this condition.

*10) The developer shall provide an operations and maintenance plan for the on-site wastewater storage tank to address the timing of the off-peak discharge, emergency procedures for breakdowns and repairs, and odor control. The plan shall include steps to ensure ongoing objectionable odors do not affect the site or surrounding area. The operations and maintenance plan shall be approved by the City Public Works Director and/or City Engineer.

*11) A minimum of 15% of the site shall be covered with landscaping as required by Section 20.36 (Table 20.36-1) of the Zoning Ordinance. Landscaping and irrigation shall be required to meet the City's Water Efficient Landscape Ordinance and the requirements of Zoning Ordinance Section 20.36.040.

*12) All signs shall comply with the North Merced Sign Ordinance and Section 20.62.040 (B)(2) of the City's Zoning Ordinance for signs in a Neighborhood Commercial (C-N) zone. Illuminated signs may be illuminated until 10:00 p.m. or the end of the business day, whichever is later.

*13) The applicant shall construct all missing improvements along the property frontage on Yosemite Avenue and McKee Road including, but not limited to, sidewalk, curb, gutter, street lights, and street trees. Any existing improvements that are damaged or that do not meet current standards shall be repaired or replaced as required by the City Engineer.

*14) All necessary right-of-way along the property frontage, including Yosemite Avenue, McKee Road, and Whitewater Way, needed for public improvements shall be dedicated prior to the issuance of the first building permit.

*15) Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access.

*16) Parking lot trees shall be installed per City Parking Lot Landscape Standards and Section 20.38.070 (F). At a minimum, parking lot trees shall be provided at a ratio of one tree for every six parking spaces. Trees shall be a minimum of 15-gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list).

*17) All projects on this site shall comply with Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).

*18) All storm water shall be contained on-site for a minimum of 48 hours, then released into the City's storm water system at a rate not to exceed the 2-year pre-development flow or as approved by the City Engineer.

*19) Prior to issuance of the first grading/building permit for any project on the site, the applicant shall demonstrate compliance with San Joaquin Valley Air Pollution Control District Rule 9510 to the Planning Department. Changes to the site plan resulting from compliance with Rule 9510 are subject to review by City Staff or the Planning Commission, as determined by the Director of Development Services.

*20) Bicycle parking for all projects on the site shall meet the minimum requirements of the California Green Building Code and Merced Municipal Code Section 20.38.080.

*21) All landscaping in the public right-of-way shall comply with the most recently adopted water regulations by the State and City addressing water conservation measures. If turf is proposed to be installed in medians or park strips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.

*22) If it is determined by the Fire Department that emergency vehicle access to Whitewater Way is needed to adequately serve the site or the surrounding area, the developer shall work with the City to provide such access, including an emergency gate with appropriate knox boxes, etc. as required by the Fire Department.

*23) For buildings over 30 feet tall, a minimum 26-foot-wide drive aisle shall be provided for emergency vehicle access. The developer shall work with the Fire Department to determine the areas that need the 26-foot-wide drive aisle.

*24) A fire control room may be required for the buildings on the site. The applicant shall work with the Fire Department to determine the location of the fire control room. Additional fire control rooms may be required at the discretion of the Fire Chief.

*25) Each building shall be provided with a Fire Department Connection.

*26) Buildings that do not provide an elevator (other than a freight elevator) shall be provided with an additional exit. The developer shall work with the Chief Building Official to determine the number of exits required for each building.

*27) A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access must be provided throughout the project site or as required by the Fire Department.

*28) The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.

*29) All parking lot and other exterior lighting shall be oriented in such a way so that is does not spill over onto adjacent properties.

*30) In order to comply with the parking requirements for this project, a parking demand analysis would be required in order for the project to qualify for the mixed-use reduction allowed by Section 20.38.050 (F). This study shall be provided at the time of building permit submittal and shall be approved by the Director of Development Services. In no case shall the reduction be greater than 30% as allowed by the Zoning Ordinance.

31) Containers for refuse and recycled goods shall be stored in enclosures that are designed with colors compatible with the buildings and shall be constructed to meet City Standards. At the Building Permit stage, the developer shall work with the City Refuse Department to

determine the best location for these enclosures to ensure proper access is provided for City Refuse Trucks as well as the number of containers needed to adequately serve the site. Use of a trash compactor should be considered to reduce the number of pick-ups per week.

32) A minimum 8-foot high concrete block wall shall be installed along the southern property line. A minimum five-foot wide landscaping area adjacent to the wall shall be provided to allow for the planting of vines or other appropriate landscape material.

33) Drive-thru uses, bars, nightclubs, and large convenience markets similar to a 7-Eleven type store are not allowed. Small convenience markets intended to serve the tenants or the immediate neighborhood could be allowed. Restaurants serving alcohol could be allowed with Conditional Use Permit approval.

34) All construction activity shall be conducted between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday.

35) All walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment.

36) All mechanical equipment shall be screened from public view.

(*) Denotes non-discretionary conditions.

PROJECT DESCRIPTION

The proposed project requires Conditional Use Permit approval to allow the construction of a mixed-use project on approximately 5.94 acres of land located at the southeast corner of Yosemite Avenue and McKee Road. The mixed-use project combines 214 multi-family residential units with approximately 37,117 square feet of commercial space (retail and office). These uses would be located within four buildings on the site, two of which would be 2-story buildings and two that would be 3-story buildings. The commercial space, along with common/community areas for the residential tenants would be located on the first floor of Buildings 2, 3, and 4. Building 1 would contain only residential units.

No specific tenants have been identified for the retail portions of the project located within Buildings 2 and 4. However, the Floor Plans for Buildings 2 and 4 identify the types of tenants the developer envisions for this project. These uses could include service related uses such as barbershops and nail salons, general retail uses, and restaurant/food uses. The first floor of Building 3 is designated for office space. The developer has received a Letter of Intent (LOI) from UC Merced to occupy the office space and to use some of the residential units for grad-student housing. The floor plans for the commercial areas of Buildings 2, 3, and 4 are provided at Attachment C.

The apartment complex would have an on-site manager and would use a key-fob entry system to increase security and allow better monitoring of the number of tenants residing in the complex. Each apartment would be issued a certain number of key-fobs which would give them access to the buildings, their apartment, and the common areas. The key-fobs would also be required to enable power to the units which would make it more difficult for an unregistered tenant to stay in the unit.

Surrounding Uses
Attachment A

Surrounding Land	Existing Use of Land	Zoning Designation	City General Plan Land Use Designation
North	Single-Family Residential/Church/School (across Yosemite Avenue)	County	Rural Residential (RR)
South	Single-Family Residential	R-1-6	Low Density Residential (LD)
East	Single-Family Residential (across Whitewater Way)	P-D #52	Low Density Residential (LD)
West	Single-Family Residential (across McKee Road)	R-1-6	Low Density Residential (LD)

BACKGROUND

The project site was annexed to the City in 2003 as part of the Hunt Farms Annexation. The project site is currently vacant, but was previously occupied by two single-family dwellings (these were demolished in 2017). The site is currently zoned Neighborhood Commercial (C-N). The subject site consists of two individual lots [Assessor's Parcel Numbers (APN's): 008-310-053 and -038 totaling 5.94 acres]. Recently, 22,670 square feet of lot area was acquired from the neighboring property to the south. On October 7, 2019, the City Council approved a General Plan and Zone Change changing the land use designation for this newly acquired area consistent with the rest of the site (C-N).

In 2014, the owner applied for a General Plan Amendment and Zone Change to change the entire site from Low Density Residential (LD) and R-1-6 to Neighborhood Commercial (CN). At that time, the owner proposed the construction of a 62,000-square-foot retail commercial center that would have included a small grocery store, a fast-food restaurant (with a drive-through), and other retail uses appropriate to the Neighborhood Commercial (C-N) zone. The City Council approved the General Plan Amendment and Zone Change to Neighborhood Commercial in 2015.

When the General Plan Amendment and Zone Change were approved in 2015, the City Council had two options for the Shopping Center design on the project site. One option included providing direct access to Whitewater Way from Yosemite Avenue, and the other option did not provide access other an entrance-only service road to serve commercial uses proposed on the site. The City Council voted to prohibit direct access from Yosemite Avenue to Whitewater Way and instead, approved the option with an entrance-only service road.

When the City Council approved the General Plan Amendment and Zone Change on October 7, 2019, they also considered the appeal of the Planning Commission's denial of Conditional Use Permit (CUP) #1231 to allow a mixed-use project consisting of 428 Efficiency Dwelling Units and approximately 18,000 square feet of retail commercial space. The City Council upheld the Planning Commission's denial of CUP #1231 based on density, traffic congestion, and concerns regarding sewer capacity.

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

A) The proposed mixed-use project complies with the General Plan designation of Neighborhood Commercial (CN) and the Zoning classification of Neighborhood Commercial (C-N). The proposed commercial uses comply with the General Plan designation of Neighborhood Commercial (CN). Although the General Plan encourages mixed-use developments, it does not specifically address the density allowed within a commercial zone for a mixed-use project. The *Merced Vision 2030 General Plan* includes two classifications for higher density residential uses – High-Medium Density (HMD) and High Density (HD). The High-Medium designation allows 12 to 24 units per acre, while the High Density designation allows 24 to 36 units per acre. The proposed project has a density of 36 units per acre, which is consistent with the High Density (HD) designations. Therefore, because there is no definitive designation for a mixed use project and there are General Plan policies that encourage higher density and alternate housing types (see below), the City has relied upon the High Density designation to determine compliance with the General Plan. Based on this designation, the proposed multi-family portion of the project would comply with the General Plan.

The Housing Element of the *Merced Vision 2030 General Plan* includes policies supporting affordable housing, mixed-use development, and higher densities.

Policy H-1.1 *Support Increased in Residential Zoning Districts*

Although the proposed project would not be located within a residential zone, it does provide an opportunity for a higher density project to provide needed housing within the City.

Policy H 1.1.c *Encourage Mixed Use Development*

The proposed project would provide a mixture of retail commercial uses to serve the neighborhood and the multi-family dwelling units.

Policy 1.1.e *Encourage Alternate Housing Types*

The proposed project would include one, two, and three-bedroom apartments. The units range in size from 276 square feet for a one-bedroom unit with a balcony, to 876 square feet for a 3 bedroom unit. This mixture provides a variety of different housing types to meet the growing need of housing within the community and supports this policy of providing alternate housing types.

Policy 1.8b *Prioritize City efforts to encourage residential development by focusing on in-fill development and densification within the existing City Limits.*

The proposed project is on an in-fill site and meets the density requirements of the City's highest density classification.

The following are Land Use Policies and Implementing Actions of the General Plan that could be met with the proposed project.

Policy L-1.1	*Promote Balanced Development Which Provides Jobs, Services, and Housing.*
Implementing Action 1.1.a:	*Promote mixed use development combining compatible employment, service and residential elements.*
Implementing Action 1.1.c:	*Determine the types of housing opportunities needed for the type of employment opportunities being created in the City.*

The Zoning Ordinance does not specify a density for multi-family housing allowed within a C-N zone, it merely states that multi-family uses are allowed within the C-N zone as a Conditional Use. Therefore, approval of the proposed Conditional Use Permit would bring the project into compliance with the Zoning Ordinance.

Zoning Ordinance Compliance – Conditional Use Permit Required Findings

B) Section 20.68.020 sets forth specific Findings that must be made in order for the Planning Commission to approve a Conditional Use Permit. These Findings are provided below.

1. *The proposed use is consistent with the purpose and standards of the zoning district, the General Plan, and any adopted area or neighborhood plan, specific plan, or community plan.*

   The purpose of a Neighborhood Commercial (C-N) zone is to provide areas for shopping centers and other commercial uses that serve the day-to-day needs of a residential neighborhood. The C-N zone allows a variety of commercial uses and residential uses, subject to approval of a Conditional Use Permit. The proposed project would provide a variety of retail and restaurant uses to serve the tenants of the project as well as the surrounding neighborhood. With the approval of the requested Conditional Use Permit, the project would comply with the requirements and purpose of the C-N Zone.

   As described in Finding A above, the project meets the requirements of the General Plan. There are no other area, specific, or neighborhood plans for this area.

2. *The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the subject property.*

   As described above, the commercial uses are allowed within a C-N zone. The proposed multi-family component of the project is a conditional use. The developer has revised the project to address some of the concerns expressed with the previously proposed project. The building heights have been reduced for the buildings on the east and west side of the site closest to the existing residential uses. The setbacks have been increased for those buildings as well in an effort to reduce impacts on the surrounding neighborhood. The site is surrounded by residential uses and a church to the north. Therefore, residential uses are common in this area. Another apartment complex is currently under construction east of this site at the corner of Yosemite and Lake Road, in the same general vicinity, which provides a mixture of housing units for the area. Given the proximity to the UC, multi-family

uses are appropriate for this area. Therefore, through the implementation of the conditions of approval, the proposed apartment project (as part of the overall mixed-use project) would be compatible with the existing and future land uses in the vicinity.

3. *The proposed use will not be detrimental to the public health, safety, and welfare of the City.*

   The proposed project does not include any uses that would be detrimental to the public health, safety, and welfare of the City. The project would be required to annex to the City's Community Facilities District to pay for costs related to police and fire safety. Implementation of the conditions of approval and adherence to all Building and Fire Codes, and City Standards would prevent the project from having any detrimental effect on the health safety, and welfare of the City.

4. *The proposed use is properly located within the City and adequately served by existing or planned services and infrastructure.*

   The project site is an in-fill site near the edge of the City's eastern boundary, surrounded by residential uses. The project would be adequately served by the City's water system. Through the implementation of the conditions of approval, the project would be adequately served by the City's sewer and storm water systems. Additionally, the project would be required to pay Public Facilities Impact Fees to help pay for future improvements needed to the City's infrastructure.

Traffic/Circulation

C) The project site is located at the southeast corner of Yosemite Avenue and McKee Road. Yosemite Avenue, east of Parsons Avenue is designated as a "Special Street Section" in the *Merced Vision 2030 General Plan*. As such, the ultimate right-of-way for this road is 94 feet. McKee Road is a Collector Road with an ultimate right of way of 74 feet. The project would have access from Yosemite Avenue (right-in/right-out only) and McKee Road (full access). Both the intersections of Yosemite Avenue and McKee Road and Yosemite Avenue and Via Moraga (approximately 0.3 miles east of McKee Road) are signalized.

Yosemite Avenue Access

The primary access on Yosemite Avenue would be a driveway that is located approximately 320 feet east of the intersection of Yosemite Avenue and McKee Road (refer to the Site Plan at Attachment B of Planning Commission Staff Report #20-01). This driveway would provide right in/right out access only. The existing median in Yosemite Avenue would remain unchanged along the project site frontage. No other access to the site would be provided on Yosemite Avenue.

McKee Road Access

The primary access on McKee Road would be through a driveway located approximately 195 feet south of the intersection of Yosemite Avenue and McKee Road. This driveway would allow both left and right turning movements.

Whitewater Way

No access is proposed to Whitewater Way from the project site, unless the Fire Department requires an emergency access per Condition #22 of the Conditional Use Permit Conditions.

Traffic Impact Analysis

A traffic analysis was prepared for the proposed project by K2 Traffic Engineering, Inc. This analysis studied the following roadway segments:

1. Yosemite Avenue between Parsons Avenue and McKee Road.
2. McKee Road between Yosemite Avenue and Silverado Road.

The following intersections were also studied:

1. Yosemite Avenue at Parsons Avenue/Gardner Avenue
2. Yosemite Avenue at McKee Road
3. Yosemite Avenue at Hatch Road
4. McKee Road at Olive Avenue

The analysis looked at six different scenarios to determine the impact of the project. The scenarios included:

1. Existing Conditions
2. Existing Conditions plus Project
3. Existing plus Approved Conditions
4. Existing plus Approved Conditions, plus Project
5. Cumulative Year (2035) without Project Conditions
6. Cumulative Year (2035) with Project Conditions

The traffic analysis determined that the proposed project would generate a total of 1,876 Average Daily Trips (ADT's). After standard reductions are given for transit and bicycle use, pass-by traffic, and internal capture, the total net ADT's are 1,184. The trip generation numbers are provided on page 13 of the traffic analysis (Appendix D of the Initial Study at Attachment K of Planning Commission Staff Report #20-01)

The *Merced Vision 2030 General Plan* establishes an acceptable Level of Service (LOS) as LOS D for intersection and roadway operations. The traffic study found that, under existing conditions, the LOS for the intersection at Yosemite Avenue and Parsons/Gardner Avenue currently operates at an LOS F for AM Peak Hour traffic and an LOS E for PM Peak Hour traffic. Additionally, the intersection of McKee Road and Olive Avenue operate at an LOS E and LOS D, respectively. The other two intersections studied (Yosemite Avenue at McKee Road and Yosemite Avenue at Hatch Road) operate at acceptable levels of service (LOS B or better).

With the addition of the proposed project, the intersection at Yosemite Avenue and Parsons/Gardner Avenue, the level of service would be reduced to LOS F and LOS E for the AM and PM peak hours, respectively. The level of service for McKee Road and Olive Avenue would remain an LOS E for the AM peak hour traffic. All other intersections would retain an LOS D or better rating. Under the Cumulative 2035 with project scenario, these same intersections are reduced to an LOS F for both AM and PM peak hours.

The traffic study also conducted a Peak Hour Signal Warrant Analysis and found that signal warrants are satisfied for signals at the intersections of Yosemite Avenue and Parsons/Gardner Avenue and McKee Road and Olive Avenue.

The traffic study recommended the following mitigation measures:

TRA-01 Pay a proportionate share of the cost of the traffic signal at the intersection of Yosemite Avenue and Parsons/Gardner Avenue.

TRA-02 Pay a proportionate share of the cost of the traffic signal at the intersection of McKee Road and Olive Avenue.

Because these intersections are currently operating at a level of service below LOS D (the standard established by the General Plan), and the project impacts are not the cause of the existing problems with these intersections, the project would only be required to contribute a fair share to the cost of the traffic signals. The fair share contribution is based on the projects impacts, which in this case would be 2.4% of the cost of the traffic signal at Yosemite Avenue and Parsons/Gardner Avenue and 1.4% of the cost of the signal at McKee Road and Olive Avenue. The applicants would be eligible for reimbursement for up to 100% of the cost for the Yosemite Avenue and Parsons/Gardner Avenue traffic signal, which is an arterial/arterial intersection, through the City's Public Facilities Financing Program (PFFP). The McKee Road and Olive Avenue intersection would be eligible for up to 50% reimbursement through the PFFP as an arterial/collector intersection. The other 50% would be reimbursed if the owners of the 4 corners do any improvements that would require them to provide mitigation. The City would collect the money for reimbursement for up to 15 years.

In addition to contributing to the cost of the traffic signals, the project would be providing access to alternate forms of transportation to reduce the impacts from the project. The developer would provide on-site pick-up/drop-off areas for Uber and Lyft, provide bicycles for tenants to use, and possibly provide Zip cars and/or scooters that could be used by the tenants.

In comparison to the previously proposed mixed-use project, the ADT's are reduced from 2,215 ADT's to 1,876 ADT's (gross, with no reductions given) and 1,146 net. It should also be noted that this amount is less than the estimated traffic generation for the proposed shopping center that was approved for this site in 2014.

Additional mitigation measures were adopted with the General Plan Amendment and Zone Change approved in 2019. The development would be required to comply with the applicable mitigation measures as determined by the City Engineer.

Parking

D) The Zoning Ordinance requires 1.75 spaces of parking for each multi-family unit up to 30 units, plus an additional 1.5 spaces for each unit over 30. There is also an increase in the number of spaces required based on the number of bedrooms and bathrooms in a unit. Based on this calculation, the residential portion of this project would require 339 parking spaces.

Parking for the commercial portion of the project would be based on the actual uses. When

the parking requirements are based on the square footage of the tenant space, the Zoning Ordinance allows a reduction in the floor area for non-public space. In this case, a standard 15% reduction was applied when calculating the parking requirements for the office and retail portions of the project. General office uses require one parking space for every 250 square feet of floor area and retail spaces generally require one space for every 300 square feet of floor area (not including restaurant uses). Based on these requirements, the required parking for the office portion would be 49 spaces and for the retail portion, 64 spaces. This brings the total number of required parking spaces to 452.

The project site provides a total of 386 parking spaces which includes 25 motorcycle parking stalls. In addition, the project provides 70 bicycle parking spaces. Although the total number of spaces required is 452, the Zoning Ordinance allows reductions based on certain criteria. If the project site is located within 400 feet of an approved bus stop, a 5% reduction may be given. Up to a 30% reduction may be given for mixed use developments with the approval of a parking demand study approved by the Director of Development Services. Based on the current design and number of parking spaces provided, the project would need the 5% reduction for a transit stop and a 15% reduction for the mixed-uses granted to comply with the parking requirements. However, it should be noted that through the building permit process, the number of stalls may change given the need to provide trash enclosures and other possible minor site modifications, which could increase the reduction amount. In no case would the reduction be greater than 30% as allowed by the Zoning Ordinance.

The developer will be working with UC Merced to move the bus stop near Yosemite Avenue and Via Moraga closer to their site, so they could qualify for the 5% reduction previously described. In addition, the developer will be providing pick-up/drop-off locations for Uber and Lyft to encourage ride sharing, offering bicycles, and possibly Zip cars and scooters for their tenants to use to reduce the actual number of parking spaces needed. Also, because this is a mixed-use project, it is likely there would be commercial uses that would not need parking in the evenings, which would leave additional spaces open for the other uses during these hours. Condition #30 requires the developer to provide a parking demand analysis demonstrating that a reduction is warranted prior to the issuance of a building permit.

As previously mentioned, the project will also provide indoor bicycle storage facilities as well as bicycle parking for the commercial uses. The site has easy access to the bicycle trail system which could encourage the use of bicycles rather than cars.

Although the Zoning Ordinance allows for parking reductions, it is important that sufficient parking still be maintained on the site to prevent parking from spilling out into the adjacent neighborhoods.

Public Improvements/City Services

E) *Water*

There is a 16-inch water line in Yosemite Avenue and another 16-inch line in McKee Road to serve the project site. The City's water supply would be sufficient to serve the proposed project.

areas. It should be noted that a development is only required to mitigate the impacts related to their project. The existing conditions are not the responsibility of the development.

During the review process for the previous proposal, the neighborhood voiced concerns regarding having bars and nightclubs in this project. The developer agreed that they would not allow bars and/or nightclubs to be located within their project. Refer to Condition #33 for the restrictions placed on the uses selling alcoholic beverages.

Public hearing notices are typically sent to all property owners within 300 feet of the project site. In this case, notices were sent to all property owners within 500 feet of the site as well as an extended area on McKee and Hatch Roads. To date, staff has not had any comments other than those heard at the community meetings held by the developer.

Signage

J) All signs on the site would be required to comply with the North Merced Sign Ordinance and the Neighborhood Commercial sign regulations. As such, with illuminated signs may be required to shut off at 10:00 p.m. (Condition #12).

Land Use/Density Issues

K) The project proposes to construct a mixed-use project to include 214 multi-family dwelling units and approximately 37,117 square feet of commercial space (retail and office). As described in Finding A, the proposed land uses are allowable under the current Zoning designation of Neighborhood Commercial, with the residential portion requiring Conditional Use Permit approval. The residential portion of the project has a density of 36 units per acre. This density is consistent with the General Plan designation of High Density Residential (HD) which allows 24 to 36 units per acre. The density of the project is consistent with the density requirements of the High Density Residential (HD) designation which allows 24 to 36 units per acre.

The Neighborhood Commercial (C-N) zone allows a variety of commercial uses. The table at Attachment J of Planning Commission Staff Report #20-01 provides a list of the types of uses allowed. As mentioned above in the Neighborhood Impact section, the developer has agreed to limitations on the types of uses.

Environmental Clearance

L) The Planning staff has conducted an environmental review (Initial Study # 19-37) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Draft Mitigated Negative Declaration (i.e., no significant effects in this case because of the mitigation measures and/or modifications described in Initial Study #19-37) is being recommended (Attachment K of Planning Commission Staff Report #20-01).

Attachments:

A) Location Map
B) Site Plan
C) Building Floor Plans
D) Elevations & Rendering

E) Unit Floor Plans
F) Project Comparison
G) Letter of Intent from UC Merced
H) Roof-top deck
I) Distance Illustration
J) C-N Zone Uses
K) Initial Study #19-37
L) Draft Planning Commission Resolution

Ref: *N:\SHARED\PLANNING\STAFFREP\SR2020\SR 20-01- CUP 1238 (Yosemite & McKee) .docx*

Attachment Matrix for
Planning Commission Staff Report #20-01

Staff Report #20-01 Attachment	Administrative Report Attachment
Attachment A – Location Map	Attachment 1 – Location Map
Attachment B – Site Plan	Attachment 2 – Site Plan
Attachment C – Building Floor Plans	Attachment 4 – Building Floor Plans
Attachment D – Elevations	Attachment 5 – Elevations
Attachment E – Unit Floor Plans	Attachment 6 – Unit Floor Plans
Attachment F – The Hub Side-by Side	Attachment 15 – The Hub Side-by-Side
Attachment H – Roof-top Deck	Attachment 7 – Roof-top Deck
Attachment I – Distance Comparison	Attachment 8 – Distance Comparison
Attachment L – Draft Planning Commission Resolution #4035	Attachment 9 – Planning Commission Resolution #4035

UNIVERSITY OF CALIFORNIA

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UNIVERSITY OF CALIFORNIA, MERCED
5200 North Lake Road
MERCED, CALIFORNIA 95343
(209) 228-4055

January 6, 2020

Joe Englanoff
Merced Holdings, LP
9701 W Pico Blvd, Unit 201
Los Angeles, CA 90035

This letter expresses the University of California Merced's (UCM) interest in the property commonly known as "The Hub at Yosemite", located at 3492 McKee Rd, Merced California, 95340 ("The Hub"). UCM desires to express to the City of Merced Planning Commission its support of both the proposed development and developer's application for the proposed Conditional Use Permit. It is our understanding that the developer desires to complete the first phase of the project by July 2021 to allow tenants to move-in beginning in August 2021. We expect The Hub to provide much needed housing for UCM graduate students, post docs and visiting faculty.

Following final approval by the Merced City Council, UCM intends to negotiate with the developer, Merced Holdings L.P., for a program to house UCM graduate student, post doc, and visiting faculty occupancy. The parties are considering the negotiation of a master lease for some portion of the residential units and office space located within The Hub.

While this letter expresses support of the development known as "The Hub at Yosemite," UCM has not committed to a particular course of action with respect to The Hub, and nothing herein imposes any obligation or commitment to proceed with negotiations. Any and all legal rights and obligations between the parties will come into existence only if and when both UCM and the developer, in their sole and absolute discretion, execute definitive agreements. This letter shall not be deemed to confer any rights upon any person or entity or give rise to any right or cause of action, contractual or otherwise. No third party should act in reliance hereon.

Sincerely,

Michael McLeod
Vice Chancellor, Chief Operating Officer
Physical Operations, Planning and Development

20.10.020 Land Use Regulations for Commercial Zoning Districts

A. Permitted Uses. Table 20.10-1 identifies land uses permitted in commercial zoning districts.

TABLE 20.10-1 PERMITTED LAND USES IN THE COMMERCIAL ZONING DISTRICTS

Key P Permitted Use M Minor Use Permit Required SP Site Plan Review Permit Required C Conditional Use Permit Required X Use Not Allowed	Zoning District [1]							
	C-O	C-N	C-C	C-SC	C-T	C-G	B-P	Additional Regulations
RESIDENTIAL USES								
Group/Transitional/Supportive Housing	X	X	P [3]	X	X	X	X	
Live/Work Units	C	C	P [2]	X	X	X	X	Sec. 20.44.080
Multiple-Family Dwellings	C	C	P	X	X	X	X	
Residential Care Facilities, Small *(6 or Less)*	X	X	P [3]	X	X	X	X	
Residential Care Facilities, Large *(More than 6 residents)*	X	X	P [3]	X	X	X	X	
Single-Room Occupancy	X	X	P [3]	X	X	X	X	Sec. 20.44.120
COMMUNITY USES								
Community Assembly	C	C	C	X	C	C	C	
Community Garden	SP	SP	SP	SP	X	SP	X	Sec. 20.44.050
Colleges and Trade Schools	C	C	C	SP[9]	X	C	C	
Convalescent or Nursing Homes	C	C	C	X	X	X	X	
Cultural Institutions	C	C	C	X	C	C	C	
Day Care Centers (Children & Adults)	M	M	M	X	X	X	SP	
Emergency Shelters	X	X	C	X	C	P	X	Sec.20.44.150
Government Offices	P	P	P	X	C	C	C	
Hospitals and Surgery Centers	C	C	C	X	X	X	C	
Instructional Services	P	P	P	X	X	X	SP	
Medical Offices and Clinics	P	P	P	X	X	X	C	
Parks and Recreational Facilities	C	C	C	X	X	X	C	
Public Safety Facilities	SP	SP	P	C	SP	SP	SP	
Rehabilitation Centers	P	P [6]	P[10]	X	X	C	C	
Social Assistance Services	C	C	C	X	SP	P	X	

Key	Zoning District [1]							
P Permitted Use M Minor Use Permit Required SP Site Plan Review Permit Required C Conditional Use Permit Required X Use Not Allowed	C-O	C-N	C-C	C-SC	C-T	C-G	B-P	Additional Regulations
COMMERCIAL USES								
Alcoholic Beverage Sales [7]	X	P [7][8]	P [7]	C [7][8]	P [7]	P [7]	SP [7]	Sec.20.44.010
Bail Bond Businesses	C	X	C [10]	X	C	C	C	
Bars and Nightclubs	X	C	C	X	C	C	C	
Banks, Retail	P	P	P	P [9]	SP	SP	SP	
Bed and Breakfast	X	X	C	X	C	C	X	Sec.20.44.030
Building Supplies/Home Improvement	X	X	C	X	SP	P	SP	
Business Support Services	X	C	M	X	P	P	SP	
Cardrooms [5]	X	X	C [5]	X	C [5]	C [5]	X	Chapter 9.08
Cemeteries and Mausoleums	X	X	C	X	C	P	X	
Check Cashing/Payday Loan Establishments	C	X	C [10]	X	C	C	C	Sec.20.44.040
Commercial Cannabis Businesses	Refer to Table 20.44-1 in Section 20.44.170							
Commercial Recreation, Indoor (Except Below)	X	SP	SP	SP[9]	P	SP	C	
Multi-Screen (6 or More) Movie Theaters	X	C	P	X	C	X	C	
Commercial Recreation, Outdoor	X	X	X	SP [9]	P	C	C	
Drive-Through and Drive-Up Sales	C	C	SP	SP [9]	P	P	SP	
Equipment Sales and Rental	X	X	X	X	P	P	SP	
Farmer's Market	C	SP	SP	SP	SP	SP	SP	Sec.20.50.030B
Flea Market	X	X	X	X	C	C	C	
Funeral Parlors and Mortuaries	C	C	C	X	C	P	C	
Gas and Service Stations/Car Washes	X	C	SP	SP [9]	P	P	SP	Sec.20.44.070
Hotels and Motels	X	X	P	X	P	C	C	
Hookah Lounges	X	C	C	X	C	C	C	
Kennels	X	X	X	X	C	P	C	
Maintenance and Repair Services	X	X	X	X	P	P	SP	
Massage Establishments	C [16]	C [16]	C [16]	X	C [16]	C [16]	X	Chapter 5.44
Massage Therapy—Sole Practitioner	P[17]	P[17]	P[17]	X	C [16]	C [16]	X	Chapter 5.44
Mobile Food Vendors	C	C	C [10]	X	SP [11]	SP	C	Sec. 5.54 & 20.44.020
Mobile Home Sales	X	X	X	X	P	P	SP	
Office, Professional	P	P	P	SP [9]	SP	SP	SP	

Key	Zoning District [1]							
P Permitted Use M Minor Use Permit Required SP Site Plan Review Permit Required C Conditional Use Permit Required X Use Not Allowed	C-O	C-N	C-C	C-SC	C-T	C-G	B-P	Additional Regulations
COMMERCIAL USES (Continued)								
Pawn Shops	X	X	C [10]	X	X	P	X	
Personal Services	SP	P	P	P [9]	SP	SP	SP [12]	
Retail, General	SP[12]	P	P	P [9]	P	SP	SP	
Restaurants	C [13]	P [8]	P	SP [9]	P	M	SP [12] [13]	
Tattoo Parlors	X	SP	M	X	M	M	SP	
Tobacco Retailers [18]	X	P [18]	P [18]	P [18]	P [18]	P [18]	SP[18]	Sec.20.44.160
Vehicle Parts and Accessories Sales	X	P	P	X	P	P	SP	
Vehicle Rentals	X	X	M	X	P	P	SP	
Vehicle Repair and Maintenance, Major	X	X	X	X	C	P	C	
Vehicle Repair and Maintenance, Minor	X	SP	P	X	P	P	C	
Vehicle Sales	X	X	P [10] [14]	X	P	P	C	
INDUSTRIAL USES								
Manufacturing and Processing, General	X	X	X	X	X	M	C	
Manufacturing and Processing, Light	X	X	X	X	X	P	SP	
Research and Development	C	X	C	X	SP	SP	P	
Warehousing, Wholesaling, and Distribution	X	X	SP[15]	X	P	P	SP	
Wrecking & Salvage Establishments	X	X	X	X	C	C	X	Sec.20.44.140
TRANSPORTATION, COMMUNICATION, AND UTILITY USES								
Airports	X	X	X	X	C	C	C	
Freight Terminals	X	X	X	X	C	C	C	
Heliports	C	X	C	X	C	C	C	
Parking Facilities	P	P	P	P[9]	P	P	P	
Public/Mini Storage	X	X	X	X	M	M	SP	
Recycling Collection Facilities								Sec.20.44.090
Reverse Vending Machines	P	P	P	M[9]	P	P	P	
Small Collection Facilities	SP	SP	SP	SP[9]	SP	SP	SP	
Large Collection Facilities	X	X	X	X	C	C	C	
Utilities, Major	C	C	C	X	C	C	C	
Utilities, Minor	P	P	P	P[9]	P	P	P	
Wireless Communications Facilities	See Chapter 20.58							

Notes:

[1] A Site Plan Review Permit may be required per Chapter 20.32 (Interface Regulations) regardless of the uses shown in Table 20.10-1.

[2] Residential use on the ground floor is prohibited unless it is located on the back of the property where it is not visible or approved with a Conditional Use Permit.

[3] Prohibited as a single use. Permitted as part of a residential mixed-use project.

[4] Use shall not exceed 20,000 square feet.

[5] 24 hour operations limited to C-T and C-C zones per Chapter 9.08 (Gaming).

[6] Rehabilitation centers for drug, methadone, and alcohol are prohibited.

[7] A Conditional Use Permit is required for establishments smaller than 20,000 square feet.

[8] A Conditional Use Permit is required for alcoholic beverage sales for on-site consumption.

[9] Permitted only as part of a shopping center or other retail establishment with a minimum of 20,000 square feet of floor area devoted to the sale of groceries.

[10] Prohibited in the City Center area between 19th and 16th Streets and O Street and Martin Luther King, Jr. Way, including properties fronting on either side of each of the above streets, except vehicle sales showrooms can be allowed.



[11] Includes refreshment stands.

[12] Permitted only as an ancillary use to serve employees, not to occupy more than 5,000 square feet.

[13] Conditional Use Permit required unless the use is ancillary to a principal permitted use. For restaurants, Conditional Use Permit is required unless the uses are conducted in and entered from within the building with no outside advertising.

[14] A Site Plan Review Permit is required for used vehicle sales.

[15] Temporary warehousing and storage only is allowed per the requirements of Section 20.10.030(D).

[16] Provided that a massage establishment permit has not been revoked at that location within 12 months of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44.

[17] Must have valid certificate from State of California as a massage therapist or massage practitioner pursuant to the Massage Therapy Act (Business and Professions Code Section 4600 *et seq.)*.

[18] Prohibited within 1,000 feet of schools and other uses per Sec. 20.44.160, unless building over 20,000 square feet.

20.10.030 Development Standards and Guidelines for Commercial Zoning Districts

A. General Standards. Table 20.10-2 identifies development standards that apply to all parcels and structures located in commercial zoning districts. See Figure 20.10-1.

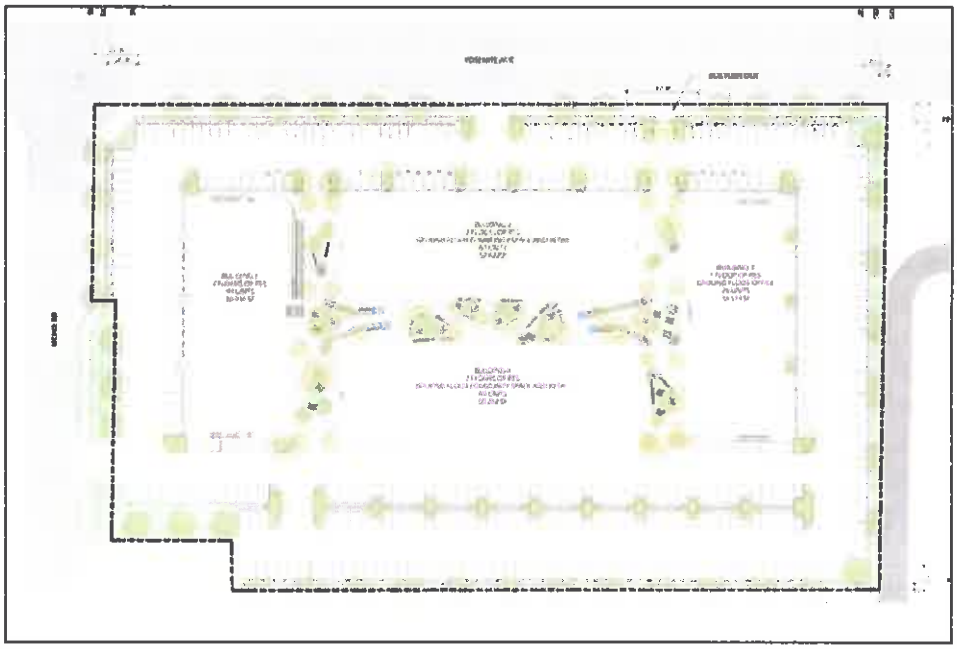
B. Outdoor Operation of Uses.

1. The outdoor operation of a land use in the C-C and C-N zoning districts shall require approval of a Site Plan Review Permit. Outdoor dining in accordance with Chapter 12.36 (Restaurant Encroachment Permits), outdoor recreation,

INITIAL STUDY #19-37

Conditional Use Permit #1238

SOUTHEAST CORNER OF
YOSEMITE AVENUE & MCKEE ROAD
Assessor's Parcel Numbers: 008-310-038; -053



Proposed Mixed-Use Project

ATTACHMENT 26

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A) Public Hearing Notice and Map
B) Mitigation Monitoring Program

Appendices

A. Mitigation Monitoring Program for Initial Study #14-21

B. Air Quality Analysis

C. Greenhouse Gas Analysis

D. Traffic Analysis

CITY OF MERCED
PLANNING & PERMITTING DIVISION

TYPE OF PROPOSAL: Conditional Use Permit #1238

INITIAL STUDY: #19-37

DATE RECEIVED: November 25, 2019 (date application determined to be complete)

LOCATION: Southwest corner of East Yosemite Avenue and McKee Road (3486 and 3492 McKee Road)

ASSESSOR'S PARCEL NUMBERS: 008-310-053 AND 008-310-038

Please forward any written comments by January 22, 2020 to:

Julie Nelson, Associate Planner
City of Merced Planning & Permitting Division
678 West 18th Street
Merced, CA 95340

Applicant Contact Information:

Merced Holdings, LP
9701 W Pico Blvd., Ste 201A
Los Angeles, CA 90035-4743

General Plan and Zoning Designations

Current General Plan Designation: Neighborhood Commercial (CN) and Low Density Residential (LD) – refer to the General Plan and Zoning Map at Figure 3.

Current Zoning Designation: Neighborhood Commercial (C-N) and R-1-6 – refer to the General Plan and Zoning Map at Figure 3.

Project Site

The proposed project is located at the southeast corner of Yosemite Avenue and McKee Road (Figures 1 and 2). The site is comprised of two parcels (APN's: 008-310-053 and -038) totaling approximately 5.94 acres (Figure 2). The surrounding land uses are shown on the map at Figure 2 and listed in the table below.

Surrounding Land	Existing Use of Land	Zoning Designation	City General Plan Land Use Designation
North	Single-Family Residential/Church/School (across Yosemite Avenue)	County	Rural Residential (RR)
South	Single-Family Residential	R-1-6	Low Density Residential (LD)
East	Single-Family Residential	P-D #52	Low Density Residential (LD)
West	Single-Family Residential (across McKee Road)	R-1-6	Low Density Residential (LD)

Figure 1
Proximity Map

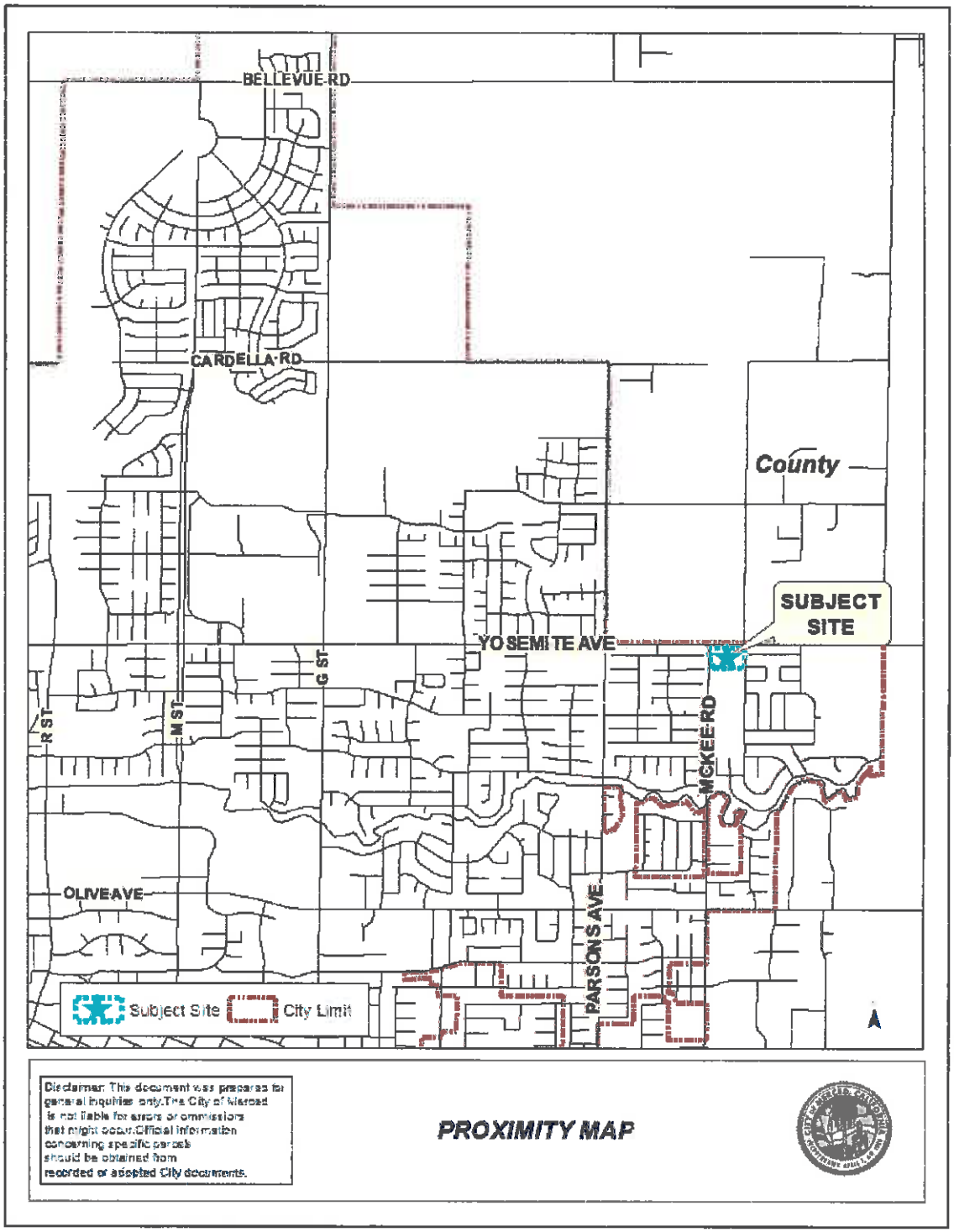


Figure 2
Subject Site & Surrounding Uses



Project Description

The proposed project is a request for a Conditional Use Permit to allow the construction of a mixed-use development to include 21 4 apartment units and approximately 37,000 square feet of commercial space (retail and offices) within four buildings (two 2-story buildings and two 3-story buildings) on an approximately 5.94-acre parcel. The General Plan designation is Neighborhood Commercial and the Zoning classification is Neighborhood Commercial (C-N).

The 214 apartment units would contain a mixture of 1, 2, and 3-bedroom apartments and approximately 8,000 square feet of resident/community space. Buildings 1 and 3 (refer to the Site Plan at Figure 3) would be 2-story buildings and Buildings 2 and 4 would be 3-story buildings. The ground floor of Building 3 would provide commercial office space and the ground floors of Buildings 2 and 4 would provide a mixture of resident/community space and commercial uses. 394 parking spaces would be provided to serve the uses. The table below provides a breakdown of the units, stories, building heights, and sizes. The floor plans for each building are provided at Figures 4-A through 4-D (pages 7-12). The building height shown in the table below is the height to the top of the parapet of each building. Each building would have an additional screen for mechanical equipment that would be approximately 2-3 feet in height and an elevator shaft that would be approximately 8-9 feet in height. Building 2 includes a roof-top deck for tenants to have an additional open space/recreation area. This area would include a lounging area with tables and chairs as well as trees to add shade. The building elevations are provided at Figures 5-A, 5-B, 5-C, 5-D, and 5-E.

BUILDING DETAILS

Building No.	Stories	1st Floor	2nd Floor	3rd Floor	Total Square Feet	Height (to top of parapet)
1	2	22 units	27 units	n/a	30,456	26' 1 1/8"
2	3	Retail/Resident Space	34 units	33 units	57,622	33' 11"
3	2	Office	29 units	n/a	30,533	26' 1 1/8"
4	3	Retail/Resident Space	34 units	35 units	58,262	33' 11"
TOTAL UNITS		214			176,873	

The development will have 82- 1 bedroom/1bath units, 112 - 2 bedroom/2 bath units, and, 20 - 3 bedroom/3 bath units. The one-bedroom units would vary in size depending on whether the unit includes a balcony. A one-bedroom unit with a balcony would have 276 square feet and without a balcony it would have 300 square feet. The two-bedroom units would be 576 square feet with a 24-square-foot balcony, and the three bedroom units would be 876 square feet with a 24-square-foot balcony.

Parking

The project would provide 386 spaces to serve the residential uses as well as the commercial uses. These spaces include 25 motorcycle parking spaces as well as 361 automobile parking spaces (including handicap accessible spaces). Additionally, the project would provide 70 bicycle

parking spaces located within the buildings for the residents. As per code requirements, short-term bike parking would be provided for the commercial uses as well.

Typically, parking for the residential portion of the project would require 339 spaces and the commercial uses (office and retail) would require 113 spaces for a total requirement of 452 spaces. The Zoning Ordinance allows up to a 30% reduction for a mixed-use development with the approval of a parking demand analysis approved by the Development Services Director. With the 30% reduction, the parking requirement would be reduced to 316 spaces.

The developer will be implementing measures to reduce the need for parking on the site. The developer will be working with UC Merced to move the bus stop near Yosemite Avenue and Via Moraga closer to their site, so they could qualify for a 5% reduction based on the location of a transit stop. In addition, the developer will be providing pick-up/drop-off locations for Uber and Lyft to encourage ride sharing, offering bicycles, and possibly Zip cars and scooters for their tenants to use to reduce the actual number of parking spaces needed. Also, because this is a mixed-use project, it is likely there would be commercial uses that would not need parking in the evenings, which would leave additional spaces open for the other uses during these hours.

Zoning

The Zoning Ordinance describes uses that are allowed within a specific zone "by right" and those allowed with a discretionary review such as Site Plan Review or a Conditional Use Permit. Multi-family dwellings are allowed within a C-N zone with approval of a Conditional Use Permit. Therefore, the applicant has requested approval of a CUP for this project. Additionally, Section 20.32 of the Zoning Ordinance sets out the requirements for interface regulations to help integrate potentially incompatible zones. This section requires Site Plan Review be obtained prior to construction on a parcel with a Neighborhood Commercial (C-N) zone when it is adjacent to or across the street from an R-1-6 zone or property zoned Planned Development (P-D) containing uses that are similar to those permitted in an R-1-6 zone. In this case, the property to the west across McKee Road and the property to the south are zoned R-1-6. The property to the east is zoned Planned Development (P-D) #52 which allows single-family dwellings similar to the R-1-6 zone. The properties to the north of the site are not within the City Limits, but are within the City's Sphere of Influence and Specific Urban Development Plan Boundary and have a Rural Residential (RR) General Plan designation. The uses in this area include a church and a small school as well as single-family dwellings located on 1 to 2-acre lots. Instead of requiring two separate processes for the project to review the use as a Conditional Use and interface with a Site Plan Review, the Conditional Use Permit process will address the interface regulations.

Figure 3 -Site Plan

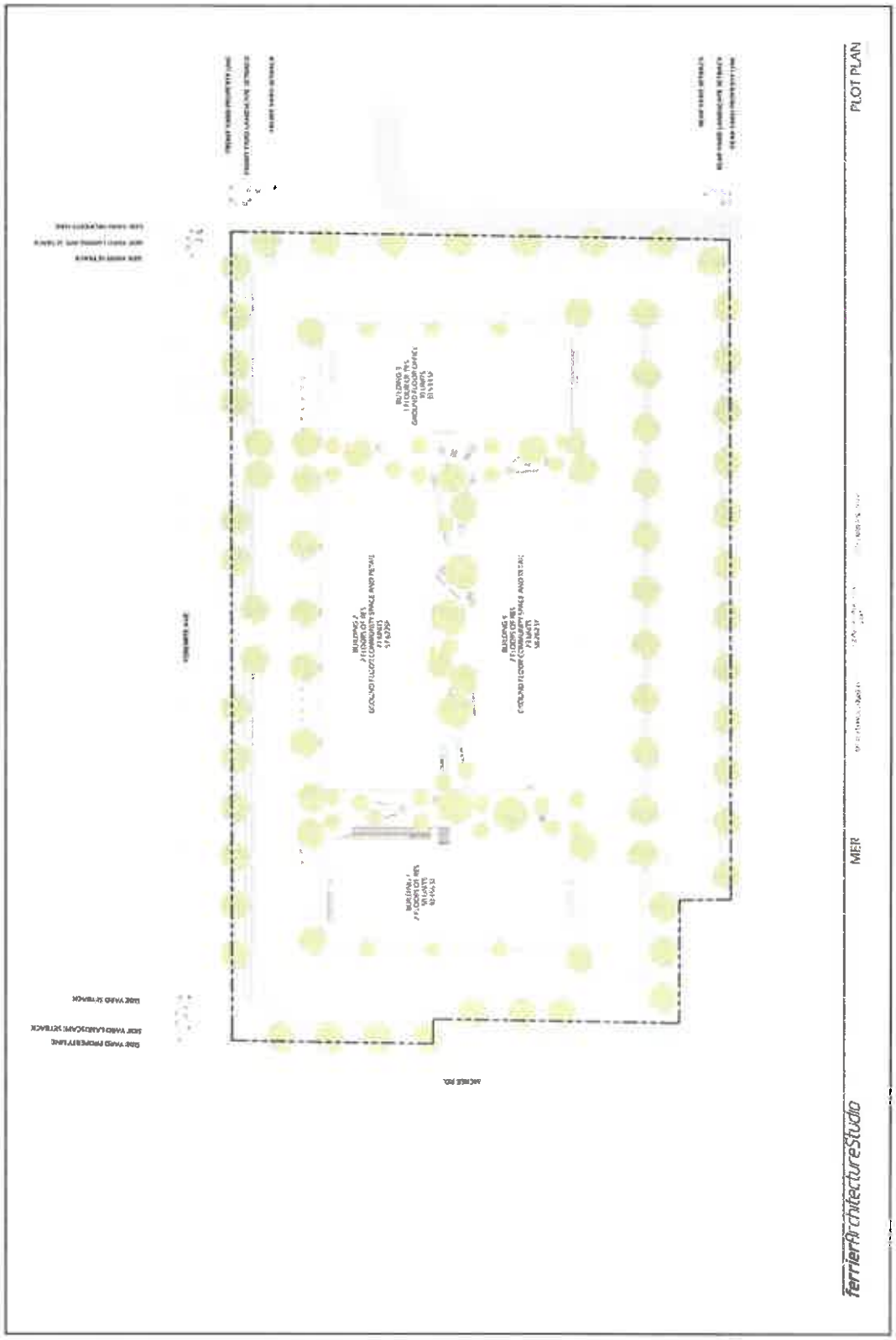
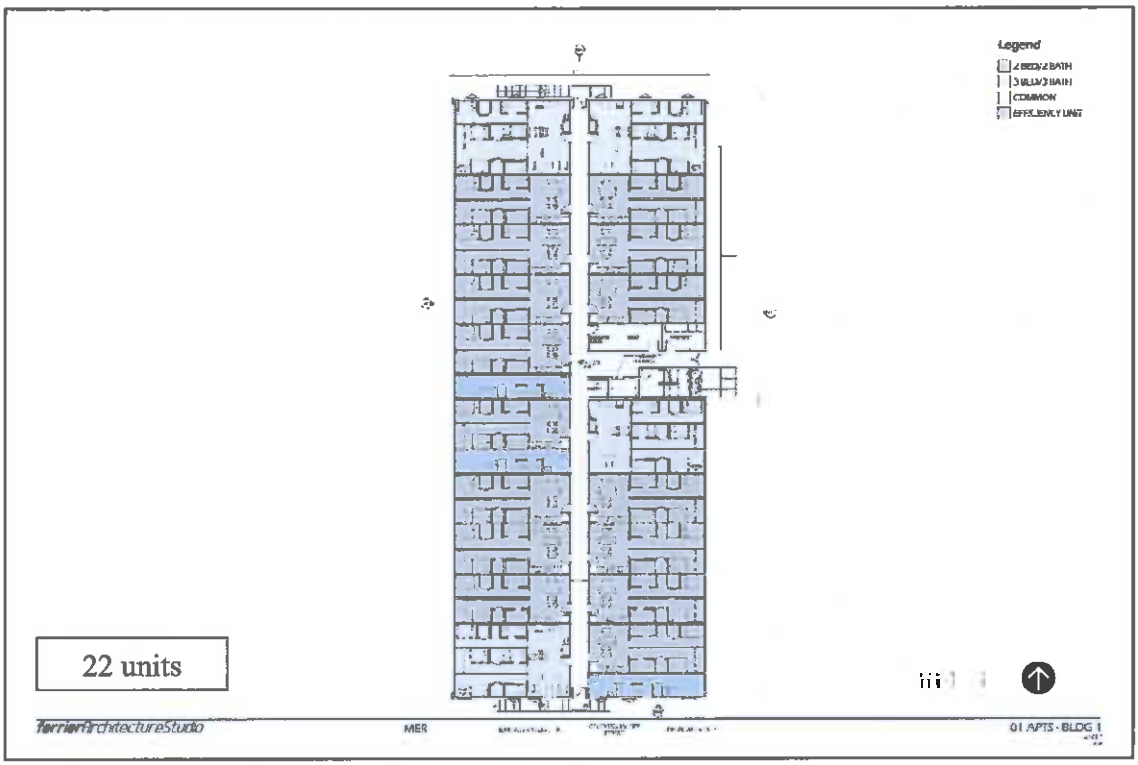


Figure 4-A - Floor Plan-Building 1
First Floor



Second Floor

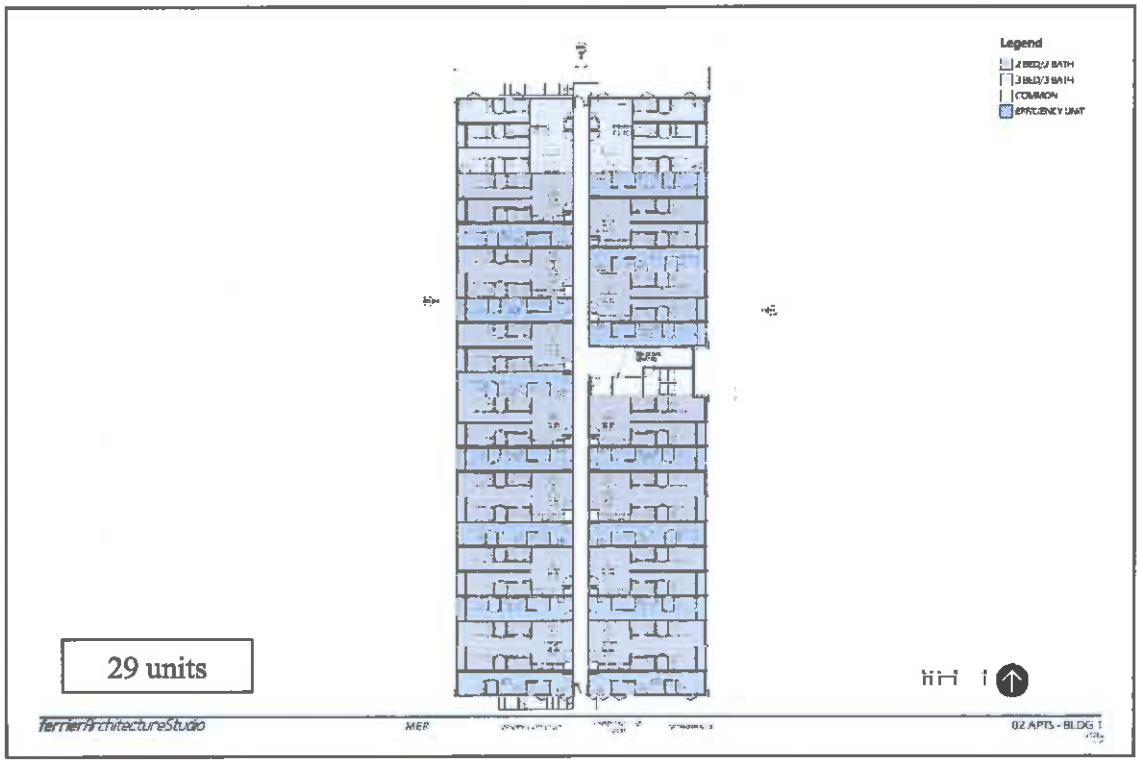
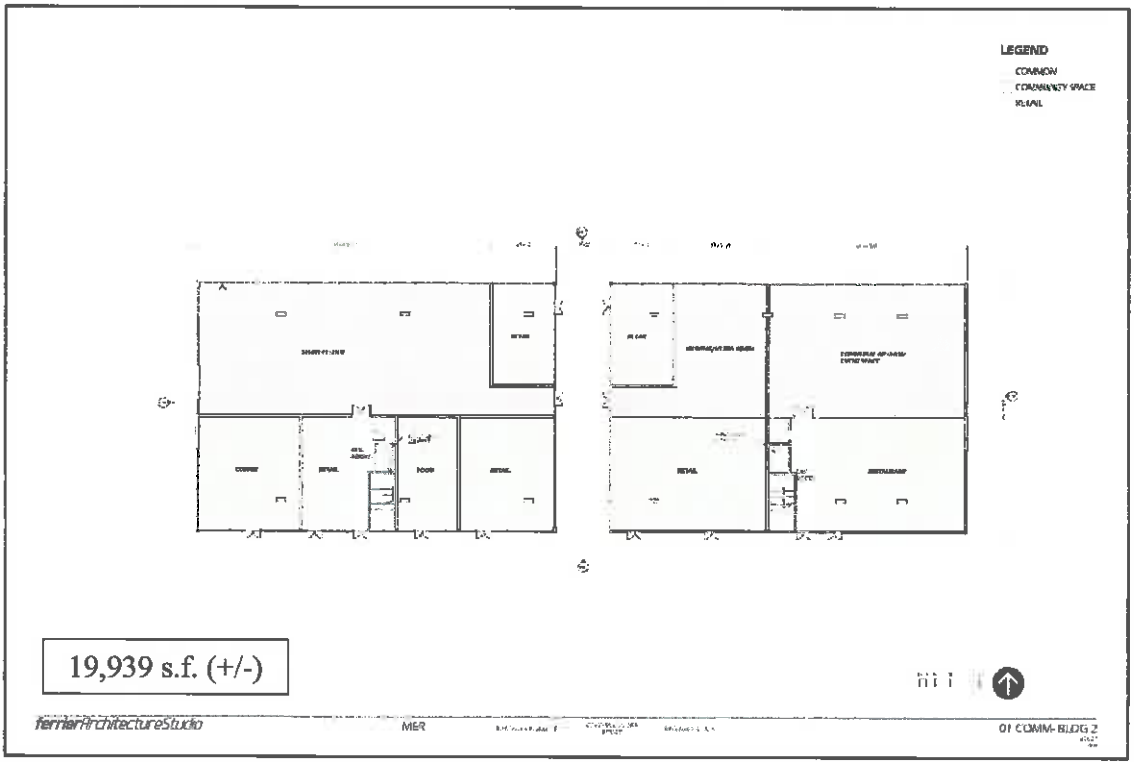
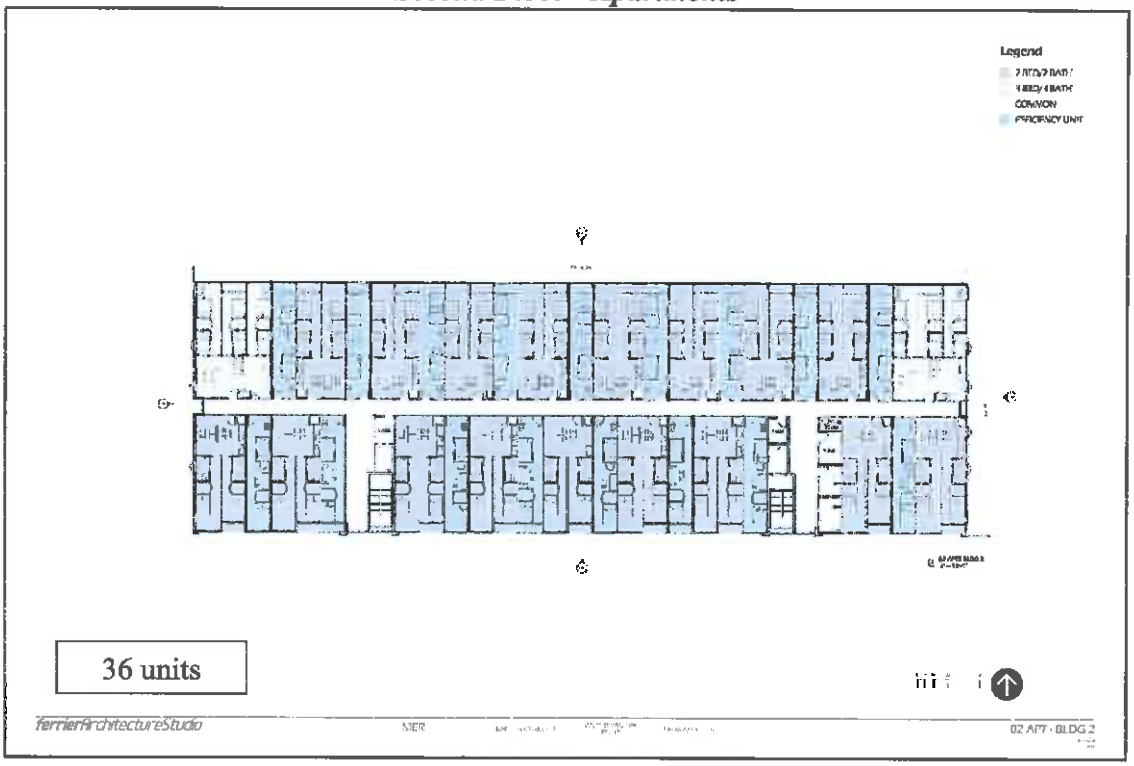


Figure 4-B - Floor Plan-Building 2
First Floor – Retail/Resident Space



Second Floor - Apartments



Third Floor – Apartments



Roof-Top Resident Area

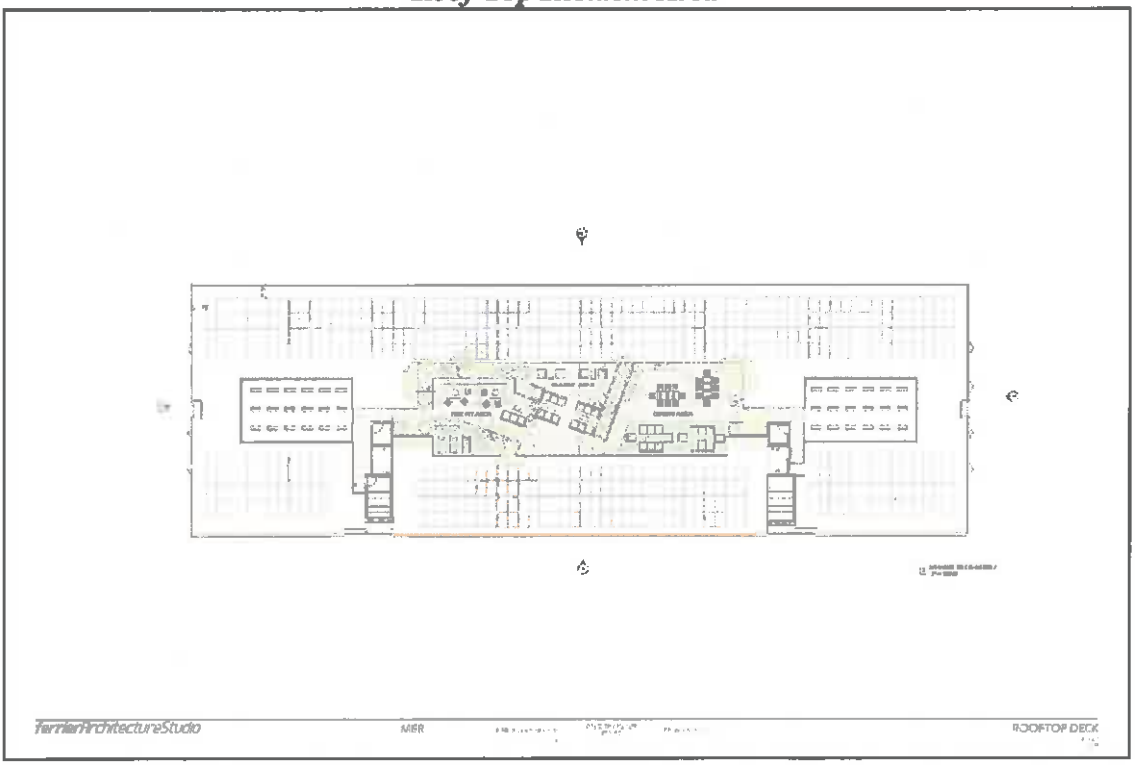
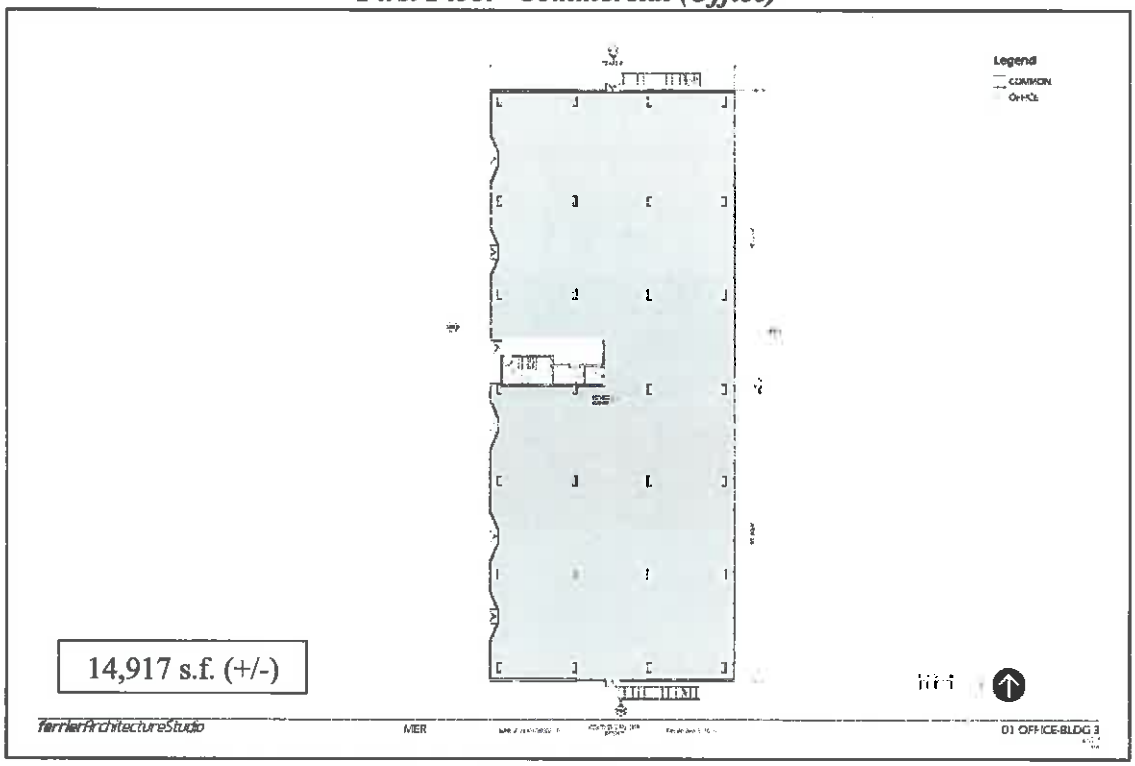


Figure 4-C - Floor Plan-Building 3
First Floor- Commercial (Office)



Second Floor – Apartments

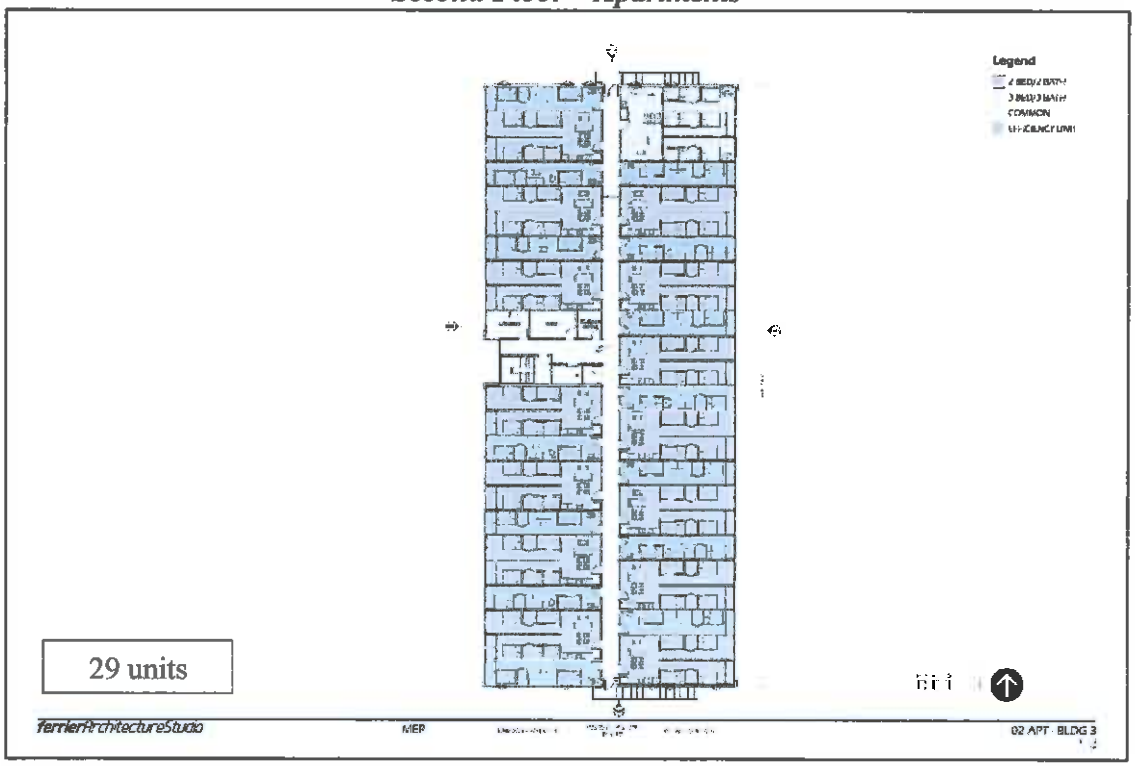
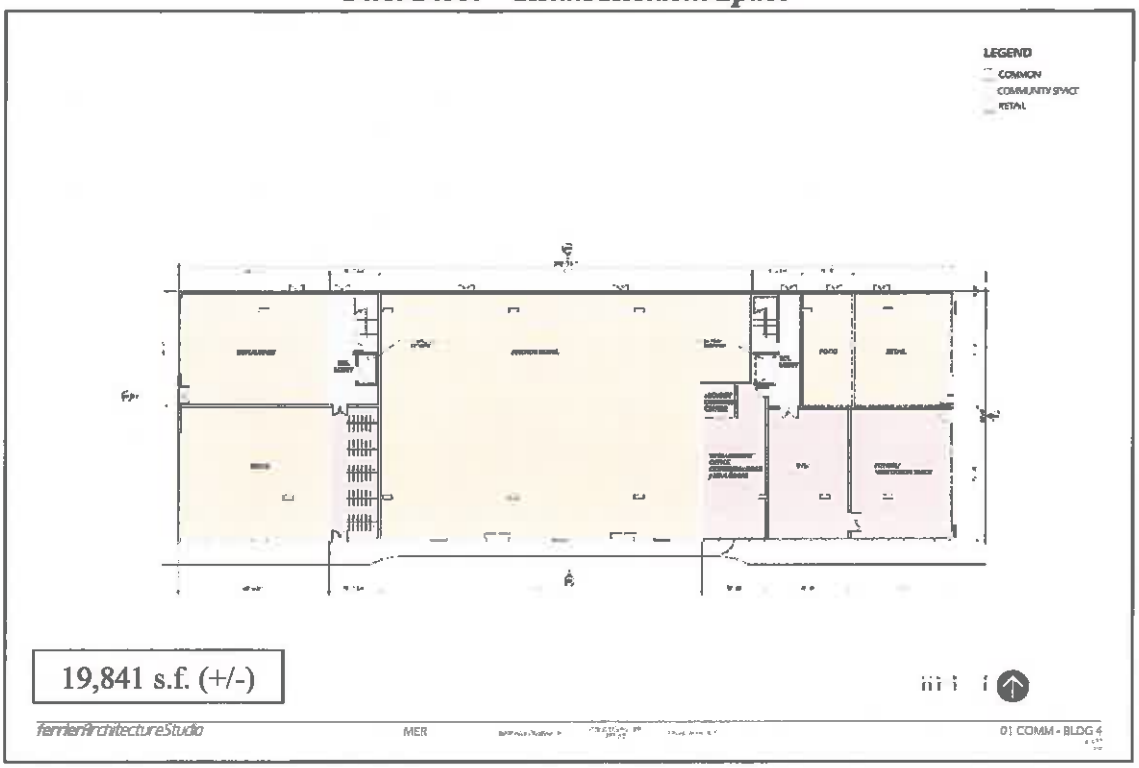


Figure 4-D - Floor Plan-Building 4
First Floor – Retail/Resident Space



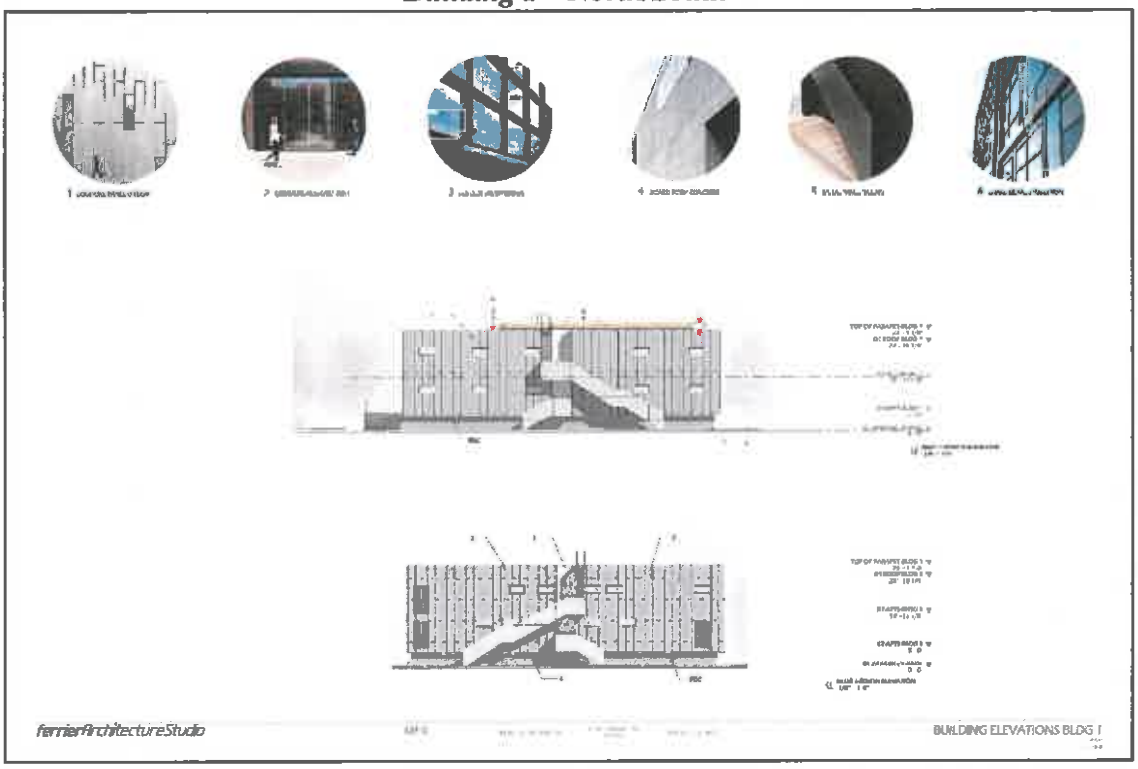
Second Floor - Apartments



Building 4 - Third Floor - Apartments



Figure 5-A – Elevations
Building 1 – North/South



Building 1 – East/West

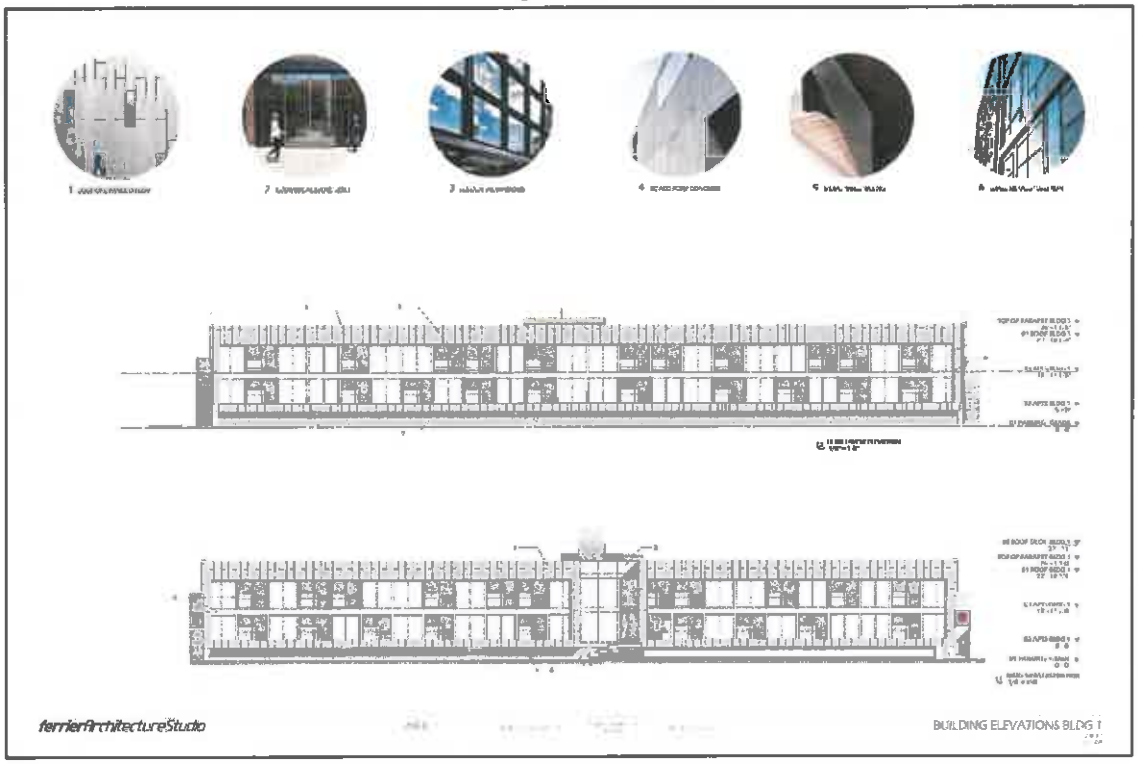
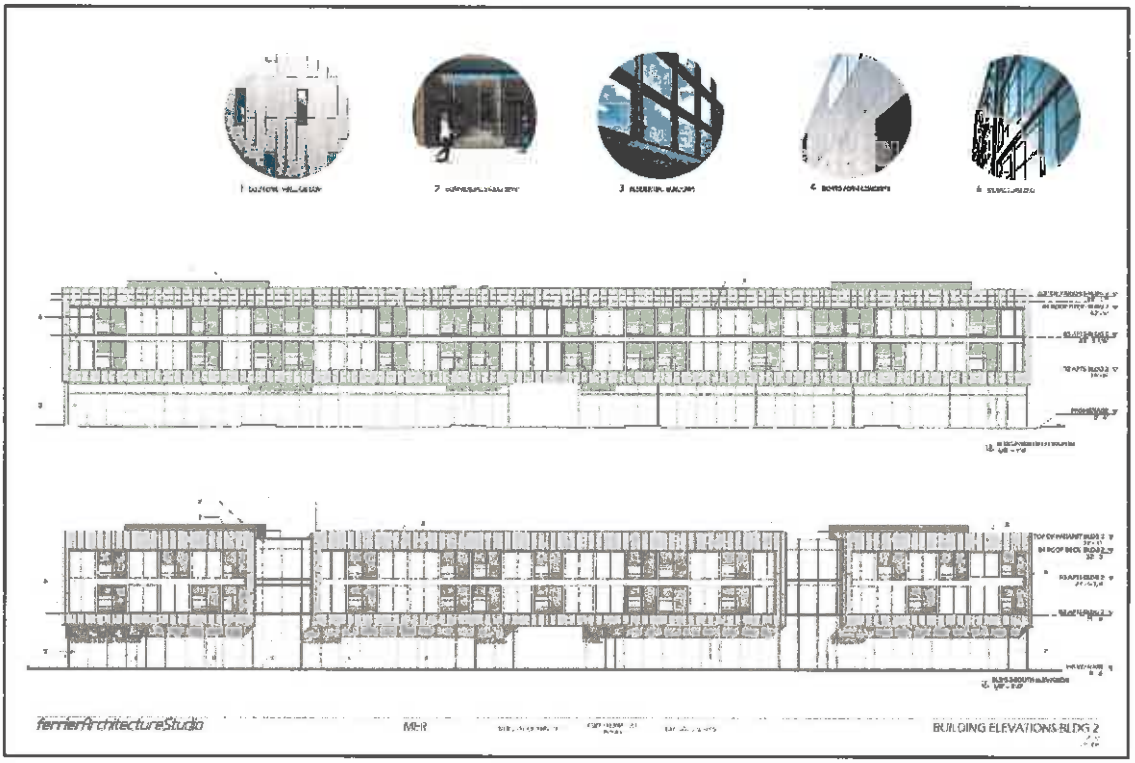


Figure 5-B – Elevations
Building 2 – North/South



Building 2 – East/West

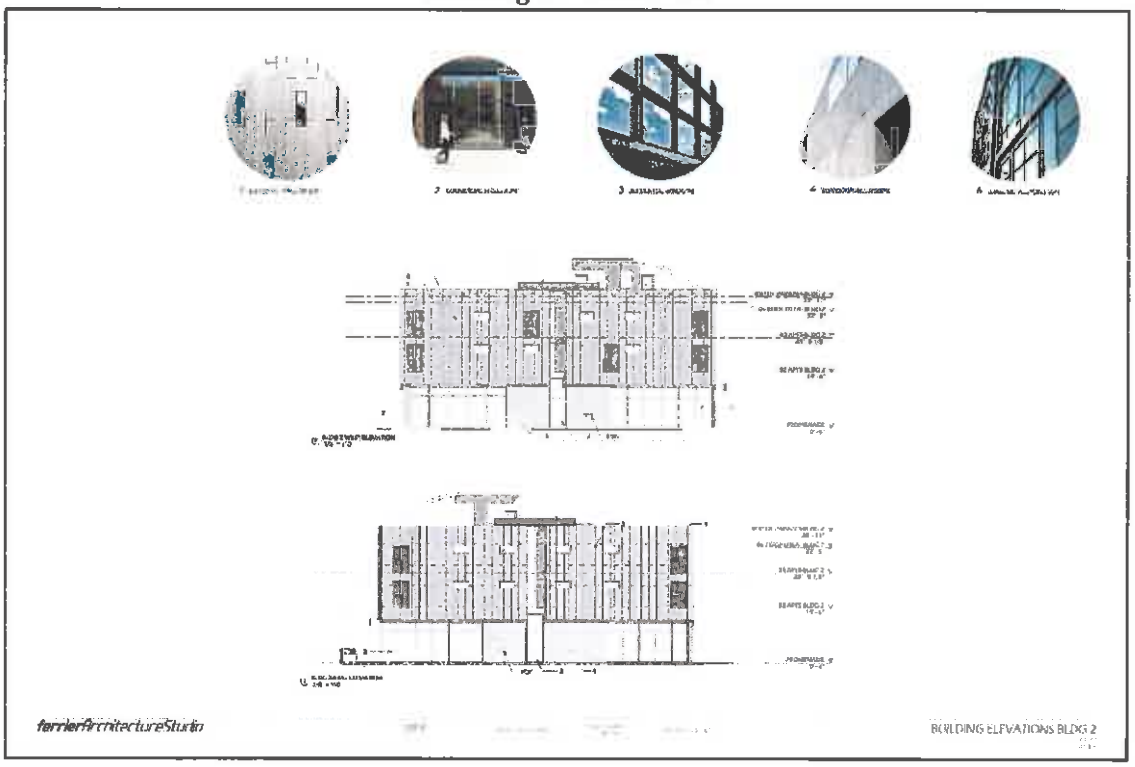
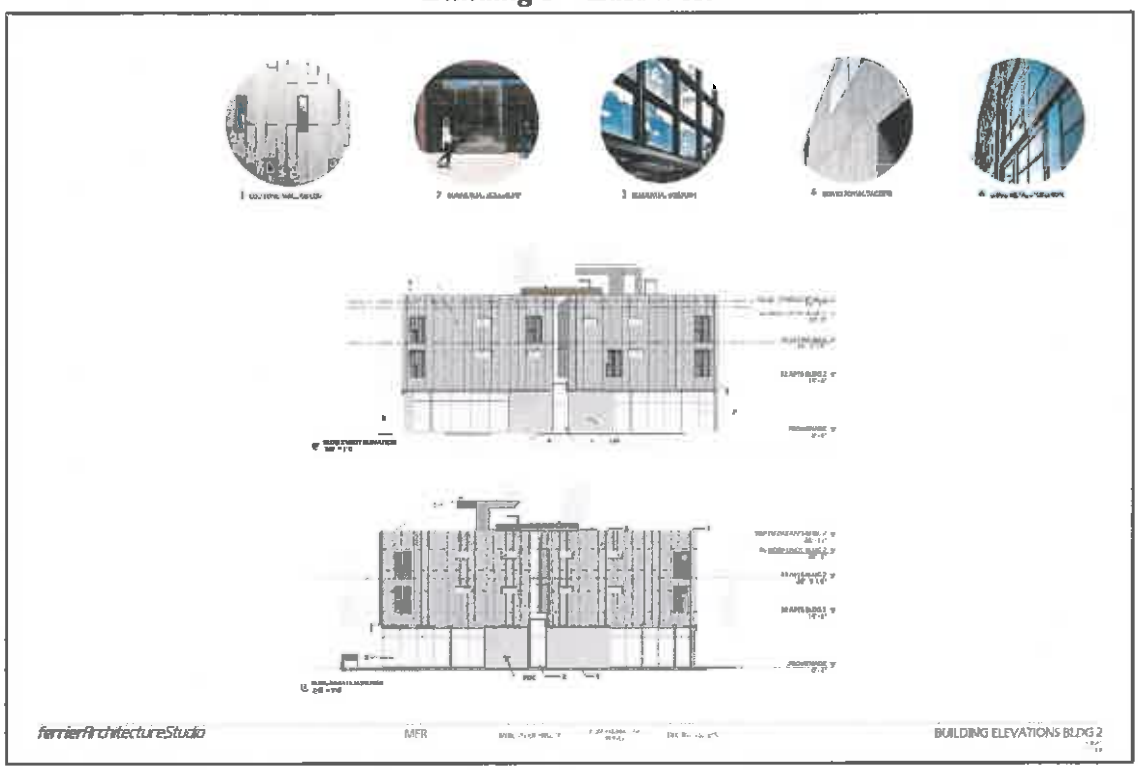


Figure 5-C – Elevations
Building 3 – East/West



Building 3 – North/South

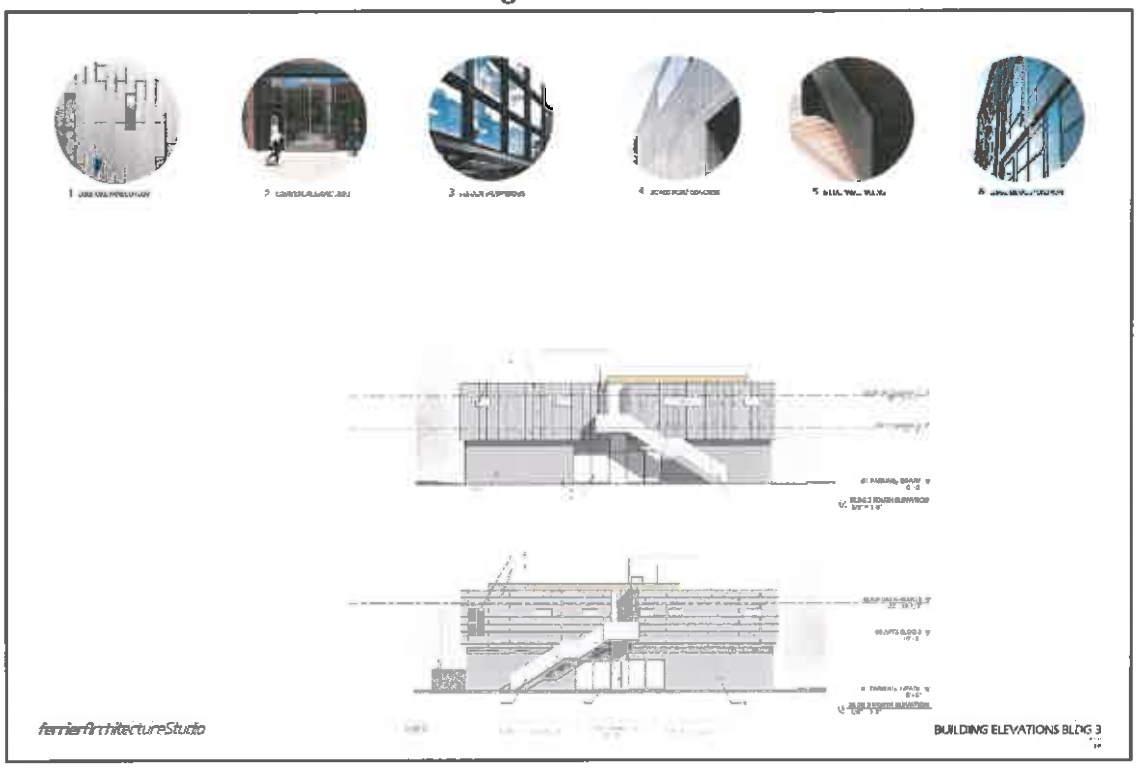
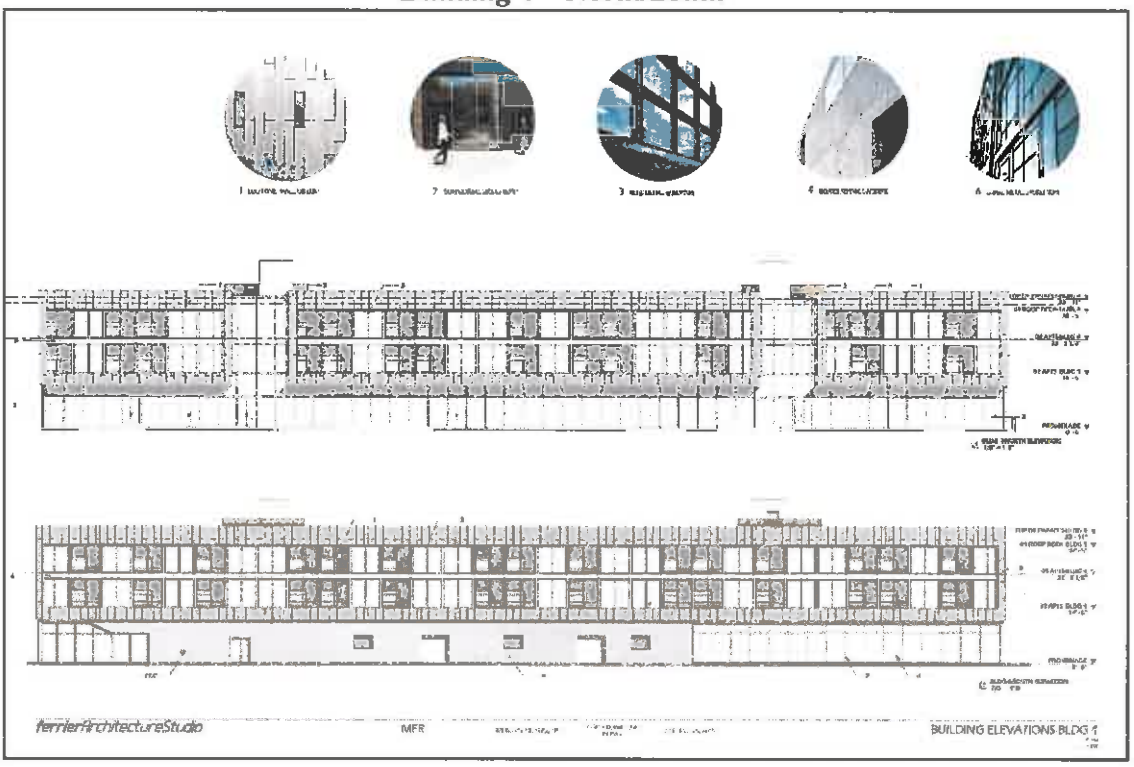


Figure 5-D – Elevations
Building 4 – North/South



Building 4 – East/West

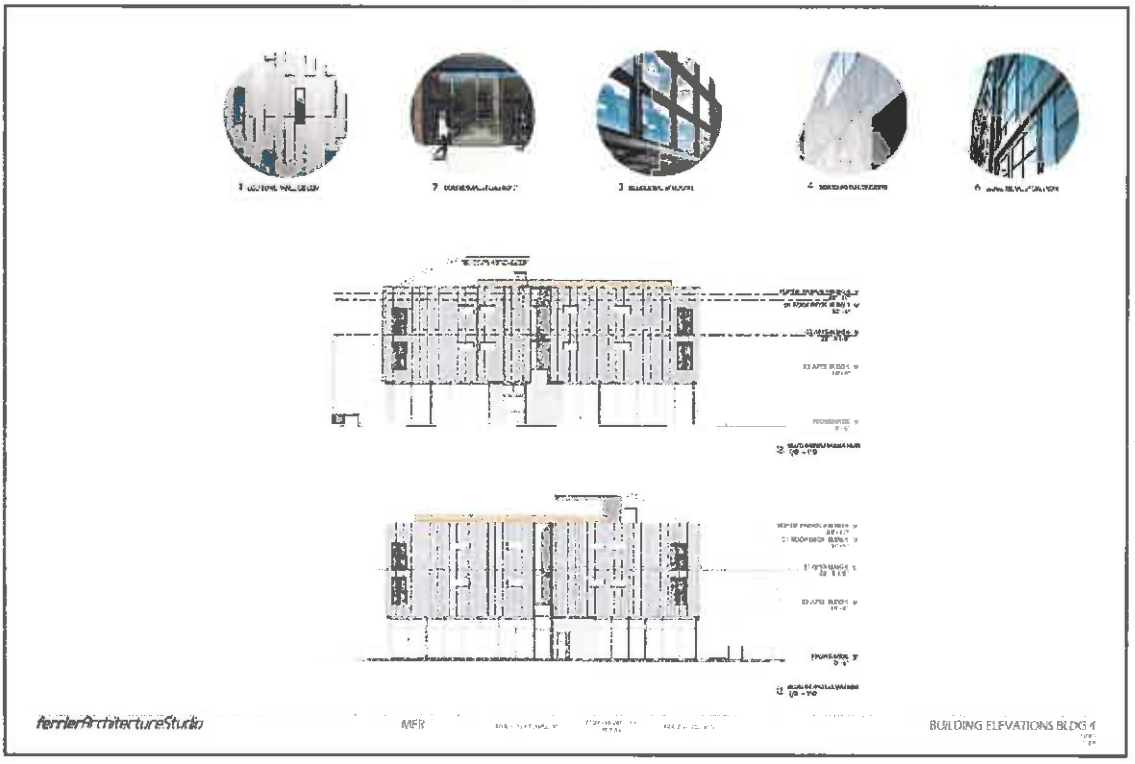


Figure 5-E – Colored Rendering



Background

This site was included in Expanded Initial Study (EIS) #02-27 for the "Hunt Family Annexation," which resulted in a Mitigated Negative Declaration. In 2014, an application was submitted for a General Plan Amendment and Zone Change to change the land use from Low Density Residential to Neighborhood Commercial for a majority of the site (all but the newly acquired 22,679 square feet). The requested General Plan Amendment and Zone Change changing the zoning from R-1-6 to Neighborhood Commercial (C-N) were approved August 3, 2015.

With this change, an additional environmental review (Initial Study #14-32) was prepared and also resulted in a Mitigated Negative Declaration (MND). The Mitigation Monitoring Program for Initial Study #14-32, which also includes relevant mitigation measures from EIS #02-27, is provided at Appendix A.

Environmental Review #19-18 was approved with General Plan Amendment #19-02 and Zone Change #426 on October 6, 2019, that changed the General Plan and Zoning designations for 0.52 acres to Neighborhood Commercial. The Mitigation Measures for Environmental Review #19-18 have been included in the Mitigation Monitoring Program for this environmental review (#19-37). All applicable mitigation measures from the previous environmental reviews shall be enforced with the project currently being proposed.

Within a Neighborhood Commercial (C-N) zone, multi-family uses are permitted with Conditional Use Permit approval. The proposed commercial uses (both retail and office uses) are allowed within a C-N zone, but would be subject to interface regulations as required by Section 20.32.

A. INITIAL FINDINGS

A. The proposal is a project as defined by CEQA Guidelines Section 15378.

B. The project is not a ministerial or emergency project as defined under CEQA Guidelines (Sections 15369 and 15369).

C. The project is therefore discretionary and subject to CEQA (Section 15357).

D. The project is not Categorically Exempt.

E. The project is not Statutorily Exempt.

F. Therefore, an Environmental Checklist has been required and filed.

B. CHECKLIST FINDINGS

A. An on-site inspection was made by this reviewer on November 25, 2019.

B. The checklist was prepared on December 30, 2019.

C. The *Merced Vision 2030 General Plan* and its associated EIR (SCH# 2008071069) were certified in January 2012. The document comprehensively examined the potential environmental impacts that may occur as a result of build-out of the 28,576-acre Merced SUDP/SOI. For those significant environmental impacts (Loss of Agricultural Soils and Air Quality) for which no mitigation measures were available, the City adopted a Statement of Overriding Considerations (City Council Resolution #2011-63). This document herein incorporates by reference the *Merced*

Vision 2030 General Plan, the General Plan Program EIR (SCH# 2008071069), and Resolution #2011-63.

As a subsequent development project within the SUDP/SOI, many potential environmental effects of the Project have been previously considered at the program level and addressed within the General Plan and associated EIR. (Copies of the General Plan and its EIR are available for review at the City of Merced Planning and Permitting Division, 678 West 18th Street, Merced, CA 95340.) As a second tier environmental document, Initial Study #19-18 plans to incorporate goals, policies, and implementing actions of the *Merced Vision 2030 General Plan*, along with mitigation measures from the General Plan EIR, as mitigation for potential impacts of the Project.

Project-level environmental impacts and mitigation measures (if applicable) have been identified through site-specific review by City staff. This study also utilizes existing technical information contained in prior documents and incorporates this information into this study. This site was included in Expanded Initial Study #02-27 for General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02 and Initial Study #14-32 for General Plan Amendment #14-06 and Zone Change #421. The previously approved Mitigation Monitoring Program for both Initial Studies is found at Appendix A.

Project-level environmental impacts have been identified through site-specific review by City staff. This study also utilizes existing technical information contained in prior documents and incorporates this information into this study.

C. ENVIRONMENTAL IMPACTS:

Will the proposed project result in significant impacts in any of the listed categories? Significant impacts are those which are substantial, or potentially substantial, changes that may adversely affect the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant. (Section 15372, State CEQA Guidelines. Appendix G of the Guidelines contains examples of possible significant effects.)

A narrative description of all "potentially significant," "negative declaration: potentially significant unless mitigation incorporated," and "less than significant impact" answers are provided within this Initial Study.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact," as indicated by the checklist on the following pages.

X	Aesthetics		Agriculture/Forestry Resources	X	Air Quality
X	Biological Resources	X	Cultural Resources	X	Energy
X	Geology/Soils	X	Greenhouse Gas Emissions	X	Hazards and Hazardous Materials
X	Hydrology/Water Quality	X	Land Use/Planning		Mineral Resources
X	Noise	X	Population/Housing	X	Public Services
X	Recreation	X	Transportation		Tribal Cultural Resources
X	Utilities/Services Systems	X	Wildfire	X	Mandatory Findings of Significance

DETERMINATION

On the basis of this initial evaluation:

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

Prepared by: _____ _____
Julie Nelson, Associate Planner — Date

Approved by: _____ _____
Kim Espinosa, Planning Manager
Environmental Coordinator, City of Merced — Date

Distributed for Public Review: January 2, 2020

1. Aesthetics

SETTING AND DESCRIPTION

The project site is comprised of two parcels totaling 5.94 acres located at the southeast corner of East Yosemite Avenue and McKee Road. The site is currently vacant, although, two single-family dwellings were recently demolished and removed from the site. The site is surrounded by urban development consisting of primarily single-family homes. There is also a church and small school located to the north of the site.

The site is not located within a designated scenic corridor and there are no scenic vistas visible from the site. The topography of the site is level and there are no outstanding features noted.

The proposed project would include the construction of four buildings ranging in height from 26' 1-1/8" (2-stories – Buildings 1 and 3) to 33' 11" (3-stories- Buildings 2 and 4) to the top of the building parapet. The buildings would be located towards the interior of the site with parking surrounding the buildings (refer to the building elevations at Figures 5-A through 5-D on pages 13 through 17).

The buildings would have a modern design with a mixture of exterior finishes including vertical and/or horizontal wood siding, stucco, and typical commercial store fronts with metal finishes. Balconies would be provided on the upper floor levels for the residential tenants. Each building would have interior stairways as well as exterior stairways for emergency access.

The site would be enhanced with landscaping along the perimeter and between the buildings as well as parking lot trees (refer to the Site Plan at Figure 4 on Page 6 for the conceptual landscape plan for the site).

Parking lot lighting and exterior building lighting would be added to the site.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
1. **Aesthetics.** Will the project:				
a) Have a substantial adverse effect on a scenic vista?				✓
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				✓
c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?			✓	

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?			✓	

Impact Analysis

Would the project:

a) *Have a substantial adverse effect on a scenic vista?*

The site is not designated as a scenic vista and is not located near any designated scenic vistas. Therefore, the project would not have any adverse impacts on a scenic vista and there would be **no impact**.

b) *Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?*

There are no officially designated State Scenic Highways or Routes in the project vicinity. Therefore, the project would have **no impact** on scenic resources, such as rock outcroppings, trees, or historic buildings within a scenic highway.

c) *If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?*

The project site is located within an urbanized area with development surrounding the site. The current zoning for the site is Neighborhood Commercial (C-N). The proposed buildings would not exceed the maximum height allowed in the adjacent R-1-6 zone (35 feet) or that allowed within a C-N zone when directly across from or adjacent to a residential zone (also 35 feet). The City's zoning ordinance does not regulate scenic quality other than building height and general aesthetics. Because the site is currently vacant and has recently been in a blighted condition, the development of the site would improve the aesthetic value of the site. Therefore, any changes to the visual character of the site would be a **less than significant impact.**

d) *Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?*

The construction of the mixed-use development on the site would add artificial lighting to the area. The parking areas and buildings would add artificial lighting to the site and surrounding area. However, given the fact that the site is surrounded by urban development and is currently zoned for commercial development, the impacts would be less than significant. The proposed project may result in low level, off-site light and glare from streetlights, security lights, parking lot lighting and reflective material. Off-site effects depend upon the type of lighting fixtures installed and building materials used to construct the buildings. All lighting would be required to meet the California Energy Code and would be required to be shielded so it doesn't spillover onto adjacent properties as required by the Energy Code. The addition of lighting would be a **less than significant impact.**

2) Agriculture Resources

SETTING AND DESCRIPTION

Merced County is among the largest agriculture producing Counties in California (ranked fifth), with a gross income of more than $3.4 billion in 2017. The County's leading agriculture commodities include milk, chickens, almonds, cattle and calves, tomatoes, and sweet potatoes.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
2. Agriculture and Forestry Resources. Will the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and monitoring Program of the California Resources Agency, to non - agriculture?				✓
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?				✓
c) Conflict with existing zoning for, or cause rezoning of, forest land [as defined in Public Resources Code Section 12220(g)], timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production [as defined by Government Code Section 51104(g)]?				✓
d) Result in the loss of forest land or conversion of forest land to non-forest use?				✓
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?				✓

Impact Analysis

Would the project:

a) *Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and monitoring Program of the California Resources Agency, to non -agriculture?*

The project site is located within the City Limits of Merced and was annexed in 2003. The California Department of Conservation prepares Important Farmland Maps through its Farmlands Mapping and Monitoring Program (FMMP). The system of classifying areas is based on soil type and use. According to the 2018 Merced County Important Farmlands Map, the site is classified as "Urban and Built-Up Land, and "Vacant or Disturbed Land" (Figure 7). Therefore, the proposed Conditional Use Permit would not have any effect on Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. The proposed project would not affect protected farmland and there would be **no impact.**

b) *Conflict with existing zoning for agricultural use, or a Williamson Act contract?*

There are no Williamson Act contract lands in this area. Therefore, there is **no impact.**

c) *Conflict with existing zoning for, or cause rezoning of, forest land as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g))?*

There is no forest land or timberland on the site. The project would not conflict with any zoning or plan for forest land or timberland. Therefore, **there is no impact.**

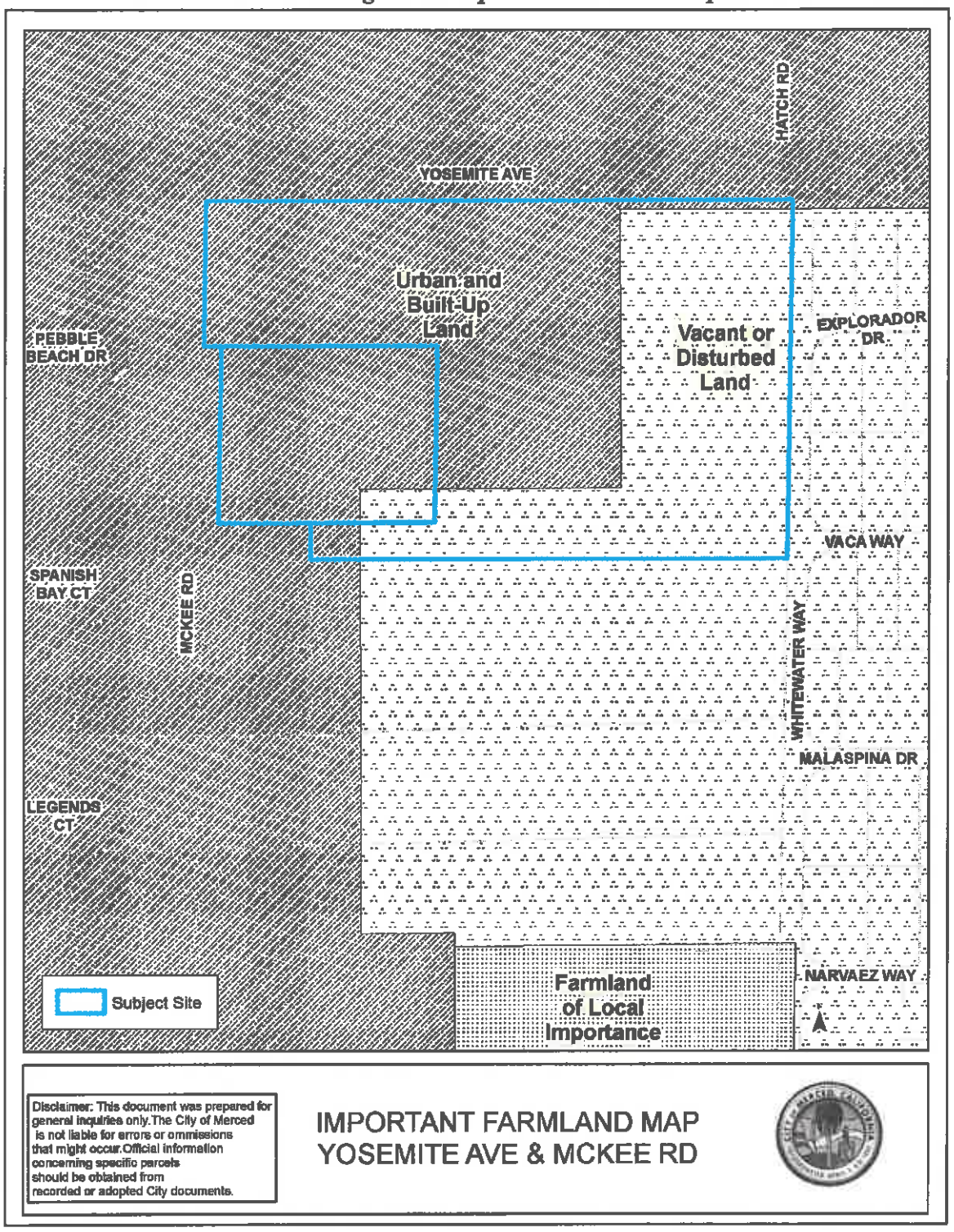
d) *Result in the loss of forest land or conversion of forest land to non-forest use?*

See item 3 above. **No impact.**

e) *Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?*

The nearest land being used for farming is approximately one-half mile to the east, outside the City Limits. The proposed development would not cause the use of this land to change. Therefore, there is **no impact.**

Figure 6 - Important Farmland Map



3. Air Quality

SETTING AND DESCRIPTION

The San Joaquin Valley Air Pollution Control District (SJVAPCD) will review the project to assess the impact to air quality and to establish acceptable mitigation measures. Hence, the City recognizes that additional mitigation measures may be applied to subsequent phases of the development of this area. While the action of the SJVAPCD is independent of City reviews and actions, their process allows the City to review proposed mitigation measures that could affect project design and operation. Any proposed changes are subject to approval by the City.

The project is located in the San Joaquin Valley Air Basin (SJVAB), which occupies the southern half of the Central Valley and is approximately 250 miles in length and, on average, 35 miles in width. The Coast Range, which has an average elevation of 3,000 feet, serves as the western border of the SJVAB. The San Emigdio Mountains, part of the Coast Range, and the Tehachapi Mountains, part of the Sierra Nevada, are both located to the south of the SJVAB. The Sierra Nevada extends in a northwesterly direction and forms the eastern boundary of the SJVAB. The SJVAB is basically flat with a downward gradient to the northwest.

The climate of the SJVAB is strongly influenced by the presence of these mountain ranges. The mountain ranges to the west and south induce winter storms from the Pacific to release precipitation on the western slopes, producing a partial rain shadow over the valley. A rain shadow is defined as the region on the leeward side of the mountain where precipitation is noticeably less because moisture in the air is removed in the form of clouds and precipitation on the windward side. In addition, the mountain ranges block the free circulation of air to the east, resulting in the entrapment of stable air in the valley for extended periods during the cooler months.

Winter in the SJVAB is characterized as mild and fairly humid, and the summer is hot, dry, and cloudless. During the summer, a Pacific high-pressure cell is centered over the northeastern Pacific Ocean, resulting in stable meteorological conditions and a steady northwesterly wind.

The Air Quality Analysis found at Appendix B was originally prepared for the original project that included 428 apartment units and approximately 18,000 square feet of commercial space. The current project has been revised and the number of units reduced to 214 units. This analysis is based, in part, on the projected average daily trips for the project determined by the traffic analysis. The revised traffic analysis determined the current plan of 214 apartments and approximately 37,000 square feet of commercial space (retail and office) would result in fewer average daily trips (ADT's) (1,184 ADT's v. 1,322 ADT's for the original project). Although the commercial space is larger, these uses typically generate fewer air quality impacts than a typical residential use would. Additionally, the buildings are reduced in size, therefore the construction impacts would be less. Therefore, the original Air Quality Analysis remains sufficient for this project. For additional information, please refer to the Air Quality Analysis prepared by Rincon Consultants found at Appendix B.

The revised project would also be LEED certified (Silver or higher) which would help mitigate any potential impacts.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
3. **Air Quality.** Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?				✓
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?			✓	
c) Expose sensitive receptors to substantial pollutant concentrations?			✓	
d) Create objectionable odors affecting a substantial number of people?		✓		

Impact Analysis

Would the project:

a) *Conflict with or obstruct implementation of the applicable air quality plan?*

As described above, the Air Quality Analysis found at Appendix B was prepared for the original project which included 428 units and approximately 18,000 square feet of commercial space. However, because the number of units was reduced and the Average Daily Trips (ADT's) for the project were reduced, the original Air Quality Analysis remains sufficient for the revised project. There would be no commercial uses that would create a significant impact on air quality. As such, based on the Air Quality Analysis, the proposed project would not conflict with or obstruct implementation of the applicable air quality plan. Therefore, there would be **no impact.**

b) *Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?*

Per the Air Quality Analysis found at Appendix B, the proposed project would not result in a cumulatively considerable net increase of any criteria pollutant. Therefore, this impact is considered **less than significant.**

c) *Expose sensitive receptors to substantial pollutant concentrations?*

Construction of the proposed project may expose surrounding sensitive receptors to airborne particulates, as well as a small quantity of construction equipment pollutants (i.e., usually diesel-fueled vehicles and equipment). Because the project has been reduced in size, the construction impacts would be less than or equal to the impacts analyzed in the original Air Quality Analysis. Therefore, based on Table 2 of the Air Quality Analysis at Appendix B indicates construction emissions would not exceed the SJVAPCD construction threshold levels. Additionally, Table 3 of the Analysis indicates that operational emissions

would not exceed the SJVAPCD threshold levels. Therefore, this impact is considered **less than significant.**

d) *Create objectionable odors affecting a substantial number of people?*

During construction, the various diesel powered vehicles and equipment in use on-site would create localized odors. These odors would be temporary and are not likely to be noticeable for extended periods of time beyond the project site. The potential for diesel odor impacts is therefore considered less than significant. In addition, the proposed residential and commercial uses are not expected to produce any offensive odors that would result in frequent odor complaints.

Due to constraints in the City's sewer system, the project would be required to install an underground wastewater storage tank. The project would be able to discharge a maximum of 8,000 gallons per day during peak hours. The remainder of the wastewater would be stored in the underground tank. Although the tank would be underground, it is possible that at certain times during maintenance or if there were a problem with the sewer system that objectionable odors could be emitted from the tank. In order to reduce any impacts associated with the storage tank, the following mitigation measure is recommended to reduce this impact to **less than significant with mitigation.**

Mitigation Measures:

AQ-1 - The developer shall provide an operations and maintenance plan for the on-site wastewater storage tank to address the timing of the off-peak discharge, emergency procedures for breakdowns and repairs, and odor control. The plan shall include steps to ensure ongoing objectionable odors do not affect the site or surrounding area. The operations and maintenance plan shall be approved by the City Public Works Director and/or City Engineer.

4. Biological Resources

SETTING AND DESCRIPTION

The plan area is located in the Central California Valley eco-region. This eco-region is characterized by flat, intensively farmed plains with long, hot dry summers and cool, wet winters (14-20 inches of precipitation per year). The Central California Valley eco-region includes the Sacramento Valley to the north and the San Joaquin Valley to the south and it ranges between the Sierra Nevada Foothills to the east to the Coastal Range foothills to the west. Nearly half of the eco-region is actively farmed, and about three fourths of that farmed land is irrigated.

According to the State of California, Department of Fish and Game Natural Diversity Data Base (NDDB), the site does not include any plant and/or animal species listed as threatened or endangered by the State of California or the Federal Government. Furthermore, the biological resources evaluation, prepared as part of the *Merced Vision 2030 General Plan Program Environmental Impact Report* (EIR), does not identify the project area as containing any seasonal or non-seasonal wetland or vernal pool areas. Given the adjacent, built-up, urban land uses and major roadways, no form of unique, rare or endangered species of plant and/or animal life could be sustained on the subject site.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
4. **Biological Resources.** Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modification, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?			✓	
b) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?			✓	
c) Conflict with any local policies or ordinance protecting biological resources, such as a tree preservation policy or ordinance?				✓
d) Conflict with the provisions of an adopted Habitat Conservation plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				✓
e) Conflict with any local policies or ordinance protecting biological resources, such as a tree preservation policy or ordinance?				✓
f) *Conflict with the provisions of an adopted Habitat Conservation plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?*				✓

Impact Analysis

Would the project:

a) *Have a substantial adverse effect, either directly or through habitat modification, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?*

The proposed project would not have any direct effects on animal life by changing the diversity of species, number of species, reduce any rare or endangered species, introduce any new species, or deteriorate existing fish or wildlife habitat. Although the *Merced Vision 2030 General Plan* identifies several species of plant and animal life that exist within the City's urban boundaries, the subject site, which is surrounded by developed urban uses, does not contain any rare or endangered species of plant or animal life.

A biological resources inventory was prepared as part of the environmental review for the annexation of this area. At that time, there was no evidence of the presence of any candidate, sensitive, or special status species or their habitats in the area. However, mitigation measures were adopted for project sites that abut Black Rascal Creek. Because this site does not abut the creek, these mitigation measures are not applicable to this project. This impact would be **less than significant.**

Goal Area OS-1: Open Space for the Preservation of Natural Resources	
Policies:	
OS-1.1	Identify and mitigate impacts to wildlife habitats which support rare, endangered, or threatened species.

b) *Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?*

The proposed project would not have any direct effects on riparian habitat or other sensitive natural community. The City General Plan identifies Bear, Black Rascal, Cottonwood, Miles, Fahrens, and Owens Creeks within the City's growth area. The subject site is not located adjacent to any of these areas or any water way. Therefore, the project would have a **less than significant impact** on riparian habitat.

c) *Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?*

The project site would not have any direct effect on wetlands as no wetlands have been identified in this area. All of the area surrounding the subject site has been modified from its original state and is developed with urban uses. There is **no impact.**

d) *Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?*

The project would not have any adverse effects on any resident or migratory fish or wildlife species or with established native resident migratory wildlife corridor, or impede the use of native wildlife nursery sites. There is **no impact.**

e) *Conflict with any local policies or ordinance protecting biological resources, such as a tree preservation policy or ordinance?*

The proposed project would not conflict with local policies and/or ordinances protecting biological resources. There are few trees or other vegetation present on the site. The City's

General Plan does not identify this site as being a biological resource. According to Expanded Initial Study #02-27, the biological study done for the annexation of this site revealed no evidence of the presence of any candidate, sensitive, or special status species or their habitats on the site. Therefore, there is **no impact.**

f) *Conflict with the provisions of an adopted Habitat Conservation plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?*

The proposed project would not have any effects on a habitat conservation plan. There are no adopted habitat conservation plans, Natural Conservation Community Plan, or other approved local, regional, or state habitat conservation plan for the City of Merced or Merced County. There is **no impact.**

5. Cultural Resources

SETTING AND DESCRIPTION

The City of Merced area lies within the ethnographic territory of the Yokuts people. The Yokuts were members of the Penutian language family which held all of the Central Valley, San Francisco Bay Area, and the Pacific Coast from Marin County to near Point Sur.

Merced County was first explored by Gabriel Moraga in 1806, when he named the Merced River, "El Rio de Nuestra Senra de la Merced." Moraga's explorations were designed to locate appropriate sites for an inland chain of missions. Moraga explored the region again in 1808 and 1810.

Archaeology

Archaeological sites are defined as locations containing significant levels of resources that identify human activity. Very little archaeological survey work has been conducted within the City or its surrounding areas. Creeks, drainage, and sloughs exist in the northern expansion area of the City, and Bear Creek and Cottonwood Creek pass through the developed area. Archaeological sites in the Central Valley are commonly located adjacent to waterways and represent potential for significant archaeological resources.

Paleontological sites are those that show evidence of pre-human existence. Quite frequently, they are small outcroppings visible on the earth's surface. While the surface outcroppings are important indications of paleontologic resources, it is the geologic formations that are the most important. There are no known sectors within the project area known to contain sites of paleontologic significance.

Historic Resources

In 1985, in response to community concerns over the loss of some of the City's historic resources, and the perceived threats to many remaining resources, a survey of historic buildings was undertaken in the City. The survey focused on pre-1941 districts, buildings, structures, and objects of historical, architectural, and cultural significance. The survey area included a roughly four square-mile area of the central portion of the City.

The National Register of Historic Places, the California Historical Landmarks List, and the California Inventory of Historic Resources identify several sites within the City of Merced. These

sites are listed on the Merced Historical Site Survey and maintained by the Merced Historical Society. There are no listed historical sites on the Project site.

According to the environmental review conducted for the annexation of this area, there are no listed historical sites and no known sectors within the project area known to contain sites of paleontological or archeological significance. However, mitigation measures were adopted to ensure proper steps are taken in the event evidence of archeological artifacts area discovered during construction.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
5. **Cultural Resources.** Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?		✓		
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?		✓		
c) Disturb any human remains, including those interred outside of formal cemeteries?		✓		

Impact Analysis

Would the project:

a) *Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?*

The project would not alter or destroy any historic archaeological site, building, structure, or object, nor would it alter or affect unique ethnic cultural values or restrict religious or sacred uses.

A cultural resources records search was conducted by the Central California Information Center (CCIC) at California State University, Stanislaus as part of the City's General Plan update. No historic resources were found at or near the project site. The impact of this project would be less than significant. However, as part of the Expanded Initial Study (EIS) prepared for this site as part of the annexation process in 2003, mitigation measures were applied to ensure no cultural resources would be disturbed. This project would be required to comply with those mitigation measures. Compliance with this mitigation measure would reduce this impact to **less than significant with mitigation.**

Mitigation Measures:

CUL-1) If unknown pre-contact or historic-period archaeological materials are encountered during project activities, all work in the immediate vicinity of the find shall halt until a qualified archaeologist can evaluate the find and make recommendations.

Cultural resources materials may include pre-contact resources such as flaked and ground stone tools and debris, shell, bone, ceramics, and fire-affected rock, as well as historic resources such as glass, metal, wood, brick, or structural remnants. If the qualified archaeologist determines that the discovery represents a potentially significant cultural resource, additional investigations shall be required to mitigate adverse impacts from project implementation. These additional studies may include, but are not limited to, recordation, archaeological excavation, or other forms of significance evaluations.

The applicant shall inform its contractor(s) of the sensitivity of the project site for archaeological deposits, and include the following directive in the appropriate contract documents:

"The subsurface of the construction site is sensitive for archaeological deposits. If archaeological deposits are encountered during project subsurface construction, all ground-disturbing activities within 25 feet shall be redirected and a qualified archaeologist shall assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. Project personnel shall not collect or move any archaeological materials. Archaeological deposits can include, but are not limited to, shellfish remains; bones, including human remains; and tools made from, obsidian, chert, and basalt; mortars and pestles; historical trash deposits containing glass, ceramics, and metal artifacts; and structural remains, including foundations and wells."

The City shall verify that the language has been included in the grading plans prior to issuance of a grading permit or other permitted project action that includes ground-disturbing activities on the project site.

b) *Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?*

The project would not alter or destroy any prehistoric archaeological site, building, structure, or object, nor would it alter or affect unique ethnic cultural values or restrict religious or sacred uses.

A cultural resources records search was conducted by the Central California Information Center (CCIC) at California State University, Stanislaus as part of the City's General Plan update. No archeological resources were found at or near the project site. However, the project is required to comply with all mitigation measures applied to EIS #02-27. Therefore, this impact would be **less than significant with mitigation**.

Mitigation Measure:

CUL-2) Implementation of Mitigation Measure CUL-1.

c) *Disturb any human remains, including those interred outside of formal cemeteries?*

Disturbance of human remains interred outside of formal cemeteries would result in a significant impact. If human remains are identified during project construction, Section

7050.5 of the California Health and Safety Code and Section 5097.98 of the Public Resources Code shall apply, appropriate. Therefore, implementation of Mitigation Measure CUL-3 reduce potential impacts to human remains to **less than significant with mitigation.**

Mitigation Measure:

CUL-3) If human remains are identified during construction and cannot be preserved in place, the applicant shall fund: 1) the removal and documentation of the human remains from the project corridor by a qualified archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology, 2) the scientific analysis of the remains by a qualified archaeologist, should such analysis be permitted by the Native American Most Likely Descendant, and 3) the reburial of the remains, as appropriate. All excavation, analysis, and reburial of Native American human remains shall be done in consultation with the Native American Most Likely Descendant, as identified by the California Native American Heritage Commission.

6. Energy

SETTING AND DESCRIPTION

Appendix F (Energy Conservation) of the CEQA Guidelines provides that potentially significant energy implications of a project must be considered in an EIR, with particular emphasis on avoiding or reducing the inefficient, wasteful and unnecessary consumption of energy. As such, this discussion considers the proposed Project's consumption of energy resources, particularly electricity, natural gas, and transportation fuels, during both the project's construction and operational phases.

The proposed mixed use project would be built to meet the California Energy Code requirements and may include the installation of solar panels. Additionally, the project would provide bicycle parking and promote the use of public transit to help reduce energy consumed for transportation. The site is located within ¼-mile of a transit stop. The project would incorporate recycling procedures for the disposal of recyclable materials in accordance with the City's recycling ordinance and AB 341.

According to data from the U.S. Energy Information Administration, apartment buildings with 5 or more units typically use less energy than other home types. Households in apartment buildings with 5 or more units use approximately 50% less energy as other types of homes. The lower energy consumption can be attributed, in part to smaller living spaces and units being bordered by other units or common areas which reduces exposure to outside temperatures and the number of windows in the unit.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
6. **Energy.** Would the project:				
a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?		✓		
b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?		✓		

Impact Analysis

a) *Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?*

The project is not expected to result in potentially significant impacts due to wasteful, inefficient, or unnecessary consumption of energy resources during project construction or operation. The project would be constructed on an in-fill lot that has access to existing electrical and telecommunications services. No new transportation, electrical, or telecommunications facilities are required to support the project leading to unnecessary consumption of energy resources. Compliance with the California Green Building Standards Code, AB 341- Solid Waste Diversion, and the San Joaquin Valley Air Pollution Control District standards during construction and operation of the project will further ensure the efficient consumption of energy resources. Implementation of these regulations would reduce impacts to **less than significant with mitigation.**

Mitigation Measure:

ENE-1) The applicant shall comply with all applicable California Energy Code, AB 341, and San Joaquin Valley Air Pollution Control District rules and regulations regulating energy efficiency and waste.

b) *Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?*

With the implementation of the regulations described in item "a" above, the proposed project would not conflict with a state or local plan for renewable energy or energy efficiency. This impact is **less than significant with mitigation.**

ENE-2) Implementation of Mitigation Measure ENE-1.

7. Geology and Soils

SETTING AND DESCRIPTION

The City of Merced is located approximately 150 miles southeast of San Francisco along the west side of the southern portion of the Great Valley Geomorphic Province, more commonly referred to as the San Joaquin Valley. The valley is a broad lowlands bounded by the Sierra Nevada to the east and Coastal Ranges to the west. The San Joaquin Valley has been filled with a thick sequence

of sedimentary deposits of Jurassic to recent age. A review of the geologic map indicates that the area around Merced is primarily underlain by the Pleistocene Modesto and Riverbank Formations with Holocene alluvial deposits in the drainages. Miocene-Pliocene Mehrten and Pliocene Laguna Formation materials are present in outcrops on the east side of the SUDP/SOI. Modesto and Riverbank Formation deposits are characterized by sand and silt alluvium derived from weathering of rocks deposited east of the SUDP/SOI. The Laguna Formation is made up of consolidated gravel sand and silt alluvium and the Mehrten Formation is generally a well consolidated andesitic mudflow breccia conglomerate.

Faults and Seismicity

A fault, or a fracture in the crust of the earth along which rocks on one side have moved relative to those on the other side, is an indication of past seismic activity. It is assumed that those that have been active recently are the most likely to be active in the future, although even inactive faults may not be "dead." "Potentially Active" faults are those that have been active during the past two million years or during the Quaternary Period. "Active" faults are those that have been active within the past 11,000 years. Earthquakes originate as movement or slippage occurring along an active fault. These movements generate shock waves that result in ground shaking.

Based on review of geologic maps and reports for the area, there are no known active or potentially active faults, or Alquist-Priolo Earthquake Fault Zones (formerly referred to as a Special Studies Zone) in the SUDP/SOI. In order to determine the distance of known active faults within 50 miles of the Site, the computer program EZ-FRISK was used in the General Plan Update.

Soils

According to the USDA Natural Resources Conservation Service website, the soil on the site includes Yokohl clay loam, 0 to 3 persent slopes (YbA). Soil properties can influence the development of building sites, including site selection, structural design, construction, performance after construction, and maintenance. Soil properties that affect the load-supporting capacity of an area include depth to groundwater, ponding, flooding, subsidence, shrink-swell potential, and compressibility.

The City of Merced regulates the effects of soils and geological constraints primarily through the enforcement of the California Building Code (CBC), which requires the implementation of engineering solutions for constraints to development posed by slopes, soils, and geology.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
7. **Geology and Soils.** Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving: i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault?			✓	
ii) Strong seismic ground shaking?			✓	
iii) Seismic-related ground failure, including liquefaction?			✓	
iv) Landslides?			✓	
b) Result in substantial soil erosion or loss of topsoil?		✓		
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?			✓	
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?			✓	
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?			✓	
f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?			✓	

Impact Analysis

Would the project:

a) *Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:*

i) *Strong seismic ground shaking?*

ii) *Strong seismic ground shaking?*

iii) *Seismic-related ground failure, including liquefaction?*

iv) *Landslides?*

The project site is not located within a mapped fault hazard zone, and there is no record or evidence of faulting on the project site (City of Merced General Plan Figure 11.1). Because no faults underlie the project site, no people or structures would be exposed to substantial adverse effects related to earthquake rupture, and no impact would result from the project.

Expanded Initial Study #02-27 stated that the project site **may** expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving strong seismic ground shaking.

Ground shaking of moderate severity may be expected to be experienced on the project site during a large seismic event. All building permits are reviewed to ensure compliance with the California Building Code (CBC). In addition, the City enforces the provisions of the Alquist Priolo Special Study Zones Act that limits development in areas identified as having special seismic hazards. All structures shall be designed and built in accordance with the standards of the California Building Code. Pursuant to CEQA §15162, the project will not create any impacts that warrant additional environmental documentation over and above the impacts addressed in the City's General Plan EIR.

The project **may** expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving seismic-related ground failure, including liquefaction. However, according to the City's *Merced Vision 2030 General Plan EIR,* the probability of soil liquefaction occurring within the City of Merced is considered to be a low to moderate hazard; however, detailed geotechnical engineering investigation required in compliance with the California Building Code (CBC) would be required for the project.

APPLICABLE GENERAL PLAN GOALS AND POLICIES:

The City's *Merced Vision 2030 General Plan* contains policies that address seismic safety.

Goal Area S-2: Seismic Safety:	
Goal **Reasonable Safety for City Residents from the Hazards of Earthquake and Other Geologic Activity**	
Policies	
S-2.1	Restrict urban development in all areas with potential ground failure characteristics.

The project would not expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving landslides.

Landslides generally occur on slopes of 15 percent or greater. The project site's topography is generally of slopes between 0 and 3 percent, which are considered insufficient to produce hazards other than minor sliding during seismic activity.

These impacts are considered **less than significant.**

b) *Result in substantial soil erosion or loss of topsoil?*

Construction of the proposed project could result in temporary soil erosion and the loss of top soil due to construction activities, including clearing, grading, site preparation activities, and installation of the proposed drainage and on-site sewer and water systems. Construction activities disturbing one or more acres are required by the State Water Resources Board (SWRCB) to obtain a General Construction Activity Stormwater Permit, which would require the proposed project to implement a Storm Water Pollution Prevention Plan (SWPPP). Project compliance with SWRCB and the City of Merced regulations to avoid erosion siltation effects would reduce this impact to **less than significant with mitigation**.

Mitigation Measures:

GEO-1) The project shall comply with all requirements of the State Water Resources Board (SWRCB) and obtain a General Construction Activity Stormwater Permit.

GEO-2) The project shall comply with all applicable mitigation measures for Expanded Initial Study #02-27 for General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02.

c) *Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?*

The City of Merced is located in the Valley area of Merced County and is therefore less likely to experience landslides than other areas in the County. The probability of soil liquefaction actually taking place anywhere in the City of Merced is considered to be a low hazaRoad Soil types in the area are not conducive to liquefaction because they are either too coarse or too high in clay content. According to the *Merced Vision 2030 General Plan* EIR, no significant free face failures were observed within the SUDP/SOI and the potential for lurch cracking and lateral spreading is, therefore, very low within the SUDP/SOI area. This impact is **less than significant.**

d) *Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?*

Expansive soils are those possessing clay particles that react to moisture changes by shrinking (when they dry) or swelling (when they become wet). Expansive soils can also consist of silty to sandy clay. The extent of shrinking and swelling is influenced by the environment, extent of wet or dry cycles, and by the amount of clay in the soil. This physical change in the soils can react unfavorably with building foundations, concrete walkways, swimming pools, roadways, and masonry walls.

Implementation of General Plan Policies, adherence to the Alquist-Priolo Act, and enforcement of the California Building Code (CBC) Standards would reduce this impact to **less than significant.**

e) *Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?*

The EIR prepared for the City's *Merced Vision 2030 General Plan* states the following:

"According to the Geologic, Geohazards and Environmental Health Hazards Evaluation Report (Geocon Consultants, Inc.), the soils in the SUDP/SOI are not generally considered to be expansive, have a generally low to moderate erosion potential, and are generally considered suitable for wastewater disposal using conventional septic systems."

However, no new septic systems are allowed in the City and any future construction on the site will be required to connect to the City's sewer system. Based on this evaluation, this impact is **less than significant.**

f) *Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?*

The proposed project would be located on a previously developed in-fill site. The site has been used for agriculture as well as residential purposes and has been previously altered from its native state. Therefore, this impact would be **less than significant.**

8. Greenhouse Gas Emissions

SETTING AND DESCRIPTION

The issue of project-generated Greenhouse Gas (GHG) Emissions is a reflection of the larger concern of Global Climate Change. While GHG emissions can be evaluated on a project level, overall, the issue reflects a more regional or global concern. CEQA requires all projects to discuss a project's GHG contributions. However, from the standpoint of CEQA, GHG impacts on global climate change are inherently cumulative. The quantity of GHGs that it takes to ultimately result in climate change is not precisely known; however, it can safely be assumed that existing conditions do not measurably contribute to a noticeable incremental change in the global climate.

The project applicant provided a Greenhouse Gas study for the previously proposed project on this site which was prepared by Rincon Consultants, Inc. (Appendix C). The study analyzed the emissions associated with a 62,000-square-foot neighborhood commercial center. Although the project has changed, the greenhouse gas impacts would remain similar. Additionally, the project is now slated to be constructed to meet LEED Silver requirements which would reduce any impacts even further than estimated with the analysis. Therefore, the previous analysis remains valid for this project.

The City of Merced has not developed or adopted a CEQA threshold for determining the significance of GHG emissions at the project-level. The San Joaquin Valley Air Pollution Control District (SJVAPCD) thresholds were recommended for use in the study. Based on the SJVAPCD, the proposed project would have a less than significant impact if it achieves at least a 29 percent reduction in GHG emissions compared to business as usual (BAU). This reduction is consistent with the AB 32 Scoping Plan (2008).

The current project has been modified since the Greenhouse Gas Analysis was completed. The project has reduced the number of apartments from 428 to 214, increased the commercial space from 18,000 to 22,672 square feet and added 14,455 square feet of office

space. The project will not be developed to meet LEED certification requirements for LEED Silver or higher. Based on these factors it was determined the previous Greenhouse Gas analysis remained sufficient.

To determine whether the construction of the future shopping center (now a mixed use project) would result in a 29 percent reduction in BAU GHG emissions, two emissions scenarios were calculated and compared:

BAU Scenario – is reflective of a realistic project scenario that would occur absent project design features and state regulations enacted as a result of AB 32, and is consistent with SJVAPCD's and the Air Resources Board's (ARB) definition of "business as usual."

Project Scenario – is also reflective of a realistic project scenario that includes voluntary project design features and further state regulations enacted as a result of AB 32. The project design features and state regulations accounted for in the Project Scenario include use of energy efficient (LED) lighting, recycled water, efficient irrigation systems, recycling, as well as Renewable Portfolio Standard, Low Carbon Fuel Standard, and Pavley Standards.

THRESHOLDS OF SIGNIFICANCE

The proposed project would result in a significant impact on the environment if it would:

- Generate GHG emissions either directly or indirectly, that may have a significant impact on the environment;
- Conflict with any applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of GHGs.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
8. <u>Greenhouse Gas Emissions.</u> Would the project:				
a) Generate greenhouse gas emission, either directly or indirectly, that may have a significant impact on the environment?			✓	
b) Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?			✓	

Impact Analysis

Would the project:

a) *Generate greenhouse gas emission, either directly or indirectly, that may have a significant impact on the environment?*

The following is an excerpt from the Greenhouse Gas Study provide by Rincon Consultants, Inc. – Appendix C. Although the original project considered by this analysis was for a 62,000-square-foot retail commercial shopping center, the revised mixed-use project would generate comparable vehicle trips and the project construction would be similar. Therefore, the impacts are considered to be similar and a new analysis was not required.

Construction of the proposed project would generate GHG emissions through on-site use of heavy duty construction equipment and off-site vehicle trips made by construction workers and haul/delivery trucks that would travel to and from the project site. Construction of the proposed project would be completed in approximately eight months. To evaluate GHG emissions from project construction, construction emissions are amortized over the life of the project (approximately 20 years as a conservative estimate) and added to the operational emissions. As shown in Table 1, both the BAU Scenario and Project Scenario would generate approximately 221 MT CO_2E total or 11 MT CO_2E per year when amortized over a 20-year period.

Operation of the proposed project would result in GHG emissions from the following primary sources: energy (electricity and natural gas used on-site), mobile (on-road mobile vehicle traffic generated by the project), solid waste disposal by the land use, water usage by the land use, and area sources (landscaping equipment). As shown in Table 1, operation of the project would generate 3,387 MT CO_2E per year under the BAU Scenario and 2,103 MT CO_2E per year under the Project Scenario. The difference in GHG emission between the BAU Scenario and Project Scenario can be attributed to the voluntary project features (i.e., low-flow fixtures, provision of neighborhood commercial uses, pedestrian access, and bicycle parking), the Renewable Portfolio Standard, Title 24 Energy Efficiency Building Standards, Low Carbon Fuel Standard, and Pavley I StandaRoad

As shown in Table 1, under the BAU Scenario, the proposed project would generate approximately 3,398 MT CO_2E per year from both construction and operation, while the proposed project under the Project Scenario would generate approximately 2,114 MT CO_2E per year from both construction and operation.

Table 1: Project-related GHG Emissions for BAU Scenario and Project Scenario

	GHG Emissions (MT CO2E per Year)	
Source	**BAU Scenario**	**Project Scenario**
Construction Emissions		
Mobile (20-year amortization)	11	11
Construction Emissions Subtotal	**11**	**11**
Operational Emissions		
Area	<0.2	<0.2
Energy	232	120
Mobile	3,109	1,946
Solid Waste	30	30
Water	16	8.4
Operational Emissions Subtotal	**3,387**	**2,103**
Total GHG Emissions	**3,398**	**2,114**

As shown in Table 2, the Project Scenario would reduce BAU emission by 1,284 MT CO_2E per year. Therefore, the proposed project demonstrates an approximately 38 percent reduction below the BAU Scenario and would be considered **less than significant**.

Table 2: Summary of Project Reduction from BAU Scenario

	GHG Emissions (MT CO2E per Year)
BAU Scenario Total	3,398
Project Scenario Total	2,114
Difference Between BAU and Project	1,284
Percent Reduction from BAU Scenario	**38%**
Project Meets or Exceeds Threshold (less-than-significant)	**Yes (Less-than-Significant)**

Based on the SJVAPCD's recommended threshold, GHG emissions from the proposed project would be less than significant if the Project Scenario emissions are at least 29 percent below BAU Scenario emissions. As shown in Table 2, the Project Scenario would reduce BAU Scenario emissions by 1,284 MT CO_2E per year, or approximately 38 percent, which is greater than the 29 percent threshold. Therefore, GHG emissions from the proposed project would be **less than significant**.

b) *Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?*

The following is an excerpt from the Greenhouse Gas Study provide by Rincon Consultants, Inc. – Appendix C.

Assembly Bill (AB) 32 identifies a statewide target to reduce GHG emissions to 1990 levels by 2020, which is equivalent to "cutting approximately 30 percent from business-as-usual emission levels projected for 2020, or about 15 percent from today's levels" (Scoping Plan, 2008). The City's Climate Action Plan (2012) also establishes a target to reduce GHG emissions 15 percent below 2008 levels, consistent with AB 32 and its Scoping Plan. Construction and operation of the proposed project would achieve a 32.4 percent reduction in GHG emissions compared to BAU, which exceeds the reduction targets identified in the Scoping Plan and City's Climate Action Plan.

In addition, the proposed project would support many of the goals identified in the City's Climate Action Plan. The project would help reduce vehicle miles traveled by providing neighborhood commercial services and providing bicycle parking and pedestrian access. As such, the proposed project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions and impacts would be **less than significant.**

9. Hazards and Hazardous Materials

SETTING AND DESCRIPTION

Hazardous Materials

A substance may be considered hazardous due to a number of criteria, including toxicity, ignitability, corrosivity, or reactivity. The term "hazardous material" is defined in law as any material that, because of quantity, concentration, or physical, or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment.

Wildland and Urban Fire Hazards

Both urban and wildland fire hazard potential exists in the City of Merced and surrounding areas, creating the potential for injury, loss of life, and property damage. Urban fires primarily involve the uncontrolled burning of residential, commercial, or industrial structures due to human activities. Wildland fires affect grassland, brush or woodlands, and any structures on or near these fires. Such fires can result from either human made or natural causes.

Urban fires comprise the majority of fires in the City of Merced while the potential for wildland fires could increase as large blocks of undeveloped land are annexed into the City. Most of the fires are caused by human activities involving motor vehicles, equipment, arson, and burning of debris.

Airport Safety

The City of Merced is impacted by the presence of two airports-Merced Regional Airport, which is in the southwest corner of the City, and Castle Airport (the former Castle Air Force Base), located approximately eight miles northwest of the subject site.

The continued operation of the Merced Regional Airport involves various hazards to both flight (physical obstructions in the airspace or land use characteristics which affect flight safety) and safety on the ground (damage due to an aircraft accident). Growth is restricted around the Regional Airport in the southwest corner of the City due to the noise and safety hazards associated with the flight path.

Castle Airport also impacts the City. Portions of the northwest part of the City's SUDP/SOI and the incorporated City are within Castle's safety zones. The primary impact is due to noise (Zones C and D), though small areas have density restrictions (Zone B2). The military discontinued operations at Castle in 1995. One important criterion for determining the various zones is the noise factor. Military aircraft are designed solely for performance, whereas civilian aircraft have extensive design features to control noise.

Potential hazards to flight include physical obstructions and other land use characteristics that can affect flight safety, which include: visual hazards such as distracting lights, glare, and sources of smoke; electronic interference with aircraft instruments or radio communications; and uses which may attract flocks of birds. In order to safeguard an airport's long-term usability, preventing encroachment of objects into the surrounding airspace is imperative.

Railroad

Hazardous materials are regularly shipped on the BNSF and SP/UP Railroad lines that pass through the City. While unlikely, an incident involving the derailment of a train could result in the

spillage of cargo from the train in transporting. The spillage of hazardous materials could have devastating results. The City has little to no control over the types of materials shipped via the rail lines. There is also a safety concern for pedestrians along the tracks and vehicles utilizing at-grade crossings. The design and operation of at-grade crossings allows the City some control over rail-related hazards. Ensuring proper gate operation at the crossings is the most effective strategy to avoid collision and possible derailments.

Public Protection and Disaster Planning

Hospitals, ambulance companies, and fire districts provide medical emergency services. Considerable thought and planning have gone into efforts to improve responses to day-to-day emergencies and planning for a general disaster response capability.

The City's Emergency Plan and the County Hazardous Waste Management Plan both deal with detailed emergency response procedures under various conditions for hazardous materials spills. The City also works with the State Department of Health Services to establish cleanup plans and to monitor the cleanup of known hazardous waste sites within the City.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
9. **Hazards and Hazardous Materials.** Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?			✓	
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?			✓	
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?			✓	
d) Be located on a site which is included on a list of hazardous materials site complied pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				✓

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				✓
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				✓
g) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				✓

Impact Analysis

Would the project:

a) *Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?*

Construction activities of the proposed project would involve the use, storage, transport, and disposal of oil, gasoline, diesel fuel, paints, solvents, and other hazardous materials. No hazardous materials are anticipated to be used at the site after construction. The project would be required to adhere to all applicable federal and state health and safety standards. Construction activity must also be in compliance with the California Occupational Safety and Health Administration regulations (Occupational Safety and Health Act of 1970). This impact would be **less than significant** with compliance with these requirements.

b) *Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?*

Construction on the project site would be reviewed for the use of hazardous materials at the building permit stage. Implementation of Fire Department and Building Code regulations for hazardous materials, as well as implementation of federal and state requirements, would reduce any risk caused by a future use on the site from hazardous materials to a **less than significant** level.

APPLICABLE GENERAL PLAN GOALS AND POLICIES:

The City of Merced *Vision 2030 General Plan* contains policies that address hazardous materials.

Goal Area S-7: Hazardous Materials	
Goal **Hazardous Materials Safety for City Residents**	
Policies	
S-2.1	Prevent injuries and environmental contamination due to the uncontrolled release of hazardous materials.
Implementing Actions:	
7.1.a	Support Merced County in carrying out and enforcing the Merced County Hazardous Waste Management Plan.
7.1.b	Continue to update and enforce local ordinances regulating the permitted use and storage of hazardous gases, liquids, and solids.
7.1.d	Provide continuing training for hazardous materials enforcement and response personnel.

c) *Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?*

There is one school located within a ¼-mile radius of the site. Providence Christian School is located to the north across Yosemite Avenue approximately 200 feet from the subject site. Hazardous materials are not expected to be at the project site after construction. However, compliance with Fire Department regulations, as well as state and federal regulations through annual inspections and permitting requirements makes this impact **less than significant**.

d) *Be located on a site which is included on a list of hazardous materials site complied pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?*

According to the California Department of Toxic Substances Control EnviroStor database search, the project site is not listed as a hazardous waste site, and no significant hazard to the public or the environment would result with project implementation. Therefore, there is **no impact.**

e) *For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?*

The project site is located approximately 7 miles from the Merced Regional Airport and approximately 9 miles from the Castle Airport. The project site is not located in an area for which an Airport Land Use Plan has been prepared, and no public or private airfields are within two miles of the project area. Therefore, no at-risk population working at the site would be exposed to hazards due to aircraft over-flight. Therefore, implementation of the proposed project would not expose persons to airport-related hazards, and **no impact** would occur.

f) *Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?*

The proposed project will not adversely affect any adopted emergency response plan or emergency evacuation plan. No additional impacts will result from the development of the project area over and above those already evaluated by the EIR prepared for the *Merced Vision 2030 General Plan.* The project would not modify any roadways or cause any other changes that would impair the implementation of an adopted emergency response plan. Therefore, there is **no impact.**

APPLICABLE GENERAL PLAN GOALS AND POLICIES:

The *Merced Vision 2030 General Plan* contains policies that address disaster preparedness.

Goal Area S-1: Disaster Preparedness	
Goal **General Disaster Preparedness**	
Policies	
S-1.1	Develop and maintain emergency preparedness procedures for the City.
Implementing Actions:	
1.1.a	Keep up-to-date through annual review the City's existing Emergency Plan and coordinate with the countywide Emergency Plan.
1.1.b	Prepare route capacity studies and determine evacuation procedures and routes for different types of disasters, including means for notifying residents of a need to evacuate because of a severe hazard as soon as possible.
7.1.d	Provide continuing training for hazardous materials enforcement and response personnel.

g) *Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?*

The project site is located within an urban area and is not located within a very high fire hazard severity zone. According to the EIR prepared for the *Merced Vision 2030 General Plan*, the risk for wildland fire in the City of Merced is minimal. According to the Cal Fire website, the Merced County Fire Hazard Severity Zone Map shows the project site is designated as a "Local Area of Responsibility" with a Hazard Classification of "Urban Unzoned."

The City of Merced Fire Department is the responsible agency for responding to fires at the subject site. The project site is located within Fire District #5, and is served by Station #55 located at 3520 Parsons Avenue (approximately 0.5 miles from the project site). The proposed project would not expose people or structures to significant loss, injury or death involving wildland fires and there would be **no impact.**

10. Hydrology and Water Quality

SETTING AND DESCRIPTION

Water Supplies and Facilities

The City's water supply system consists of four elevated storage tanks with a combined storage capacity of approximately 1.4 million gallons, 23 wells and 14 pumping stations equipped with

variable speed pumps that attempt to maintain 45 to 50 psi (pounds per square inch) nominal water pressure. The City is required to meet State Health pressure requirements, which call for a minimum of 20 psi at every service connection under the annual peak hour condition and maintenance of the annual average day demand plus fire flow, whichever is stricter.

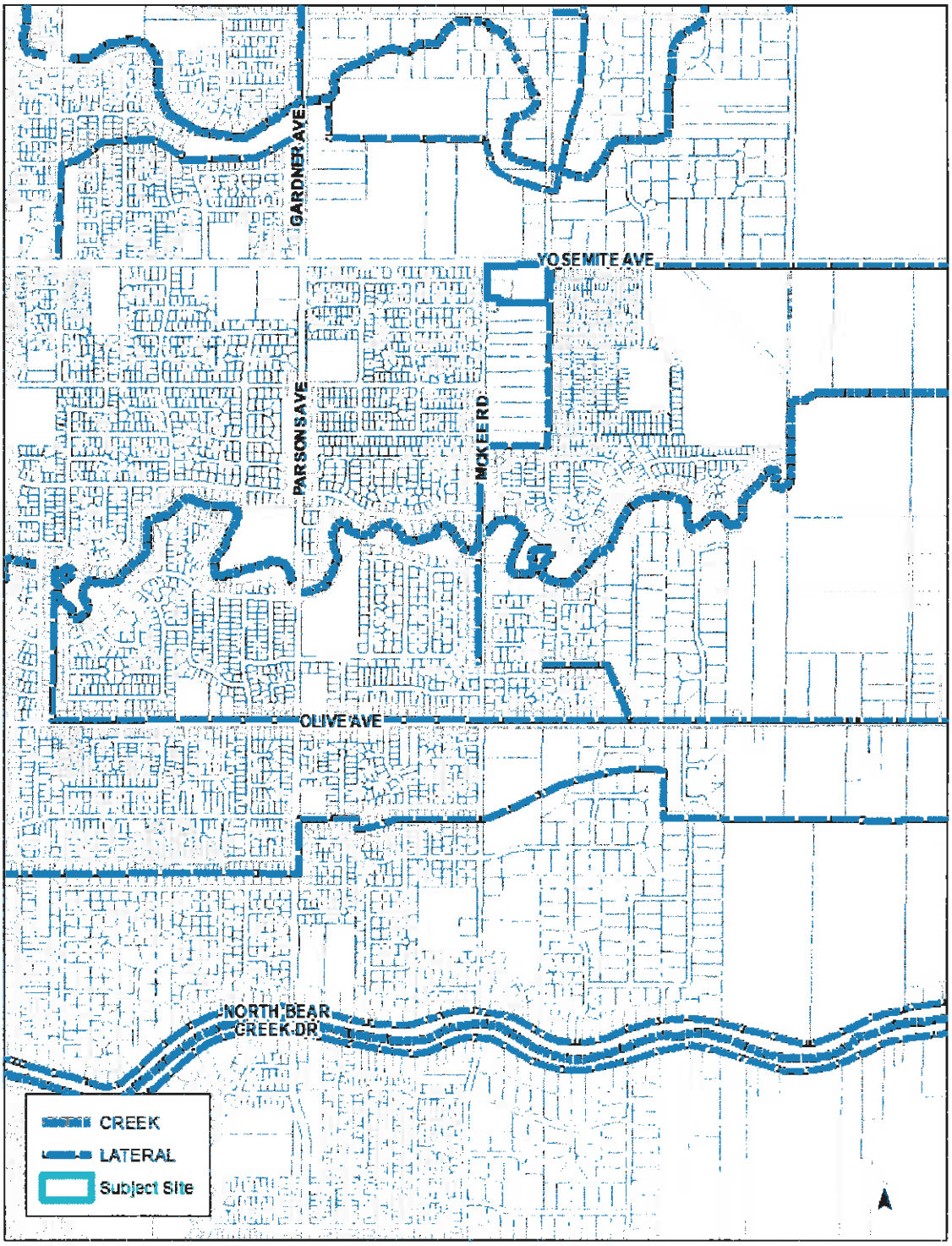
Storm Drainage/Flooding

In accordance with the adopted City of Merced Standard Designs of Common Engineering Structures, percolation/detention basins are designed to temporarily collect run-off so that it can be metered at acceptable rates into canals and streams which have limited capacity.

Proximity to Existing Waterways

The project site is located at the southeast corner of Yosemite Avenue and McKee Road. There are underground Merced Irrigation District (MID) facilities adjacent to the site that feed into Black Rascal Creek. Black Rascal Creek is located approximately ½ mile to the south of the site and Cottonwood Creek is located approximately ½ mile north of the site. Refer to the map at Figure 7 on Page 50.

Figure 7 - Waterways



	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
10. Hydrology and Water Quality. Would the project:				
a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?		✓		
b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?			✓	
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:				
i. result in a substantial erosion or siltation on- or off-site;		✓		
ii. substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite;		✓		
iii. create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or		✓		
iv. impede or redirect flood flows?		✓		
d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?			✓	
e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?			✓	

Impact Analysis

Would the project:

a) *Violate any water quality standards or waste discharge requirements?*

The project site is currently vacant, but previously had two houses on it (they were demolished in 2017). Construction of the proposed mixed-use project and associated parking would result in the majority of the site being covered with impervious surfaces.

The State Water Resources Control Board and nine Regional Water Quality Control Boards regulate the water quality of surface water and groundwater bodies throughout California. The proposed project is within the jurisdiction of the Central Valley Regional Water Quality Control Board (RWQCB).

Pollutants of concern during construction include sediments, trash, petroleum products, concrete waste (dry and wet), sanitary waste, and chemicals. During construction activities, excavated soil would be exposed with an increased potential to expose soils to wind and water erosion, which could result in temporary minimal increases in sediment load into the MID nearby water bodies, including the Black Rascal Creek, located approximately 0.5 miles to the south, and Cottonwood Creek, located approximately 0.5 mile to the north. Any potential short-term water quality effects from project related construction activities can be minimized and reduced to a level of **less than significant with mitigation** by implementing the following mitigation measure.

Mitigation Measure:

HYDRO-1) To minimize any potential short-term water quality effects from project-related construction activities, the project contractor shall implement Best Management Practices (BMPs) in conformance with the California Storm Water Best Management Practice Handbook for Construction Activity. In addition, the proposed project shall be in compliance with existing regulatory requirements, including the Water Pollution Control Preparation (WPCP) Manual. In addition, implementation of a Storm Water Pollution Prevention Plan (SWPPP) would be required under the National Pollutant Discharge Elimination System (NPDES) to regulate water quality associated with construction activities.

HYDRO-2 If any storm drainage from the site is to drain into MID facilities, the developer shall first enter into a "Storm Drainage Agreement" with MID and pay all applicable fees.

The nearest water bodies to the proposed project include the Black Rascal Creek, located approximately 0.5 mile to the south, and Cottonwood Creek, located approximately 0.5 mile to the north. Operation of the proposed project could result in surface water pollution associated with chemicals, liquid products, petroleum products (such as paints, solvents, and fuels), and waste that may be spilled or leaked and have the potential to be transported via runoff during periods of heavy precipitation into these water bodies. Implementation of Mitigation Measure HYDRO-2, described below, would ensure that stormwater runoff from the proposed project would be appropriately managed to prevent pollutants from

being discharged into these water bodies, reducing any potential impacts to **less than significant with mitigation.**

Mitigation Measure:

HYDRO-3) To reduce the potential for degradation of surface water quality during project operation, a SWPPP shall be prepared for the proposed project. The SWPPP shall describe specific programs to minimize stormwater pollution resulting from the proposed project. Specifically, the SWPPP shall identify and describe source control measures, treatment controls, and BMP maintenance requirements to ensure that the project complies with post-construction stormwater management requirements of the RWQCB.

b) *Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?*

The City receives all of its water supply from groundwater. Based on the City's Urban Water Management Plan (UWMP), water consumption in 2015 was estimated to be 15.9 million gallons of water per day (mgd) or approximately 17,855 acre-feet per year. The UWMP also estimates the projected acre-feet of water use for years 2020, 2025, 2030, and 2035, which are projected to increase each year. By 2035, the City's projected water use is expected to be 31,960 acre-feet of potable and raw water and 5,869 acre-feet of recycled water.

The proposed project would generate a need for approximately 53,500 gallons per day for the residential uses and approximately 2,160 gallons per day for the retail/commercial uses. Based on the 2015 water well production of 15.9 mgd, the proposed project would use approximately 0.34% of the total daily water demand for the City.

Although development of the site would restrict onsite recharge where new impervious surface areas are created, all alterations to groundwater flow would be captured and routed to the stormwater percolation ponds or pervious surfaces with no substantial net loss in recharge potential anticipated. This reduces this impact to a **less than significant** level.

c) *Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:*

i. result in a substantial erosion or siltation on- or off-site;

ii. substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite;

iii. create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or

iv. impede or redirect flood flows?

Implementation of the project would result in grading and landform alterations on the site that would expose native soils that could be subject to the effects associated with wind and

water erosion unless adequate measures are taken to limit the transport of soils in surface water from the site to downstream locations. As discussed above, the project applicant would be required to implement a SWPPP that would identify specific measures to address erosion and siltation resulting from grading and construction as well as the potential long-term water quality impacts.

Construction of the project would include connecting on-site drainage facilities to the City's storm drain system. The City has approximately 112 miles of underground storm drain lines, underground storage pipes, and 141 acres of detention ponds. An 18-inch storm drain line exists in Yosemite Avenue that the on-site storm drainage system would connect to. The project site would consist of approximately 200,000 square feet of impervious surfaces. All storm water run-off would be required to be captured on-site and metered into the City's storm drainage per City Standards. Additionally, at the time of construction, the developer would be required to provide calculations to demonstrate that the proposed on-site retention and the City's storm water system would be able to accommodate the additional run-off from the site.

According to FEMA, the project site as well as the area surrounding the site are located within a Zone X which is considered to be outside the flood plain. As previously mentioned any run-off from the site would be required to be captured on-site and metered into the City's storm drain system. Therefore runoff from the site would not increase the rate or amount of surface water flooding or impede or redirect flood flows.

Implementation of Mitigation Measure HYDRO-1 and Mitigation Measure HYDRO-4 below would reduce any impacts from site drainage to **less than significant with mitigation**.

Mitigation Measure:

HYDRO-4 Prior to issuance of a building permit or as required by the City Engineer, the developer shall demonstrate to the City that storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City Standards and the City's Storm Drain Master Plan.

d) *In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?*

As shown on the map located at Figure 9 on the following page, the project site is located within Flood Zone "X." The Federal Emergency Management Agency (FEMA), defines Zone X as an area of minimal flood hazaRoad Zone X is the area determined to be outside the 500-year flood and protected by levee from 100-year flood.

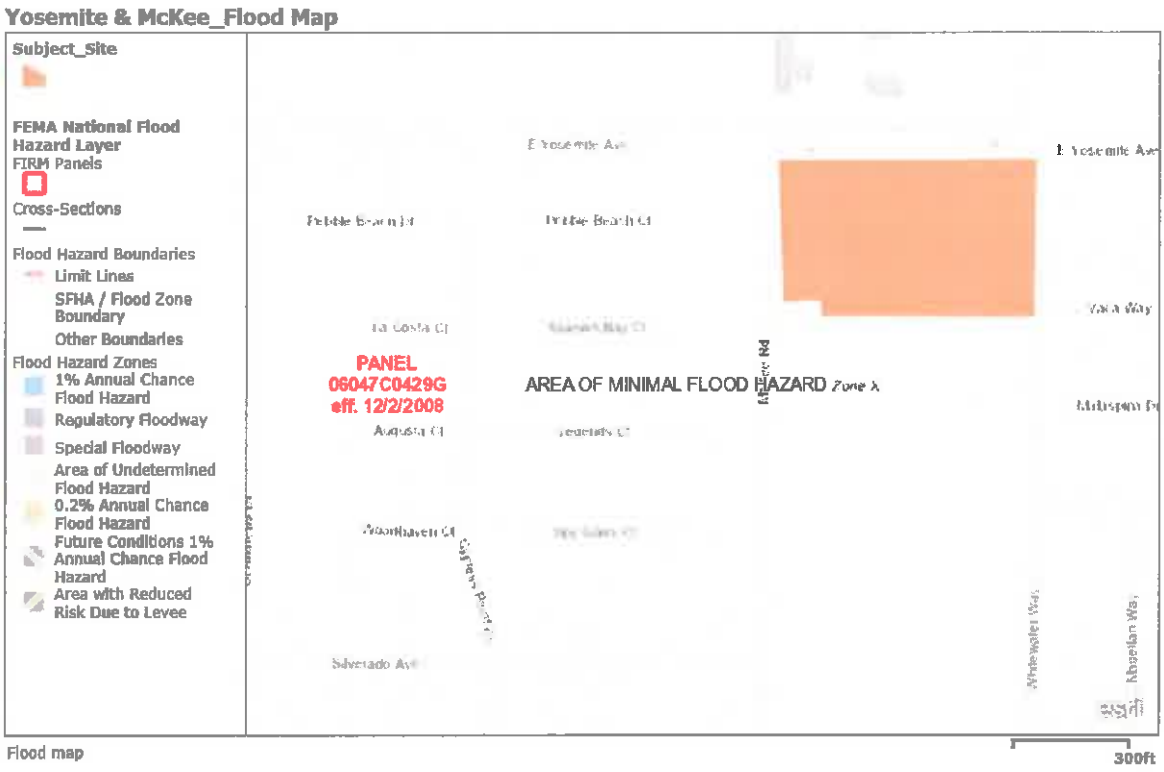
The site is not in a tsunami or seiche zone and would not present a risk for release of pollutants due to inundation. This impact is **less than significant.**

e) *Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?*

The proposed project would not obstruct or conflict with the implementation of a water quality control plan or sustainable groundwater management plan. The project would be

required to comply with all City of Merced standards and Master Plan requirements for groundwater and water quality control. This impact is **less than significant.**

Figure 8 - FEMA Flood Map



11. Land Use and Planning

SETTING AND DESCRIPTION

The project site is located within the City Limits of Merced and within its Specific Urban Development Plan and Sphere of Influence (SUDP/SOI). The site has a General Plan designation of Neighborhood Commercial (CN) and is zoned Neighborhood Commercial(C-N). The proposed residential portion of the mixed-use project would require Conditional Use Permit approval. Because the project site is adjacent to residential uses (refer to the Surrounding Uses table below), inter-face regulations as required by Section 20.32 of the Zoning Ordinance apply. As such, Site Plan Review would be required for the project. However, because the project also requires Conditional Use Permit approval, the inter-face regulations would be reviewed with the CUP.

Surrounding Uses

Refer to Figure 2 on Page 3 and the table below for the surrounding land uses.

Surrounding Land	Existing Use of Land	Zoning Designation	City General Plan Land Use Designation
North	Single-Family Residential/Church/School (across Yosemite Avenue)	County	Rural Residential (RR)
South	Single-Family Residential	R-1-6	Low Density Residential (LD)
East	Single-Family Residential	P-D #52	Low Density Residential (LD)
West	Single-Family Residential (across McKee Road)	R-1-6	Low Density Residential (LD)

Current Use/Background

The project site is currently vacant, but was previously occupied by two single-family dwellings (these were demolished in 2017). The site is currently zoned Neighborhood Commercial (C-N), with a small portion of the site being zoned R-1-6. The subject site consists of two individual lots [Assessor's Parcel Numbers (APN's): 008-310-053 and -038 totaling 5.94 acres]. Recently, 22,670 square feet of lot area was acquired from the neighboring property to the south and made part of APN 008-310-053 (refer to the Proposed Land Use Map at Figure 3 on page 5). The General Plan designation for this area was recently changed from Low Density (LD) to Neighborhood Commercial (CN) and the zoning designation was changed from R-1-6 to Neighborhood Commercial (C-N).

In 2014, the owner applied for a General Plan Amendment and Zone Change to change the original parcels (not including the 22,670 square feet recently added) from Low Density Residential (LD) and R-1-6 to Neighborhood Commercial (CN). At that time, the owner proposed the construction of a 62,000 square-foot retail commercial center that would have included a small grocery store, a fast-food restaurant (with a drive-through), and other retail uses appropriate to the Neighborhood Commercial (C-N) zone. The City Council approved the General Plan Amendment and Zone Change to Neighborhood Commercial in 2015.

In 2019, the applicant applied for a General Plan Amendment, Zone Change, and Conditional Use Permit to allow the construction of a mixed-use project that consisted of 428 units and approximately 18,000 square feet of retail. The General Plan Amendment and Zone Change only applied to a small strip of land (0.52 acres) recently acquired from the property owner to the south. The General Plan Amendment and Zone Change were approved making the General Plan and Zoning designations consistent for the entire site. However the Conditional Use Permit (CUP) was not approved. Therefore the applicant has revised the project reducing the number of units, increasing the retail area, and adding office space.

Project Characteristics

The current project consists of a Conditional Use Permit for the entire 5.94 acres to allow the construction of a mixed-use project consisting of 214 apartments consisting of 1, 2, and 3 bedroom units and approximately 37,117 square feet of commercial space for retail and office uses along

with associated parking for the proposed uses. The development would consist of two 2-story buildings and two 3-story buildings located near the middle of the site with parking around the perimeter of the site (refer to the Site Plan at Figure 4 on Page 6).

The table below provides the size, height, and use of each building.

BUILDING DETAILS

Building No.	Stories	1st Floor	2nd Floor	3rd Floor	Total Square Feet	Height (to top of parapet)
1	2	22 units	27 units	n/a	30,456	26' 1 1/8"
2	3	Retail/Resident Space	34 units	33 units	57,622	33' 11"
3	2	Office	29 units	n/a	30,533	26' 1 1/8"
4	3	Retail/Resident Space	34 units	35 units	58,262	33' 11"
TOTAL UNITS		214			176,873	

Building 2 would include 8,615 square feet of retail/commercial and 8,363 square feet of community/common space for the residents on the first floor. Building 4 would have 14,057 square feet retail space and 4,181 square feet of community/common area for the tenants to use on the first floor. Additionally, a roof-top deck is proposed on top of Building 2 as an additional amenity for the tenants. This area would provide additional common/open space with seating and possible tables for the tenants to use. There would also be a promenade area between Buildings 2 and 4 providing an open space area with tables and seating for the tenants and possibly patrons of the retail uses.

Although the Neighborhood Commercial zone is primarily used for commercial development intended to serve a neighborhood, multi-family uses are allowed with a Conditional Use Permit. The proposed mix-use development would provide approximately 37,117 square feet of commercial space (retail and office uses) in addition to the 214 multi-family residential units. The retail uses would most likely be uses that would serve the entire area, not just the tenants of the apartment complex. The developer is working with UC Merced to occupy the office space and a number of the apartments. Although a final agreement has not been reach, the developer is in receipt of a Letter of Intent (LOI) from UC Merced indicating their interest.

The General Plan encourages mixed-use developments, it does not specifically address the density allowed within a commercial zone for a mixed-use project. The *Merced Vision 2030 General Plan* includes two classifications for higher density residential uses – High-Medium Density (HMD) and High Density (HD). The High-Medium designation allows 12 to 24 units per acre, while the High Density designation allows 24 to 36 units per acre. The proposed project has a density of 36 units per acre, which is consistent with the High Density (HD) designations. Therefore, because there is no definitive designation for a mixed use project and there are General Plan policies that encourage higher density and alternate housing types (see below), the City has relied upon the High Density designation to determine compliance with the General Plan. Based on this designation, the proposed multi-family portion of the project would comply with the General Plan.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
11. Land Use and Planning. Would the project:				
a) Physically divide an established community?				✓
b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?			✓	

Impact Analysis

Would the project:

a) *Physically divide an established community?*

The project site was annexed in 2002 and is surrounded by urban uses. The proposed project would develop an existing vacant lot and would become a part of the adjacent, surrounding community. The project would not physically divide the community, therefore, there is **no impact.**

c) *Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?*

As described above, the project complies with the General Plan Designation of High Density Residential with an average density of 36 units per acre. The following General Plan policies support mixed-use developments and higher density residential developments. The project would have a **less than significant impact.**

The Housing Element of the *Merced Vision 2030 General Plan* includes policies supporting affordable housing, mixed-use development, and higher densities.

Policy H-1.1 Support Increased in Residential Zoning Districts

Although the proposed project would not be located within a residential zone, it does provide an opportunity for a higher density project to provide needed housing within the City.

Policy H 1.1.c Encourage Mixed Use Development

The proposed project would provide a mixture of retail commercial uses to serve the neighborhood and multi-family efficiency dwelling units.

Policy 1.1.e Encourage Alternate Housing Types

The proposed project would include efficiency dwelling units that would essentially house a single occupant within an approximately 350-square-foot unit. Each unit would provide kitchen facilities, a bathroom, and living and sleeping areas. This type of unit is unusual

for the City of Merced. This policy encourages housing designs with a smaller footprint as a form of alternate housing.

Policy 1.8b Prioritize City efforts to encourage residential development by focusing on in-fill development and densification within the existing City Limits.

12. Mineral Resources

SETTING AND DESCRIPTION

The City of Merced does not contain any mineral resources that require managed production, according to the State Mining and Geology BoaRoad Based on observed site conditions and review of geological maps for the area, economic deposits of precious or base metals are not expected to underlie the Merced SUDP/SOI. According to the California Geological Survey, Aggregate Availability in California - Map Sheet 52, Updated 2006, minor aggregate production occurs west and north of the City of Merced, but economic deposits of aggregate minerals are not mined within the immediate vicinity of the SUDP/SOI. Commercial deposits of oil and gas are not known to occur within the SUDP/SOI or vicinity.

According to the Merced County General Plan Background Report (June 21, 2007), very few traditional hard rock mines exist in the County. The County's mineral resources are almost all sand and gravel mining operations. Approximately 38 square miles of Merced County, in 10 aggregate resource areas (ARA), have been classified by the California Division of Mines and Geology for aggregate. The 10 identified resource areas contain an estimated 1.18 billion tons of concrete resources with approximately 574 million tons in western Merced County and approximately 605 million tons in eastern Merced County. Based on available production data and population projections, the Division of Mines and Geology estimated that 144 million tons of aggregate would be needed to satisfy the projected demand for construction aggregate in the County through the year 2049. The available supply of aggregate in Merced County substantially exceeds the current and projected demand.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
12. **Mineral Resources.** Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				✓
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?				✓

Impact Analysis

Would the project:

a) *Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?*

Based on observed site conditions and review of geological maps for the area, economic deposits of precious or base metals are not known to occur in the Merced SUDP/SOI. Therefore implementation of the proposed project would have **no impact** on the availability of mineral resources or impact current or future mining operations.

b) *Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?*

No Mineral Resource Zones or mineral resource recovery sites exist within the City of Merced or in the area designated for future expansion of the City (the SUDP/SOI). Therefore implementation of the proposed project would have **no impact** on the availability of mineral resources or impact current of future mining operations.

13. Noise

SETTING AND DESCRIPTION

Noise is usually defined as unwanted sound. Noise consists of any sound that may produce physiological or psychological damage and/or interfere with communication, work, rest, recreation, or sleep. Several noise measurement scales exist that are used to describe noise in a particular location. A decibel (dB) is a unit of measurement that indicates the relative intensity of a sound. Sound levels in dB are calculated on a logarithmic basis. An increase of 10 dB represents a 10-fold increase in acoustic energy, while 20 dB is 100 times more intense and 30 dB is 1,000 times more intense. Each 10 dB increase in sound level is perceived as approximately a doubling of loudness; and similarly, each 10 dB decrease in sound level is perceived as half as loud. Sound intensity is normally measured through the A-weighted sound level (dBA). This scale gives greater weight to the frequencies of sound to which the human ear is most sensitive. The A-weighted sound level is the basis for 24-hour sound measurements that better represent human sensitivity to sound at night.

As noise spreads from a source, it loses energy so that the farther away the noise receiver is from the noise source, the lower the perceived noise level would be. Geometric spreading causes the sound level to attenuate or be reduced, resulting in a 6 dB reduction in the noise level for each doubling of distance from a single point source of noise to the noise sensitive receptor of concern. According to the *Merced Vision 2030 General Plan,* outdoor noise exposure not exceeding 60 db is considered to be a "normally acceptable" noise level for residential uses.

Potential noise impacts of the proposed project can be categorized as those resulting from construction and those from operational activities. Construction noise would have a short-term effect; operational noise would continue throughout the lifetime of the project.

The existing noise in the area is predominantly traffic related. However, there is a school and church on the north side of Yosemite Avenue that have occasional outdoor activities. Additionally, there has been construction going on in the Moraga Subdivision for the last year or more which has contributed to noise in the area. Otherwise, the site is surrounded by residential uses.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
13. **Noise.** Would the project result in:				
a) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?		✓		
b) Generation of excessive groundborne vibration or groundborne noise levels?			✓	
c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?			✓	

Impact Analysis

Would the project result in:

a) *Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?*

Construction Noise

Construction of the project would temporarily increase noise levels in the area during the construction period. The duration of construction is expected to be 120-180 days. Therefore, the noise from construction may be steady for several weeks and then cease all together. Construction activities, including site clearing, building construction, and paving would be considered an intermittent noise impact throughout the construction period. These activities could result in various effects on sensitive receptors, depending on the presence of intervening barriers or other insulating materials. Although construction activities would likely occur only during daytime hours, construction noise could still be considered disruptive to local residents. The City of Merced does not have a noise ordinance, but past practice has been to allow construction activities during daylight hours (between 7:00 a.m. and 7:00 p.m.). Implementation of the mitigation measures below would reduce potential impacts from construction noise to **less than significant with mitigation.**

Operational Noise

Noise from the mixed-use development would be primarily traffic related. Additionally, there would be added noise from outdoor activities such as loading and unloading of

materials and products for the retail uses and possible outdoor activities of the tenants, as well as more frequent refuse collection to serve the site. Parking for the site is located around the perimeter of the property. There would be a concrete block wall along the southern boundary of the project. To the west of the project across McKee Road (a 60 to 80-foot right-of-way) are existing single-family residences. There is a 6-foot-tall fence along the eastern property line of these residences separating them from McKee Road. This fence is a combination of stucco, wrought-iron, and wood. To the east of the site are additional single-family homes, separated by Whitewater Way (approximately 25-foot right-of-way) and an emergency vehicle access easement (25-feet wide) just off Yosemite Avenue (refer to map at Figure 8). A concrete block wall has been constructed adjacent to the emergency vehicle access easement, but does not extend to the other residential lots along the east side of Whitewater Way. As proposed, the project would provide a 15-foot landscape buffer along Yosemite Avenue, Whitewater Way and McKee Road. The landscape buffer along the southern property line would be reduced to 5 feet, but there would be a block wall providing separation as well.

The project does not include outdoor recreation areas other than the promenade between Buildings 2 and 4. The common area on the ground floor of Building 4 would provide recreation area for the tenants. Additionally, a roof deck is proposed on the top of Building 4 which would provide additional common area with tables and chairs for tenants. Noise from the outdoor promenade area and the roof deck could be of concern, however, given the distance from the adjacent uses, it is not expected to have a significant impact. The promenade area would be approximately 240 feet from the nearest home across McKee Road and approximately the same distance from the homes on Whitewater Way. The homes to the north and south of the site would be buffered from noise by the location of Buildings 2 and 4. The roof deck would be approximately 450 feet from the homes on McKee Road and approximately 250 feet from the homes on Whitewater Way.

Acceptable outdoor noise levels in residential areas is not exceeding 60 dB. According to Table 10.2 of the *Merced Vision General Plan,* the current noise level generated by traffic along Yosemite Avenue within 100 feet of the roadway is 61.2 dB. Using this as a reference, it is unlikely that noise from the apartments or outdoor recreation areas would exceed 60 dB. However, the increase in traffic may increase the noise level generated from Yosemite Avenue. According to Table 10.2 at time of the General Plan buildout, it is expected that in order to achieve a rating of 60dB, a sensitive use would have to be 297 feet from the roadway. While it is not expected that this project would increase traffic to the level expected by the General Plan buildout, there will be an increase over the existing traffic in the area, but it is not expected to significantly increase the noise impacts. As explained in the Traffic and Transportation section below, the traffic generated by this project would very similar to the traffic generated by the previously proposed shopping center. Therefore, operational noise is expected to be **less than significant.**

Mitigation Measure:

NOI-1) To reduce potential construction noise impacts, the following multi-part mitigation measure shall be implemented for the project:

- The construction contractor shall ensure that all internal combustion engine-driven equipment is equipped with mufflers that are in good condition and appropriate for the equipment.
- The construction contractor shall locate stationary noise-generating equipment as far as feasible from sensitive receptors when sensitive receptors adjoin or are near a construction disturbance area. In addition, the project contractor shall place such stationary construction equipment so that emitted noise is directed away from sensitive receptors nearest the project site.
- The construction contractor shall prohibit unnecessary idling of internal combustion engines (i.e., idling in excess of 5 minutes is prohibited).
- The construction contractor shall locate, to the maximum extent practical, on-site equipment staging areas so as to maximize the distance between construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction.
- The construction contractor shall limit all noise producing construction activities, including deliveries and warming up of equipment, to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No such work shall be permitted on Sundays or federal holidays without prior approval from the City.

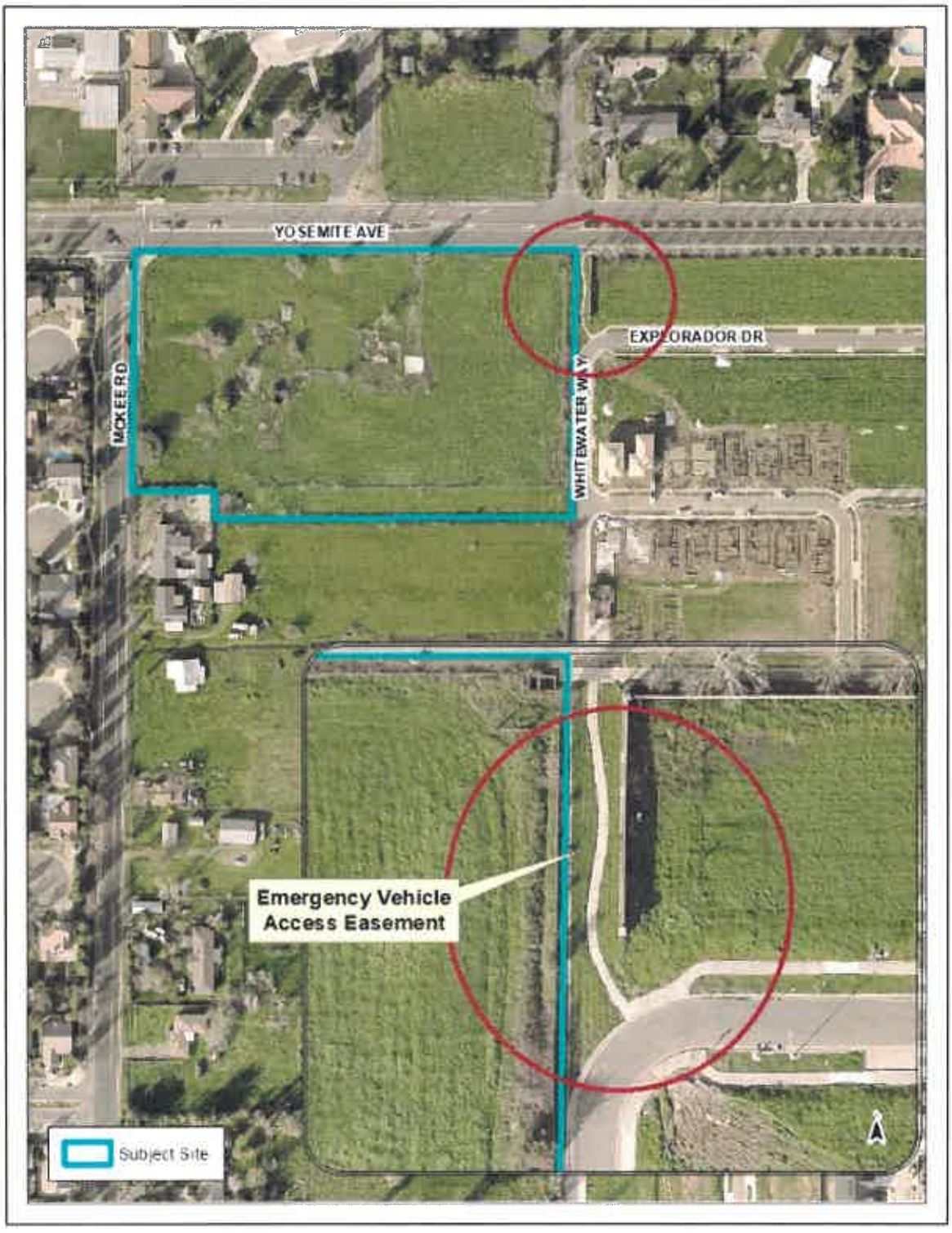
b) *Generation of excessive groundborne vibration or groundborne noise levels?*

No permanent noise sources would be located within the project site that would expose persons to excessive groundborne vibration or noise levels. Construction activities associated with implementation of the proposed project are not expected to result in excessive groundborne vibration or groundborne noise levels. Therefore, implementation of the proposed project would not permanently expose persons within or around the project sites to excessive groundborne vibration or noise and the project impacts would be ***less than significant***

c) *For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?*

The nearest airports to the project site include Merced Regional Airport, located approximately 6.9 miles southwest of the project site, and Castle Airport, located approximately 9.3 miles northwest of the project site. No portion of the project site lies within the 55 dBA CNEL noise contours of these airports. Given the project site's distance from the nearest airports, project implementation would not expose people residing or working in the project area to excessive noise levels and impacts would be **less than significant**.

Figure 9 - Emergency Vehicle Access



14. Population and Housing

SETTING AND DESCRIPTION

The implementation of the proposed project would result in the construction of a mixed use project that would consist of 214 apartments and approximately 37,117 square feet of commercial space. The project site is surrounded by urban uses.

Expected Population and Employment Growth

According to the State Department of Finance, the City of Merced's population for 2019 is estimated to be 87,110. Population projections estimate that the Merced SUDP area will have a population of 159,900 by the Year 2030. The 2019 population projections prepared by the State also indicate a vacancy rate of 6.31% and an average household size of 3.24 persons per household.

According to the *Merced Vision 2030 General Plan*, the City of Merced is expected to experience significant employment growth by the Year 2030.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
14. Population and Housing. Would the project:				
a) Induce substantial population growth in an area either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?			✓	
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				✓

Impact Analysis

Would the project:

a) *Induce substantial population growth in an area either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?*

The proposed mixed-use project includes the construction of 214 dwelling units, with a mixture of one, two, and three-bedroom units. As previously explained, the unit density is slightly higher than would be allowed by the City's General Plan. However, when one looks at the actual number of people on the site, the density falls within the General Plan estimate of 72.8 persons per acre for a site with a High Density General Plan designation. There are no new roads or other infrastructure being proposed with the project. Therefore, this impact would be **less than significant.**

b) *Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?*

Implementation of the proposed project would not displace any existing housing. There were previously two single-family dwellings on the site, but these homes were in a blighted condition and were demolished in 2017. There is **no impact.**

15. Public Services

SETTING AND DESCRIPTION

Fire Protection

The City of Merced Fire Department provides fire protection, rescue, and emergency medical services from five fire stations throughout the urban area. The City's Central Fire Station is located in the downtown area at 16th and G Streets. The City also has four other stations throughout the City. Station #55, located at 3520 Parsons Avenue would serve the project site.

Police Protection

The City of Merced Police Department provides police protection for the entire City. The Police Department employs a mixture of sworn officers, non-sworn officer positions (clerical, etc.), and unpaid volunteers (VIP's). The service standard used for planning future police facilities is approximately 1.37 sworn officers per 1,000 population, per the Public Facilities Financing Plan.

Schools

The public school system in Merced is served by three districts: 1) Merced City School District (elementary and middle schools); 2) Merced Union High School District (MUHSD); and, 3) Weaver Union School District (serving a small area in the southeastern part of the City with elementary schools). The districts include various elementary schools, middle (junior high) schools, and high schools. The Project site falls within the Merced City School District and Merced Union High School District (MUHSD).

As the City grows, new schools will need to be built to serve our growing population. According to the Development Fee Justification Study for the MUHSD, Merced City Schools students are generated by new multi-family development at the following rate:

Student Generation Rates

Commercial/Industrial Category	Elementary (K-8) (Students per 1,000 sq.ft.)	High School (9-12) (Students per 1,000 sq.ft.)
Retail	0.13	0.038
Restaurants	0.00	0.157
Offices	0.28	0.048
Services	0.06	0.022
Wholesale/Warehouse	0.19	0.016
Industrial	0.30	0.147
Multi-Family	0.559 (per unit)	0.109 (per unit)

Based on the table above, the proposed mixed-use project would be expected to generate 158 total new students [132 Elementary School (K-8) students, and 26 High School students].

Parks

Richard Bernasconi Park located within the Moraga subdivision to the east of the site would be the closest park to the project site. Rahilly Park is located approximately 1 mile southwest of the site and Davenport Park is located approximately 1 mile northwest of the site.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
15. **Public Services.** Would the project:				
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services:				
i. Fire Protection?			✓	
ii. Police Protection?			✓	
iii. Schools?			✓	
iv. Parks?			✓	
v. Other Public Facilities?			✓	

Impact Analysis

Would the project:

a) *Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services:*

i. *Fire Protection* - The City of Merced Fire Department would provide fire protection services to the site. The project site is located within Fire District #5 and would be served by Fire Station #55, located at 3520 Parsons Avenue. The response from this station would meet the desired response time of 4 to 6 minutes, citywide. The proposed change in land use designation would not affect the City's ability to provide fire protection. The project would be required to be constructed with a fire sprinkler system and to meet all requirements of the California Fire Code and the Merced Municipal Code.

At the time a building permit is issued, the developer would be required to pay the fees required by the Public Facility Financing Plan (PFFP). A portion of

this fee goes to cover the City's costs for fire protection such as fire stations, etc. In addition, the developer would be required to annex into the City's Community Facilities District for Services (CFD #2003-2). This would result in an assessment paid with property taxes in which a portion of the tax would go to pay for fire protection services.

Compliance with all Fire, Building, and Municipal Code requirements as well as payment of the Impact Fees required by the Public Facilities Financing Program, and annexation into the City's CFD for services would reduce any potential impacts to a **less than significant level**.

ii. *Police Protection* - Development of the project would require additional police services in the area. The proposed mixed-use project is located on a site that is currently vacant. Any change to the status of the site would require additional services. However, the impacts from the proposed project would not substantially increase the impacts beyond what was anticipated with the previous General Plan Amendment and Zone Change that changed the land use for this site to Neighborhood Commercial. Payment of the required Public Facilities Impact Fees and annexation into the City's Community Facilities District (CFD) for services would reduce any potential impacts to a **less than significant** level.

iii. *Schools* - Based on the table provided in the "Settings and Description" section above, the proposed mixed-use project would generate 132 Elementary School (K-8) students and 26 High School students. This project is intended primarily for college students and faculty, however, it is not exclusively limited to this. Therefore, there could be some impact on schools. Therefore, as with all development, the project would be required to pay all fees required by the Leroy F. Greene School Facilities Act of 1988. The payment of this statutory fee under California Government Code §65995 is deemed "full and complete mitigation" of school impacts.

iv. *Parks* - The development of the mixed use project would not trigger the need to construct a new park in the area. Payment of the fees required under the Public Facilities Financing Program (PFFP) as described above and payment of Quimby Act fees would be required at time of building permit issuance to help fund future parks and maintenance of existing parks as well as the payment of fees in lieu of land dedication for future parks would be required at the building permit stage. The proposed amenities onsite and the payment of fees would reduce this potential impact to **less than significant**.

v. *Other Public Facilities* - The development of the project could impact the maintenance of public facilities and could generate impacts to other governmental services. Payment of the fees required under the Public Facilities Financing Program (PFFP) as described above would mitigate these impacts to a **less than significant** level.

16. Recreation

SETTING AND DESCRIPTION

The City of Merced has a well-developed network of parks and recreation facilities. Richard Bernasconi Park (a Neighborhood Park) is located within the Moraga Subdivision at the corner of Jardin Way and Aviles Drive. This park is approximately 0.2 miles from the site. Bob Carpenter Park (a Neighborhood Park) is located at the corner of Parsons Avenue and Silverado Drive, approximately 1/2 mile from the site. Rahilly Park (a Regional Park) is also located on Parsons Avenue approximately 1 mile from the project site. The Rascal Creek Bike path is also accessible from McKee Road approximately ½ mile south of the site.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
16. **Recreation.** Would the project:				
a) Increase the use of neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?			✓	
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?			✓	

Impact Analysis
Would the project:

a) *Increase the use of neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?*

The construction of the proposed project would provide 214 units which, in turn, would introduce new residents to this area. As described above, there are 3 parks within a short distance of the site, the site would also have easy access to the City's bicycle trail system with an access point to trail system approximately ½ mile to the east of the site. The project would provide an approximately 29,500-square-foot outdoor greenspace and promenade area for the tenants. Additionally, the developer would be required to pay the fees described under the Parks section above which would help fund future recreation needs. This impact would be **less than significant.**

b) *Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?*

As described above, the project would provide a community/recreation area, a promenade area, and rooftop deck for residents to use for recreation. Also as previously described, the

project would be required to pay all impact fees required at the time of building permit issuance which would reduce any impacts to a **less than significant** level.

17. Transportation/Traffic

SETTING AND DESCRIPTION

The project site is located at the southeast corner of Yosemite Avenue and McKee Road. Yosemite Avenue, east of Parsons Avenue is designated as a "Special Street Section" in the *Merced Vision 2030 General Plan*. As such, the ultimate right-of-way for this road is 94 feet. McKee Road is a Collector Road with an ultimate right of way of 74 feet. The project would have access from Yosemite Avenue (right-in/right-out only) and McKee Road. Both the intersections of Yosemite Avenue and McKee Road and Yosemite Avenue and Via Moraga are signalized.

Yosemite Avenue Access

The primary access on Yosemite Avenue would be a driveway that is located approximately 320 feet east of the intersection of Yosemite Avenue and McKee Road (refer to the Site Plan at Figure 3 on Page 6). This driveway would provide right in/right out access only. The existing median in Yosemite Avenue would remain unchanged along the project site frontage.

McKee Road Access

The primary access on McKee Road would be through a driveway located approximately 195 feet south of the intersection of Yosemite Avenue and McKee Road. This driveway would allow both left and right turning movements.

Project Characteristics

The proposed project includes 214 Dwelling Units and approximately 37,117 square feet of commercial space (retail and office). The project would incentivize the use of alternate transportation by offering a discount on rent for residents who don't have a vehicle. Additionally, they will provide specific areas for Uber and Lyft pick-ups, and they are exploring the possibility of offering rentals of bicycles, scooters, and zip cars. The site is also located near transit stops for The Bus and Cat Tracks.

The developer originally prepared a traffic analysis for this project site in 2014. The traffic generation from the previously proposed mixed-use project consisting of 428 units and 18,000 square feet of commercial to the traffic generation for the project in 2014. Therefore, no additional analysis was required. However, with the currently revised project consisting of 214 units and approximately 37,000 square feet of commercial (retail and off), an updated traffic analysis was provided. This analysis determined the impacts of the currently proposed project to be less than both previous projects.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
17. **Transportation/Traffic.** Would the project:				
a) Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?		✓		
b) Conflict or be inconsistent with CEQA Guidelines § 15064.3, subdivision (b)?		✓		
c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?				✓
d) Result in inadequate emergency access?			✓	

Impact Analysis

Would the project:

a) *Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?*

The project site is located at the southeast corner of Yosemite Avenue and McKee Road. Yosemite Avenue, east of Parsons is designated as a "Special Street Section" in the *Merced Vision 2030 General Plan*. As such, the ultimate right-of-way for this road is 94 feet. McKee Road is a Collector Road with an ultimate right of way of 74 feet. The project would have access from Yosemite Avenue (right-in/right-out only) and McKee Road (full access). Both the intersections of Yosemite Avenue and McKee Road and Yosemite Avenue and Via Moraga (approximately 0.3 miles east of McKee Road) are signalized.

Yosemite Avenue Access

The primary access on Yosemite Avenue would be a driveway that is located approximately 320 feet east of the intersection of Yosemite Avenue and McKee Road (refer to the Site Plan at Attachment B). This driveway would provide right in/right out access only. The existing median in Yosemite Avenue would remain unchanged along the project site frontage. No other access to the site would be provided on Yosemite Avenue.

McKee Road Access

The primary access on McKee Road would be through a driveway located approximately 195 feet south of the intersection of Yosemite Avenue and McKee Road. This driveway would allow both left and right turning movements.

Whitewater Way

No access is proposed to Whitewater Way from the project site, unless the Fire Department requires an emergency access per Condition #22 of the Conditional Use Permit Conditions.

Traffic Impact Analysis

A traffic analysis was prepared for the proposed project by K2 Traffic Engineering, Inc. This analysis studied the following roadway segments:

1. Yosemite Avenue between Parsons Avenue and McKee Road.
2. McKee Road between Yosemite Avenue and Silverado Road.

The following intersections were also studied:

1. Yosemite Avenue at Parsons Avenue/Gardner Avenue
2. Yosemite Avenue at McKee Road
3. Yosemite Avenue at Hatch Road
4. McKee Road at Olive Avenue

The analysis looked at six different scenarios to determine the impact of the project. The scenarios included:

1. Existing Conditions
2. Existing Conditions plus Project
3. Existing plus Approved Conditions
4. Existing plus Approved Conditions, plus Project
5. Cumulative Year (2035) without Project Conditions
6. Cumulative Year (2035) with Project Conditions

The traffic analysis determined that the proposed project would generate a total of 1,876. After standard reductions are given for transit and bicycle use, pass-by traffic, and internal capture, the total net ADT's are 1,184. The trip generation numbers are provided on page 13 of the traffic analysis.

The *Merced Vision 2030 General Plan* establishes an acceptable Level of Service (LOS) as LOS D for intersection and roadway operations. The traffic study found that, under existing conditions, the LOS for the intersection at Yosemite Avenue and Parsons/Gardner Avenue currently operates at an LOS F for AM Peak Hour traffic and an LOS E for PM Peak Hour traffic. Additionally, the intersection of McKee Road and Olive Avenue operates at an LOS E and LOS D, respectively. The other two intersections studied (Yosemite Avenue at McKee Road and Yosemite Avenue at Hatch Road) operate at acceptable levels of service (LOS B or better).

With the addition of the proposed project, the intersection at Yosemite Avenue and Parsons/Gardner Avenue, the level of service would be reduced to LOS F and LOS E for the AM and PM peak hours, respectively. The level of service for McKee Road and Olive Avenue would remain an LOS E for the AM peak hour traffic. All other intersections would retain an LOS D or better rating. Under the Cumulative 2035 with project scenario, these same intersections are reduced to an LOS F for both AM and PM peak hours.

The traffic study also conducted a Peak Hour Signal Warrant Analysis and found that signal warrants are satisfied for signals at the intersections of Yosemite Avenue and Parsons/Gardner Avenue and McKee Road and Olive Avenue.

The traffic study recommended the following mitigation measures:

Install traffic signals at the intersection of Yosemite Avenue and Parsons/Gardener Avenue and at the intersection of McKee Road and Olive Avenue.

Because these intersections are currently operating at a level of service below LOS D (the standard established by the General Plan), and the project impacts are not the cause of the existing problems with these intersections, the project would only be required to contribute a fair share to the cost of the traffic signals. The fair share contribution is based on the projects impacts, which in this case would be 2.4% of the cost of the traffic signal at Yosemite Avenue and Parsons/Gardner Avenue and 1.4% of the cost of the signal at McKee Road and Olive Avenue.

In addition to contributing to the cost of the traffic signals, the project would be providing access to alternate forms of transportation to reduce the impacts from the project. The developer would provide on-site pick-up/drop-off areas for Uber and Lyft, provide bicycles for tenants to use, and possibly provide Zip cars and/or scooters that could be used by the tenants.

In comparison to the previously proposed mixed-use project, the ADT's are reduced from 2,215 ADT's to 1,876 ADT's (gross, with no reductions given) and 1,146 net. It should also be noted that this amount is less than the estimated traffic generation for the proposed shopping center that was approved for this site in 2014.

Additional mitigation measures were adopted with the General Plan Amendment and Zone Change approved in 2019. The development would be required to comply with the applicable mitigation measures as determined by the City Engineer.

The current project would not add any new roadway facilities and proposes to encourage bicycle, pedestrian, and transit use by providing bicycle parking facilities on-site (both long-term and short-term facilities would be provided in compliance with the CA Green Code), providing a pedestrian-friendly site design with easy access to sidewalks and bicycle paths, and the site would be located near transit stops. The implementation of these design elements along with the previously approved mitigation measures would reduce potential impacts to **less than significant with mitigation.**

Mitigation Measures

TRA-01 Pay a proportionate share of the cost of the traffic signal at the intersection of Yosemite Avenue and Parsons/Gardner Avenue.

The following mitigation measures were adopted with Initial Study #19-18 and would apply, unless deemed unnecessary by the City Engineer.

The westbound lane of Yosemite Avenue at Parsons Avenue shall be modified to accommodate an additional 200-foot shared thru/right turn lane. In addition, the existing shared left/thru/right

lane shall be restriped to be a shared left/thru lane. (The Traffic Analysis recommended an additional 100 foot lane be installed. The City Engineer recommends the length of the lane be increased to 200 feet.)

-or-

The applicant shall be required to pay for their proportionate share of the above improvement as determined by the City Engineer.

TRA-02 Pay a proportionate share of the cost of the traffic signal at the intersection of McKee Road and Olive Avenue.

The following mitigation measures were adopted with Initial Study #19-18 and would apply, unless deemed unnecessary by the City Engineer.

The following modifications to the intersection of Olive Avenue and McKee Road shall be made:

Southbound Approach:

- Remove the adjacent on-street parking for 100 feet on the southbound approach.
- Re-stripe the approach as shared left/thru lane and share right/thru lane.
- Remove the adjacent on-street parking for 100 feet on the southbound receiving lane and stripe it as a lane drop.

Northbound Approach

- Remove the adjacent on-street parking for 100 feet on the north bound approach.
- Re-stripe the approach as shared left/thru lane and shared right/thru lane.
- Remove the adjacent on-street parking for 100 feet on the northbound receiving lane and stripe it as a lane drop. The City Engineer shall determine if this measure is feasible due to the location of residential driveways in this area.

b) *Conflict or be inconsistent with CEQA Guidelines § 15064.3, subdivision (b)?*

Vehicle Miles Traveled. Senate Bill (SB) 743 (Steinberg 2013) was approved by Governor Brown on September 27, 2013, and created a path to revise the definition of transportation impacts according to CEQA. As the guidelines are proposed today, CEQA transportation impacts are determined using LOS of intersections and roadways, which is a measure of congestion. The intent of SB 743 is to align CEQA transportation study methodology with and promote the statewide goals and policies for reducing vehicle miles traveled (VMT) and GHGs. Three objectives of SB 743 related to development are to reduce GHGs, diversify land uses, and focus on creating a multimodal environment. It is hoped that this will spur infill development.

VMT is defined as the product of a number of trips and those trips' lengths. CEQA Guidelines § 15064.3 (b) (1) provides the following criteria for analyzing transportation impacts for land use projects: Vehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact. The California Office of Planning and research recommends assuming a project causes a less than significant impact if it is located within ½-mile of a transit stop along an existing high quality transit corridor. The project site is located within ½-mile of transit stops that are served by The Cat Tracks transit service for UC Merced. However, an additional stop may be needed for the regional transit system buses (The Bus). Implementation of the following mitigation measure would reduce potential impacts to **less than significant with mitigation.**

Mitigation Measure:

TRA-03 The developer shall work with the Transit Joint Powers Authority of Merced County (The Bus) to locate a bus stop within ½-mile of the project site.

c) *Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?*

Implementation of the proposed project would create new roads or alter any existing roads in such a way to substantially increase hazards due to a geometric design feature. The proposed project would alter the intersections of McKee Road and Olive Avenue and Yosemite Avenue and Parsons Avenue as required by Mitigation Measures TRA-01 and TRA-02. Otherwise, there would be no modifications to roadways. Construction of the proposed project would create **no impact.**

d) *Result in inadequate emergency access?*

The proposed project includes two driveways to provide access to the site. The project includes a right-in/right-out driveway on Yosemite Avenue and a full access driveway on McKee Road. Providing two points of access into the site satisfies the Fire Departments requirements for emergency access. Any impacts would be **less than significant.**

18. Tribal Cultural Resources

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
18. Tribal Cultural Resources Would the project:				
a) Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code § 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:				
i. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or				✓
ii. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code § 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code § 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.				✓

Impact Analysis

Would the project:

a) *Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code § 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:*

   i. *Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k)?*

   ii. *A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision*

> *(c) of Public Resources Code § 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code § 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.*

As stated in the Cultural Resources Section of this Initial Study, improvements associated with the project include site excavation, grading, paving, and construction of buildings. The areas of the project subject to demolition and construction facilities are likely to have been subject to ground disturbance in the past. No tribal resources are known to have occurred or have been identified at the project site or in the vicinity of the project site. However, as noted in the Cultural Resources Section, implementation of Mitigation Measures CUL-1 and CUL-3 would protect previously unrecorded or unknown cultural resources, including Native American artifacts and human remains, should these be encountered during project construction.

In addition, Assembly Bill (AB) 52 provides for consultation between lead agencies and Native American tribal organizations during the CEQA process. Since AB 52 was enacted in July 2015, the City has not been contacted by any California Native American tribes requesting that they be notified when projects are proposed in Merced. As a result, the City is not required to notify any tribes of this project, and no tribes have requested consultation pursuant to Public Resources Code section 21080.3.1. Therefore, it is assumed that no Tribal Cultural Resources would be adversely affected by the project. As a result, ***no impact*** would occur.

19. Utilities and Service Systems

SETTING AND DESCRIPTION

Water

The City's water system is composed of 23 groundwater production wells located throughout the City, approximately 350 miles of main lines, and 4 water tower tanks for storage. Well pump operators ensure reliability and adequate system pressure at all times to satisfy customer demand. Diesel powered generators help maintain uninterrupted operations during power outage. The City of Merced water system delivers more than 24 million gallons of drinking water per day to approximately 20,733 residential, commercial, and industrial customer locations. The City is required to meet State Health pressure requirements, which call for a minimum of 20 psi at every service connection under the annual peak hour condition and maintenance of the annual average day demand plus fire flow, whichever is stricter. The City of Merced Water Division is operated by the Public Works Department.

The City of Merced's wells have an average depth of 414 feet and range in depth from 161 feet to 800 feet. The depth of these wells would suggest that the City of Merced is primarily drawing water from a deep aquifer associated with the Mehrten geologic formation. Increasing urban demand and associated population growth, along with an increased shift by agricultural users from surface water to groundwater and prolonged drought, have resulted in declining groundwater levels due to overdraft. This condition was recognized by the City of Merced and the Merced Irrigation District (MID) in 1993, at which time the two entities began a two-year planning process to assure a safe and reliable water supply for Eastern Merced County through the year 2030. Integrated Regional Water Planning continues today through various efforts.

Wastewater

Wastewater (sanitary sewer) collection and treatment in the Merced urban area is provided by the City of Merced. The wastewater collection system handles wastewater generated by residential, commercial, and industrial uses in the City.

The City Wastewater Treatment Plant (WWTP), located in the southwest part of the City about two miles south of the airport, has been periodically expanded and upgraded to meet the needs of the City's growing population and new industry. The City's wastewater treatment facility has a capacity of 11.5 million gallons per day (mgd), with an average flow of 8.5 mgd. The City has recently completed an expansion project to increase capacity to 12 mgd and upgrade to tertiary treatment with the addition of filtration and ultraviolet disinfection. Future improvements would add another 8 mgd in capacity (in increments of 4 mgd), for a total of 20 mgd. This design capacity can support a population of approximately 174,000. The collection system will also need to be expanded as development occurs.

Treated effluent is disposed of in several ways depending on the time of year. Most of the treated effluent (75% average) is discharged to Hartley Slough throughout the year. The remaining treated effluent is delivered to a land application area and the on-site City-owned wetland area south of the treatment plant.

Storm Drainage

The Draft *City of Merced Storm Drainage Master Plan* addresses the collection and disposal of surface water runoff in the City's SUDP. The study addresses both the collection and disposal of storm water. Systems of storm drain pipes and catch basins are laid out, sized, and costed in the plan to serve present and projected urban land uses.

It is the responsibility of the developer to ensure that utilities, including storm water and drainage facilities, are installed in compliance with City regulations and other applicable regulations. Necessary arrangements with the utility companies or other agencies will be made for such installation, according to the specifications of the governing agency and the City (ORoad 1342 § 2 (part), 1980: prior code § 25.21(f)). The City requires the construction of storm water percolation/detention basins with new development. Percolation basins are designed to collect storm water and filter it before it is absorbed into the soil and reaches groundwater tables. Detention basins are designed to temporarily collect runoff so it can be metered at acceptable rates into canals and streams which have limited capacity. The disposal system is mainly composed of MID facilities, including water distribution canals and laterals, drains, and natural channels that traverse the area.

The City of Merced has been involved in developing a Storm Water Management Plan (SWMP) to fulfill requirements of storm water discharges from Small Municipal Separate Storm Sewer System (MS4) operators in accordance with Section 402(p) of the Federal Clean Water Act (CWA). The SWMP was developed to also comply with General Permit Number CAS000004, Water Quality Order No. 2003-0005-DWQ.

Solid Waste

The City of Merced is served by the Highway 59 Landfill and the Highway 59 Compost Facility, located at 6040 North Highway 59, one and one-half miles north of Old Lake Road. The County of Merced is the contracting agency for landfill operations and maintenance, while the facilities

are owned by the Regional Waste Authority. The City of Merced provides services for all refuse pick-up within the City limits and franchise hauling companies collect in the unincorporated areas. In addition to these two landfill sites, there is one private disposal facility, the Flintkote County Disposal Site, at SR 59 and the Merced River. This site is restricted to concrete and earth material.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
19. **Utilities and Service Systems.** Would the project:				
a) Require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?			✓	
b) Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?			✓	
c) Result in a determination by the waste water treatment provider, which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?		✓		
d) Generate solid waste in excess of state or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?			✓	
e) Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?			✓	

Impact Analysis

Would the project:

a) *Require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?*

The proposed project would be served by the City's existing water, wastewater treatment, and storm water drainage systems. Due to constricted capacity in the Yosemite Avenue line, the project would be required to provide an alternative to allow wastewater to be pumped into the City's wastewater system during off-peak hours. The developer has proposed the use of an on-site storage facility for wastewater to be held and then pumped into the City's wastewater system and on to the treatment plant during off-peak hours. In order to determine the amount of on-site storage needed for the project, the City calculated the gallons per day as follows.

The project includes 214 units and approximately 37,117 square feet of commercial space. The project is expected to generate approximately 43,570 gallons per day (gpd) of wastewater. Under the current Sewer Master Plan, this site was estimated to have single-family dwellings consistent with R-1-6 zoning. Thus, the estimated sewer generation was 8,000 gpd. In order to prevent over-burdening the existing infrastructure, the project would need to retain wastewater in excess of 8,000 gpd on site and discharge it at off-peak hours. In order to ensure there is enough capacity for on-site storage and that the sewer generation is consistent with the General Plan, the developer would need to provide sufficient storage for any wastewater in excess of 8,000 gpd. Based on the estimated generation of 43,570, the on-site storage would need a capacity to hold a minimum of 35, 570 gpd.

With the implementation of on-site storage as described above, no new City Facilities would need to be constructed. Electrical power, natural gas, and telecommunications facilities are all located near the site. It is not anticipated that any new facilities would be required. This impact would be **less than significant.**

b) *Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?*

The City's water supply system consists of four elevated storage tanks with a combined storage capacity of approximately 1.4 million gallons, 23 wells and 14 pumping stations. The project is expected to use approximately 53,125 gallons of water per day. There is a 16-inch water line in Yosemite Avenue and another 16-inch line in McKee Road to serve the project site. The City's water supply would be sufficient to serve the proposed project. This impact would be **less than significant.**

c) *Result in a determination by the waste water treatment provider, which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?*

The City's wastewater collection system handles wastewater generated by residential, commercial, and industrial uses in the City. The City Wastewater Treatment Plant (WWTP), located in the southwest part of the City about 2 miles south of the airport, has been periodically expanded and upgraded to meet the needs of the City's growing population and new industry.

The WWTP recently finished two major upgrades (Phase IV and Phase V) to improve the quality of the treated water, referred to as plant effluent, and to improve the quality of biosolids and methods of treatment. The Merced Wastewater Treatment Plant is now one of the most advanced facilities in the state. It is capable of treating up to 12 million gallons of influent a day. The proposed project is estimated to generate approximately 47,408

gallons of wastewater per day (based on 111 gallons/resident). The additional wastewater generated by the project would be approximately 0.39% of the overall capacity of the WWTP.

Although there is sufficient capacity at the WWTP, the existing line in Yosemite Avenue does not have enough capacity during peak hours to accommodate the additional wastewater and transmit it to the WWTP for processing [refer to Item (a) above]. In order to mitigate this issue, the project would be required to implement the mitigation measure below. Implementation of this mitigation measure would reduce this impact to **less than significant with mitigation.**

Mitigation Measure:

UTI-01) Due to constraints in the existing sewer collection system, the project shall be allowed to release wastewater into the City's system at a rate of 8,000 gallons per day (gpd) during peak hours. All wastewater in excess of this amount shall be stored on-site in an approved wastewater storage tank or other method approved by the Public Works Director and/or City Engineer to be released during off-peak hours. A flow monitor shall be installed with a telemetry or SCADA system approved by the Public Works Director and/or City Engineer to monitor the flow and ensure compliance with this requirement. The City shall periodically monitor the flow.

Generate solid waste in excess of state or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?

Solid wastes within the County of Merced are disposed of at two landfill sites owned and operated by the Merced County Regional Waste Management Authority. The west side of the County is served by the Billy Wright Road landfill, and the east side (including the City of Merced) by the Highway 59 landfill, 1.5 miles north of Old Lake Road. The County of Merced is the contracting agency for landfill operation and maintenance. It is estimated that the remaining capacity of the Highway 59 site will last until the year 2030. The City of Merced provides services for all refuse pick-up within the City limits, including green waste and recycling. Street sweeping services are also offered.

The proposed project would be required to provide recycling containers as well as general garbage containers. Additionally, in order to reduce the number of containers on site for general waste, the developer may install trash compactors. CalRecycle estimates that the average multi-family unit generates approximately 4 pounds of waste per day (combined trash and recyclables). This equates to 1,712 pounds/day for the overall project. It is expected that approximately ½ of the total waste generated could be recycled. The City's Refuse Department would be able to serve the project and sufficient capacity is available at the landfill to serve the project. This impact would be **less than significant.**

d) *Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?*

The California Integrated Waste Management Act of 1989 (AB 939) changed the focus of solid waste management from landfill to diversion strategies such as source reduction, recycling, and composting. The purpose of the diversion strategies is to reduce dependence

on landfills for solid waste disposal. AB 939 established mandatory diversion goals of 25 percent by 1995 and 50 percent by 2000. The proposed project would be required to comply with all federal, State, and local regulations related to solid waste. Furthermore, the proposed project would be required to comply with all standards related to solid waste diversion, reduction, and recycling during project construction and operation of the project. Therefore, the proposed project is anticipated to result in **less-than-significant** impacts related to potential conflicts with federal, State, and local statutes and regulations related to solid waste.

20. Wildfire

SETTING AND DESCRIPTION

Both urban and wildland fire hazard potential exists in the City of Merced and surrounding areas, creating the potential for injury, loss of life, and property damage. Urban fires primarily involve the uncontrolled burning of residential, commercial, or industrial structures due to human activities. Wildland fires affect grassland, brush or woodlands, and any structures on or near these fires. Such fires can result from either human made or natural causes.

Urban fires comprise the majority of fires in the City of Merced. The site is surrounded by urban uses. The single-family lots to the south are large lots over 1 acre in size. These lots contain areas of grass and other vegetation that could be susceptible to fires. However, the City of Merced Fire Department has procedures in place to address the issue of wildland fires, so no additional mitigation would be necessary.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
20. **Wildfire.** If located in or near stat responsibility areas or lands classified as very high fire hazard severity zones, would the project:				
a) Substantially impair an adopted emergency response plan or emergency evacuation plan?			✓	
b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?			✓	
c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?			✓	

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?				✓

Impact Analysis

Would the project:

a) *Substantially impair an adopted emergency response plan or emergency evacuation plan?*

The project does not include the construction of new roadways or major changes to existing roads. The project would also be required to comply with all applicable requirements of the California Fire Code. As such, the project would not impact an adopted emergency response plan or emergency evacuation plan. This impact would be **less than significant.**

b) *Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?*

According to the California Department of Forestry and Fire Protection, the project site is not located in any fire hazard zone. The areas surrounding the project site are mostly developed, urban land.

There is a low potential for wildland fires within these parameters. Additionally, the California Building Code and the California Fire Codes work together to regulate building construction and related items such as the care of vacant lots and the storage of flammable liquids.

To provide effective fire prevention activities for low hazard occupancies, the Fire Department conducts seasonal hazard removal programs (primarily weed abatement). The City of Merced employs a weed abatement program, which requires property owners to eliminate flammable vegetation and rubbish from their properties. Each property within the City is surveyed each spring and notices are sent to the property owners whose properties have been identified to pose a fire risk. Since inception of this program in 1992, grass or brush related fires within the City have been greatly reduced. The City also picks up abandoned vehicles, and a "Spring Clean-up" conducted annually allows people to have bulky refuse picked up at transfer stations without charge. A permanent site is being planned near Highway 59 and Yosemite Avenue. Further, staging areas, building areas, and/or areas slated for development using spark-producing equipment are cleared of dried vegetation or other materials that could serve as fuel for combustion; impacts are considered **less than significant**.

c) *Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?*

The project would be required to repair/replace any missing or damaged infra-structure along their property frontage. However, the on-going maintenance of roadways would fall to the City. All other infra-structure or utilities exist in the area. No additional infra-structure or on-going maintenance would be required that would cause an impact to the environment. This impact is **less than significant.**

d) *Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?*

The project site and surrounding area is relatively flat with no risk of downslope or downstream flooding or landslides. Therefore, there is **no impact.**

21. Mandatory Findings of Significance

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
21. Mandatory Findings of Significance. Would the project:				
a) Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?			✓	
b) Have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probably future projects?)			✓	
c) Have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?			✓	

Impact Analysis

Would the project:

a) *Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?*

As previously discussed in this document, the project does not have the potential to adversely affect biological resources or cultural resources because such resources are lacking on the project site, and any potential impacts would be avoided with implementation of the mitigation measures and other applicable codes identified in this report. Also, the project would not significantly change the existing urban setting of the project area. Thus, this impact would be **less than significant.**

b) *Have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probably future projects?)*

The Program Environmental Impact Report conducted for the *Merced Vision 2030 General Plan, and the General Plan Program EIR* (SCH# 2008071069) has recognized that future development and build-out of the SUDP/SOI will result in cumulative and unavoidable impacts in the areas of Air Quality and Loss of Agricultural Soils. In conjunction with this conclusion, the City has adopted a Statement of Overriding Considerations for these impacts (Resolution #2011-63) which is herein incorporated by reference.

The certified General Plan EIR addressed and analyzed cumulative impacts resulting from changing agricultural use to urban uses. No new or unaddressed cumulative impacts will result from the Project that have not previously been considered by the certified General Plan EIR or by the Statement of Overriding Considerations, or mitigated by this Expanded Initial Study. This Initial Study does not disclose any new and/or feasible mitigation measures which would lessen the unavoidable and significant cumulative impacts.

The analysis of impacts associated with the development of the proposed change will contribute to the cumulative impacts identified in the General Plan EIR. The nature and extent of these impacts, however, falls within the parameters of impacts previously analyzed in the General Plan EIR. No individual or cumulative impacts will be created by the Project that have not previously been considered at the program level by the General Plan EIR or mitigated by this Initial Study. This impact is **less than significant.**

c) *Have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?*

Development anticipated by the *Merced Vision 2030 General Plan* will have significant adverse effects on human beings. These include the incremental degradation of air quality in the San Joaquin Basin, the loss of prime agricultural soils, the incremental increase in traffic, and the increased demand on natural resources, public services, and facilities. However, consistent with the provisions of CEQA previously identified, the analysis of the

Project is limited to those impacts which are peculiar to the Project site or which were not previously identified as significant effects in the prior EIR. The previously-certified General Plan EIR and the Statement of Overriding Considerations addressed those cumulative impacts; hence, there is no requirement to address them again as part of this Project.

This previous EIR has concluded that these significant adverse impacts are accounted for in the mitigation measures incorporated into the General Plan EIR. In addition, a Statement of Overriding Considerations has been adopted by City Council Resolution #2011-63 that indicates that the significant impacts associated with development of the Project are offset by the benefits that will be realized in providing necessary jobs for residents of the City. The analysis and mitigation of impacts has been detailed in the Environmental Impact Report prepared for the *Merced Vision 2030 General Plan*, which are incorporated into this document by reference.

While this issue was addressed and resolved with the General Plan EIR in an abundance of caution, in order to fulfill CEQA's mandate to fully disclose potential environmental consequences of projects, this analysis is considered herein. However, as a full disclosure document, this issue is repeated in abbreviated form for purposes of disclosure, even though it was resolved as a part of the General Plan.

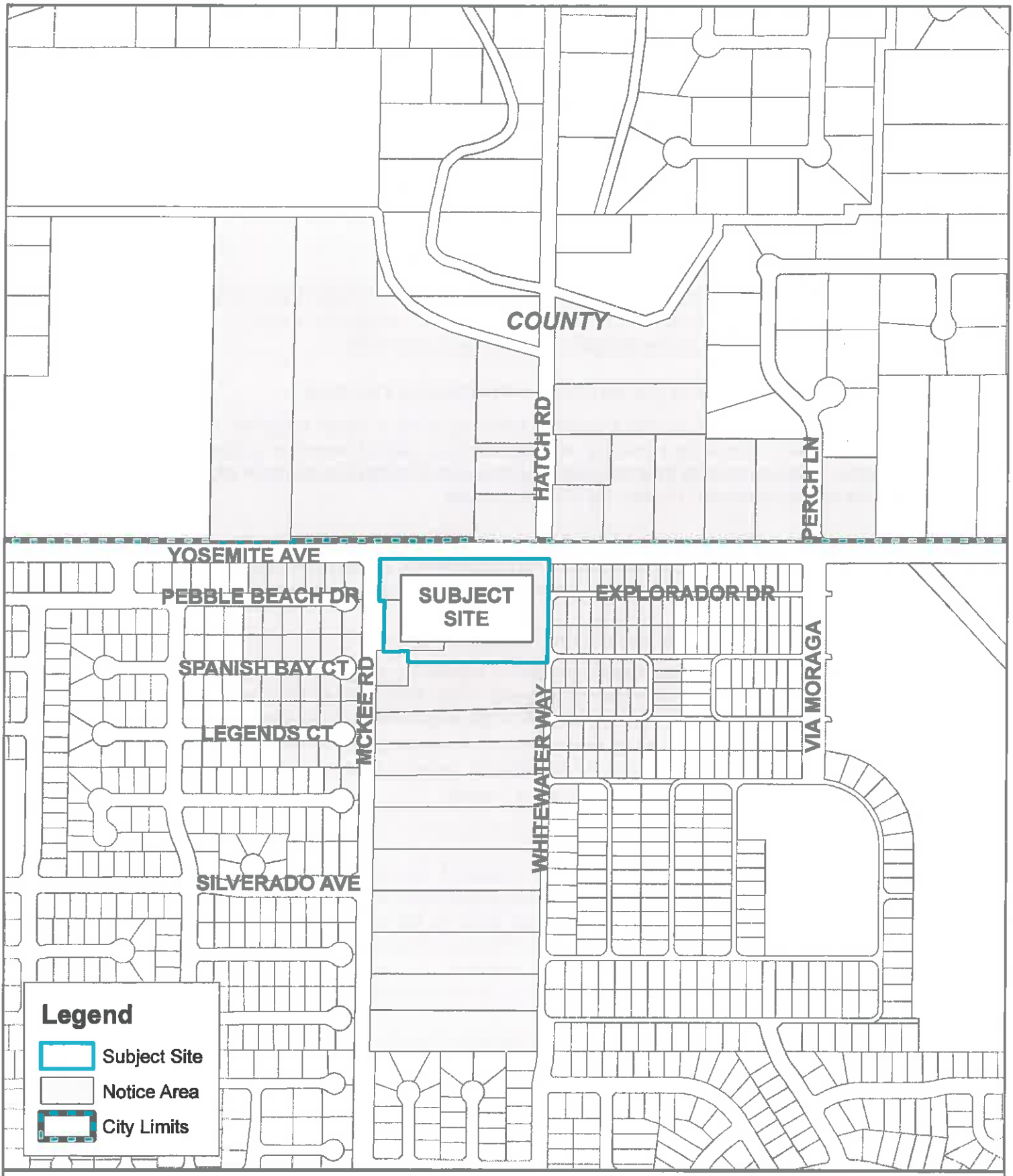
Potential impacts associated with the Project's development have been described in this Initial Study. All impacts were determined to either be **less than significant** or **less than significant with mitigation measures.**

Attachments:

A) Public Hearing Notice and Notice Area Map
B) Mitigation Monitoring Program

Appendices:

A) Mitigation Monitoring Program for Initial Study #19-18
B) Air Quality Analysis
C) Greenhouse Gas Analysis for General Plan Amendment #14-06
D) Traffic Analysis



Disclaimer: This document was prepared for general inquiries only. The City of Merced is not liable for errors or ommissions that might occur. Official information concerning specific parcels should be obtained from recorded or adopted City documents.

CONDITIONAL USE PERMIT #1238
THE HUB - MIXED USE PROJECT

ENVIRONMENTAL REVIEW #19-37
Mitigation Monitoring Program

MITIGATION MONITORING CONTENTS

This mitigation monitoring program includes a brief discussion of the legal basis and purpose of the mitigation monitoring program, a key to understanding the monitoring matrix, a discussion of noncompliance complaints, and the mitigation monitoring matrix itself.

LEGAL BASIS AND PURPOSE OF THE MITIGATION MONITORING PROGRAM

Public Resource Code (PRC) 21081.6 requires public agencies to adopt mitigation monitoring or reporting programs whenever certifying an environmental impact report or mitigated negative declaration. This requirement facilitates implementation of all mitigation measures adopted through the California Environmental Quality Act (CEQA) process.

The City of Merced has adopted its own "Mitigation Monitoring and Reporting Program" (MMC 19.28). The City's program was developed in accordance with the advisory publication, *Tracking CEQA Mitigation Measures*, from the Governor's Office of Planning and Research.

As required by MMC 19.28.050, the following findings are made:

1) The requirements of the adopted mitigation monitoring program for the Conditional Use Permit #1238 shall run with the real property. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

MITIGATION MONITORING PROCEDURES

In most cases, mitigation measures can be monitored through the City's construction plan approval/plan check process. When the approved project plans and specifications, with mitigation measures, are submitted to the City Development Services Department, a copy of the monitoring checklist will be attached to the submittal. The Mitigation Monitoring Checklist will be filled out upon project approval with mitigation measures required. As project plans and specifications are checked, compliance with each mitigation measure can be reviewed.

In instances where mitigation requires on-going monitoring, the Mitigation Monitoring Checklist will be used until monitoring is no longer necessary. The Development Services Department will be required to file periodic reports on how the implementation of various mitigation measures is progressing or is being maintained. Department staff may be required to conduct periodic inspections to assure compliance. In some instances, outside agencies and/or consultants may be required to conduct necessary periodic inspections as part of the mitigation monitoring program. Fees may be imposed per MMC 19.28.070 for the cost of implementing the monitoring program.

GENERAL PLAN MITIGATION MEASURES

As a second tier environmental document, Initial Study #19-18 incorporates some mitigation measures adopted as part of the *Merced Vision 2030 General Plan Program Environmental Impact Report* (SCH# 2008071069), as mitigation for potential impacts of the Project.

NONCOMPLIANCE COMPLAINTS

Any person or agency may file a complaint asserting noncompliance with the mitigation measures associated with the project. The complaint shall be directed to the Director of Development Services in written form providing specific information on the asserted violation. The Director of Development Services shall cause an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall cause appropriate actions to remedy any violation. The complainant shall receive written confirmation indicating the results of the investigation or the final action corresponding to the particular noncompliance issue. Merced Municipal Code (MMC) Sections 19.28.080 and 19.28.090 outline the criminal penalties and civil and administrative remedies which may be incurred in the event of noncompliance. MMC 19.28.100 spells out the appeals procedures.

MONITORING MATRIX

The following pages provide a series of tables identifying the mitigation measures proposed specifically for Conditional Use Permit #1238. The columns within the tables are defined as follows:

Mitigation Measure:	Describes the Mitigation Measure (referenced by number).
Timing:	Identifies at what point in time or phase of the project that the mitigation measure will be completed.
Agency/Department Consultation:	This column references any public agency or City department with which coordination is required to satisfy the identified mitigation measure.
Verification:	These columns will be initialed and dated by the individual designated to verify adherence to the project specific mitigation.

Conditional Use Permit #1238
Mitigation Monitoring Checklist

Project Name:_____ **File Number:**_____
Approval Date:_____ **Project Location** _____
Brief Project Description_____

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City of Merced's Mitigation Monitoring Requirements (MMC 19.28) with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6).

5) Cultural Resources				
Impact	***Mitigation Measures***	***Timing***	***Agency or Department***	***City Verification (date and initials)***
d	AQ-1 The developer shall provide an operations and maintenance plan for the on-site wastewater storage tank to address the timing of the off-peak discharge, emergency procedures for breakdowns and repairs, and odor control. The plan shall include steps to ensure ongoing objectionable odors do not affect the site or surrounding area. The operations and maintenance plan shall be approved by the City Public Works Director and/or City Engineer.	Building Permit	Engineering/ Public Works	
5) Cultural Resources				
a	CUL-1) If unknown pre-contact or historic-period archaeological materials are encountered during project activities, all work in the immediate vicinity of the find shall halt until a qualified archaeologist can evaluate the find and make recommendations. Cultural resources materials may include pre-contact resources such as flaked and ground stone tools and debris, shell, bone, ceramics, and fire-affected rock, as well as historic resources such as glass, metal, wood, brick, or structural remnants. If the qualified archaeologist determines that the discovery represents a potentially significant cultural resource, additional investigations shall be required to mitigate adverse impacts from the project implementation. *(continued on next page)*	Building Permits	Planning Department	

a		These additional studies may include, but are not limited to, recordation, archaeological excavation, or other forms of significance evaluations. The applicant shall inform its contractor(s) of the sensitivity of the project site for archaeological deposits, and include the following directive in the appropriate contract documents: "The subsurface of the construction site is sensitive for archaeological deposits. If archaeological deposits are encountered during project subsurface construction, all ground-disturbing activities within 25 feet shall be redirected and a qualified archaeologist shall assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. Project personnel shall not collect or move any archaeological materials. Archaeological deposits can include, but are not limited to, shellfish remains; bones, including human remains; and tools made from, obsidian, chert, and basalt; mortars and pestles; historical trash deposits containing glass, ceramics, and metal artifacts; and structural remains, including foundations and wells." The City shall verify that the language has been included in the grading plans prior to issuance of a grading permit or other permitted project action that includes ground-disturbing activities on the project site.			

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
b	CUL-2) Implementation of Mitigation Measure CUL-1.	Building Permits	Planning Department	
c	CUL-3) If human remains are identified during construction and cannot be preserved in place, the applicant shall fund: 1) the removal and documentation of the human remains from the project corridor by a qualified archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology, 2) the scientific analysis of the remains by a qualified archaeologist, should such analysis be permitted by the Native American Most Likely Descendant, and 3) the reburial of the remains, as appropriate. All excavation, analysis, and reburial of Native American human remains shall be done in consultation with the Native American Most Likely Descendant, as identified by the California Native American Heritage Commission.	Building Permits	Planning Department	
6) Engergy				
a	ENE-1) The applicant shall comply with all applicable California Energy Code, AB 341, and San Joaquin Valley Air Pollution Control District rules and regulations regulating energy efficiency and waste.	Building Permits	Building Department	
b	ENE-2) Implementation of Mitigation Measure ENE-1.	Building Permits	Building Department	

Impact No.	***Mitigation Measures***	***Timing***	***Agency or Department***	***City Verification (date and initials)***
7) Geology and Soils				
b	GEO-1) The project shall comply with all requirements of the State Water Resources Board (SWRCB) and obtain a General Construction Activity Stormwater Permit.	Building/ Encroachment Permits	Engineering Department	
	GEO-2) The project shall comply with all applicable mitigation measures for Expanded Initial Study #02-27 for General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02.	Building/ Encroachment Permits	Engineering Department	
8) Hydrology and Water Quality				
a	HYDRO-1) To minimize any potential short-term water quality effects from project-related construction activities, the project contractor shall implement Best Management Practices (BMPs) in conformance with the California Storm Water Best Management Practice Handbook for Construction Activity. In addition, the proposed project shall be in compliance with existing regulatory requirements, including the Water Pollution Control Preparation (WPCP) Manual. In addition, implementation of a Storm Water Pollution Prevention Plan (SWPPP) would be required under the National Pollutant Discharge Elimination System (NPDES) to regulate water quality associated with construction activities.	Building/ Encroachment Permits	Engineering Department	

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
a	HYDRO-2 If any storm drainage from the site is to drain into MID facilities, the developer shall first enter into a "Storm Drainage Agreement" with MID and pay all applicable fees.	Building/ Encroachment Permits	Engineering Department	
a	HYDRO-3) To reduce the potential for degradation of surface water quality during project operation, a SWPPP shall be prepared for the proposed project. The SWPPP shall describe specific programs to minimize stormwater pollution resulting from the proposed project. Specifically, the SWPPP shall identify and describe source control measures, treatment controls, and BMP maintenance requirements to ensure that the project complies with post-construction stormwater management requirements of the RWQCB.	Building/ Encroachment Permits	Engineering Department	
c	HYDRO-4 Prior to issuance of a building permit or as required by the City Engineer, the developer shall demonstrate to the City that storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City Standards and the City's Storm Drain Master Plan.	Building/ Encroachment Permits	Engineering Department	

13) Noise				
Impact No.	***Mitigation Measures***	***Timing***	***Agency or Department***	***City Verification (date and initials)***
	NOI-1) To reduce potential construction noise impacts, the following multi-part mitigation measure shall be implemented for the project: • The construction contractor shall ensure that all internal combustion engine-driven equipment is equipped with mufflers that are in good condition and appropriate for the equipment. • The construction contractor shall locate stationary noise-generating equipment as far as feasible from sensitive receptors when sensitive receptors adjoin or are near a construction disturbance area. In addition, the project contractor shall place such stationary construction equipment so that emitted noise is directed away from sensitive receptors nearest the project site. *(continued on next page)*			

13) Noise				
Impact No.	***Mitigation Measures***	***Timing***	***Agency or Department***	***City Verification (date and initials)***
a	• The construction contractor shall prohibit unnecessary idling of internal combustion engines (i.e., idling in excess of 5 minutes is prohibited). • The construction contractor shall locate, to the maximum extent practical, on-site equipment staging areas so as to maximize the distance between construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction. • The construction contractor shall limit all noise producing construction activities, including deliveries and warming up of equipment, to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No such work shall be permitted on Sundays or federal holidays without prior approval from the City.	Building Permit	Building Department	

17) Transportation and Traffic

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
a	**TRA-01** Pay a proportionate share of the cost of the traffic signal at the intersection of Yosemite Avenue and Parsons/Gardner Avenue. **The following mitigation measures were adopted with Initial Study #19-18 and would apply, unless deemed unnecessary by the City Engineer.** The westbound lane of Yosemite Avenue at Parsons Avenue shall be modified to accommodate an additional 200-foot shared thru/right turn lane. In addition, the existing shared left/thru/right lane shall be restriped to be a shared left/thru lane. (The Traffic Analysis recommended an additional 100 foot lane be installed. The City Engineer recommends the length of the lane be increased to 200 feet.) -or- The applicant shall be required to pay for their proportionate share of the above improvement as determined by the City Engineer.	Building Permit	Planning/ Engineering Department	

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
a	**TRA-02** Pay a proportionate share of the cost of the traffic signal at the intersection of McKee Road and Olive Avenue. **The following mitigation measures were adopted with Initial Study #19-18 and would apply, unless deemed unnecessary by the City Engineer.** The following modifications to the intersection of Olive Avenue and McKee Road shall be made: <u>Southbound Approach:</u> • Remove the adjacent on-street parking for 100 feet on the southbound approach. • Re-stripe the approach as shared left/thru lane and share right/thru lane. • Remove the adjacent on-street parking for 100 feet on the southbound receiving lane and stripe it as a lane drop. <u>Northbound Approach</u> • Remove the adjacent on-street parking for 100 feet on the north bound approach. • Re-stripe the approach as shared left/thru lane and shared right/thru lane. • Remove the adjacent on-street parking for 100 feet on the northbound receiving lane and stripe it as a lane drop. The City Engineer shall determine if this measure is feasible due to the location of residential driveways in this area.	Building Permit	Planning/ Engineering Department	

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
b	**TRA-03** The developer shall work with the Transit Joint Powers Authority of Merced County (The Bus) to locate a bus stop within ½-mile of the project site.	Building Permit	Planning/ Engineering Department	
19) Utilities and Service Systems				
c	**UTI-01)** The project shall provide for on-site storage of wastewater in an underground storage tank, then release the wastewater into the City's system during off-peak hours or an alternative approved by the City Engineer. Details to be worked out with the City Engineer prior to construction.	Building Permit	Engineering Department	

Certificate of Completion:
By signing below, the environmental coordinator confirms that the required mitigation measures have been implemented as evidenced by the Schedule of Tasks and Sign-Off Checklist, and that all direct and indirect costs have been paid. This act constitutes the issuance of a *Certificate of Completion.*

_____ _____
Environmental Coordinator Date

APPENDIX A
MITIGATION MONITORING PROGRAM
INITIAL STUDY #14-32

ENVIRONMENTAL REVIEW #14-32
Mitigation Monitoring Program

MITIGATION MONITORING CONTENTS

This mitigation monitoring program includes a brief discussion of the legal basis and purpose of the mitigation monitoring program, a key to understanding the monitoring matrix, a discussion of noncompliance complaints, and the mitigation monitoring matrix itself.

LEGAL BASIS AND PURPOSE OF THE MITIGATION MONITORING PROGRAM

Public Resource Code (PRC) 21081.6 requires public agencies to adopt mitigation monitoring or reporting programs whenever certifying an environmental impact report or mitigated negative declaration. This requirement facilitates implementation of all mitigation measures adopted through the California Environmental Quality Act (CEQA) process.

The City of Merced has adopted its own "Mitigation Monitoring and Reporting Program" (MMC 19.28). The City's program was developed in accordance with the advisory publication, *Tracking CEQA Mitigation Measures*, from the Governor's Office of Planning and Research.

As required by MMC 19.28.050, the following findings are made:

1) The requirements of the adopted mitigation monitoring program for the General Plan Amendment #14-06 and Zone Change #421, shall run with the real property. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

MITIGATION MONITORING PROCEDURES

In most cases, mitigation measures can be monitored through the City's construction plan approval/plan check process. When the approved project plans and specifications, with mitigation measures, are submitted to the City Development Services Department, a copy of the monitoring checklist will be attached to the submittal. The Mitigation Monitoring Checklist will be filled out upon project approval with mitigation measures required. As project plans and specifications are checked, compliance with each mitigation measure can be reviewed.

In instances where mitigation requires on-going monitoring, the Mitigation Monitoring Checklist will be used until monitoring is no longer necessary. The Development Services Department will be required to file periodic reports on how the implementation of various mitigation measures is progressing or is being maintained. Department staff may be required to conduct periodic inspections to assure compliance. In some instances, outside agencies and/or consultants may be required to conduct necessary periodic inspections as part of the mitigation monitoring program. Fees may be imposed per MMC 19.28.070 for the cost of implementing the monitoring program.

General Plan Mitigation Measures

As a second tier environmental document, Initial Study #14-32 incorporates some mitigation measures adopted as part of the *Merced Vision 2030 General Plan Program Environmental Impact Report* (SCH# 2008071069), as mitigation for potential impacts of the Project.

Noncompliance Complaints

Any person or agency may file a complaint asserting noncompliance with the mitigation measures associated with the project. The complaint shall be directed to the Director of Development Services in written form providing specific information on the asserted violation. The Director of Development Services shall cause an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall cause appropriate actions to remedy any violation. The complainant shall receive written confirmation indicating the results of the investigation or the final action corresponding to the particular noncompliance issue. Merced Municipal Code (MMC) Sections 19.28.080 and 19.28.090 outline the criminal penalties and civil and administrative remedies which may be incurred in the event of noncompliance. MMC 19.28.100 spells out the appeals procedures.

Monitoring Matrix

The following pages provide a series of tables identifying the mitigation measures proposed specifically for General Plan Amendment #14-06 and Zone Change #421. The columns within the tables are defined as follows:

Mitigation Measure:	Describes the Mitigation Measure (referenced by number).
Timing:	Identifies at what point in time or phase of the project that the mitigation measure will be completed.
Agency/Department Consultation:	This column references any public agency or City department with which coordination is required to satisfy the identified mitigation meausre.
Verification:	These columns will be initialed and dated by the individual designated to verify adherence to the project specific mitigation.

General Plan Amendment #14-06/Zone Change #421
Mitigation Monitoring Checklist

Project Name:_____ **File Number:**_____
Approval Date:_____ **Project Location**_____
Brief Project Description_____

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City of Merced's Mitigation Monitoring Requirements (MMC 19.28) with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6).

C) Air Quality

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
C-1	C-1) The project applicant shall submit an Indirect Source Review (ISR) to the San Joaquin Air Pollution Control Board in compliance with District Rule 9510 and shall comply with all other applicable District Rules. The San Joaquin Valley Air Pollution Control District recommends this application be submitted as early as possible or prior to the final discretionary approval.	Prior to Conditional Use Permit (CUP) approval	Planning Department	
C-1	C-2) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-27 for General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02 (Attachment A).	Building Permit Issuance / CUP approval	Inspection Services / Planning Department	

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
C-2	C-3) Compliance with Mitigation Measures C-1 and C-2 above would reduce this impact to a less than significant level.	Building Permit Issuance / CUP approval	Inspection Services / Planning Department	
C-3	C-4) Compliance with Mitigation Measures C-1 and C-2 above would reduce this impact to a less than significant level.	Building Permit Issuance / CUP approval	Inspection Services / Planning Department	
C-5	C-5) Compliance with Mitigation Measures C-1 and C-2 above would reduce this impact to a less than significant level.	Building Permit Issuance / CUP approval	Inspection Services / Planning Department	
E) Cultural Resources				
Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
E-1	E-1) The project shall comply with all applicable mitigation measures for Expanded Initial Study #02-27 for General Plan Amendment #02-02 and Annexation/Pre-zoning #02-02 (Attachment A).	Building Permit	Planning Department	
E-2	E-2) Compliance with Mitigation Measure E-1 would make this impact less than significant.	Building Permit	Planning Department	
E-3	E-3) Compliance with Mitigation Measure E-1 would make this impact less than significant.	Building Permit	Planning Department	
E-4	E-4) Compliance with Mitigation Measure E-1 would make this impact less than significant.	Building Permit	Planning Department	

F) Geology and Soils

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
F-2	F-1) The project shall comply with all requirements of the State Water Resources Board (SWRCB) and obtain a General Construction Activity Stormwater Permit.	Building Permit	Inspection Services / Engineering Department	
F-2	F-2) The project shall comply with all applicable mitigation measures for Expanded Initial Study #02-27 General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02 (Attachment A).	Building Permit	Inspection Services / Engineering Department/ Planning	

H) Hydrology and Water Quality

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
H-2	H-1) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-27 for General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02 (Attachment A).	Building Permit	Inspection Services	
H-2	H-2) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-27 for General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02 (Attachment A).	Building Permit	Inspection Services / Planning Department / Engineering	

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
H-3	H-3) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-27 for General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02 (Attachment A).	Building Permit	Inspection Services / Planning Department / Engineering	
H-4	H-4) The project developer shall provide calculations to the City Engineer verifying the capacity of the existing storm drain line as well as the capacity of the basin into which the water would ultimately drain.	Building Permit	Engineering	
H-4	H-5) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-27 for General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02 (Attachment A).	Building Permit	Inspection Services / Planning Department / Engineering	
H-5	H-6) The project developer shall provide calculations to the City Engineer verifying the capacity of the existing storm drain line as well as the capacity of the basin into which the water would ultimately drain.	Building Permit	Engineering	
H-5	H-7) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-27 for General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02 (Attachment A).	Building Permit	Inspection Services / Planning Department / Engineering	

K) Noise				
Impact No.	***Mitigation Measures***	***Timing***	***Agency or Department***	***City Verification (date and initials)***
K-1	K-1) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-27 for General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02 (Attachment A).	Building Permit	Inspection Services / Planning Department / Engineering	
K-2	K-2) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-27 for General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02 (Attachment A).	Building Permit	Inspection Services / Planning Department / Engineering	
O. Transportation/Traffic				
Impact No.	***Mitigation Measures***	***Timing***	***Agency or Department***	***City Verification (date and initials)***
O-1	O-1) The westbound lane of Yosemite Avenue at Parsons Avenue shall be modified to accommodate an additional 200-foot shared thru/right turn lane. In addition, the existing shared left/thru/right lane shall be restriped to be a shared left/thru lane. (The Traffic Analysis recommended an additional 100 foot lane be installed. The City Engineer recommends the length of the lane be increased to 200 feet.) -or- The applicant shall be required to pay for their proportionate share of the above improvement as determined by the City Engineer.	Building Permit	Planning Department / Engineering	

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
O-1	O-2) The following modifications to the intersection of Olive Avenue and McKee Road shall be made: <u>Southbound Approach:</u> • Remove the adjacent on-street parking for 100 feet on the southbound approach. • Re-strip the approach as shared left/thru lane and share right/thru lane. • Remove the adjacent on-street parking for 100 feet on the southbound receiving lane and stripe it as a lane drop. <u>Northbound Approach</u> • Remove the adjacent on-street parking for 100 feet on the north bound approach. • Re-strip the approach as shared left/thru lane and shared right/thru lane. • Remove the adjacent on-street parking for 100 feet on the northbound receiving lane and stripe it as a lane drop. The City Engineer shall determine if this measure is feasible due to the location of residential driveways in this area.	Building Permit	Planning Department / Engineering	

Impact No.	*Mitigation Measures*	*Timing*	*Agency or Department*	*City Verification (date and initials)*
O-1	O-3) The project shall comply with all applicable mitigation measures for Expanded Initial Study #02-27 for General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02 (Attachment A).			
O-2	O-4) The implementation of Mitigation Measures O-1 through O-3 above would reduce this impact to a less than significant level.			

Certificate of Completion:
By signing below, the environmental coordinator confirms that the required mitigation measures have been implemented as evidenced by the Schedule of Tasks and Sign-Off Checklist, and that all direct and indirect costs have been paid. This act constitutes the issuance of a *Certificate of Completion.*

_____ _____
Environmental Coordinator Date

Attachments:
Mitigation Monitoring Program for Initial Study #02-27 for GPA #02-02/Annexation/Pre-Zoning #02-02

EXPANDED INITIAL STUDY #02-27
for
HUNT FAMILY ANNEXATION TO THE CITY OF MERCED

Appendix A
Mitigation Monitoring Program

MITIGATION MONITORING CONTENTS

This mitigation monitoring program includes a brief discussion of the legal basis and purpose of the mitigation monitoring program, a key to understanding the monitoring matrix, a discussion of noncompliance complaints, and the mitigation monitoring matrix itself.

LEGAL BASIS AND PURPOSE OF THE MITIGATION MONITORING PROGRAM

Public Resource Code (PRC) 21081.6 requires public agencies to adopt mitigation monitoring or reporting programs whenever certifying an environmental impact report or mitigated negative declaration. This requirement facilitates implementation of all mitigation measures adopted through the California Environmental Quality Act (CEQA) process.

The City of Merced has adopted its own "Mitigation Monitoring and Reporting Program" (MMC 19.28). The City's program was developed in accordance with the advisory publication, *Tracking CEQA Mitigation Measures*, from the Governor's Office of Planning and Research.

As required by MMC 19.28.050, the following findings are made:

1) The requirements of the adopted mitigation monitoring program for the Hunt Family shall run with the real property that is the subject of a General Plan Amendment/Annexation to the City of Merced. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

MITIGATION MONITORING PROCEDURES

In most cases, mitigation measures can be monitored through the City's construction plan approval/plan check process. When the approved project plans and specifications, with mitigation measures, are submitted to the City Development Services Department, a copy of the monitoring checklist will be attached to the submittal. The Hunt Family Annexation Mitigation Monitoring Checklist will be filled out upon project approval with mitigation measures required. As project plans and specifications are checked, compliance with each mitigation measure can be reviewed.

In instances where mitigation requires on-going monitoring, the Mitigation Monitoring Checklist will be used until monitoring is no longer necessary. The Development Services Department will be required to file periodic reports on how the implementation of various mitigation measures is progressing or is being maintained. Department staff may be required to conduct periodic inspections to assure compliance. In some instances, outside agencies and/or consultants may be required to conduct necessary periodic inspections as part of the mitigation monitoring program. Fees may be imposed per MMC 19.28.070 for the cost of implementing the monitoring program.

General Plan Mitigation Measures

As a second tier environmental document, the *Expanded Initial Study for Hunt Family Annexation to the City of Merced* incorporates some mitigation measures adopted as part of the *Merced Vision 2015 General Plan Program Environmental Impact Report* (SCH# 95082050), as mitigation for potential impacts of the Project. Therefore, following the Hunt Family Annexation Mitigation Monitoring Checklist (starting on page A-11) is a list of these relevant General Plan mitigation measures along with the General Plan Mitigation Monitoring Checklists (Forms A and B) to be used to verify that the General Plan mitigation measures have been met.

Noncompliance Complaints

Any person or agency may file a complaint asserting noncompliance with the mitigation measures associated with the project. The complaint shall be directed to the Director of Development Services in written form providing specific information on the asserted violation. The Director of Development Services shall cause an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall cause appropriate actions to remedy any violation. The complainant shall receive written confirmation indicating the results of the investigation or the final action corresponding to the particular noncompliance issue. Merced Municipal Code (MMC) Sections 19.28.080 and 19.28.090 outline the criminal penalties and civil and administrative remedies which may be incurred in the event of noncompliance. MMC 19.28.100 spells out the appeals procedures.

Monitoring Matrix

The following pages provide a series of tables identifying the mitigation measures proposed specifically for the Hunt Family Annexation. The columns within the tables are defined as follows:

Mitigation Measure:	Summarizes the Mitigation Measure (referenced by number) identified in *Expanded Initial Study #02-27*.
Timing:	Identifies at what point in time or phase of the project that the mitigation measure will be completed.
Agency/Department Consultation:	This column references any public agency or City department with which coordination is required to satisfy the identified mitigation.
Verification:	These columns will be initialed and dated by the individual designated to verify adherence to the project specific mitigation.

Hunt Family Annexation
Mitigation Monitoring Checklist

Project Name:_____ **File Number:**_____
Approval Date:_____ **Project Location** _____
Brief Project Description_____

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City of Merced's Mitigation Monitoring Requirements (MMC 19.28) with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6).

Mitigation Measure	*Timing*	*Agency or Department Consultation*	*City Verification (date and initials)*
2. AGRICULTURAL RESOURCES			
2-1 A provision shall be recorded by the applicants/developer or successors, at time of sale of any residentially-zoned property within the project that lies within 1,000 feet of the external boundary of any non-project property which currently has an active agricultural operation (including 4-H projects), or has had an agricultural operation on it during the calendar year preceding the year within which the sale takes place. This provision shall notify the buyer(s) and any subsequent owner(s) of the possible inconvenience or discomfort of farming operations, arising from the use of agricultural chemicals, including pesticides, and fertilizers, as well as from the pursuit of agricultural operations including plowing, spraying, and harvesting which occasionally generate dust, smoke, noise and odor, and the priority to which Merced County places on agricultural operations.	*Building Permits*	*City Planning & Inspection Services*	

EXHIBIT A

Mitigation Measure	*Timing*	*Agency or Department Consultation*	*City Verification (date and initials)*
3. AIR QUALITY			
3-1. All active portions of construction sites, earthen access roads, and material excavated or graded shall be sufficiently watered to prevent excessive amounts of dust. Watering shall occur at least twice a day with complete coverage, preferably in the late morning and after work is done for the day. Where feasible, reclaimed water shall be used.	*Building Permits*	*City Inspection Services*	
3-2. All clearing, grading, earth moving, or excavation activities shall cease during periods of winds greater than 20 miles per hour averaged over one hour.	*Building Permits*	*City Inspection Services*	
3-3. All material transported off site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust.	*Building Permits*	*City Inspection Services*	
3-4. The area disturbed by clearing, earth moving, or excavation activities shall be minimized at all times. This can be accomplished by mowing instead of disking for weed control and seeding and watering inactive portions of the construction site until grass is evident, if construction time frames warrant.	*Building Permits*	*City Inspection Services*	
3-5. Construction site vehicle speeds shall be limited to 15 miles per hour.	*Building Permits*	*City Inspection Services*	
3-6. If used, petroleum-based dust palliatives shall meet the road oil requirements of the District's rule regarding Cutback Asphalt Paving Materials.	*Building Permits*	*SJVUAPCD*	
3-7. Streets adjacent to the Project site shall be swept as needed to remove silt and/or mud that may have accumulated from construction activities. The streets are required to be wet prior to or in conjunction with rotary sweeping.	*Building Permits*	*City Inspection Services*	
3-8. All internal combustion engine-driven equipment shall be properly maintained and well tuned according to the manufacturer's specifications.	*Building Permits*	*City Inspection Services*	

Mitigation Measure	*Timing*	*Agency or Department Consultation*	*City Verification (date and initials)*
3-9. When reasonably available and economically feasible, diesel powered or electric equipment shall be utilized in lieu of gasoline powered engines.	*Building Permits*	*City Inspection Services*	
3-10. Construction activities shall minimize obstruction of through traffic lanes adjacent to the site and a flag person shall be retained to maintain safety adjacent to existing roadways.	*Building Permits*	*City Inspection Services*	
3-11. Prior to issuance of building permits, the project will be required to comply with District Regulation VIII. Specifically, the rules that apply to this project are: Rule 8010 (Administrative Requirements) and Rule 8020 (Construction, Demolition, Excavation, and Extraction Activities). Additional rules that may apply to this project depending on ccnstruction practices employed are: Rule 8030 (Handling and Storage of Bulk Materials), Rule 8060 (Paved and Unpaved Roads), and Rule 8070 (Parking , Shipping, Receiving, Transfer, Fueling, and Service Areas).	*Building Permits*	*SJVUAPCD*	
3-12. If public transit is available in the area, a public transit stop shall be located within safe walking distance from the Project site or included as part of the Project. (Details to be worked out with Merced County Transit staff at the tentative map stage.)	*Tentative Subdivision Map*	*City Planning and Merced County Transit Service*	
3-13. Provide low nitrogen oxide (NOx) emitting and/or high efficiency water heaters.	*Building Permits*	*City Inspection Services*	
3-14. Planting of deciduous trees on the south and westerly facing sides of buildings.	*Building Permits*	*City Inspection Services*	
3-15. If fireplaces are proposed, only natural gas fireplaces, EPA-certified wood burning fireplaces/stoves, or pellet fueled heater should be installed. Conventional open-hearth fireplaces should not be permitted.	*Building Permits*	*City Inspection Services*	

Mitigation Measure	*Timing*	*Agency or Department Consultation*	*City Verification (date and initials)*
3-16. Sidewalks and bikepaths should be installed throughout as much of the project as possible and should be connected to any nearby open space areas, parks, schools, commercial areas, etc.	*Tentative Subdivision Map*	*City Planning*	
3-17. Natural gas lines and electrical outlets should be installed in patio areas to encourage the use of gas barbecues and electric yard tools.	*Building Permits*	*City Inspection Services*	
3-18. Energy efficient design including automated control system for heating/air conditioning and energy efficiency beyond Title 24 requirements, lighting controls and energy-efficient lighting in buildings, increased insulation beyond Title 24 requirements, and light colored roof materials to reflect heat.	*Building Permits*	*City Inspection Services*	
3-19. Install sandbags or other erosion control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent.	*Building Permits*	*City Inspection Services*	
3-20. All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at least once every 24 hours when operation are occurring. (the use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting t limit the visible dust emissions.)	*Building Permits*	*City Inspection Services*	
3-21. Limit the hours of operation of heavy duty equipment to between 7 a.m. and 7 p.m. and/or the amount of equipment in use. (See also mitigation measure 11-2).	*Building Permits*	*City Inspection Services*	
4) BIOLOGICAL RESOURCES			
4-1. The developers shall dedicate to the City a minimum 50-foot-wide corridor from the centerline (or 25 feet from the crown, whichever is greater) of Black Rascal Creek in order to maintain these open space areas as natural riparian preserves and recreation areas per *Merced Vision 2015 General Plan* policy.	*Tentative Subdivision Map*	*City Planning*	

Mitigation Measure	*Timing*	*Agency or Department Consultation*	*City Verification (date and initials)*
4-2. If any trees along Black Rascal Creek or on the Project site that have been determined to be potential nesting sites for raptors are proposed for removal, a pre-construction survey for nesting raptors shall be conducted prior to tree removal and alternatives to removal shall be explored. If removal is approved by the City, between February 1 and September 15, appropriate measures to avoid disturbing any nesting raptors shall be implemented at that time or the trees shall be felled between September 15 and January 31.	*Tentative Subdivision Map*	*City Planning*	
5) CULTURAL RESOURCES			
5-1. If evidence of archaeological artifacts is discovered during construction, all operations within an area at and adjacent to the discovered site shall halt until a qualified archaeologist determines the extent of significance of the site.	*Building Permits*	*City Planning*	
5-2. On-site preservation of a resource is the preferred alternative. Preserving a cultural deposit maintains the artifacts in context and may prevent inadvertent discovery of, or damage to, human burials. Preservation may be accomplished through a number of means such as capping or covering the site with a layer of soil, fencing the site area, and/or incorporation of the resource in a park area.	*Building Permits*	*City Planning*	
6. GEOLOGY AND SOILS			
6-1. Prior to approval of a tentative subdivision map, the City shall review plans for drainage and stormwater run-off control systems and their component facilities to ensure that these systems are non-erosive in design.	*Building Permits*	*City Inspection Services*	

Mitigation Measure	*Timing*	*Agency or Department Consultation*	*City Verification (date and initials)*
6-2. Upon completion of phased construction, subsequent phases shall re-vegetate all exposed soil surfaces within 30 days, or as otherwise approved by the City, to minimize potential topsoil erosion. Reasonable alternatives to re-vegetation may be employed, especially during peak high temperature periods or to avoid negative impacts to nearby agricultural activities, subject to the approval of the City.	*Building Permits*	*City Inspection Services*	
6-3. Projects under review shall be required to submit temporary erosion control plans for construction activities.	*Building Permits*	*City Inspection Services*	
6-4 Prior to the issuance of building permits, the applicant shall retain a qualified geologist or qualified soil specialist to conduct soil samples throughout the Project area to identify expansive soils, and those areas shall be identified on a map for the City.	*Building Permits*	*City Inspection Services*	
6-5 Building plans shall be reviewed by a registered engineer or other professional specializing in geo-technical assessments to ensure that the soils can support the load..	*Building Permits*	*City Inspection Services*	
8) HYDROLOGY AND WATER QUALITY			
8-1. Prior to approval of a tentative subdivision map, the applicant shall demonstrate to the City that storm drainage facilities are adequate to meet Project demands and that improvements are consistent with the Merced County Critical Area Flooding and Drainage Plan and/or the City's Storm Drainage Master Plan.	*Tentative Subdivision Map*	*City Planning*	
8-2. Prior to approval of building permits, the applicants shall demonstrate to the City that temporary erosion control measures will be followed during construction.	*Building Permits*	*City Planning*	

Mitigation Measure	*Timing*	*Agency or Department Consultation*	*City Verification (date and initials)*
11) NOISE			
11-1. Residential development on the Project site shall meet acceptable noise level standards as follows: • A maximum of 45 dB for interior noise level for residential projects. • A maximum of 60 dB for exterior noise level, especially when outdoor activities are important components of a project. • A maximum of 65 dB when all the best available noise-reduction techniques have been exhausted without achieving 60 dB, and the strict application of such a maximum becomes a hindrance to development needed or typical for an area.	*Building Permits*	*City Inspection Services*	
11-2. Grading and construction activity shall be limited to daylight hours (between 7 a.m. and 7 p.m.) in areas where noise sensitive receptors (i.e. adjacent single-family development) are located.	*Building Permits*	*City Inspection Services*	
11-3. In noise sensitive areas, construction equipment, compressors, and generators shall be fitted with heavy duty mufflers specifically designed to reduce noise impacts.	*Building Permits*	*City Inspection Services*	
13) PUBLIC SERVICES			
13-1 Prior to the issuance of building permits, the applicant shall be responsible for the payment of school facility impact fees as adopted by the Merced City School District and Merced Union High School District.	*Building Permits*	*City Inspection Services*	
14) RECREATION			
14-1. The Project developers shall work with the City to locate a neighborhood park site within the Project boundaries. (Details to be addressed at the tentative subdivision map stage.)	*Tentative Subdivision Map*	*City Planning*	

	Mitigation Measure	*Timing*	*Agency or Department Consultation*	*City Verification (date and initials)*
14-2.	The Project developers shall work with the City (and County as applicable) on the design and construction of bike paths along Black Rascal Creek and possibly along the PG&E utility corridor, and to connect the City bike path to the County bike path along Lake Road. (Details and possible reimbursement to be addressed at the tentative subdivision map stage.)	*Tentative Subdivision Map*	*City Planning and County Planning*	
	15) TRANSPORTATION AND TRAFFIC			
15-1	The Project shall pay all fees as required under the City's Public Facilities Impact Fees (Chapter 17.62 of the Merced Municipal Code) prior to building permit issuance.	*Building Permits*	*City Inspection Services*	
15-2	*Traffic Signal at Yosemite and McKee or Hatch:* Owner shall provide financial security acceptable to the City equivalent to a "fair share" (but not to exceed 25 percent) of the cost of a traffic signal at the intersection of either McKee Road and Yosemite Avenue or Hatch Road and Yosemite Avenue, whichever intersection the City ultimately decides to signalize. Scope of improvements includes a traffic signal and related intersection improvements to City standards and to the satisfaction of the City Engineer. The "fair share," final cost, and form of security shall be determined by the City Engineer at the time of the first tentative subdivision map or other discretionary action. The determination of the City Engineer will be subject to appeal to the City Council.	*Tentative Subdivision Map*	*City Planning*	

	Mitigation Measure	***Timing***	***Agency or Department Consultation***	***City Verification (date and initials)***
15-3	*Yosemite Avenue:* The developer shall construct and dedicate any remaining improvements on half of the 94-foot right-of-way for Yosemite Avenue along the Project boundaries. The developer shall construct full frontage improvements (curb, gutter, sidewalks, street trees, street lights, etc.) on Yosemite and at least one travel lane in each direction. The timing of construction of the improvements is to be determined at the subdivision map stage. Construction is subject to reimbursement per Merced Municipal Code (MMC) section 17.58 and/or the Administrative Policy of the Public Facilities Impact Fees (City Council Resolution #98-73), whichever is applicable.	*Tentative Subdivision Map*	*City Planning*	
15-4	*McKee Road*: The developer shall construct and dedicate any remaining improvements on half of the 74-foot right-of-way for McKee Road along the Project boundaries. The developer shall construct full frontage improvements (curb, gutter, sidewalks, street trees, street lights, etc.) on McKee and at least one travel lane in each direction. The timing of construction of the improvements is to be determined at the subdivision map stage. Only off-site construction is subject to reimbursement per Merced Municipal Code (MMC) section 17.58, but no reimbursement is available from the Public Facilities Impact Fees for collectors, such as McKee.	*Tentative Subdivision Map*	*City Planning*	
15-5	*Local and Collector Streets*: The developer shall be responsible for construction and dedication of all interior collector and local streets within the Project boundaries. Construction shall meet all the requirements of the most recent edition of the City of Merced's *Standard Designs for Common Engineering Structures*. No reimbursement is available for these roadways.	*Tentative Subdivision Map*	*City Planning*	

	Mitigation Measure	*Timing*	*Agency or Department Consultation*	*City Verification (date and initials)*
15-6	*Lake Road:* The property owners shall work with the City and the County to address whether a future extension of Lake Road is necessary from Yosemite Avenue south to Olive Avenue as shown in the County's Circulation Element. This issue shall be addressed prior to approval of the first final subdivision map with frontage on the possible Lake Road right-of-way. If the issue is not resolved prior to map approval, right-of-way for the future extension of Lake Road shall be preserved on the map, with the understanding that it might be given back to the property owners in the future if it is not needed.	*Tentative Subdivision Map*	*City Planning and County Planning*	
	16) UTILITIES			
16-1	Prior to approval of a tentative subdivision map, the City shall review the Project application to ensure that wastewater facilities are adequate to meet Project service demands and are consistent with wastewater master plans.	*Tentative Subdivision Map*	*City Planning*	

Copies of This Form Distributed To:

_____ City Council _____ City Manager _____ Dev Serv Dir. _____ Public Works Dir._____ City Engineer _____ Fire Chief
_____ Police Chief _____ Leisure Serv. Dir. _____ County of Merced (Dept. _____) _____ Other (List_____)
_____ Responsible Agency: (List _____)

I hereby certify that I have inspected the project site and that the above information is true to the best of my knowledge.

Name: (Print) _____ **Representing: (Agency/Firm)** _____

Signature: _____ **Date:** _____

APPLICABLE MITIGATION MEASURES OF THE GENERAL PLAN EIR—HUNT FAMILY ANNEXATION

	Mitigation Measure	*Timing*	*Agency or Department Consultation*	*City Verification (date and initials)*
	Plant/Animal Life			
3-a)	When site-specific development proposals are submitted to the City for review and action, surveys should be conducted for special-status species prior to the disturbance of potentially suitable habitat. All surveys will be conducted in accordance with applicable state and federal guidelines.	*Tentative Subdivision Map*	*City Planning*	Completed 10/2/02 with Biological Resources Inventory by Moore Biological Consultants (Appendix D)
	Traffic/Circulation			
7-a)	Appropriate traffic studies shall be prepared for all development projects which can be expected to reduce a road segment or intersection levels of service below "D."	*Tentative Subdivision Map*	*City Planning*	
7-b)	The City shall require all development proposals to contribute, based on their proportionate share of impact, to circulation system improvements necessary to maintain at least a level of service "D" on all road segments and intersections impacted by the development project.	*Certificate of Occupancy*	*City Planning*	
	Public Facilities/Services			
8-d)	Development projects will be required to pay public facilities impact fees as established by the City in accordance with the requirements of State law.	*Certificate of Occupancy*	*City Planning*	

Merced Vision 2015 General Plan
Environmental Mitigation Checklist Form A

Project Name:_____ **File Number:**_____
Approval Date:_____ **EIR**_____ **Conditional Neg. Dec.**_____

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City of Merced's Mitigation Monitoring requirements with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6)

Mitigation Measure	Type	Monitoring Dept.	Shown on Plans	Verified Implementation	Remarks
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					

(Add additional Measures as Necessary)

Explanation of Headings:

Type:	Project, ongoing, cumulative.
Monitoring Dept.	Department or Agency responsible for monitoring a particular mitigation measure.
Shown on Plans:	When mitigation measure is shown on plans, this column will be initialed and dated.
Verified Implementation:	When a mitigation measure has been implemented, this column will be initialed and dated.
8-3. Remarks:	Area for describing status of ongoing mitigation measure, or for other information.

Merced Vision 2015 General Plan
Mitigation Measure Monitoring Checklist—Form B

Monitoring Phase: _____**Pre-Construction** _____**Construction**

Project File Number: _____

Project Name: _____

Brief Project Description: _____

Project Location: _____

Requirement Met:

Date	Yes	No	Description of Mitigation Measures
_____	____	____	1._____
_____	____	____	2._____
_____	____	____	3._____
_____	____	____	4._____
_____	____	____	5._____

Requirement On-Going:

Date	Yes	No	Description of Mitigation Measures
_____	____	____	1._____
_____	____	____	2._____
_____	____	____	3._____
_____	____	____	4._____
_____	____	____	5._____

Trustee Agency	Date	Yes	No
1._____	_____	____	_____
2._____	_____	____	_____
3._____	_____	____	_____
4._____	_____	____	_____

Copies of This Form Distributed To:

_____ City Council _____ City Manager _____ Dev Serv Dir.. _____ Public Works Dir.
_____ City Engineer _____ Fire Chief _____ Police Chief _____ Leisure Services Dir.
_____ County of Merced (Dept. _____) _____Other (List_____)
_____ Responsible Agency: (List _____ _____)

I hereby certify that I have inspected the project site and that the above information is true to the best of my knowledge.

Name: (Print) _____
Representing: (Agency/Firm) _____
Signature: _____
Date:_____

EXHIBIT A

APPENDIX B
AIR QUALITY ANALYSIS

Rincon Consultants, Inc.
4825 J Street, Suite 200
Sacramento, California 95819

916 706 1374 OFFICE AND FAX

info@rinconconsultants.com
www.rinconconsultants.com

July 10, 2019
Project No: 19-08088

Raj Joshi
Merced Holdings LP
Via email: raj@builderific.com

Subject: **Air Quality Technical Analysis for the Shoppes at University Village Mixed-Use Project at Yosemite Avenue and McKee Road in the City of Merced, California**

Dear Mr. Joshi:

Rincon Consultants, Inc. (Rincon) is pleased to provide this memorandum summarizing the findings of an air quality technical analysis for the Shoppes at University Village Mixed-Use Project (proposed project) located at the southeast corner of Yosemite Avenue and McKee Road in the City of Merced, California. Rincon assessed the project's air quality impacts in accordance with the methodologies outlined in the San Joaquin Valley Air Pollution Control District (SJVAPCD) *CEQA Air Quality Handbook* and supplemental guidance. The methodologies and results are summarized below.

Project Description

The project site is located on approximately 5.94 acres at the southeast corner of Yosemite Avenue and McKee Road in the City of Merced. The project would include construction of three residential buildings and one mixed-use building. Building 1 would include 102 residential units; Building 2 would include 56 residential units, 18,000 square feet (sf) of commercial space, and 18,000 sf of retail and common space;[1] Building 3 would include 102 residential units; and Building 4 would include 168 residential units. Based on applicant provided information, the residential units would primarily be used as student housing. The project would also include 376 vehicular parking spaces, nine of which would be American with Disabilities Act compliant and 12 of which would be established as electric vehicle charging stations.

Impact Analysis

Methodology

The project's construction and operational criteria pollutant emissions were estimated using the California Emissions Estimator Model (CalEEMod), version 2016.3.2. CalEEMod uses project-specific information, including the project's land uses, square footages, location, and construction information to estimate a project's operational and construction emissions.

[1] Based on applicant provided information, it is assumed that the community space would include a fast food restaurant without drive-through (4,500 sf), a health club (9,000 sf) for use by residents only, and an office space (4,500 sf).

This report assumes that construction would begin in January 2020 and occur over approximately 14 months based on CalEEMod defaults. Modeling utilized CalEEMod defaults for construction equipment and, because the site is relatively flat, it was assumed that no import or export would be required. Trip generation rates provided by the San Mateo Planning Department were used in the analysis. Trip generation rates provided and input into CalEEMod include 3.31 trips per day for residential uses and 44.32 trips per day for the commercial and retail uses. The fleet mix for the residential units, which would be used by students, was altered from CalEEMod defaults to be more consistent with a fleet mix that represents student housing.[2] Specifically, the percentage of the fleet mix assigned to motorhomes and school buses was reduced to zero and that percentage of trips was added to the light duty automotive (LDA) category. Additionally, the heavy-heavy-duty (HHD) vehicle class was reduced from approximately 15 percent of the fleet mix to five percent of the fleet mix and the approximately 10 percent removed from HHD was added to the medium-heavy-duty (MHD) vehicle class to represent future conditions on the project site. Finally, it was assumed that the units would not include hearths. CalEEMod results and assumptions are included as an attachment.

Significance Thresholds

The SJVAPCD recommends the use of quantitative thresholds to determine the significance of temporary construction-related pollutant emissions and project operational emissions. SJVAPCD's project-specific and cumulative significance thresholds are the same and where projects exceed the project-specific significance thresholds they are considered cumulatively considerable.[3] The SJVAPCD has recommended regional thresholds for emissions of reactive organic gases (ROG), nitrous oxide (NO_X), carbon monoxide (CO), sulfur oxide (SO_X), particulate matter with a diameter between 2.5 and 10 micrometers (PM_{10}), and particulate matter with a diameter of 2.5 micrometers or less ($PM_{2.5}$). SJVAPCD's construction and operational significance thresholds are shown in Table .

Table 1 Air Quality Thresholds of Significance – Criteria Pollutants

	Maximum Annual Emissions (tons per year)					
Emission Source	ROG	NO_x	CO	SO_x	PM_{10}	$PM_{2.5}$
Construction Emissions	10	10	100	27	15	15
Operational Emissions	10	10	100	27	15	15

Source: SJVAPCD. 2015. San Joaquin Valley APCD Air Quality Significance Thresholds – Criteria Pollutants. http://www.valleyair.org/transportation/0714-GAMAQI-Criteria-Pollutant-Thresholds-of-Significance.pdf

Results

Construction Emissions

Table 2 summarizes the estimated maximum daily emissions of pollutants associated with construction of the project. As shown in Table 2, ROG, NO_X, CO, SO_X, PM_{10}, and $PM_{2.5}$ emissions would not exceed

[2] The default fleet mix used for the retail component remained unchanged.
[3] SJVAPCD. 2015. *San Joaquin Valley APCD Guidance for Assessing and Mitigating Air Quality Impacts. http://www.valleyair.org/transportation/GAMAQI_3-19-15.pdf*

SJVAPCD regional thresholds. Therefore, project construction would not violate an air quality standard or contribute substantially to an existing or projected air quality violation.

Table 2 Construction Emissions

	Maximum Annual Emissions (tons per year)					
Emission Source	ROG	NO_x	CO	SO_x	PM_{10}	$PM_{2.5}$
2020 Construction Emissions	0.5	3.9	3.9	<0.1	0.7	0.3
2021 Construction Emissions	4.3	0.1	0.2	<0.1	<0.1	<0.1
Maximum Construction Emissions	**4.3**	**3.9**	**3.9**	**<0.1**	**0.7**	**0.3**
SJVAPCD Construction Thresholds	*10*	*10*	*100*	*27*	*15*	*15*
Threshold Exceeded?	**No**	**No**	**No**	**No**	**No**	**No**

Notes: All emissions modeling was done using CalEEMod. See Attachment for modeling worksheets.

Operational Emissions

Table 3 summarizes project-related operational emissions by emission source. The majority of project-related operational emissions would be associated with vehicle trips to and from the project site. As shown in Table 3, project operational emissions would not exceed SJVAPCD regional thresholds for criteria pollutants. Therefore, the project would not violate an air quality standard or contribute substantially to an existing or projected air quality violation. Because criteria pollutant emissions and regional thresholds are cumulative in nature, the project would not result in a cumulatively considerable net increase of a criteria pollutant.

Table 3 Operational Emissions

	Maximum Annual Emissions (tons per year)					
Emission Source	ROG	NO_x	CO	SO_x	PM_{10}	$PM_{2.5}$
Area	2.3	<0.1	3.2	<0.1	<0.1	<0.1
Energy	<0.1	0.3	0.2	<0.1	<0.1	<0.1
Mobile	0.8	7.7	7.7	<0.1	2.1	0.6
Total Project Emissions	**3.2**	**8.0**	**11.0**	**<0.1**	**2.1**	**0.6**
SJVAPCD Operational Thresholds	*10*	*10*	*100*	*27*	*15*	*15*
Threshold Exceeded?	**No**	**No**	**No**	**No**	**No**	**No**

Notes: All emissions modeling was done using CalEEMod. See Attachment for modeling worksheets.

Conclusions

Based on the analysis, the project's operational and construction emissions would not exceed the SJVAPCD recommended regional or local significance thresholds.

Thank you for the opportunity to work with you on this project. Please contact us if you have any questions or concerns regarding the information presented herein.

Sincerely,
Rincon Consultants, Inc.

Kari Zajac, MESM
Project Manager

Matt Maddox, AICP, MESM
Principal

Attachments

CalEEMod Results and Assumptions

Attachment

California Emissions Estimator Model Results and Assumptions

Shoppes at University Villege Project - 19-08088

Merced County, Annual

1.0 Project Characteristics

1.1 Land Usage

Land Uses	Size	Metric	Lot Acreage	Floor Surface Area	Population
General Office Building	4.50	1000sqft	0.00	4,500.00	0
Parking Lot	376.00	Space	3.38	150,400.00	0
Fast Food Restaurant w/o Drive Thru	4.50	1000sqft	0.00	4,500.00	0
Health Club	9.00	1000sqft	0.00	9,000.00	0
Apartments Mid Rise	428.00	Dwelling Unit	2.56	428,000.00	428
Strip Mall	18.00	1000sqft	0.00	18,000.00	0

1.2 Other Project Characteristics

Urbanization	Urban	**Wind Speed (m/s)**	2.2	**Precipitation Freq (Days)**	49
Climate Zone	3			**Operational Year**	2022
Utility Company	Pacific Gas & Electric Company				
CO2 Intensity (lb/MWhr)	641.35	**CH4 Intensity (lb/MWhr)**	0.029	**N2O Intensity (lb/MWhr)**	0.006

1.3 User Entered Comments & Non-Default Data

ATTACHMENT 12 - Page 160

Project Characteristics -

Land Use - Source: applicant provided site plans

Construction Phase -

Vehicle Trips - Source: City of Merced Planning Department

Fleet Mix - Assumed a fleet mix that is more consistent with student housing-- reduced motorhome and school bus to 0 and added values to LDA; reduced HHD to 5% and added remaining ~10.4% to MHD

Area Mitigation -

ATTACHMENT 12 - Page 161

Shoppes at University Villege Project - 19-08088 - Merced County, Annual

Table Name	Column Name	Default Value	New Value
tblFleetMix	HHD	0.15	0.05
tblFleetMix	LDA	0.50	0.50
tblFleetMix	MH	6.2800e-004	0.00
tblFleetMix	MHD	0.02	0.12
tblFleetMix	SBUS	1.5540e-003	0.00
tblLandUse	LotAcreage	0.10	0.00
tblLandUse	LotAcreage	0.10	0.00
tblLandUse	LotAcreage	0.21	0.00
tblLandUse	LotAcreage	11.26	2.56
tblLandUse	LotAcreage	0.41	0.00
tblLandUse	Population	1,224.00	428.00
tblVehicleTrips	ST_TR	6.39	3.31
tblVehicleTrips	ST_TR	696.00	0.00
tblVehicleTrips	ST_TR	2.46	0.00
tblVehicleTrips	ST_TR	20.87	0.00
tblVehicleTrips	SU_TR	5.86	3.31
tblVehicleTrips	SU_TR	500.00	0.00
tblVehicleTrips	SU_TR	1.05	0.00
tblVehicleTrips	SU_TR	26.73	0.00
tblVehicleTrips	WD_TR	6.65	3.31
tblVehicleTrips	WD_TR	716.00	0.00
tblVehicleTrips	WD_TR	11.03	0.00
tblVehicleTrips	WD_TR	32.93	0.00
tblWoodstoves	NumberCatalytic	2.56	0.00
tblWoodstoves	NumberNoncatalytic	2.56	0.00

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2.0 Emissions Summary

2.1 Overall Construction

Unmitigated Construction

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Year	tons/yr										MT/yr					
2020	0.5294	3.9020	3.9337	9.6800e-003	0.5679	0.1615	0.7294	0.1942	0.1514	0.3456	0.0000	871.2893	871.2893	0.1137	0.0000	874.1310
2021	4.3201	0.1341	0.1775	3.1000e-004	7.2200e-003	7.1000e-003	0.0143	1.9200e-003	6.6000e-003	8.5200e-003	0.0000	26.9500	26.9500	6.2000e-003	0.0000	27.1050
Maximum	4.3201	3.9020	3.9337	9.6800e-003	0.5679	0.1615	0.7294	0.1942	0.1514	0.3456	0.0000	871.2893	871.2893	0.1137	0.0000	874.1310

Mitigated Construction

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Year	tons/yr										MT/yr					
2020	0.5294	3.9020	3.9337	9.6800e-003	0.5679	0.1615	0.7294	0.1942	0.1514	0.3456	0.0000	871.2889	871.2889	0.1137	0.0000	874.1307
2021	4.3201	0.1341	0.1775	3.1000e-004	7.2200e-003	7.1000e-003	0.0143	1.9200e-003	6.6000e-003	8.5200e-003	0.0000	26.9500	26.9500	6.2000e-003	0.0000	27.1050
Maximum	4.3201	3.9020	3.9337	9.6800e-003	0.5679	0.1615	0.7294	0.1942	0.1514	0.3456	0.0000	871.2889	871.2889	0.1137	0.0000	874.1307

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	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio-CO2	Total CO2	CH4	N20	CO2e
Percent Reduction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Quarter	Start Date	End Date	Maximum Unmitigated ROG + NOX (tons/quarter)	Maximum Mitigated ROG + NOX (tons/quarter)
1	1-1-2020	3-31-2020	1.1189	1.1189
2	4-1-2020	6-30-2020	1.1011	1.1011
3	7-1-2020	9-30-2020	1.1132	1.1132
4	10-1-2020	12-31-2020	1.1067	1.1067
5	1-1-2021	3-31-2021	4.4589	4.4589
		Highest	4.4589	4.4589

2.2 Overall Operational

Unmitigated Operational

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Area	2.3669	0.1968	3.2533	1.1900e-003		0.0305	0.0305		0.0305	0.0305	0.0000	190.6113	190.6113	8.5800e-003	3.4000e-003	191.8388
Energy	0.0356	0.3081	0.1593	1.9400e-003		0.0246	0.0246		0.0246	0.0246	0.0000	1,042.8785	1,042.8785	0.0380	0.0129	1,047.6776
Mobile	0.7728	7.6977	7.6656	0.0339	2.0274	0.0341	2.0614	0.5509	0.0322	0.5831	0.0000	3,147.9533	3,147.9533	0.2333	0.0000	3,153.7848
Waste						0.0000	0.0000		0.0000	0.0000	65.5884	0.0000	65.5884	3.8762	0.0000	162.4925
Water						0.0000	0.0000		0.0000	0.0000	10.1259	89.8938	80.0196	1.0432	0.0252	113.6121
Total	3.1753	8.2026	11.0782	0.0370	2.0274	0.0892	2.1166	0.5509	0.0873	0.6382	75.7143	4,451.3368	4,527.0611	5.1982	0.0415	4,669.4067

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2.2 Overall Operational

Mitigated Operational

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Area	2.3482	0.0387	3.1852	1.7000e-004		0.0176	0.0176		0.0176	0.0176	0.0000	5.1985	5.1985	5.0300e-003	0.0000	5.3242
Energy	0.0356	0.3081	0.1593	1.9400e-003		0.0246	0.0246		0.0246	0.0246	0.0000	1,042.8785	1,042.8785	0.0380	0.0129	1,047.6776
Mobile	0.7728	7.6977	7.6656	0.0339	2.0274	0.0341	2.0614	0.5509	0.0322	0.5831	0.0000	3,147.9533	3,147.9533	0.2333	0.0000	3,153.7848
Waste						0.0000	0.0000		0.0000	0.0000	65.5884	0.0000	65.5884	3.8762	0.0000	162.4925
Water						0.0000	0.0000		0.0000	0.0000	10.1259	69.8938	80.0196	1.0432	0.0252	113.6121
Total	3.1566	8.0425	11.0101	0.0360	2.0274	0.0762	2.1036	0.5509	0.0744	0.6253	75.7143	4,266.9240	4,341.8383	5.1956	0.0381	4,482.8911

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio-CO2	Total CO2	CH4	N20	CO2e
Percent Reduction	0.69	1.95	0.61	2.75	0.00	14.52	0.61	0.00	14.83	2.03	0.00	4.17	4.10	0.07	8.19	3.99

3.0 Construction Detail

Construction Phase

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Phase Number	Phase Name	Phase Type	Start Date	End Date	Num Days Week	Num Days	Phase Description
1	Site Preparation	Site Preparation	1/1/2020	1/14/2020	5	10	
2	Grading	Grading	1/15/2020	2/11/2020	5	20	
3	Building Construction	Building Construction	2/12/2020	12/29/2020	5	230	
4	Paving	Paving	12/30/2020	1/26/2021	5	20	
5	Architectural Coating	Architectural Coating	1/27/2021	2/23/2021	5	20	

Acres of Grading (Site Preparation Phase): 0

Acres of Grading (Grading Phase): 10

Acres of Paving: 3.38

Residential Indoor: 866,700; Residential Outdoor: 288,900; Non-Residential Indoor: 54,000; Non-Residential Outdoor: 18,000; Striped Parking Area: 9,024 (Architectural Coating – sqft)

OffRoad Equipment

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Phase Name	Offroad Equipment Type	Amount	Usage Hours	Horse Power	Load Factor
Architectural Coating	Air Compressors	1	6.00	78	0.48
Grading	Excavators	1	8.00	158	0.38
Building Construction	Cranes	1	7.00	231	0.29
Building Construction	Forklifts	3	8.00	89	0.20
Building Construction	Generator Sets	1	8.00	84	0.74
Paving	Pavers	2	8.00	130	0.42
Paving	Rollers	2	8.00	80	0.38
Grading	Rubber Tired Dozers	1	8.00	247	0.40
Building Construction	Tractors/Loaders/Backhoes	3	7.00	97	0.37
Grading	Graders	1	8.00	187	0.41
Grading	Tractors/Loaders/Backhoes	3	8.00	97	0.37
Paving	Paving Equipment	2	8.00	132	0.36
Site Preparation	Tractors/Loaders/Backhoes	4	8.00	97	0.37
Site Preparation	Rubber Tired Dozers	3	8.00	247	0.40
Building Construction	Welders	1	8.00	46	0.45

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Trips and VMT

Phase Name	Offroad Equipment Count	Worker Trip Number	Vendor Trip Number	Hauling Trip Number	Worker Trip Length	Vendor Trip Length	Hauling Trip Length	Worker Vehicle Class	Vendor Vehicle Class	Hauling Vehicle Class
Site Preparation	7	18.00	0.00	0.00	10.80	7.30	20.00	LD_Mix	HDT_Mix	HHDT
Grading	6	15.00	0.00	0.00	10.80	7.30	20.00	LD_Mix	HDT_Mix	HHDT
Building Construction	9	384.00	76.00	0.00	10.80	7.30	20.00	LD_Mix	HDT_Mix	HHDT
Paving	6	15.00	0.00	0.00	10.80	7.30	20.00	LD_Mix	HDT_Mix	HHDT
Architectural Coating	1	77.00	0.00	0.00	10.80	7.30	20.00	LD_Mix	HDT_Mix	HHDT

3.1 Mitigation Measures Construction

3.2 Site Preparation - 2020

Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Fugitive Dust					0.0903	0.0000	0.0903	0.0497	0.0000	0.0497	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Off-Road	0.0204	0.2121	0.1076	1.9000e-004		0.0110	0.0110		0.0101	0.0101	0.0000	16.7153	16.7153	5.4100e-003	0.0000	16.8505
Total	**0.0204**	**0.2121**	**0.1076**	**1.9000e-004**	**0.0903**	**0.0110**	**0.1013**	**0.0497**	**0.0101**	**0.0598**	**0.0000**	**16.7153**	**16.7153**	**5.4100e-003**	**0.0000**	**16.8505**

Unmitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	4.1000e-004	2.9000e-004	3.0000e-003	1.0000e-005	7.2000e-004	1.0000e-005	7.2000e-004	1.9000e-004	1.0000e-005	2.0000e-004	0.0000	0.6530	0.6530	2.0000e-005	0.0000	0.6536
Total	**4.1000e-004**	**2.9000e-004**	**3.0000e-003**	**1.0000e-005**	**7.2000e-004**	**1.0000e-005**	**7.2000e-004**	**1.9000e-004**	**1.0000e-005**	**2.0000e-004**	**0.0000**	**0.6530**	**0.6530**	**2.0000e-005**	**0.0000**	**0.6536**

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3.2 Site Preparation - 2020

Mitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Fugitive Dust					0.0903	0.0000	0.0903	0.0497	0.0000	0.0497	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Off-Road	0.0204	0.2121	0.1076	1.9000e-004		0.0110	0.0110		0.0101	0.0101	0.0000	16.7153	16.7153	5.4100e-003	0.0000	16.8505
Total	0.0204	0.2121	0.1076	1.9000e-004	0.0903	0.0110	0.1013	0.0497	0.0101	0.0598	0.0000	16.7153	16.7153	5.4100e-003	0.0000	16.8505

Mitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	4.1000e-004	2.9000e-004	3.0000e-003	1.0000e-005	7.2000e-004	1.0000e-005	7.2000e-004	1.9000e-004	1.0000e-005	2.0000e-004	0.0000	0.6530	0.6530	2.0000e-005	0.0000	0.6536
Total	4.1000e-004	2.9000e-004	3.0000e-003	1.0000e-005	7.2000e-004	1.0000e-005	7.2000e-004	1.9000e-004	1.0000e-005	2.0000e-004	0.0000	0.6530	0.6530	2.0000e-005	0.0000	0.6536

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3.3 Grading - 2020

Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Fugitive Dust					0.0655	0.0000	0.0655	0.0337	0.0000	0.0337	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Off-Road	0.0243	0.2639	0.1605	3.0000e-004		0.0127	0.0127		0.0117	0.0117	0.0000	26.0588	26.0588	8.4300e-003	0.0000	26.2694
Total	0.0243	0.2639	0.1605	3.0000e-004	0.0655	0.0127	0.0783	0.0337	0.0117	0.0454	0.0000	26.0588	26.0588	8.4300e-003	0.0000	26.2694

Unmitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	6.8000e-004	4.8000e-004	5.0000e-003	1.0000e-005	1.2000e-003	1.0000e-005	1.2100e-003	3.2000e-004	1.0000e-005	3.3000e-004	0.0000	1.0884	1.0884	4.0000e-005	0.0000	1.0893
Total	6.8000e-004	4.8000e-004	5.0000e-003	1.0000e-005	1.2000e-003	1.0000e-005	1.2100e-003	3.2000e-004	1.0000e-005	3.3000e-004	0.0000	1.0884	1.0884	4.0000e-005	0.0000	1.0893

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3.3 Grading - 2020

Mitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Fugitive Dust					0.0655	0.0000	0.0655	0.0337	0.0000	0.0337	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Off-Road	0.0243	0.2639	0.1605	3.0000e-004		0.0127	0.0127		0.0117	0.0117	0.0000	26.0587	26.0587	8.4300e-003	0.0000	26.2694
Total	0.0243	0.2639	0.1605	3.0000e-004	0.0655	0.0127	0.0783	0.0337	0.0117	0.0454	0.0000	26.0587	26.0587	8.4300e-003	0.0000	26.2694

Mitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	6.8000e-004	4.8000e-004	5.0000e-003	1.0000e-005	1.2000e-003	1.0000e-005	1.2100e-003	3.2000e-004	1.0000e-005	3.3000e-004	0.0000	1.0884	1.0884	4.0000e-005	0.0000	1.0893
Total	6.8000e-004	4.8000e-004	5.0000e-003	1.0000e-005	1.2000e-003	1.0000e-005	1.2100e-003	3.2000e-004	1.0000e-005	3.3000e-004	0.0000	1.0884	1.0884	4.0000e-005	0.0000	1.0893

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3.4 Building Construction - 2020

Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Off-Road	0.2438	2.2084	1.9376	3.1000e-003		0.1285	0.1285		0.1208	0.1208	0.0000	266.3515	266.3515	0.0650	0.0000	267.9760
Total	**0.2438**	**2.2084**	**1.9376**	**3.1000e-003**		**0.1285**	**0.1285**		**0.1208**	**0.1208**	**0.0000**	**266.3515**	**266.3515**	**0.0650**	**0.0000**	**267.9760**

Unmitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0370	1.0624	0.2323	2.5100e-003	0.0579	5.7800e-003	0.0636	0.0167	5.5300e-003	0.0223	0.0000	237.8853	237.8853	0.0236	0.0000	238.4748
Worker	0.2010	0.1424	1.4726	3.5500e-003	0.3522	2.7500e-003	0.3549	0.0936	2.5400e-003	0.0962	0.0000	320.4253	320.4253	0.0106	0.0000	320.6895
Total	**0.2380**	**1.2048**	**1.7049**	**6.0600e-003**	**0.4100**	**8.5300e-003**	**0.4186**	**0.1103**	**8.0700e-003**	**0.1184**	**0.0000**	**558.3106**	**558.3106**	**0.0341**	**0.0000**	**559.1643**

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3.4 Building Construction - 2020

Mitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Off-Road	0.2438	2.2064	1.9376	3.1000e-003		0.1285	0.1285		0.1208	0.1208	0.0000	266.3512	266.3512	0.0650	0.0000	267.9757
Total	0.2438	2.2064	1.9376	3.1000e-003		0.1285	0.1285		0.1208	0.1208	0.0000	266.3512	266.3512	0.0650	0.0000	267.9757

Mitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0370	1.0624	0.2323	2.5100e-003	0.0579	5.7800e-003	0.0636	0.0167	5.5300e-003	0.0223	0.0000	237.8853	237.8853	0.0238	0.0000	238.4748
Worker	0.2010	0.1424	1.4726	3.5500e-003	0.3522	2.7500e-003	0.3549	0.0936	2.5400e-003	0.0962	0.0000	320.4253	320.4253	0.0106	0.0000	320.6895
Total	0.2380	1.2048	1.7049	6.0600e-003	0.4100	8.5300e-003	0.4186	0.1103	8.0700e-003	0.1184	0.0000	558.3106	558.3106	0.0341	0.0000	559.1643

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3.5 Paving - 2020

Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Off-Road	1.3600e-003	0.0141	0.0147	2.0000e-005		7.5000e-004	7.5000e-004		6.9000e-004	6.9000e-004	0.0000	2.0028	2.0028	6.5000e-004	0.0000	2.0190
Paving	4.4000e-004					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Total	**1.8000e-003**	**0.0141**	**0.0147**	**2.0000e-005**		**7.5000e-004**	**7.5000e-004**		**6.9000e-004**	**6.9000e-004**	**0.0000**	**2.0028**	**2.0028**	**6.5000e-004**	**0.0000**	**2.0190**

Unmitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	7.0000e-005	5.0000e-005	5.0000e-004	0.0000	1.2000e-004	0.0000	1.2000e-004	3.0000e-005	0.0000	3.0000e-005	0.0000	0.1088	0.1088	0.0000	0.0000	0.1089
Total	**7.0000e-005**	**5.0000e-005**	**5.0000e-004**	**0.0000**	**1.2000e-004**	**0.0000**	**1.2000e-004**	**3.0000e-005**	**0.0000**	**3.0000e-005**	**0.0000**	**0.1088**	**0.1088**	**0.0000**	**0.0000**	**0.1089**

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3.5 Paving - 2020

Mitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Off-Road	1.3600e-003	0.0141	0.0147	2.0000e-005		7.5000e-004	7.5000e-004		6.9000e-004	6.9000e-004	0.0000	2.0028	2.0028	6.5000e-004	0.0000	2.0190
Paving	4.4000e-004					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Total	1.8000e-003	0.0141	0.0147	2.0000e-005		7.5000e-004	7.5000e-004		6.9000e-004	6.9000e-004	0.0000	2.0028	2.0028	6.5000e-004	0.0000	2.0190

Mitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	7.0000e-005	5.0000e-005	5.0000e-004	0.0000	1.2000e-004	0.0000	1.2000e-004	3.0000e-005	0.0000	3.0000e-005	0.0000	0.1088	0.1088	0.0000	0.0000	0.1089
Total	7.0000e-005	5.0000e-005	5.0000e-004	0.0000	1.2000e-004	0.0000	1.2000e-004	3.0000e-005	0.0000	3.0000e-005	0.0000	0.1088	0.1088	0.0000	0.0000	0.1089

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3.5 Paving - 2021

Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Off-Road	0.0113	0.1163	0.1319	2.1000e-004		6.1000e-003	6.1000e-003		5.6100e-003	5.6100e-003	0.0000	18.0211	18.0211	5.8300e-003	0.0000	18.1668
Paving	3.9900e-003					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Total	0.0153	0.1163	0.1319	2.1000e-004		6.1000e-003	6.1000e-003		5.6100e-003	5.6100e-003	0.0000	18.0211	18.0211	5.8300e-003	0.0000	18.1668

Unmitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	5.7000e-004	3.9000e-004	4.1000e-003	1.0000e-005	1.0800e-003	1.0000e-005	1.0800e-003	2.9000e-004	1.0000e-005	2.9000e-004	0.0000	0.9511	0.9511	3.0000e-005	0.0000	0.9518
Total	5.7000e-004	3.9000e-004	4.1000e-003	1.0000e-005	1.0800e-003	1.0000e-005	1.0800e-003	2.9000e-004	1.0000e-005	2.9000e-004	0.0000	0.9511	0.9511	3.0000e-005	0.0000	0.9518

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3.5 Paving - 2021

Mitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Off-Road	0.0113	0.1163	0.1319	2.1000e-004		6.1000e-003	6.1000e-003		5.6100e-003	5.6100e-003	0.0000	18.0211	18.0211	5.8300e-003	0.0000	18.1668
Paving	3.9900e-003					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Total	0.0153	0.1163	0.1319	2.1000e-004		6.1000e-003	6.1000e-003		5.6100e-003	5.6100e-003	0.0000	18.0211	18.0211	5.8300e-003	0.0000	18.1668

Mitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	5.7000e-004	3.9000e-004	4.1000e-003	1.0000e-005	1.0800e-003	1.0000e-005	1.0800e-003	2.9000e-004	1.0000e-005	2.9000e-004	0.0000	0.9511	0.9511	3.0000e-005	0.0000	0.9518
Total	5.7000e-004	3.9000e-004	4.1000e-003	1.0000e-005	1.0800e-003	1.0000e-005	1.0800e-003	2.9000e-004	1.0000e-005	2.9000e-004	0.0000	0.9511	0.9511	3.0000e-005	0.0000	0.9518

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3.6 Architectural Coating - 2021

Unmitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Archit. Coating	4.2968					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Off-Road	2.1900e-003	0.0153	0.0182	3.0000e-005		9.4000e-004	9.4000e-004		9.4000e-004	9.4000e-004	0.0000	2.5533	2.5533	1.8000e-004	0.0000	2.5576
Total	**4.3010**	**0.0153**	**0.0182**	**3.0000e-005**		**9.4000e-004**	**9.4000e-004**		**9.4000e-004**	**9.4000e-004**	**0.0000**	**2.5533**	**2.5533**	**1.8000e-004**	**0.0000**	**2.5576**

Unmitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	3.2200e-003	2.2100e-003	0.0234	6.0000e-005	6.1400e-003	5.0000e-005	6.1900e-003	1.6300e-003	4.0000e-005	1.6800e-003	0.0000	5.4246	5.4246	1.7000e-004	0.0000	5.4287
Total	**3.2200e-003**	**2.2100e-003**	**0.0234**	**6.0000e-005**	**6.1400e-003**	**5.0000e-005**	**6.1900e-003**	**1.6300e-003**	**4.0000e-005**	**1.6800e-003**	**0.0000**	**5.4246**	**5.4246**	**1.7000e-004**	**0.0000**	**5.4287**

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3.6 Architectural Coating - 2021

Mitigated Construction On-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Archit. Coating	4.2988					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Off-Road	2.1900e-003	0.0153	0.0182	3.0000e-005		9.4000e-004	9.4000e-004		9.4000e-004	9.4000e-004	0.0000	2.5533	2.5533	1.8000e-004	0.0000	2.5576
Total	4.3010	0.0153	0.0182	3.0000e-005		9.4000e-004	9.4000e-004		9.4000e-004	9.4000e-004	0.0000	2.5533	2.5533	1.8000e-004	0.0000	2.5576

Mitigated Construction Off-Site

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Hauling	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Vendor	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Worker	3.2200e-003	2.2100e-003	0.0234	6.0000e-005	6.1400e-003	5.0000e-005	6.1900e-003	1.6300e-003	4.0000e-005	1.6800e-003	0.0000	5.4246	5.4246	1.7000e-004	0.0000	5.4287
Total	3.2200e-003	2.2100e-003	0.0234	6.0000e-005	6.1400e-003	5.0000e-005	6.1900e-003	1.6300e-003	4.0000e-005	1.6800e-003	0.0000	5.4246	5.4246	1.7000e-004	0.0000	5.4287

4.0 Operational Detail - Mobile

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4.1 Mitigation Measures Mobile

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Mitigated	0.7728	7.6977	7.6656	0.0339	2.0274	0.0341	2.0614	0.5509	0.0322	0.5831	0.0000	3,147.9533	3,147.9533	0.2333	0.0000	3,153.7848
Unmitigated	0.7728	7.6977	7.6656	0.0339	2.0274	0.0341	2.0614	0.5509	0.0322	0.5831	0.0000	3,147.9533	3,147.9533	0.2333	0.0000	3,153.7848

4.2 Trip Summary Information

	Average Daily Trip Rate			Unmitigated	Mitigated
Land Use	Weekday	Saturday	Sunday	Annual VMT	Annual VMT
Apartments Mid Rise	1,416.68	1,416.68	1416.68	4,126,377	4,126,377
Fast Food Restaurant w/o Drive Thru	0.00	0.00	0.00		
General Office Building	0.00	0.00	0.00		
Health Club	0.00	0.00	0.00		
Parking Lot	0.00	0.00	0.00		
Strip Mall	797.76	756.72	367.74	1,124,941	1,124,941
Total	2,214.44	2,173.40	1,784.42	5,251,318	5,251,318

4.3 Trip Type Information

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	Miles			Trip %			Trip Purpose %		
Land Use	H-W or C-W	H-S or C-C	H-O or C-NW	H-W or C-W	H-S or C-C	H-O or C-NW	Primary	Diverted	Pass-by
Apartments Mid Rise	10.80	7.30	7.50	46.90	17.40	35.70	86	11	3
Fast Food Restaurant w/o Drive	9.50	7.30	7.30	1.50	79.50	19.00	51	37	12
General Office Building	9.50	7.30	7.30	33.00	48.00	19.00	77	19	4
Health Club	9.50	7.30	7.30	16.90	64.10	19.00	52	39	9
Parking Lot	9.50	7.30	7.30	0.00	0.00	0.00	0	0	0
Strip Mall	9.50	7.30	7.30	16.60	64.40	19.00	45	40	15

4.4 Fleet Mix

Land Use	LDA	LDT1	LDT2	MDV	LHD1	LHD2	MHD	HHD	OBUS	UBUS	MCY	SBUS	MH
Apartments Mid Rise	0.500680	0.030090	0.155509	0.109662	0.018147	0.004601	0.120527	0.050000	0.002397	0.002156	0.006230	0.000000	0.000000
Fast Food Restaurant w/o Drive Thru	0.498498	0.030090	0.155509	0.109662	0.018147	0.004601	0.015536	0.154991	0.002397	0.002156	0.006230	0.001554	0.000628
General Office Building	0.498498	0.030090	0.155509	0.109662	0.018147	0.004601	0.015536	0.154991	0.002397	0.002156	0.006230	0.001554	0.000628
Health Club	0.498498	0.030090	0.155509	0.109662	0.018147	0.004601	0.015536	0.154991	0.002397	0.002156	0.006230	0.001554	0.000628
Parking Lot	0.498498	0.030090	0.155509	0.109662	0.018147	0.004601	0.015536	0.154991	0.002397	0.002156	0.006230	0.001554	0.000628
Strip Mall	0.498498	0.030090	0.155509	0.109662	0.018147	0.004601	0.015536	0.154991	0.002397	0.002156	0.006230	0.001554	0.000628

5.0 Energy Detail

Historical Energy Use: N

5.1 Mitigation Measures Energy

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	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Electricity Mitigated						0.0000	0.0000		0.0000	0.0000	0.0000	690.7751	690.7751	0.0312	6.4600e-003	693.4818
Electricity Unmitigated						0.0000	0.0000		0.0000	0.0000	0.0000	690.7751	690.7751	0.0312	6.4600e-003	693.4818
NaturalGas Mitigated	0.0356	0.3081	0.1593	1.9400e-003		0.0246	0.0246		0.0246	0.0246	0.0000	352.1034	352.1034	6.7500e-003	6.4600e-003	354.1958
NaturalGas Unmitigated	0.0356	0.3081	0.1593	1.9400e-003		0.0246	0.0246		0.0246	0.0246	0.0000	352.1034	352.1034	6.7500e-003	6.4600e-003	354.1958

5.2 Energy by Land Use - NaturalGas

Unmitigated

	NaturalGas Use	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Land Use	kBTU/yr	tons/yr										MT/yr					
Apartments Mid Rise	5.21212e+006	0.0281	0.2402	0.1022	1.5300e-003		0.0194	0.0194		0.0194	0.0194	0.0000	278.1388	278.1388	5.3300e-003	5.1000e-003	279.7916
Fast Food Restaurant w/o Drive Thru	946890	5.1100e-003	0.0464	0.0390	2.8000e-004		3.5300e-003	3.5300e-003		3.5300e-003	3.5300e-003	0.0000	50.5297	50.5297	9.7000e-004	9.3000e-004	50.8299
General Office Building	58725	3.2000e-004	2.8800e-003	2.4200e-003	2.0000e-005		2.2000e-004	2.2000e-004		2.2000e-004	2.2000e-004	0.0000	3.1338	3.1338	6.0000e-005	6.0000e-005	3.1524
Health Club	187830	1.0100e-003	9.2100e-003	7.7300e-003	6.0000e-005		7.0000e-004	7.0000e-004		7.0000e-004	7.0000e-004	0.0000	10.0233	10.0233	1.9000e-004	1.8000e-004	10.0829
Parking Lot	0	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Strip Mall	192600	1.0400e-003	9.4400e-003	7.9300e-003	6.0000e-005		7.2000e-004	7.2000e-004		7.2000e-004	7.2000e-004	0.0000	10.2779	10.2779	2.0000e-004	1.9000e-004	10.3390
Total		**0.0358**	**0.3061**	**0.1593**	**1.9500e-003**		**0.0248**	**0.0248**		**0.0248**	**0.0248**	**0.0000**	**352.1034**	**352.1034**	**6.7500e-003**	**6.4800e-003**	**354.1958**

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5.2 Energy by Land Use - NaturalGas

Mitigated

	NaturalGas Use	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Land Use	kBTU/yr	tons/yr										MT/yr					
Apartments Mid Rise	5.21212e+006	0.0281	0.2402	0.1022	1.5300e-003		0.0194	0.0194		0.0194	0.0194	0.0000	278.1388	278.1388	5.3300e-003	5.1000e-003	279.7916
Fast Food Restaurant w/o Drive Thru	946890	5.1100e-003	0.0464	0.0390	2.8000e-004		3.5300e-003	3.5300e-003		3.5300e-003	3.5300e-003	0.0000	50.5297	50.5297	9.7000e-004	9.3000e-004	50.8299
General Office Building	58725	3.2000e-004	2.8800e-003	2.4200e-003	2.0000e-005		2.2000e-004	2.2000e-004		2.2000e-004	2.2000e-004	0.0000	3.1338	3.1338	6.0000e-005	6.0000e-005	3.1524
Health Club	187830	1.0100e-003	9.2100e-003	7.7300e-003	6.0000e-005		7.0000e-004	7.0000e-004		7.0000e-004	7.0000e-004	0.0000	10.0233	10.0233	1.9000e-004	1.8000e-004	10.0829
Parking Lot	0	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Strip Mall	192600	1.0400e-003	9.4400e-003	7.9300e-003	6.0000e-005		7.2000e-004	7.2000e-004		7.2000e-004	7.2000e-004	0.0000	10.2779	10.2779	2.0000e-004	1.9000e-004	10.3390
Total		**0.0366**	**0.3081**	**0.1593**	**1.9500e-003**		**0.0246**	**0.0246**		**0.0246**	**0.0246**	**0.0000**	**352.1034**	**352.1034**	**6.7500e-003**	**6.4800e-003**	**354.1958**

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5.3 Energy by Land Use - Electricity

Unmitigated

	Electricity Use	Total CO2	CH4	N2O	CO2e
Land Use	kWh/yr	MT/yr			
Apartments Mid Rise	1.9244e+006	559.6286	0.0253	5.2400e-003	562.0222
Fast Food Restaurant w/o Drive Thru	130365	37.9247	1.7100e-003	3.5000e-004	38.0733
General Office Building	41040	11.9390	5.4000e-004	1.1000e-004	11.9858
Health Club	79380	23.0928	1.0400e-003	2.2000e-004	23.1830
Parking Lot	52840	15.3136	6.9000e-004	1.4000e-004	15.3736
Strip Mall	146700	42.6787	1.9300e-003	4.0000e-004	42.8439
Total		690.7751	0.0312	6.4600e-003	693.4819

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5.3 Energy by Land Use - Electricity

Mitigated

	Electricity Use	Total CO2	CH4	N2O	CO2e
Land Use	kWh/yr	MT/yr			
Apartments Mid Rise	1.9244e+006	559.8286	0.0263	5.2400e-003	562.0222
Fast Food Restaurant w/o Drive Thru	130365	37.9247	1.7100e-003	3.5000e-004	38.0733
General Office Building	41040	11.9390	5.4000e-004	1.1000e-004	11.9858
Health Club	79380	23.0926	1.0400e-003	2.2000e-004	23.1830
Parking Lot	52640	15.3136	6.9000e-004	1.4000e-004	15.3736
Strip Mall	146700	42.6767	1.9300e-003	4.0000e-004	42.8439
Total		**690.7751**	**0.0312**	**6.4600e-003**	**693.4618**

6.0 Area Detail

6.1 Mitigation Measures Area

No Hearths Installed

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	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	tons/yr										MT/yr					
Mitigated	2.3482	0.0367	3.1852	1.7000e-004		0.0176	0.0176		0.0176	0.0176	0.0000	5.1985	5.1985	5.0300e-003	0.0000	5.3242
Unmitigated	2.3689	0.1968	3.2533	1.1900e-003		0.0305	0.0305		0.0305	0.0305	0.0000	190.6113	190.6113	8.5800e-003	3.4000e-003	191.8388

6.2 Area by SubCategory

Unmitigated

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
SubCategory	tons/yr										MT/yr					
Architectural Coating	0.4299					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Consumer Products	1.8219					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Hearth	0.0187	0.1601	0.0681	1.0200e-003		0.0129	0.0129		0.0129	0.0129	0.0000	185.4128	185.4128	3.5500e-003	3.4000e-003	186.5146
Landscaping	0.0964	0.0367	3.1852	1.7000e-004		0.0176	0.0176		0.0176	0.0176	0.0000	5.1985	5.1985	5.0300e-003	0.0000	5.3242
Total	2.3689	0.1968	3.2533	1.1900e-003		0.0305	0.0305		0.0305	0.0305	0.0000	190.6113	190.6113	8.5800e-003	3.4000e-003	191.8388

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6.2 Area by SubCategory

Mitigated

SubCategory	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
	tons/yr										MT/yr					
Architectural Coating	0.4299					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Consumer Products	1.8219					0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Hearth	0.0000	0.0000	0.0000	0.0000		0.0000	0.0000		0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Landscaping	0.0964	0.0367	3.1852	1.7000e-004		0.0176	0.0176		0.0176	0.0176	0.0000	5.1985	5.1985	5.0300e-003	0.0000	5.3242
Total	**2.3482**	**0.0367**	**3.1852**	**1.7000e-004**		**0.0176**	**0.0176**		**0.0176**	**0.0176**	**0.0000**	**5.1985**	**5.1985**	**5.0300e-003**	**0.0000**	**5.3242**

7.0 Water Detail

7.1 Mitigation Measures Water

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	Total CO2	CH4	N2O	CO2e
Category	MT/yr			
Mitigated	80.0198	1.0432	0.0252	113.8121
Unmitigated	80.0198	1.0432	0.0252	113.8121

7.2 Water by Land Use

Unmitigated

	Indoor/Outdoor Use	Total CO2	CH4	N2O	CO2e
Land Use	Mgal	MT/yr			
Apartments Mid Rise	27.8859 / 17.5803	70.6428	0.9115	0.0220	99.9953
Fast Food Restaurant w/o Drive Thru	1.3658 / 0.0871852	2.6722	0.0446	1.0700e-003	4.1069
General Office Building	0.799802 / 0.490201	2.0118	0.0261	6.3000e-004	2.8537
Health Club	0.532288 / 0.326241	1.3389	0.0174	4.2000e-004	1.8992
Parking Lot	0 / 0	0.0000	0.0000	0.0000	0.0000
Strip Mall	1.33331 / 0.817187	3.3538	0.0436	1.0500e-003	4.7572
Total		**80.0196**	**1.0432**	**0.0252**	**113.6121**

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7.2 Water by Land Use

Mitigated

	Indoor/Outdoor Use	Total CO2	CH4	N2O	CO2e
Land Use	Mgal	MT/yr			
Apartments Mid Rise	27.8859 / 17.5803	70.6428	0.9115	0.0220	99.9953
Fast Food Restaurant w/o Drive Thru	1.3659 / 0.0871852	2.6722	0.0446	1.0700e-003	4.1069
General Office Building	0.799802 / 0.490201	2.0118	0.0261	6.3000e-004	2.8537
Health Club	0.532288 / 0.326241	1.3389	0.0174	4.2000e-004	1.8992
Parking Lot	0 / 0	0.0000	0.0000	0.0000	0.0000
Strip Mall	1.33331 / 0.817187	3.3538	0.0436	1.0500e-003	4.7572
Total		80.0196	1.0432	0.0252	113.6121

8.0 Waste Detail

8.1 Mitigation Measures Waste

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Category/Year

	Total CO2	CH4	N2O	CO2e
	MT/yr			
Mitigated	65.5884	3.8762	0.0000	162.4925
Unmitigated	65.5884	3.8762	0.0000	162.4925

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8.2 Waste by Land Use

Unmitigated

	Waste Disposed	Total CO2	CH4	N2O	CO2e
Land Use	tons	MT/yr			
Apartments Mid Rise	196.88	39.9649	2.3619	0.0000	99.0113
Fast Food Restaurant w/o Drive Thru	51.84	10.5231	0.6219	0.0000	26.0704
General Office Building	4.19	0.8505	0.0503	0.0000	2.1072
Health Club	51.3	10.4134	0.6154	0.0000	25.7989
Parking Lot	0	0.0000	0.0000	0.0000	0.0000
Strip Mall	18.9	3.8365	0.2267	0.0000	9.5048
Total		**65.5884**	**3.8762**	**0.0000**	**162.4925**

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8.2 Waste by Land Use

Mitigated

	Waste Disposed	Total CO2	CH4	N2O	CO2e
Land Use	tons	MT/yr			
Apartments Mid Rise	196.88	39.9649	2.3619	0.0000	99.0113
Fast Food Restaurant w/o Drive Thru	51.84	10.5231	0.6219	0.0000	26.0704
General Office Building	4.19	0.8505	0.0503	0.0000	2.1072
Health Club	51.3	10.4134	0.6154	0.0000	25.7989
Parking Lot	0	0.0000	0.0000	0.0000	0.0000
Strip Mall	18.9	3.8365	0.2267	0.0000	9.5048
Total		65.5884	3.8762	0.0000	162.4925

9.0 Operational Offroad

Equipment Type	Number	Hours/Day	Days/Year	Horse Power	Load Factor	Fuel Type

10.0 Stationary Equipment

Fire Pumps and Emergency Generators

Equipment Type	Number	Hours/Day	Hours/Year	Horse Power	Load Factor	Fuel Type

Boilers

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Equipment Type	Number	Heat Input/Day	Heat Input/Year	Boiler Rating	Fuel Type

User Defined Equipment

Equipment Type	Number

11.0 Vegetation

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APPENDIX C
GREENHOUSE GAS ANALYSIS

Note: This analysis was previously prepared for General Plan Amendment #14-06 and Zone Change #421. The project remains similar in size and impacts, therefore, no additional analysis was required.

Greenhouse Gas Study for The Shoppes at University Village Project

Draft Report

Prepared by:

Rincon Consultants, Inc.
Environmental Scientists Planners Engineers
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Greenhouse Gas Study for The Shoppes at University Village

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Appendix

GHG Quantitative Analysis: CalEEMod Greenhouse Gas Model Worksheets – Annual

This report is a greenhouse gas (GHG) emissions study for the proposed Shoppes at University Village project located at the southeast corner of Yosemite Avenue and McKee Road in the City of Merced. The study was prepared by Rincon Consultants, Inc. under contract to Merced Holdings LP. The purpose of this study is to analyze the proposed project's GHG emissions and the associated environmental impacts.

PROJECT LOCATION AND DESCRIPTION

The project site is located on two parcels totaling approximately 5.42 acres at the southeast corner of Yosemite Avenue and McKee Road (APNs 008-310-038 and 008-310-050) in the City of Merced. The project site is currently zoned Low Density Residential (R-1-6) and has a General Plan Designation of Low Density Residential. The project site is currently developed with two single-story residential units and one accessory building with areas of 1,416 square feet, 1,771 square feet, and 600 square feet, respectively (3,787 square feet total).

The proposed project involves a General Plan amendment and re-zone to accommodate a neighborhood commercial land use. The project would include demolition of the existing on-site structures and construction of three new neighborhood commercial buildings. The areas of the new buildings would be approximately 42,000 square feet, 13,000 square feet, and 7,000 square feet, totaling 62,000 square feet of building area. The project also would include approximately 64,800 square feet of on-site parking (approximately 216 parking spaces). In addition, the project would include bicycle parking, pedestrian site access, and the installation of low-flow fixtures and systems.

Construction of the proposed project would involve demolition, site preparation, minor grading, building construction, and architectural coating. Construction would take approximately eight months.

SETTING

Environmental Setting

Greenhouse Gases and Climate Change. Climate change refers to any change in measures of climate, such as average temperature, precipitation, or wind patterns over a period of time. Climate change may result from natural factors, natural processes, and human activities that change the composition of the atmosphere and alter the surface and features of the land. Significant changes in global climate patterns have recently been associated with global warming, an average increase in the temperature of the atmosphere near the Earth's surface, attributed to the accumulation of GHGs in the atmosphere.

Greenhouse gases, or GHGs, trap heat in the atmosphere, which in turn heats the surface of the Earth. Some GHGs, such as carbon dioxide (CO_2), occur naturally and are emitted to the atmosphere through both natural processes and human activities. Other GHGs (e.g., fluorinated gases) are created and emitted solely through human activities. According to the United Nations Intergovernmental Panel on Climate Change (IPCC), there is high confidence (95 percent or greater chance) that the global average net effect of human activities has been the dominant cause of warming (by approximately 1.4°F) since the mid-20th century (IPCC, 2013).

The principal GHGs that enter the atmosphere as a result of human activities include:

- **Carbon dioxide (CO_2)** is primarily generated by fossil fuel (e.g., oil, natural gas, and coal) combustion from stationary and mobile sources. Carbon dioxide is also removed from the atmosphere (or "sequestered") when it is absorbed by plants as part of the biological carbon cycle.
- **Methane (CH_4)** emissions result from the decomposition of organic waste in landfills and livestock enteric fermentation. CH_4 is also emitted during the production and transport of coal, natural gas, and oil.
- **Nitrous oxide (N_2O)** is emitted during agricultural and industrial activities, as well as during combustion of fossil fuels and solid waste.
- **Fluorinated gases** (i.e., hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride) are emitted from a variety of industrial processes, such as aluminum and semiconductor manufacturing. Hydrofluorocarbons are used as refrigerants, aerosol propellants, solvents, and fire retardants and are released into the atmosphere through leaks, servicing, and disposal of equipment in which they are used. These gases are typically emitted in smaller quantities but are generally very strong GHGs.

Each of the GHGs listed above differs in its ability to absorb heat in the atmosphere, or in its Global Warming Potential (GWP) over a 100 year period. GHGs are compared in terms of their respective intensity factor per molecule given an atmospheric lifetime of 100 years. The IPCC defines the intensity factor of various GHG emissions on a normalized scale that recasts all GHG emissions in terms of "carbon dioxide equivalent" (CO_2E), which compares the gas in question to that of the same mass of CO_2 (CO_2 has an intensity factor of one by definition).

State and Local GHG Emissions Levels. In 2012, California produced 459 million metric tons (MMT) CO_2E (California Air Resources Board [ARB], 2014). The transportation sector was the largest source of emissions, accounting for approximately 37 percent of the total emissions. The industrial sector accounted for approximately 22 percent of the total emissions. The ARB has projected statewide unregulated GHG emissions for the year 2020 will be 507 MMT CO_2E (ARB, August 2013). These projections represent the emissions that would be expected to occur in the absence of any GHG reduction actions.

According to the City of Merced *2011 Inventory of Community and Government Operations GHG Emissions* (2014), the community as a whole emitted 505,579 metric tons (MT) CO_2E in 2011 resulting from transportation, commercial/industrial and residential energy use, solid waste generation, and other processes/fugitive emissions. The largest source of emissions was the transportation sector, which contributed to 42 percent of total emissions. Activities in the commercial/industrial and residential sectors resulted in the second and third greatest emissions (32 percent and 21 percent respectively).

Potential Effects of Climate Change. According to the California Environmental Protection Agency's (CalEPA) *2010 Climate Action Team Biennial Report*, potential impacts of climate change in California may include loss in snow pack, sea level rise, more extreme heat days per year, more high ozone days, more large forest fires, loss of ecosystems and species, and more drought years. While there is growing scientific consensus about the possible effects of climate change at a global and potentially statewide level, current scientific modeling tools are unable to predict what local impacts may occur with a similar degree of accuracy. However,

the *City of Merced Climate Action Plan* lists higher temperatures, flooding, and drought as the major potential climate hazards that may be exacerbated by climate change.

Regulatory Setting

State of California. In recent years, the State of California has enacted several laws to address the potential effects of increasing atmospheric concentrations of GHG emissions. In 2006, the State signed into law the California Global Warming Solutions Act of 2006 (Assembly Bill [AB] 32, codified at Section 1, Division 25.5, Section 38500 et seq. of the California Health & Safety Code). This law sets a target to reduce statewide GHG emissions to 1990 levels (426.6 MMT CO_2E) by 2020 and represents California's fair share contribution toward stabilizing global warming. AB 32 also required the ARB to design and implement a plan identifying strategies and regulations to meet the statewide target. The resulting *Climate Change Scoping Plan* (2008 Scoping Plan), adopted in 2008, estimated that GHG emissions in the state need to be reduced by approximately 29 percent below 2020 "business-as-usual" (BAU) forecasted emissions (596 MMT CO_2E), or 15 percent below the GHG emissions levels at the time the 2008 Scoping Plan was prepared.[1] Key elements of the plan include:

- Adopting and implementing measures pursuant to existing state laws and policies, including California's goods movement measures, Clean Car Standards (Pavley Standard) and the Low Carbon Fuel Standard;
- Expanding energy efficiency and green building practices;
- Achieving a statewide renewables energy mix of 33 percent (Renewable Portfolio Standard);
- Reducing methane emissions from landfills;
- Developing a California cap-and-trade program;
- Targets for transportation-related GHG emissions;
- Increasing solid waste diversion; and
- Strengthening water efficiency programs.

In 2011, the ARB updated the 2020 forecast to account for new estimates for future fuel and energy demand as well as other factors. The updated forecast projects statewide BAU emissions to be 506.8 MMT CO_2E in 2020. Considering the updated BAU forecast of 506.8 MMT CO_2E, the ARB now estimates a 16 percent reduction below the estimated statewide BAU levels would now be necessary to return to 1990 emission levels (i.e., 426.6 MMT CO_2E) by 2020, instead of the 29 percent BAU reduction previously reported under the 2008 Scoping Plan (ARB, August 2013).

Senate Bill (SB) 97, signed in August 2007, acknowledges that climate change is an environmental issue that requires analysis in CEQA documents. In March 2010, the California Resources Agency adopted amendments to the *State CEQA Guidelines* for the feasible mitigation of GHG emissions or the effects of GHG emissions. The adopted CEQA Guidelines provide general regulatory guidance on the analysis and mitigation of GHG emissions in CEQA documents, while giving

[1] The ARB's "business-as-usual," or BAU, forecast provides an estimate of the future GHG emissions expected to occur if none of the foreseeable measures included in the 2008 Scoping Plan are implemented. The base years used to forecast BAU emissions for the 2008 Scoping Plan was the average of statewide emissions in 2002, 2003, and 2004. BAU forecasted emissions were estimated to reach 596 MMT CO_2E in 2020.

lead agencies the discretion to set quantitative or qualitative thresholds for the assessment and mitigation of GHGs and climate change impacts.

SJVAPCD. The SJVAPCD is the regional air quality management agency in the Central Valley and the agency with air permitting authority in the region. On December 17, 2009, the SJVAPCD adopted guidance for assessing and reducing the impacts of project-specific GHG emissions on global climate change: *Guidance for Valley Land-Use Agencies in Addressing GHG Emission Impacts for New Projects under CEQA*. It also adopted the policy: *District Policy – Addressing GHG Emission Impacts for Stationary Source Projects under CEQA When Serving as the Lead Agency*. The SJVAPCD found that the effects of project-specific emissions to be cumulative, and without mitigation, their incremental contribution to global climatic change could be considered cumulatively considerable. The SJVAPCD further found that this cumulative impact is best addressed by requiring all projects to reduce their GHG emissions consistent with the AB 32 target, whether through project design elements or mitigation. The guidance and policy allow a project to rely on the implementation of Best Performance Standards (BPS) as a method for streamlining the CEQA process of determining significance of GHG emissions. Projects not implementing BPS would be required to demonstrate that "project specific GHG emissions would be reduced or mitigated by at least 29 percent, compared to BAU, including GHG emission reductions achieved since the 2002-2004 baseline period. Projects achieving at least a 29 percent GHG emission reduction compared to BAU would be determined to have a less than significant individual and cumulative impact for GHG" (SJVAPCD Guidance, 2009). The guidance does not limit a lead agency's authority in establishing its own process and guidance for determining significance of project-related impacts on global climate change (SJVAPCD, 2009).

City of Merced. On June 6, 2012 the Merced City Council voted to include a GHG reduction target of 1990 levels by 2020, or 15 percent below 2008 levels by 2020, consistent with AB 32 in the City's *Climate Action Plan*.[2] In August 2012, the City of Merced approved its *Climate Action Plan* which provides guidance to meet the target and identifies over 150 potential ways to reduce GHG emissions and the community's influence on climate change. The City is in the process of developing a more detailed programmatic climate action plan that will qualify as a plan for the reduction of GHG emissions under CEQA Section 15183.5.

IMPACT ANALYSIS

Significance Thresholds and Methodology

Significance Thresholds. According to the CEQA Guidelines, impacts related to GHG emissions from a proposed project would be significant if the project would:

- *Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment;*[3] *and/or*
- *Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases.*[4]

[2] The ARB Scoping Plan (2008) states that reducing GHG emissions to 1990 levels by 2020 is approximately the same as reducing "current" (2005-2008) emissions levels by 15 percent by 2020.
[3] Consistent with question considered for Merced General Plan EIR Impact #3.17-1.
[4] Consistent with question considered for Merced General Plan EIR Impact #3.17-2.

The vast majority of individual projects do not generate sufficient GHG emissions to, in isolation, create a direct impact on climate change. Rather it is the increased accumulation of GHGs from more than one project and many sources in the atmosphere that may result in global climate change, which can cause the adverse environmental effects previously discussed. Accordingly, the threshold of significance for GHG emissions determines whether a project's contribution to global climate change is "cumulatively considerable." "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, other current projects, and probable future projects (CEQA Guidelines, Section 15355).

The City of Merced has not developed or adopted a CEQA threshold for determining the significance GHG emissions at the project-level, and therefore has recommended the use of the SJVAPCD threshold (see discussion under Regulatory Setting above). Based on the SJVAPCD threshold, the proposed project would have a less than cumulatively significant impact if it achieves at least a 29 percent reduction in GHG emissions compared to BAU, consistent with the AB 32 Scoping Plan (2008).

Similar to the SJVAPCD threshold, the City's Climate Action Plan (2012) establishes a target to reduce GHG emissions to 1990 levels by 2020, consistent with the AB 32 target and 2008 Scoping Plan (see discussion under Regulatory Setting above). As such, if emissions from the proposed project fall below the SJVAPCD's 29 percent threshold, which according to the 2008 Scoping Plan is roughly equivalent to 1990 levels by 2020, the proposed project would be consistent with target identified in the City's Climate Action Plan, and result in a less than significant impact with regards to conflict with an applicable plan adopted for the purpose of reducing GHG emissions if it results in a 29 percent reduction in GHG emissions.

Methodology. GHG emissions associated with project construction and operations were estimated using the California Emissions Estimator Model (CalEEMod) version 2013.2.2. The model was developed in collaboration with and supported by the air districts of California, including the SJVAPCD. The model quantifies direct emissions from project construction and operations (including vehicle use), as well as indirect emissions, such as GHG emissions from energy use, solid waste disposal, vegetation planting and/or removal, and water use. CalEEMod utilizes widely accepted models for emission estimates combined with appropriate default data that can be used if site-specific information is not available. Where project-specific inputs were not available, default data (e.g., emission factors, trip lengths, meteorology, source inventory, etc.) for Merced County was used to calculate GHG emissions associated with the project. Complete results from CalEEMod, as well as site-specific inputs and assumptions are included in the Appendix.

To determine whether the proposed project would result in a 29 percent reduction in BAU GHG emissions, two emissions scenarios were calculated and compared, which include the following (see Appendix for additional detail):

1) **BAU Scenario** - is reflective of a realistic project scenario that would occur absent project design features and state regulations enacted as a result of AB 32, and is consistent with the SJVAPCD's and ARB's definition of BAU;[5] and
2) **Project Scenario** - is also reflective of a realistic project scenario that includes voluntary project features and further state regulations enacted as a result of AB 32. The state regulations accounted for in the Project Scenario include the Renewable Portfolio Standard, Title 24 Energy Efficiency Building Standards, Low Carbon Fuel Standard, and the Pavley I Standard. The project features accounted for in the Project Scenario include the installation of low-flow fixtures and systems, pedestrian access on-site and contiguous with the site, and bicycle parking, as well as the provision of neighborhood commercial uses which would increase the diversity of land uses within a quarter mile radius of the project.

Impacts

Would the proposed project generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment?

Construction of the proposed project would generate GHG emissions through on-site use of heavy-duty construction equipment and off-site vehicle trips made by construction workers and haul/delivery trucks that would travel to and from the project site. Construction of the proposed project would be completed in approximately eight months. To evaluate GHG emissions from project construction, construction emissions are amortized over the life of the project (approximately 20-years as a conservative estimate) and added to the operational emissions. As shown in Table 1, both the BAU Scenario and Project Scenario would generate approximately 221 MT CO_2E total or 11 MT CO_2E per year when amortized over a 20-year period.

Operation of the proposed project would result in GHG emissions from the following primary sources: energy (electricity and natural gas used on-site), mobile (on-road mobile vehicle traffic generated by the project), solid waste disposal by the land use, water usage by the land use, and area sources (landscaping equipment). Table 1 shows the proposed project would generate an estimated 3,387 MT CO_2E per year under the BAU Scenario and approximately 2,103 MT CO_2E per year under the Project Scenario. The difference in GHG emissions between the BAU Scenario and Project Scenario can be attributed to the voluntary project features (i.e., low-flow fixtures, provision of neighborhood commercial uses, pedestrian access, and bicycle parking), the Renewable Portfolio Standard, Title 24 Energy Efficiency Building Standards, Low Carbon Fuel Standard, and Pavley I Standard.

As shown in Table 1, under the BAU Scenario, the proposed project would generate approximately 3,398 MT CO_2E per year from both construction and operation, while the

[5] The SJVAPCD and ARB define BAU as total baseline emissions for all emissions sources projected for the year 2020, assuming no change in GHG emissions per unit of activity (or carbon intensity) as established for the baseline period, 2002-2004. BAU does not account for the reduction in GHGs that would result from federal, state, or regional regulations for the reduction of emissions after 2002-2004 (SJVAPCD, 2009). As such, the BAU Scenario for the project uses mobile source operational emission factors from the year 2005 (CalEEMod does not provide data for any years between 2002 and 2004; 2005 was used and provides a more conservative estimate).

proposed project under the Project Scenario would generate approximately 2,114 MT CO_2E per year from both construction and operation.

Table 1: Estimate of Project-related GHG Emissions for BAU and Project Scenarios

Source	GHG Emissions (MT CO_2E per Year)	
	BAU Scenario	Project Scenario
Construction Emissions		
Mobile Source (20-year amortization)	11	11
Construction Emissions Subtotal	***11***	***11***
Operational Emissions		
Area	<0.2	<0.2
Energy	232	120
Mobile	3,109	1,946
Solid Waste	30	30
Water	16	8.4
Operational Emissions Total	***3,387***	***2,103***
Total GHG Emissions	**3,398**	**2,114**

**See the Appendix for detailed CalEEMod results.*

As shown in Table 2, the Project Scenario would reduce BAU emissions by 1,284 MT CO_2E per year. Therefore, the proposed project demonstrates an approximately 38percent reduction below the BAU Scenario and would be considered less than significant.

Table 2: Summary of Project Reduction from BAU Scenario

	GHG Emissions (MT CO_2E per Year)
Total BAU Scenario	3,398
Total Project Scenario	2,114
Difference Between BAU and Project Scenarios	1,284
Reduction from BAU Scenario	**38%**
Project Meets or Exceeds 29% Threshold (less-than-significant)	**Yes**

Would the proposed project conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of GHGs?

As previously mentioned, AB 32 identifies a statewide target to reduce GHG emissions to 1990 levels by 2020, which is equivalent to "cutting approximately 30 percent from business-as-usual emission levels projected for 2020, or about 15 percent from today's levels" (Scoping Plan, 2008). The City's Climate Action Plan (2012) also establishes a target to reduce GHG emissions 15 percent below 2008 levels, consistent with AB 32 and its Scoping Plan. Construction and operation of the proposed project would achieve a 38 percent reduction in GHG emissions compared to BAU, which exceeds the reduction targets identified in the Scoping Plan and City's Climate Action Plan.

In addition, the proposed project would support many of the goals identified in the Climate Action Plan. The project would help reduce vehicle miles traveled by providing neighborhood commercial services and providing bicycle parking and pedestrian access. The proposed project would also facilitate water conservation. As such, the proposed project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions and impacts would be less-than-significant.

REFERENCES

California Air Pollution Control Officers Association (CAPCOA). *Quantifying Greenhouse Gas Mitigation Measures*. August 2010.

CAPCOA. *CEQA & Climate Change*. January 2008.

CAPCOA. *CalEEMod User's Guide*. July 2013.

California Air Resources Board (ARB). May 2014. *Greenhouse Gas Inventory Data – 2000 to 2012*. Available at: http://www.arb.ca.gov/cc/inventory/pubs/reports/ghg_inventory_00-12_report.pdf

California Air Resources Board (ARB). August 2013. *Greenhouse Gas Inventory - 2020 Emissions Forecast*. Available at: http://www.arb.ca.gov/cc/inventory/data/forecast.htm

California Climate Action Registry. *General Reporting Protocol: Reporting Entity-Wide Greenhouse Gas Emissions*. Version 3.1. January 2009. Available at: http://www.theclimateregistry.org/downloads/GRP.pdf

California Environmental Protection Agency (CalEPA). *Climate Action Team Biennial Report*. Final Report. April 2010. Available at: http://www.energy.ca.gov/2010publications/CAT-1000-2010-005/CAT-1000-2010-005.PDF

California Environmental Protection Agency (CalEPA), March 2006. *Climate Action Team Report to Governor Schwarzenegger and the Legislature*. http://www.climatechange.ca.gov/climate_action_team/reports/2006-04-03_FINAL_CAT_REPORT_EXECSUMMARY.PDF

City of Merced. *2011 Inventory of Community and Government Operations Greenhouse Gas Emissions*. Available at: http://www.cityofmerced.org/civicax/filebank/blobdload.aspx?BlobID=13780

City of Merced. *Merced Climate Action Plan*. August 2012. Available at: http://cityofmerced.org/depts/cd/planning/climate_action_plan/default.asp

City of Merced. *Climate Action Plan: Implementation Approach Technical Memorandum*. February 17, 2014. Available at: http://www.cityofmerced.org/civicax/filebank/blobdload.aspx?BlobID=13781

Intergovernmental Panel on Climate Change [IPCC], 2006. *Revised 2006 IPCC Guidelines for National Greenhouse Gas Inventories*. [Penman,J.; Gytarsky, M.; Hiraishi, T.; Irving, W.; Krug, T.]. Paris: OECD, 2006.

Intergovernmental Panel on Climate Change [IPCC], 2007: *Summary for Policymakers. In: Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment*

Report of the Intergovernmental Panel on Climate Change [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M.Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

Intergovernmental Panel on Climate Change [IPCC], 2013: *Summary for Policymakers. In: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S. K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 2013. Available at: www.climatechange2013.org/images/report/WG1AR5_SPM_FINAL.pdf

San Joaquin Valley Air Pollution Control District. *Guidance for Valley Land-use Agencies in Addressing GHG Emission Impacts for New Projects under CEQA*. December 2009. Available at: http://www.valleyair.org/programs/CCAP/CCAP_idx.htm

San Joaquin Valley Air Pollution Control District. *District Policy – Addressing GHG Emission Impacts for Stationary Source Projects Under CEQA When Serving as the Lead Agency*. December 2009. Available at: http://www.valleyair.org/programs/CCAP/CCAP_idx.htm

APPENDIX D
TRAFFIC IMPACT ANALYSIS

TRAFFIC IMPACT STUDY

The Hub at Yosemite

A Mixed-Use Development

at the southeast corner of Yosemite Avenue and McKee Road

Merced, CA

Date: December 2, 2019

Prepared For:

Merced Holding LP

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Technical Appendices
available upon request.

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Traffic Impact Study for The Hub at Yosemite, a Mixed-Use Development at the southeast corner of Yosemite Avenue and McKee Road

Merced, CA



Prepared under the supervision of

Jende Kay Hsu, P.E., T. E.
California License # T2285

EXECUTIVE SUMMARY

The proposed mixed-use development includes constructing four buildings totaling 176,873 square feet gross floor area, including 97 single-occupancy residential units, 112 two-bedroom and 15 three-bedroom dwelling units, 20,044 square feet of retail use and 12,528 square feet of office use. The project will be constructed in one phase.

With consideration of pass-by, transit, bicycle trips, and internal capture, the project is expected to have a net trip generation of 30 inbound and 34 outbound trips in the AM peak hour, 53 inbound and 54 outbound trips in the PM peak hour, and 1,184 daily trips. The study has analyzed the project's impact at nearby intersections with consideration of other approved projects and for the cumulative year (2035). The proposed development is expected to contribute a fair share of the construction cost for the following mitigation measures:

1. Install traffic signals at the intersection of Yosemite Avenue and Parsons/Gardner Avenue, and
2. Install traffic signals at the intersection of McKee Road and Olive Avenue.

The study determines that the fair share contribution is 2.4% of the signal improvement costs for the intersection of Yosemite Avenue and Parsons/Gardner Avenue, and 1.4% for the signal improvement costs for the intersection of McKee Road and Olive Avenue. With the implementation of the above mitigation measures, the project will not result in any significant impact to study intersections and roadways.

Site access will be provided by a right-in-right out driveway on Yosemite Avenue and a full-access driveway on McKee Road. A "One Way" sign (R6-1R) should be installed on Yosemite Avenue at the raised median facing the proposed driveway to ensure right-turn egress only.

The study conducted a queue analysis and found that all existing turn bays provide sufficient length to accommodate the 95th percentile queue at each study intersection. The parking lot are designed with adequate setbacks from public streets. On-site circulation appears properly functional and efficient without bottleneck.

The project site is on the UC Merced route and the nearest bus stop is located approximately a quarter mile from the project site. A new bus stop is recommended for each direction on Yosemite Avenue near McKee Road to promote ridership of public transit by future residents.

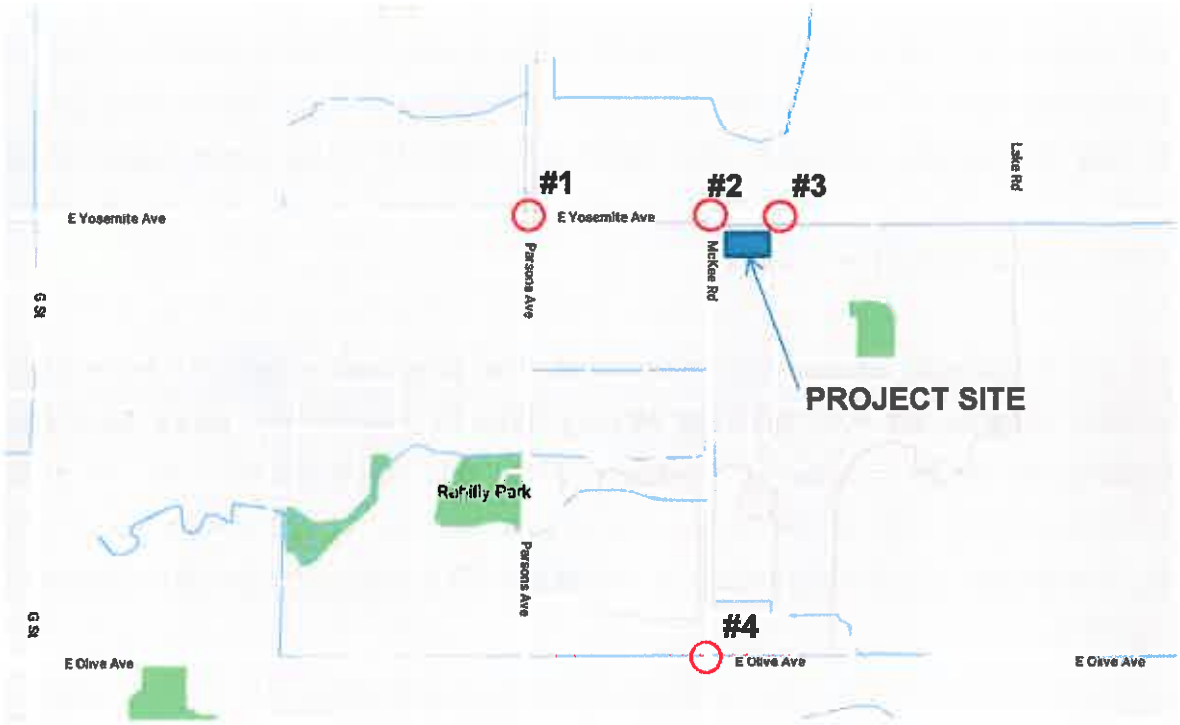
Crosswalks and ADA accessible ramps are currently present at the south and east legs of the intersection of Yosemite Avenue and McKee Road. However, there is no sidewalk along Yosemite Avenue or McKee Road at the project frontage. As part of the proposed development, the study recommends constructing ADA compliant sidewalks along Yosemite Avenue and McKee Road at the project frontage with consideration of the future bus stops.

INTRODUCTION

The purpose of this study is to evaluate traffic impact of the proposed mixed-use development located at the southeast corner of Yosemite Avenue and McKee Road in the City of Merced, California. This report is an update to the Draft Traffic Impact Analysis prepared by TJKM Transportation Consultants dated January 30, 2015. Vicinity map is shown in **Exhibit 1**.

The site is currently vacant and unimproved. The proposed mixed-use development includes constructing four buildings totaling 176,873 square feet gross floor area, including 97 single-occupancy residential units, 112 two-bedroom and 15 three-bedroom dwelling units, 20,044 square feet of retail use and 12,528 square feet of office use. The project will be constructed in one phase. The proposed site plan is shown in **Exhibit 2**.

The project provides two new driveways: a right-in-right-out driveway on Yosemite Avenue and a full-access driveway on McKee Road.

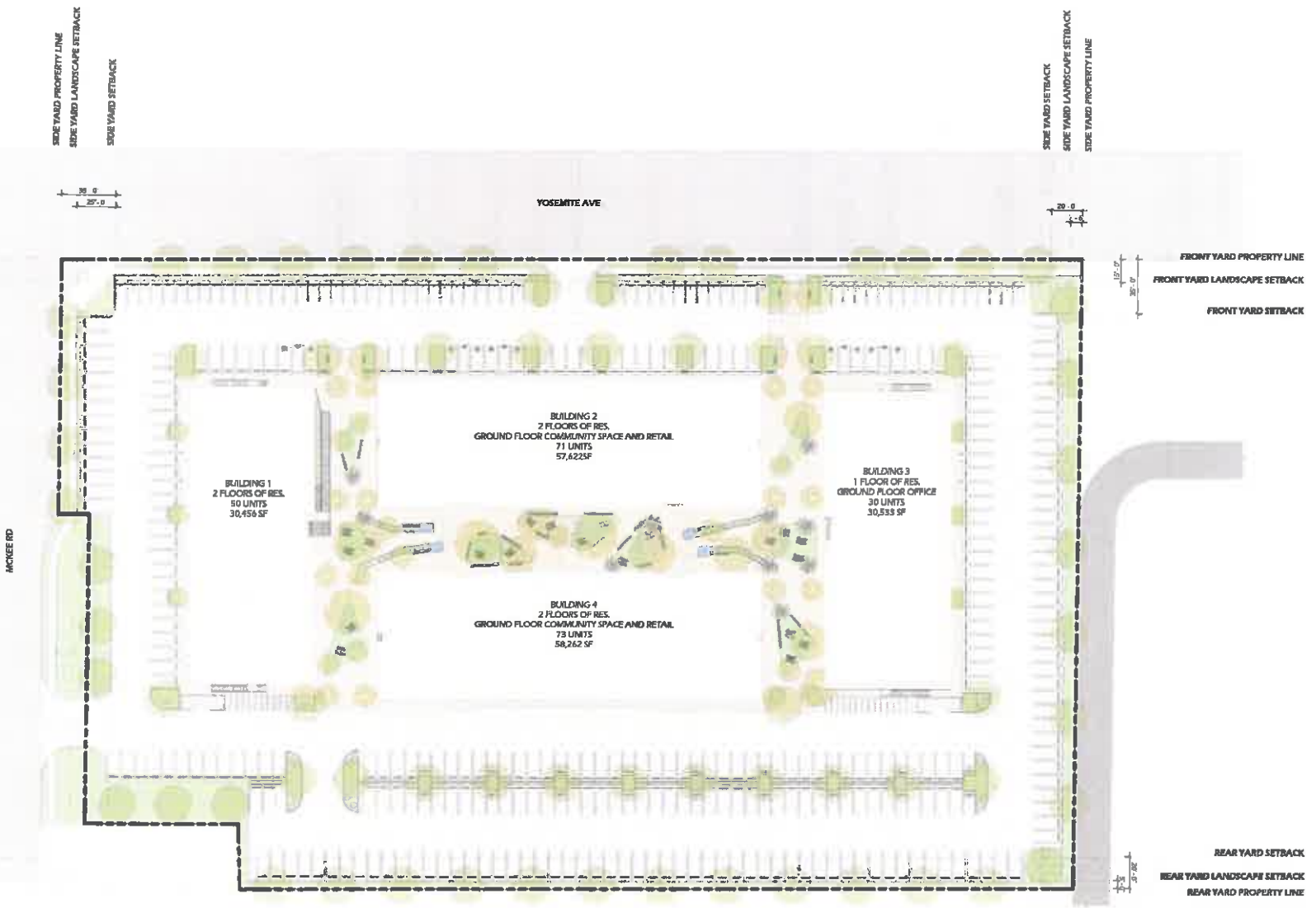


LEGEND

○ # Intersection #

EXHIBIT 1. VICINITY MAP
No Scale

ATTACHMENT 2 EXHIBIT 2 Page 2 of 2 9



ferrierArchitectureStudio

MER

MERCED HOLDINGS LP

CONDITIONAL USE PERMIT

PLOT PLAN

ANALYSIS METHODOLOGY

The study performed level-of-service analysis using SYNCHRO software and methodologies recommended by *Highway Capacity Manual (HCM 2000)* to evaluate traffic impacts before and after the project's generated traffic.

For signalized intersections, level of services are based on overall intersection delays. For unsignalized intersections, level of services are based on delays of the minor approach. Level of Services (LOS) criteria for signalized and unsignalized intersections are shown in **Tables 1** and **2**, respectively.

Table 1. LOS Definitions for Signalized Intersections

LOS	Average Control Delay (seconds/vehicle)	General Description
A	0 - 10	Free Flow
B	>10 - 20	Stable Flow (slight delays)
C	>20 - 35	Stable Flow (acceptable delays)
D	>35 - 55	Approaching unstable flow (tolerable delay, occasionally wait through more than one signal cycle before proceeding
E	>55 - 80	Unstable flow (intolerable delay)
F	>80	Forced flow (congested and queues fail to clear)

Table 2. LOS Definitions for Unsignalized Intersections

LOS	Average Control Delay of Minor Approach (seconds/vehicle)
A	0 - 10
B	>10 - 15
C	>15 - 25
D	>25 - 35
E	>35 - 50
F	>50

According to *Merced Vision 2030 General Plan,* daily roadway segment level of service thresholds by roadway type is shown in **Appendix A.**

STUDY SCENARIOS

This study includes the following scenarios:

i. Existing Conditions
ii. Existing Conditions plus Project
iii. Existing plus Approved Conditions
iv. Existing plus Approved Conditions plus Project
v. Cumulative Year (2035) without Project Conditions
vi. Cumulative Year (2035) plus Project Conditions

This study includes both project driveways and the following study intersections for evaluation and level of service (LOS) analysis:

1. Yosemite Avenue at Parsons Avenue/Gardner Avenue (All-Way Stop)
2. Yosemite Avenue at McKee Road (Signal)
3. Yosemite Avenue at Hatch Road (Side-Street Stop)
4. McKee Road at Olive Avenue (All-Way Stop)

This study includes the following roadway segments for evaluation and analysis:

1. Yosemite Avenue between Parsons Avenue and McKee Road
2. McKee Road between Yosemite Avenue and Silverado Road

EXISTING CONDITIONS

The project site is situated at the southeast corner of Yosemite Avenue and McKee Road in the City of Merced, California. Yosemite Avenue is an east-west divided arterial with two lanes in each direction at the project vicinity with raised median and left-turn pockets at major intersections. Bike lane is provided on both sides of the roadway and the posted speed limit is 50 mph at the project vicinity. Parking is prohibited on both sides of Placentia Avenue in the project vicinity.

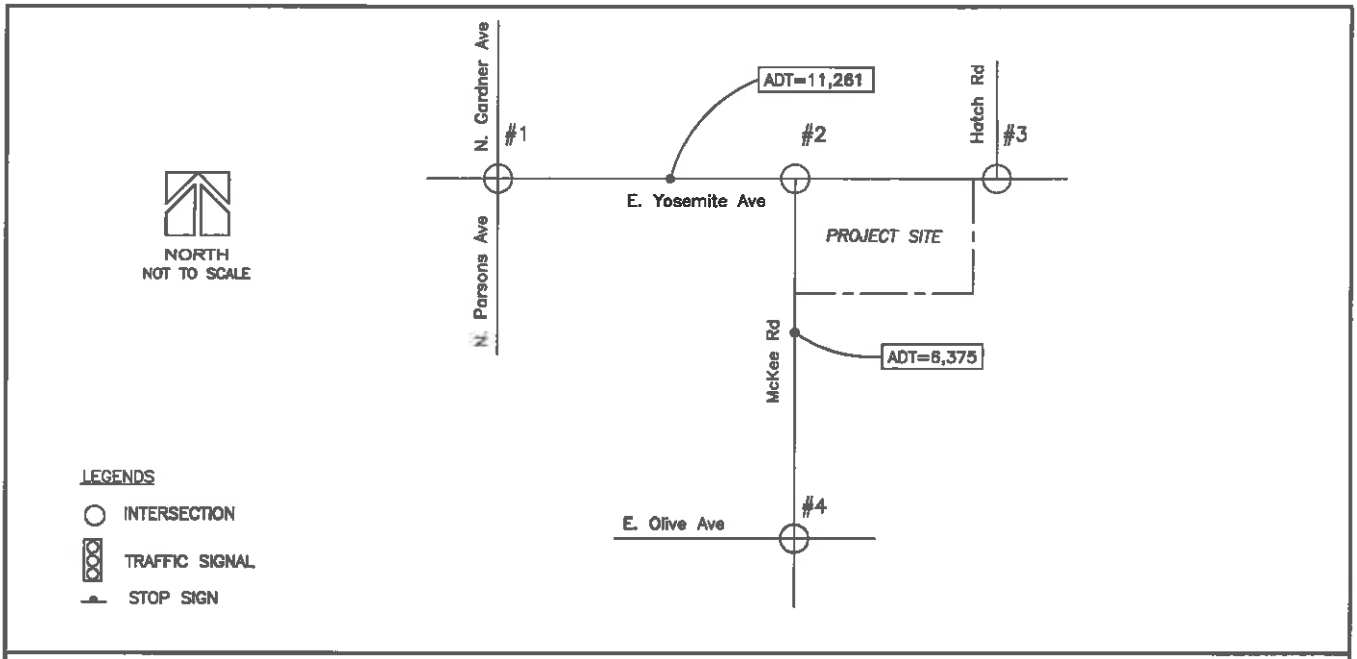
McKee Road is a two-lane, north-south collector that terminates northerly at Yosemite Avenue. The posted speed limit is 45 mph. The intersection of Yosemite Avenue and McKee Road is controlled by traffic signals.

Hatch Road is a two-lane, north-south local roadway that terminates southerly at Yosemite Avenue. Hatch Road allows right turn only at Yosemite Avenue and is controlled by a stop sign for southbound traffic.

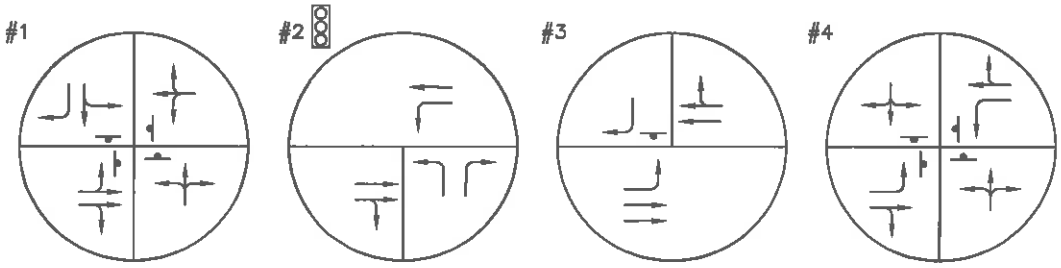
Parsons Avenue/ Gardner Avenue is a two-lane, north-south arterial. The posted speed limit is 45 mph. The intersection of Yosemite Avenue and Parsons Avenue/ Gardner Avenue is controlled by stop signs in all approaches.

Olive Avenue is a two-lane, east-west collector. The posted speed limit is 40 mph. The intersection of Olive Avenue and McKee Road is controlled by stop signs in all approaches.

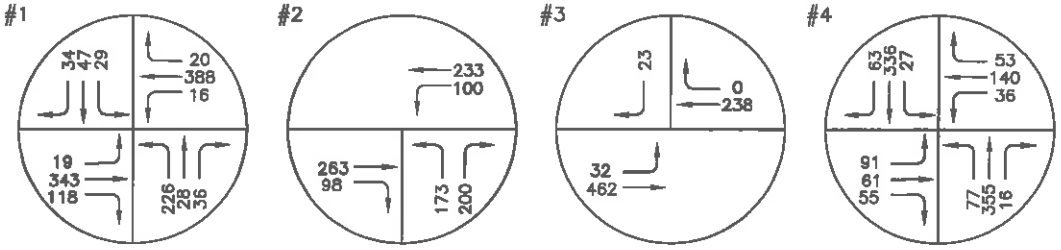
By the request of the City of Merced, all traffic data collection is conducted in September 2019, including intersection turning movement counts for the AM and PM peak hour on a typical weekday and Sunday, and 24-hour traffic volumes of roadway segments for five consecutive days. Existing lane configuration and traffic volumes are illustrated in **Exhibits 3**. Complete traffic data can be found in **Appendix B**.



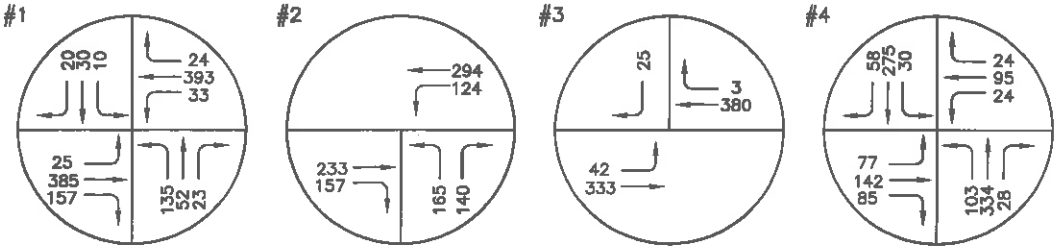
LANE CONFIGURATION



AM PEAK



PM PEAK



EXISTING LANE CONFIGURATION AND TRAFFIC VOLUMES

The Hub at Yosemite
SEC of Yosemite Ave and McKee Rd, Merced

Both roadway segments, Yosemite Avenue and McKee Road, maintain LOS C in this study scenario. Level of services for study intersections in the AM and PM peak hours under existing conditions are shown in **Table 3**. The analysis worksheets can be found in **Appendix C**.

Table 3. Traffic Analysis- Existing Conditions

Intersection	Control	AM Peak Hour		PM Peak Hour	
		LOS	Delay (s)	LOS	Delay (s)
1. Yosemite Ave at Parsons/Gardner Ave	AWSC	**F**	50.3	**E**	40.2
2. Yosemite Ave at McKee Rd	Signal	B	10.6	B	11.0
3. Yosemite Ave at Hatch Rd	TWSC	A	9.3	B	10.0
4. McKee Rd at Olive Ave	AWSC	**E**	39.4	D	34.2

All studied intersections will maintain level of service "D" or better except the following criteria:

- Location #1, Yosemite Ave at Parsons Ave/Gardner Ave: LOS's F and E for the AM and PM peak hours, respectively.
- Location #4, McKee Road at Oliver Ave: LOS E for the AM peak hour.

The study conducted Peak Hour Signal Warrant Analysis and found that signal warrants are satisfied for both Locations #1 and 4 under existing conditions. The signal warrant analysis worksheets can be found in **Appendix D**.

TRIP GENERATION

Trip generation represents the amount of traffic attracted and produced by the project development. Based upon the recommendations from *"Trip Generation"* Tenth Edition, published by the Institute of Transportation Engineers (ITE), as shown in **Table 3.**

Table 3. Trip Generation Rate

Land Use	Unit	Daily	AM Peak Hour			PM Peak Hour		
			Total	In	Out	Total	In	Out
Off-Campus Student Apartment (225)	Bedrooms	3.15	0.12	0.05	0.07	0.26	0.13	0.13
Multi-family Housing (Mid-Rise) (221)	Dwelling Unit	5.44	0.36	0.09	0.27	0.44	0.27	0.17
Shopping Center (820)	1,000 SF	37.75	0.94	0.58	0.36	3.81	1.83	1.98
Office (710)	1,000 SF	9.74	1.16	1.00	0.16	1.15	0.18	0.97

The project consists of 97 single-occupancy residential units, 112 two-bedroom units, and 15 three-bedroom units. The trip generation rates for single-occupancy residential units are based on off-campus student apartment (Land Use 225). The trip generation rates for two and three-bedroom units are based on multi-family housing (mid-rise) (Land Use 221).

The trip generation estimates 20 percent transit and bicycle trip reduction for residential trips and 35 percent pass-by trip reduction for the retail trips. Internal Capture Reduction is calculated based on ITE's internal capture worksheets (NCHRP 684). The projected trips associated with the project are shown in **Table 4.**

Table 4. Project Trip Generation

Land Use	Unit	Quantity	AM Peak Hour			PM Peak Hour			Daily
			Rate	In	Out	Rate	In	Out	
Off-Campus Student Apartment (225)	Bedrooms	97	12	5	7	24	13	11	306
Multi-family Housing (Mid-Rise) (221)	Dwelling Unit	127	46	11	35	56	34	22	691
Transit & Bicycle Reduction		(20%)	-12	-3	-8	-16	-9	-7	-199
Shopping Center (820)	1,000 SF	20,044	19	12	7	76	37	39	757
Pass-by Reduction		(35%)	-7	-4	-2	-27	-13	-14	-265
Internal Capture Reduction		(13%)	-10	-4	-6	-20	-11	-9	-228
Office (710)	1,000 SF	12,528	15	13	2	14	2	12	122
NET Trip Generation			**64**	**30**	**34**	**107**	**53**	**54**	**1,184**

The project is expected to generate 30 inbound and 34 outbound trips in the AM peak hour, 53 inbound and 54 outbound trips in the PM peak hour, and 1,184 daily trips.

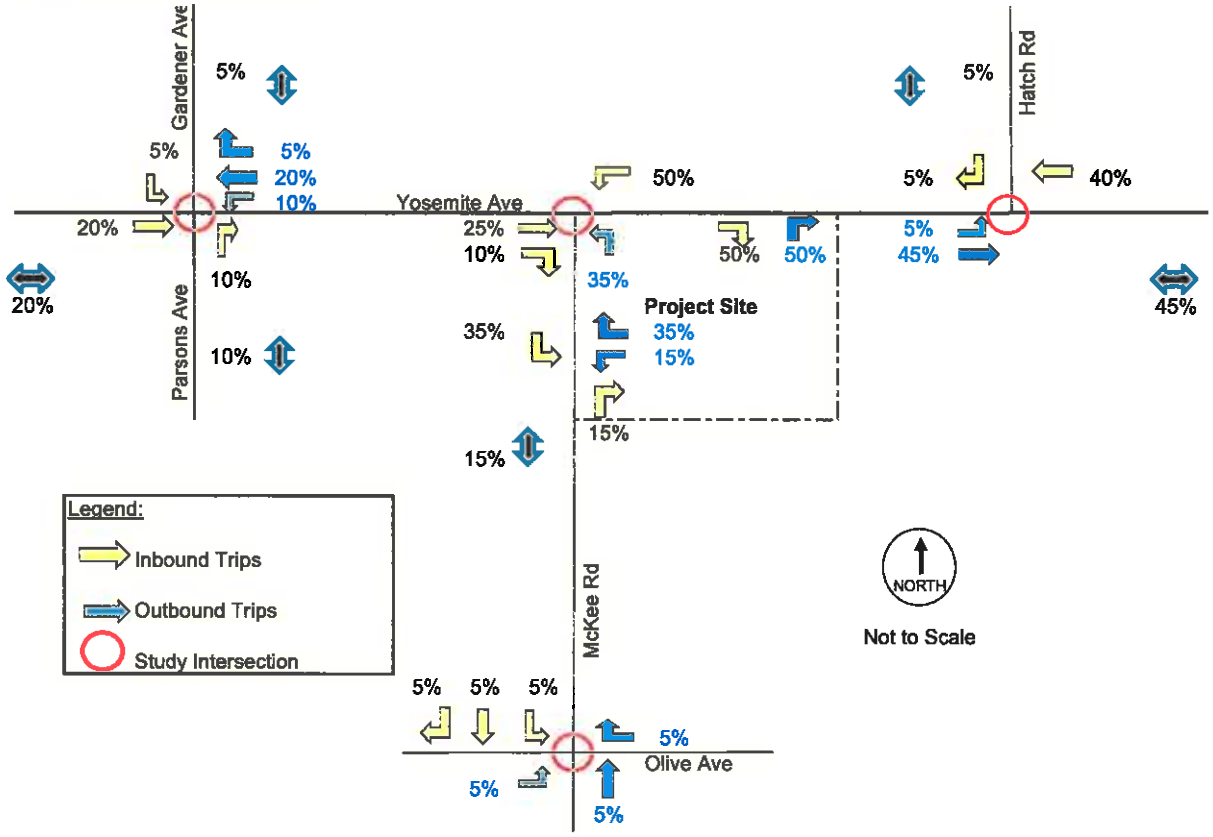
TRIP DISTRIBUTION

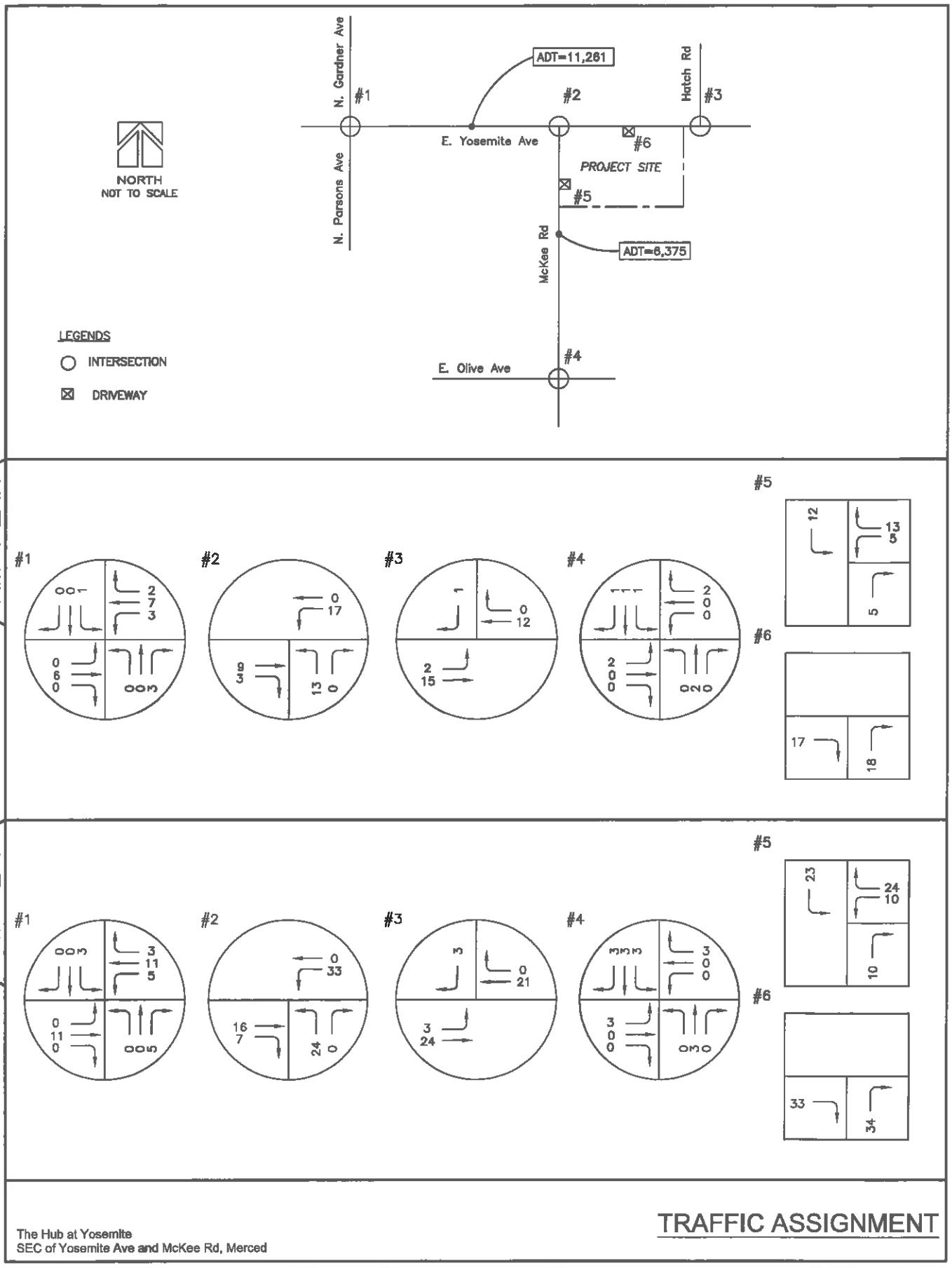
Trip distribution represents the directional orientation of traffic to and from the proposed project. Directional orientation is largely influenced by the geographical location of the site, among many other factors. The trip distribution pattern for the project is illustrated on **Exhibit 4**.

TRAFFIC ASSIGNMENT

The traffic assignment to and from the Site has been based upon the results of trip generation, trip distribution, and access layouts. **Exhibit 5** illustrates the traffic assignment of the proposed project for the AM and PM peak hours.

EXHIBIT 4. TRIP DISTRIBUTION





TRAFFIC ASSIGNMENT

The Hub at Yosemite
SEC of Yosemite Ave and McKee Rd, Merced

EXISTING CONDITIONS PLUS PROJECT

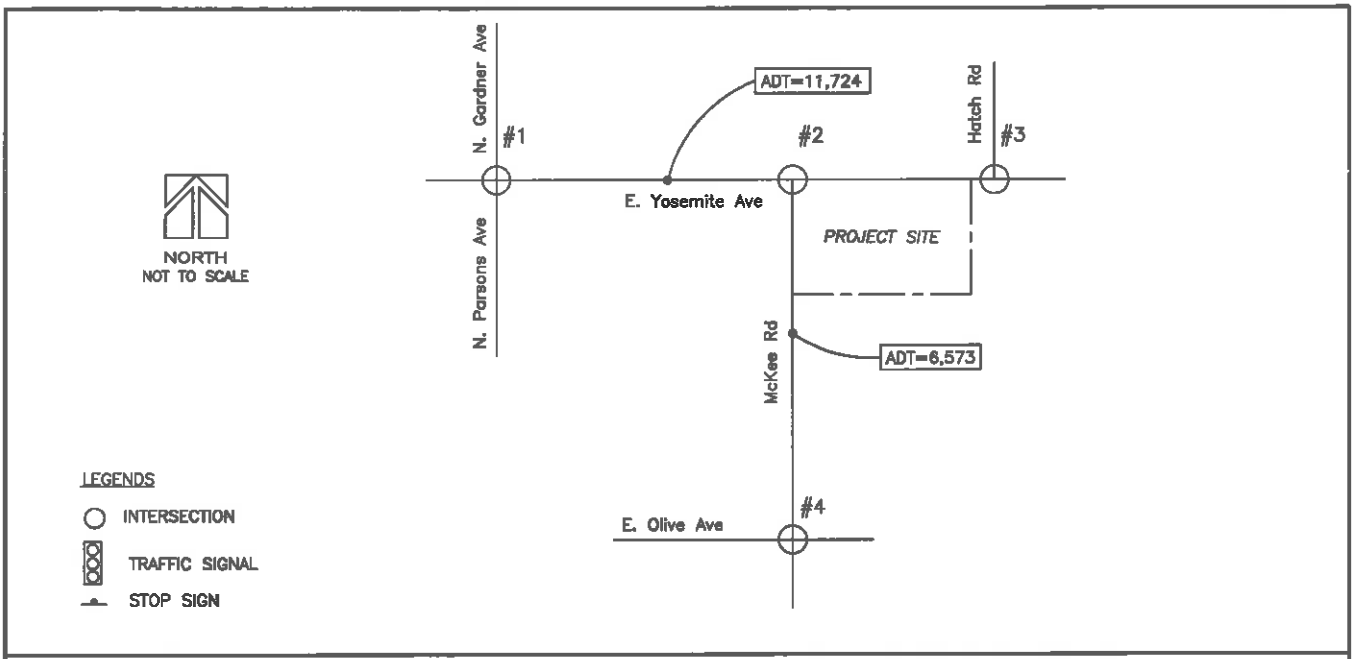
Traffic volumes of the existing condition plus project traffic are shown in **Exhibits 6**. Both roadway segments, Yosemite Avenue and McKee Road, maintain unchanged at LOS C in this study scenario. Level of services for study intersections in the AM and PM peak hours under this scenario are shown in **Table 5**.

Table 5. Traffic Analysis- Existing Conditions Plus Project

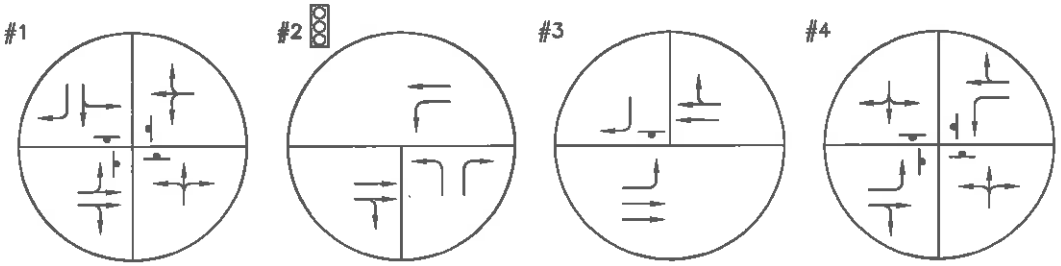
Intersection	Control	AM Peak Hour		PM Peak Hour	
		LOS	Delay (s)	LOS	Delay (s)
1. Yosemite Ave at Parsons/Gardner Ave	AWSC	**F**	54.4	**E**	45.0
2. Yosemite Ave at McKee Rd	Signal	B	10.7	B	11.4
3. Yosemite Ave at Hatch Rd	TWSC	A	9.3	B	10.1
4. McKee Rd at Olive Ave	AWSC	**E**	41.2	**E**	35.9

All studied intersections will maintain level of service "D" or better except the following criteria:

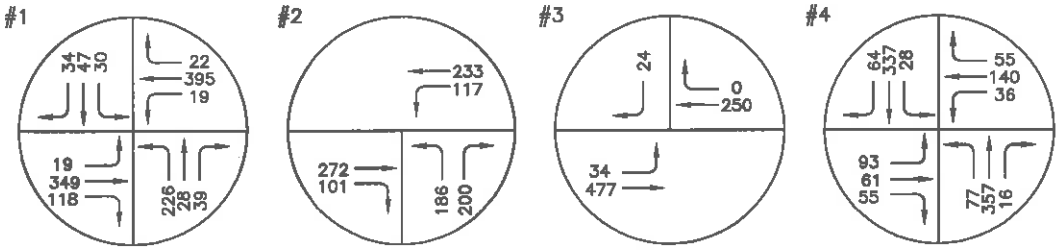
- Location #1, Yosemite Ave at Parsons Ave/Gardner Ave: LOS's F and E for the AM and PM peak hours, respectively.
- Location #4, McKee Road at Oliver Ave: LOS E for both AM and PM peak hours.



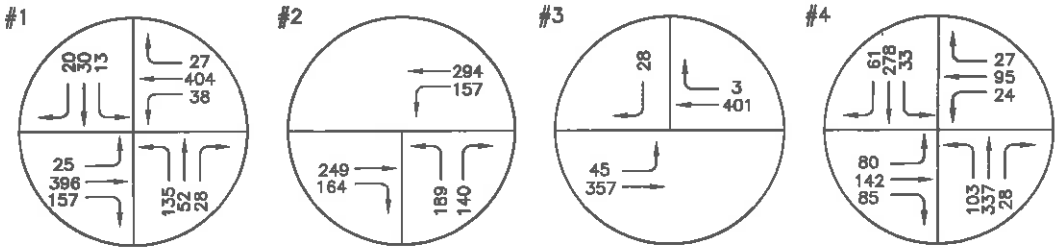
LANE CONFIGURATION



AM PEAK



PM PEAK



EXISTING PLUS PROJECT TRAFFIC VOLUMES

The Hub at Yosemite
SEC of Yosemite Ave and McKee Rd, Merced

APPROVED PROJECTS

Trip generation from other approved projects were taken into consideration. Based on information provided by the Planning Department of the City of Merced, the following approved developments are included:

- **Wathen Commercial** - This approved project is situated at the northeast corner of Yosemite Avenue and G Street. Proposed development includes a hotel, restaurant, pharmacy, bank, and office buildings.

- **University Village at Lake** - This approved project is situated at the southwest corner of Yosemite Avenue and Lake Road. Proposed development includes student apartments and commercial uses.

Location map of these approved projects is illustrated on **Exhibit 7. Exhibit 8** illustrates traffic volumes generated by these approved project at study intersections.

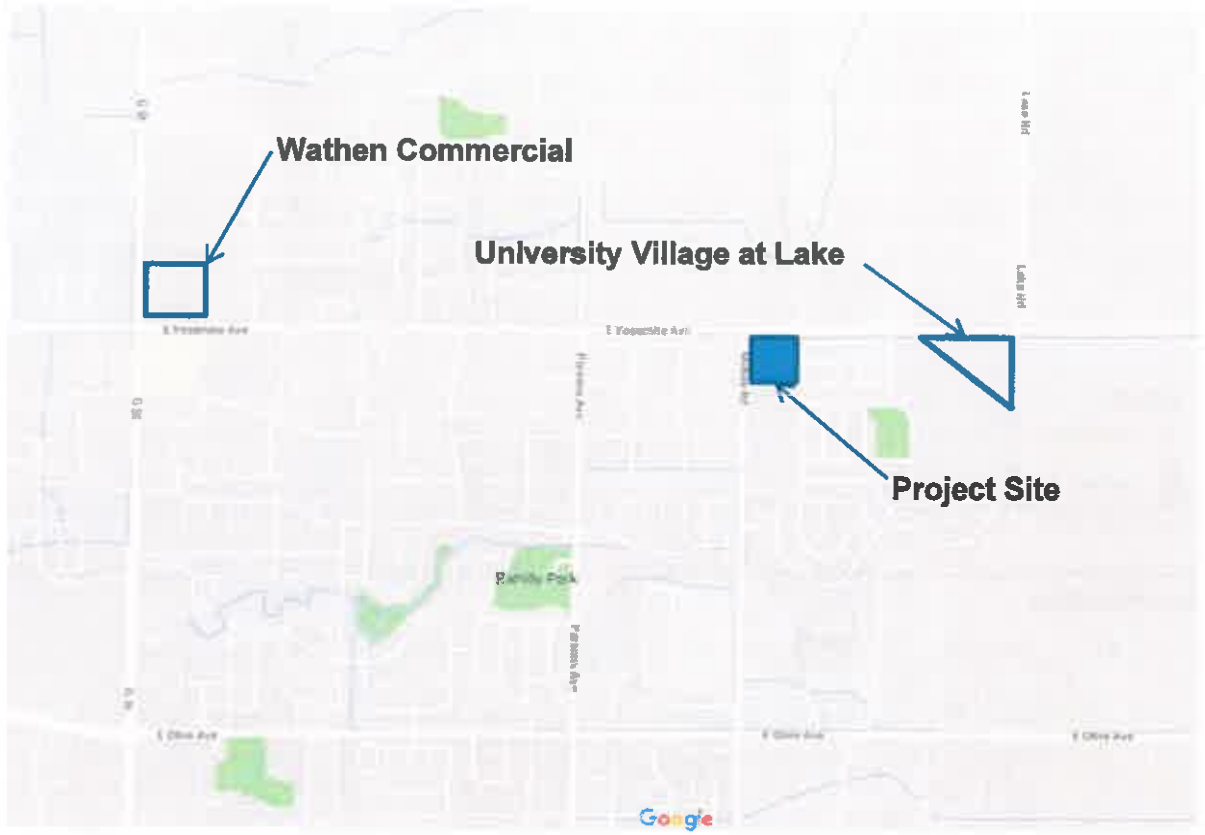
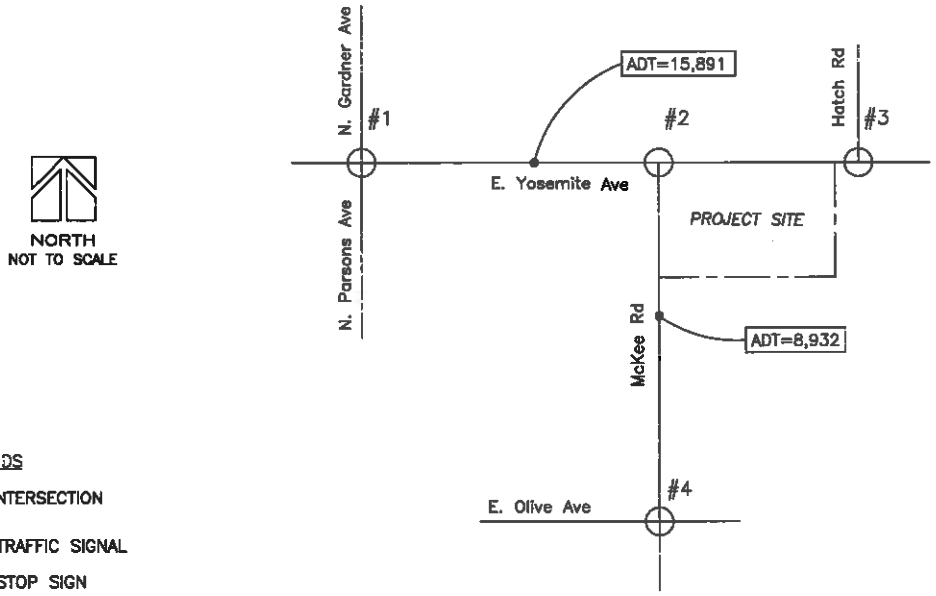
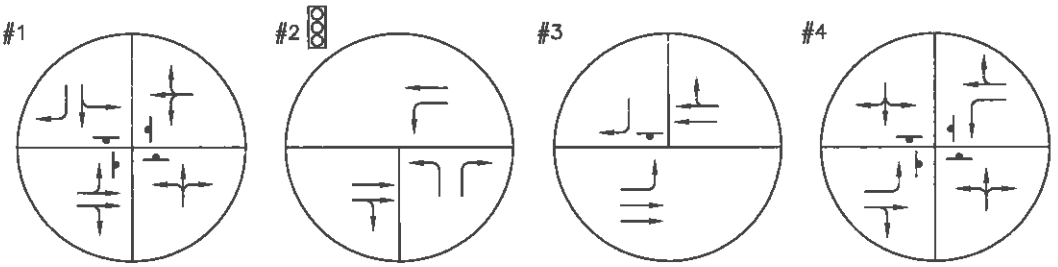


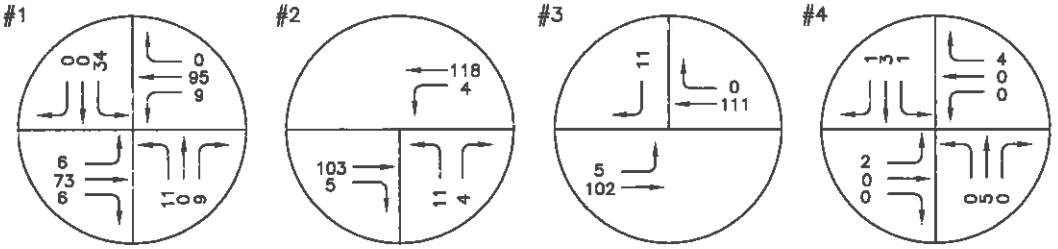
EXHIBIT 7. LOCATION MAP OF APPROVED PROJECTS
No Scale



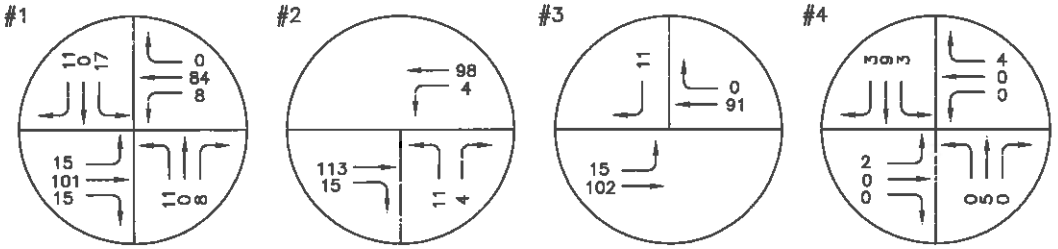
LANE CONFIGURATION



AM PEAK



PM PEAK



APPROVED PROJECTS TRAFFIC VOLUMES

The Hub at Yosemite
SEC of Yosemite Ave and McKee Rd, Merced

EXISTING PLUS APPROVED CONDITIONS

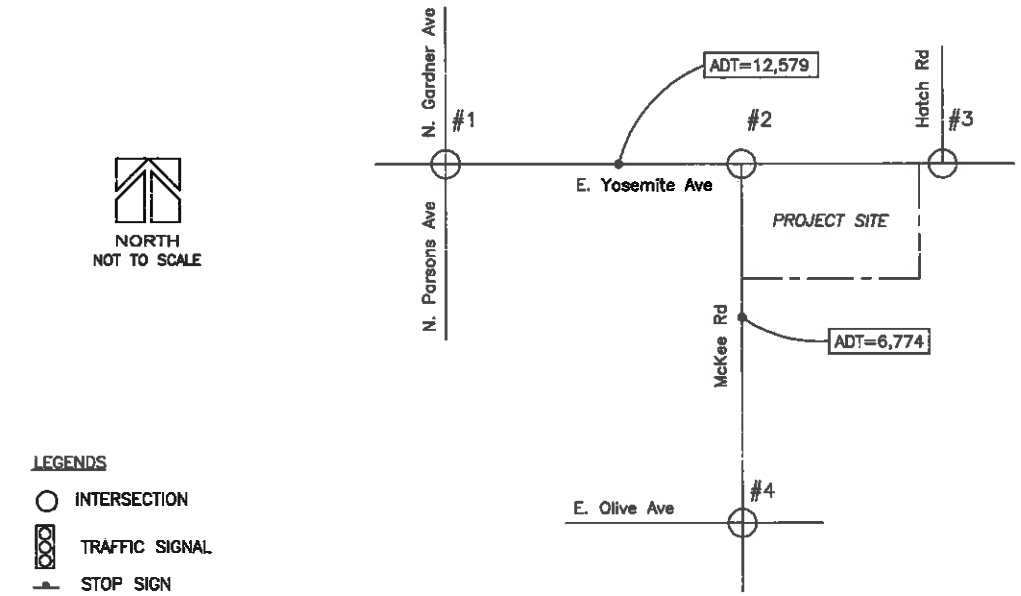
Traffic volumes of the existing condition plus project traffic are shown in **Exhibits 9**. Both roadway segments, Yosemite Avenue and McKee Road, remain unchanged at LOS C. Level of services for study intersections in the AM and PM peak hours under this scenario are shown in **Table 6**.

Table 6. Traffic Analysis: Existing plus Approved Conditions

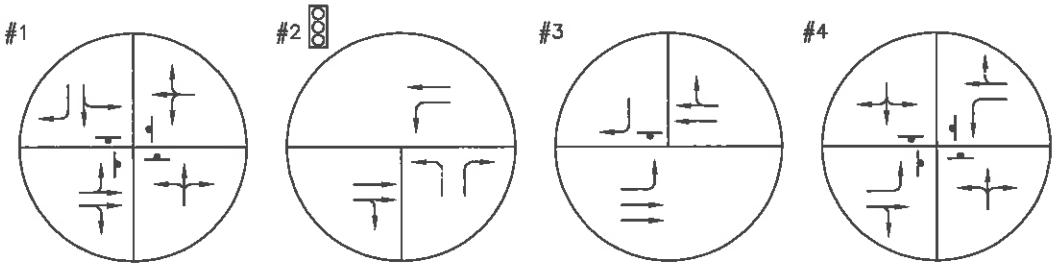
Intersection	Control	AM Peak Hour		PM Peak Hour	
		LOS	Delay (s)	LOS	Delay (s)
1. Yosemite Ave at Parsons/Gardner Ave	AWSC	F	112.8	F	86.6
2. Yosemite Ave at McKee Rd	Signal	B	11.6	B	12.2
3. Yosemite Ave at Hatch Rd	TWSC	A	9.9	B	10.5
4. McKee Rd at Olive Ave	AWSC	E	42.7	E	37.4

All studied intersections will maintain level of service "D" or better except the following criteria:

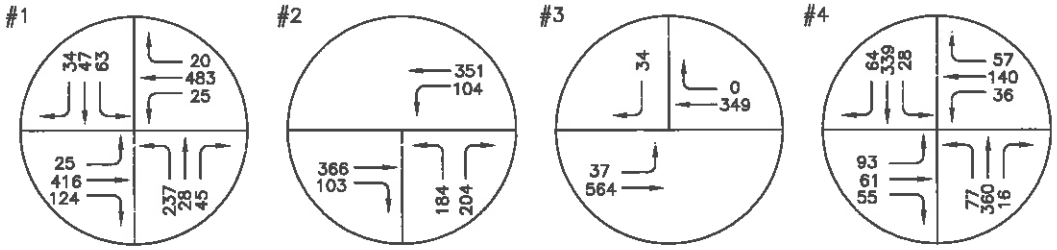
- Location #1, Yosemite Ave at Parsons Ave/Gardner Ave: LOS's F and E for the AM and PM peak hours, respectively.
- Location #4, McKee Road at Oliver Ave: LOS E for both AM and PM peak hours.



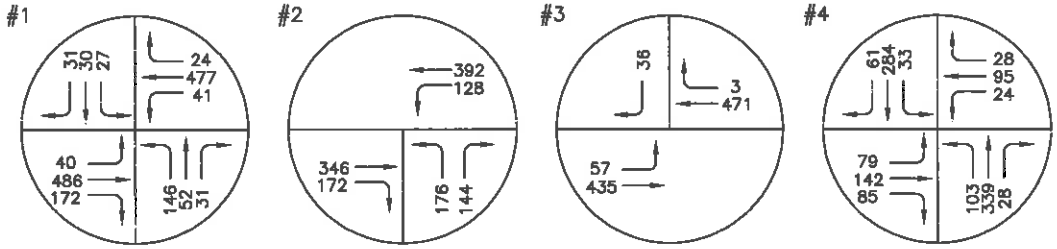
LANE CONFIGURATION



AM PEAK



PM PEAK



EXISTING PLUS APPROVED PROJECT
TRAFFIC VOLUMES

The Hub at Yosemite
SEC of Yosemite Ave and McKee Rd, Merced

K2 TRAFFIC ENGINEERING

EXISTING PLUS APPROVED PLUS PROJECT CONDITIONS

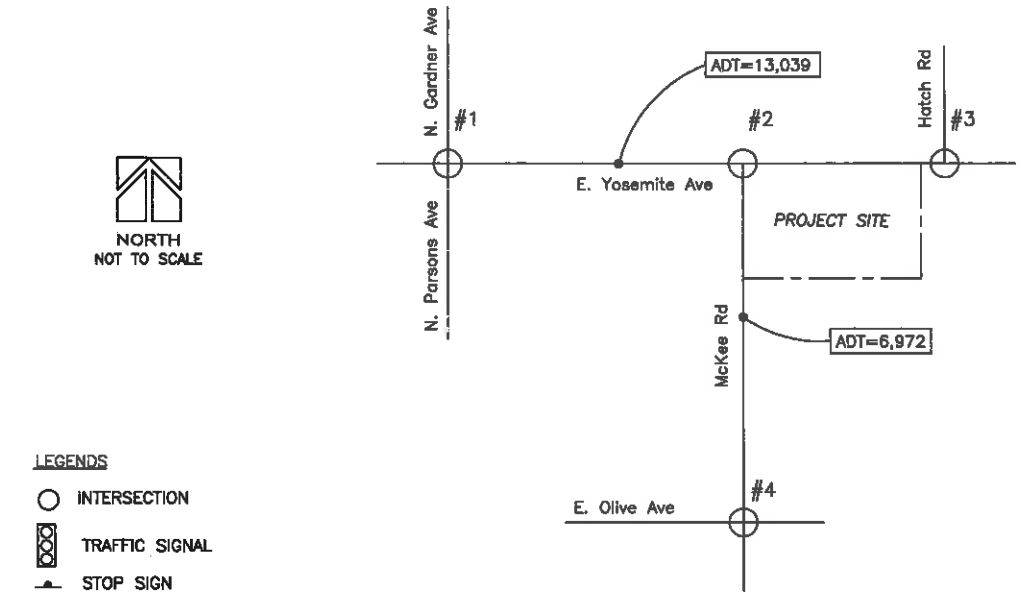
Traffic volumes for the existing plus approved projects after project completion are illustrated in **Exhibit 10.** Both roadway segments, Yosemite Avenue and McKee Road, remain unchanged at LOS C. Level of services for study intersections in the AM and PM peak hours under this scenario are shown in **Table 7.**

Table 7. Traffic Analysis: Existing plus Approved plus Project Conditions

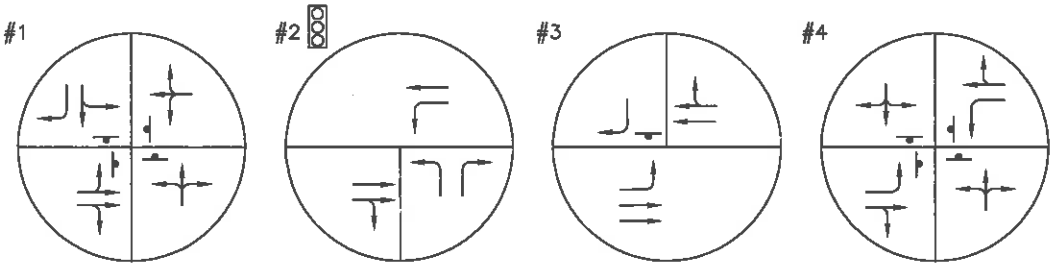
Intersection	Control	AM Peak Hour		PM Peak Hour	
		LOS	Delay (s)	LOS	Delay (s)
1. Yosemite Ave at Parsons/Gardner Ave	AWSC	F	120.8	F	97.5
2. Yosemite Ave at McKee Rd	Signal	B	11.7	B	12.7
3. Yosemite Ave at Hatch Rd	TWSC	A	9.9	B	10.7
4. McKee Rd at Olive Ave	AWSC	E	44.6	E	40.1

All studied intersections will maintain level of service "D" or better except the following criteria:

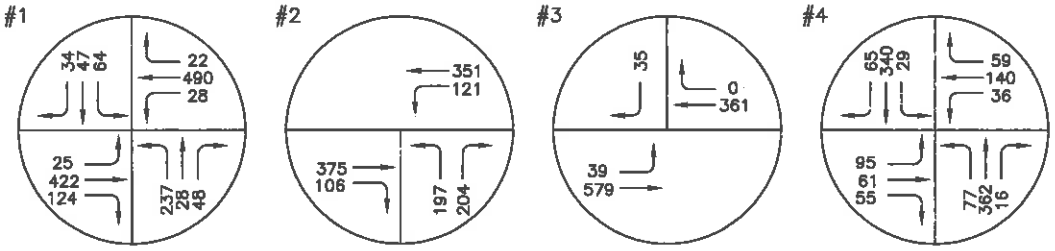
- Location #1, Yosemite Ave at Parsons Ave/Gardner Ave: LOS's F and E for the AM and PM peak hours, respectively.
- Location #4, McKee Road at Oliver Ave: LOS E for both AM and PM peak hours.



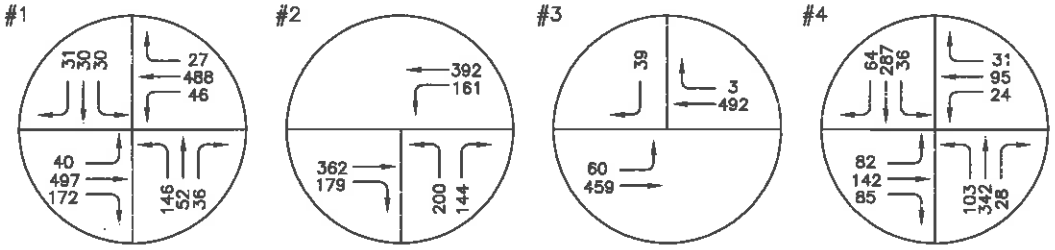
LANE CONFIGURATION



AM PEAK



PM PEAK



EXISTING PLUS APPROVED PLUS PROJECT
TRAFFIC VOLUMES

The Hub at Yosemite
SEC of Yosemite Ave and McKee Rd, Merced

K2 TRAFFIC ENGINEERING

EXHIBIT 10

CUMULATIVE YEAR (2035) WITHOUT PROJECT CONDITIONS

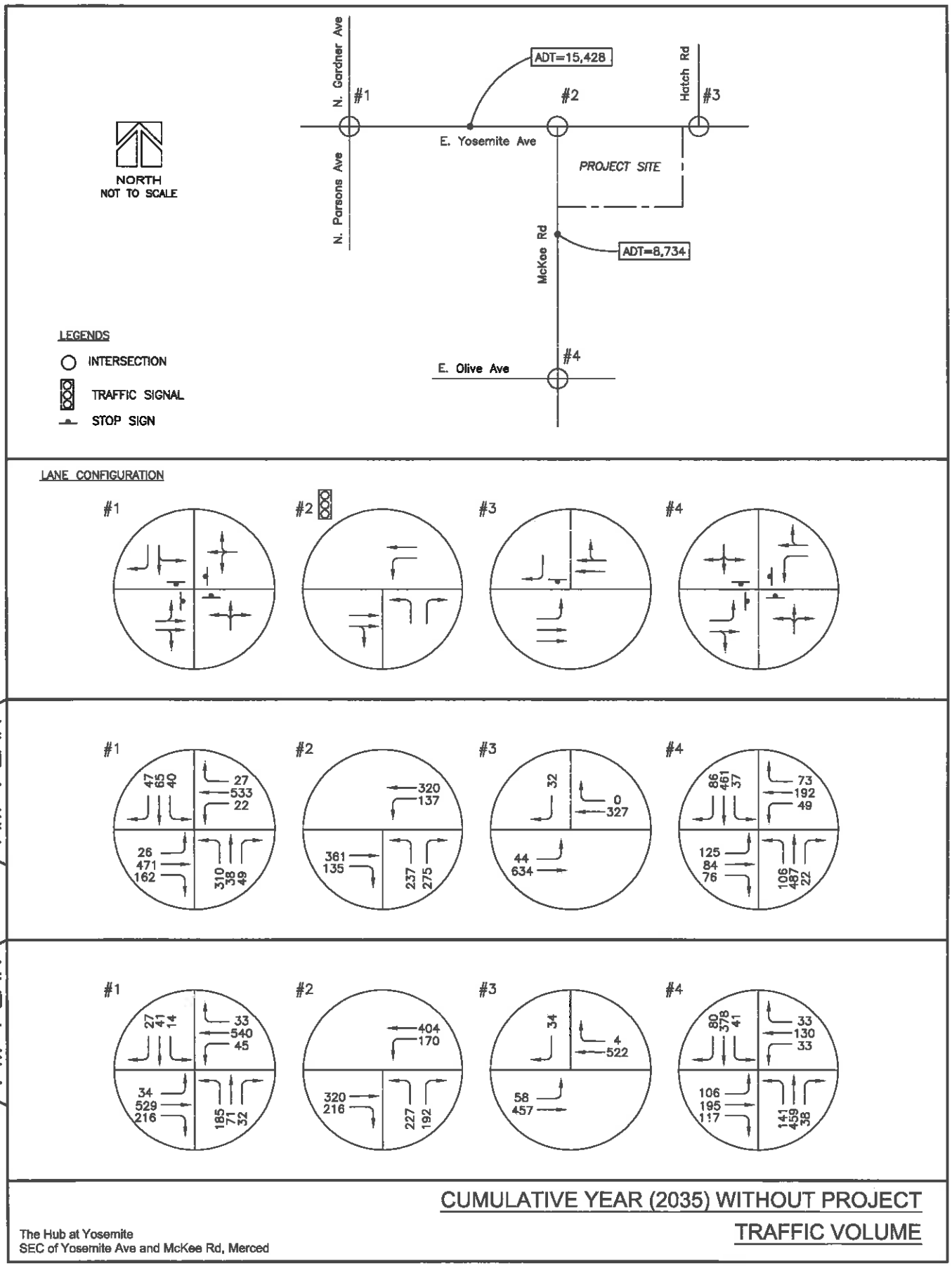
Cumulative Year 2035 without project traffic volumes were obtained by using MCAG travel demand model along with the increment method between the Base Year 2010 and the Cumulative Year 2035. The model provided a percent growth per year based on the improvements identified in the area. The growth rate was applied to the existing volumes to calculate the peak hour turning movements for Year 2035 without Project Conditions. Turning movement volumes are shown in **Exhibits 11** and travel demand model runs are shown in **Appendix E.** Both roadway segments, Yosemite Avenue and McKee Road, remain unchanged at LOS C. Level of services for study intersections in the AM and PM peak hours under this scenario are shown in **Table 8.**

Table 8. Traffic Analysis: Cumulative Year (2035) without Project Conditions

Intersection	Control	AM Peak Hour		PM Peak Hour	
		LOS	Delay (s)	LOS	Delay (s)
1. Yosemite Ave at Parsons/Gardner Ave	AWSC	F	168.8	F	145.0
2. Yosemite Ave at McKee Rd	Signal	B	12.1	B	12.9
3. Yosemite Ave at Hatch Rd	TWSC	A	9.7	B	10.8
4. McKee Rd at Olive Ave	AWSC	F	164.9	F	150.4

All studied intersections will maintain level of service "D" or better except the following criteria:

- Location #1, Yosemite Ave at Parsons Ave/Gardner Ave: LOS's F and E for the AM and PM peak hours, respectively.
- Location #4, McKee Road at Oliver Ave: LOS E for both AM and PM peak hours.



CUMULATIVE YEAR (2035) WITHOUT PROJECT
TRAFFIC VOLUME

The Hub at Yosemite
SEC of Yosemite Ave and McKee Rd, Merced

K2 TRAFFIC ENGINEERING

EXHIBIT 11

CUMULATIVE YEAR (2035) PLUS PROJECT CONDITIONS

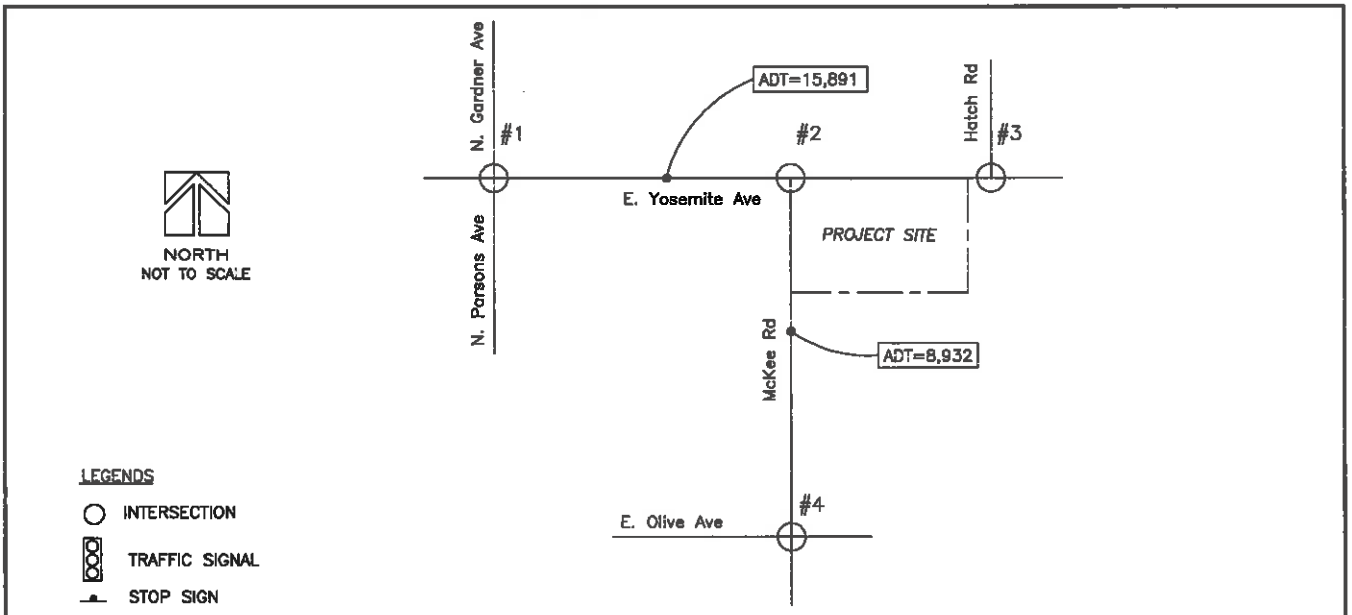
Traffic volumes for Cumulative Year 2035 plus project traffic volumes are illustrated in **Exhibit 12**. Both roadway segments, Yosemite Avenue and McKee Road, remain unchanged at LOS C. Level of services for study intersections in the AM and PM peak hours under this condition are shown in **Table 9**.

Table 9. Cumulative Year (2035) plus Project Conditions

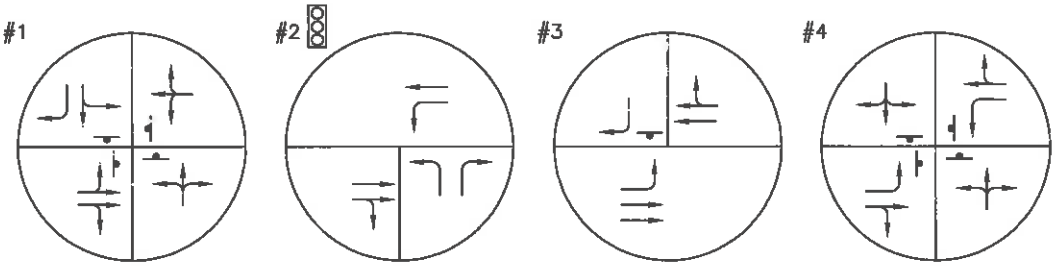
Intersection	Control	AM Peak Hour		PM Peak Hour	
		LOS	Delay (s)	LOS	Delay (s)
1. Yosemite Ave at Parsons/Gardner Ave	AWSC	F	175.8	F	158.1
2. Yosemite Ave at McKee Rd	Signal	B	12.3	B	13.6
3. Yosemite Ave at Hatch Rd	TWSC	A	9.8	B	11.0
4. McKee Rd at Olive Ave	AWSC	F	168.7	F	155.1

All studied intersections will maintain level of service "D" or better except the following criteria:

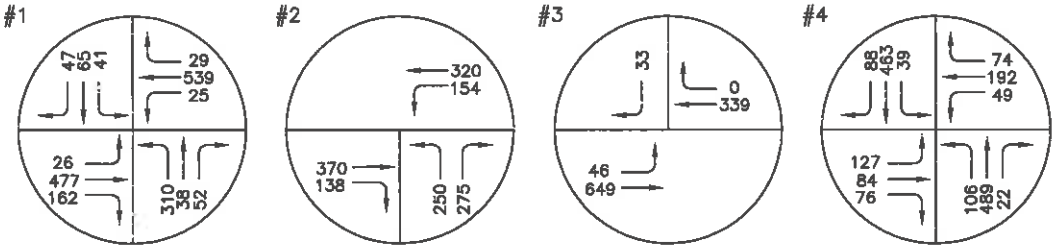
- Location #1, Yosemite Ave at Parsons Ave/Gardner Ave: LOS F for both AM and PM peak hours.
- Location #4, McKee Road at Oliver Ave: LOS F for both AM and PM peak hours.



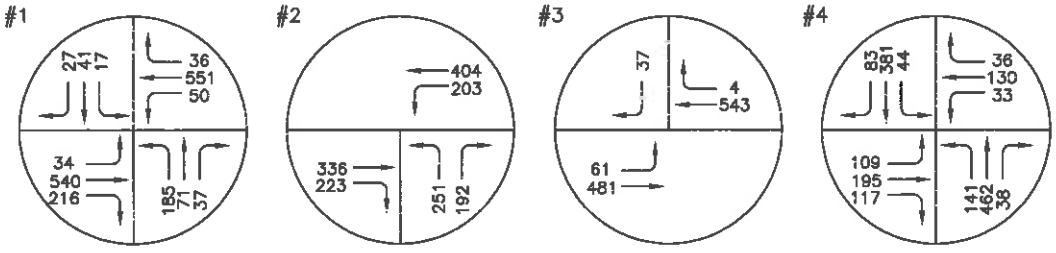
LANE CONFIGURATION



AM PEAK



PM PEAK



CUMULATIVE YEAR (2035) PLUS PROJECT

TRAFFIC VOLUME

The Hub at Yosemite
SEC of Yosemite Ave and McKee Rd, Merced

K2 TRAFFIC ENGINEERING

THRESHOLD OF SIGNIFICANT IMPACT

The Merced Vision 2030 General Plan Transportation and Circulation Element has established LOS D as the acceptable level of traffic congestion on larger roads and major intersections. LOS D is used to evaluate the potential significance of LOS impacts to intersections and segments. For projects that propose uses or intensities above that contained in the General Plan, a significant impact at a study intersection is when the addition of project related trips causes either peak hour LOS to degrade from acceptable (LOS A thru D) to unacceptable levels (E or F) or the peak hour delay to increase as follows:

Table 10. Threshold of Significant Impact

Pre-Project LOS	Peak Hour Delay Increase
A, B	10.0 seconds
C	8.0 seconds
D	5.0 seconds
E	2.0 seconds
F	1.0 seconds

For Existing Conditions, project's traffic impact at the study intersections are shown in **Table 9.**

Table 11. Project Impact Analysis - Existing Conditions

Location	Control	Pre-Project Conditions		Post Project Conditions		Project-Related	Signifi-cant
		LOS	Delay	LOS	Delay	Increase	Impact
AM PEAK							
1. Yosemite Ave at Parsons/Gardner Ave	AWSC	F	50.3	F	54.4	4.1 (>1)	YES
2. Yosemite Ave at McKee Rd	Signal	B	10.6	B	10.7	0.1	No
3. Yosemite Ave at Hatch Rd	TWSC	A	9.3	A	9.3	0	No
4. McKee Rd at Olive Ave	AWSC	E	39.4	E	41.2	1.8 (<2)	No
PM PEAK							
1. Yosemite Ave at Parsons/Gardner Ave	AWSC	E	40.2	E	45.0	4.8 (>2)	YES
2. Yosemite Ave at McKee Rd	Signal	B	11.0	B	11.4	0.4	No
3. Yosemite Ave at Hatch Rd	TWSC	B	10.0	B	10.1	0.1	No
4. McKee Rd at Olive Ave	AWSC	E	34.2	E	35.9	1.7 (<2)	No

Based on the existing conditions, the project has a significant impact at the following intersection:

- Location #1, Yosemite Avenue at Parsons/Gardner Avenue

Mitigation measures will be discussed in the next chapter.

For Existing plus Approved Conditions, project's traffic impact at the study intersections are shown in **Table 10.**

Table 12. Project Impact Analysis - Existing plus Approved Conditions

Location	Control	Pre-Project Conditions		Post Project Conditions		Project-Related	Signifi-cant
		LOS	Delay	LOS	Delay	Increase	Impact
AM PEAK							
1. Yosemite Ave at Parsons/Gardner Ave	AWSC	F	112.8	F	120.8	8.0 (>1)	YES
2. Yosemite Ave at McKee Rd	Signal	B	11.6	B	11.7	0.1	No
3. Yosemite Ave at Hatch Rd	TWSC	A	9.9	A	9.9	0	No
4. McKee Rd at Olive Ave	AWSC	E	42.7	E	44.6	1.9 (<2)	No
PM PEAK							
1. Yosemite Ave at Parsons/Gardner Ave	AWSC	F	86.6	F	97.5	10.9 (>1)	YES
2. Yosemite Ave at McKee Rd	Signal	B	12.2	B	12.7	0.5	No
3. Yosemite Ave at Hatch Rd	TWSC	B	10.5	B	10.7	0.2	No
4. McKee Rd at Olive Ave	AWSC	E	37.4	E	40.1	2.7 (>2)	YES

Based on Existing plus Approved Conditions, the project has a significant impact at the following intersection:

- Location #1, Yosemite Avenue at Parsons/Gardner Avenue
- Location #4, McKee Road at Olive Avenue

Mitigation measures will be discussed in the next chapter.

For Cumulative Year (2035) Conditions, project's traffic impact at the study intersections are shown in **Table 11**.

Table 13. Project Impact Analysis - Cumulative Year (2035) Conditions

Location	Control	Pre-Project Conditions		Post Project Conditions		Project-Related	Signifi-cant
		LOS	Delay	LOS	Delay	Increase	Impact
AM PEAK							
1. Yosemite Ave at Parsons/Gardner Ave	AWSC	F	168.8	F	175.8	7.0 (>1)	**YES**
2. Yosemite Ave at McKee Rd	Signal	B	12.1	B	12.3	0.2	No
3. Yosemite Ave at Hatch Rd	TWSC	A	9.7	A	9.8	0.1	No
4. McKee Rd at Olive Ave	AWSC	F	164.9	F	168.7	3.8 (>2)	**YES**
PM PEAK							
1. Yosemite Ave at Parsons/Gardner Ave	AWSC	F	145.0	F	158.1	13.1 (>1)	**YES**
2. Yosemite Ave at McKee Rd	Signal	B	12.9	B	13.6	0.7	No
3. Yosemite Ave at Hatch Rd	TWSC	B	10.8	B	11.0	0.2	No
4. McKee Rd at Olive Ave	AWSC	F	150.4	F	155.1	4.7 (>2)	**YES**

Based on Cumulative Year (2035) Conditions, the project has a significant impact at the following intersection:

- Location #1, Yosemite Avenue at Parsons/Gardner Avenue
- Location #4, McKee Road at Olive Avenue

Mitigation measures will be discussed in the next chapter.

MITIGATION MEASURES

The following mitigation measures are recommended:

1. Install traffic signals at the intersection of Yosemite Avenue and Parsons/Gardner Avenue, and
2. Install traffic signals at the intersection of McKee Road and Olive Avenue.

With the above mitigation measures, all study intersections will maintain acceptable level of services, and the project will no longer result in any significant traffic impact, as shown in Table 12.

Table 14. Project Impact Analysis - Mitigation Measure

Mitigated Location	Proposed Control	Existing Conditions plus Project		Existing plus Approved Conditions plus Project		Cumulative Year (2035) Conditions plus Project	
		LOS	Delay	LOS	Delay	LOS	Delay
AM PEAK							
1. Yosemite Ave at Parsons/Gardner Ave	Signal	B	13.2	B	14.6	B	18.4
4. McKee Rd at Olive Ave	Signal	A	7.8	A	7.9	B	12.9
PM PEAK							
1. Yosemite Ave at Parsons/Gardner Ave	Signal	B	13.5	C	22.0	B	14.6
4. McKee Rd at Olive Ave	Signal	A	7.6	A	7.7	B	11.3

FAIR SHARE CONTRIBUTION

The fair share contribution represents the percentage of construction cost that the proposed development is expected to contribute toward the aforementioned mitigation measures. The fair share contribution is calculated based on the sum of project trips in the PM peak hour at the subject location for the Existing plus Approved Conditions as a percentage of total trips during the same period, as shown in **Table 14**.

Table 15. Calculation of Fair Share Contribution

Traffic Signalization	Project Trip	Overall Trip (Existing plus Approved Conditions)	Project Contribution
#1. Yosemite Ave at Parsons/Gardner Ave	38	1,557	**2.4%**
#4. McKee Road at Olive Ave	18	1,301	**1.4%**

As a pre-existing condition, both All-Way-Stop-Controlled intersections are warranted for traffic signals based on existing traffic volumes. As a mitigation measure, the proposed development should contribute a fair share of traffic signal, estimated as 2.4% and 1.4% of the traffic signal improvement costs for Locations #1 and 4, respectively.

QUEUE ANALYSIS

The study conducted a queue analysis and found that all existing turn bays provide sufficient length to accommodate the 95th percentile queue at each study intersection. The summary of turning movement queue analysis are shown in **Table 10**.

Table 16. Summary of Queue Analysis

Intersection	Turn Movement	95th Percentile Queue (feet)				Existing Turn Bay Length (feet)	Exceeds Capacity
		Existing plus Approved Conditions plus Project		Cumulative Year (2035) Conditions plus Project			
		AM Peak	PM Peak	AM Peak	PM Peak		
#1. Yosemite Ave at Parsons/Gardner Ave	SBR	11	11	13	9	180	No
#2. Yosemite Ave at McKee Rd	WBL	59	144	80	143	160	No
	NBR	29	24	34	28	82	No
#3. Yosemite Ave at Hatch Rd	EBL	2	6	4	6	150	No
#4. McKee Rd at Olive Ave	WBL	20	15	24	19	120	No
	EBL	43	37	58	46	60	No

SITE ACCESS

Site access will be provided by a right-in-right out driveway on Yosemite Avenue and a full-access driveway on McKee Road. A "One Way" sign (R6-1R) should be installed on Yosemite Avenue at the raised median facing the proposed driveway to ensure right-turn egress only.

ON-SITE CIRCULATION

The parking lot are designed with adequate setbacks from public streets. On-site circulation appears properly functional and efficient without bottleneck. Nonetheless, the site plan is subject to final review and approval by the Fire Department, Planning Department and Traffic Engineer.

TRANSIT FACILITIES

The project site is on the UC Merced route that runs along Yosemite Avenue and provides transit services to UC Merced, Merced College, and Mercy Medical Center. The nearest bus stop on Yosemite Avenue is located approximately a quarter mile from the project site, easterly at Perch Lane and westerly at Parsons Avenue / Gardner Avenue. With the proposed development, a new bus stop is recommended for each direction on Yosemite Avenue near McKee Road to promote ridership of public transit by future residents.

PEDESTRIAN AND BIKE FACILITIES

Class II on-street bike lanes are currently provided on Yosemite Avenue in the project vicinity, in conformance with the *Merced County Regional Bicycle Transportation Plan.* This bike lane links easterly to a Class I bike path along Lake Road that connects to UC Merced campus.

Crosswalks and ADA accessible ramps are currently present at the south and east legs of the intersection of Yosemite Avenue and McKee Road. However, there is no sidewalk along Yosemite Avenue or McKee Road at the project frontage. As part of the proposed development, the study recommends constructing ADA compliant sidewalks along Yosemite Avenue and McKee Road at the project frontage with consideration of future bus stops.

Note: This resolution was adopted by the Planning Commission on 4/13/20. However, due to the Covid-19 restrictions, we have not obtained the Chairperson's signature yet.

CITY OF MERCED
Planning Commission

Resolution #4036

WHEREAS, the Merced City Planning Commission at a special meeting (held via teleconference) on Monday, April 13, 2020, held a public hearing and considered **Site Plan Review #455**, initiated by Merced Holdings, LP, property owner. This application is a review of Interface Regulations found in Section 20.32 of the City of Merced Zoning Ordinance as they relate to the proposed project approved by Conditional Use Permit #1238. The project is a mixed-use development with 214 apartment units and approximately 37,000 square feet of commercial uses within four buildings (two 2-story buildings and two 3-story buildings) on an approximately 5.94-acre parcel, generally located at the southeast corner of Yosemite Avenue and McKee Road. The property has a General Plan designation of Neighborhood Commercial (CN) and is zoned Neighborhood Commercial (C-N)); also known as Assessor's Parcel Numbers (APN) 008-310-053 and 008-310-038; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through C (Exhibit B) of Staff Report #20-03; and,

WHEREAS, the Merced City Planning Commission concurs with the Findings for Site Plan Review Permits in Merced Municipal Code Section 20.68.050 (F) and other Considerations as outlined in Exhibit B; and,

NOW THEREFORE, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby find that the previous environmental review (Initial Study #19-37 for Conditional Use Permit #1238) remains sufficient and no further documentation is required (CEQA Section 15162 Findings), and approve Site Plan Review Permit #455, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner _____, seconded by Commissioner _____, and carried by the following vote:

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)
ABSTAIN: Commissioner(s)

Adopted this 13th day of April 2020

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:
Exhibit A – Conditions of Approval
Exhibit B – Findings

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Conditions of Approval
Planning Commission Resolution # 4036
Site Plan Review #455

1. The proposed project shall be constructed/designed in substantial compliance with the Site Plan, Floor Plan, Elevations, and Renderings (Attachments B, C, D, and E of Planning Commission Staff Report #20-01, Attachment D of Planning Commission Staff Report #20-03), except as modified by the conditions.

2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.

3. The Project shall comply with the applicable conditions set forth in Planning Commission Resolution #3049 for General Plan Amendment #14-06 and Zone Change #421, Planning Commission Resolution #4025 for General Plan Amendment #19-02 and Zone Change #426, and Planning Commission Resolution #4035 for Conditional Use Permit #1238 previously approved for this site.

4. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.

5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the

defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

7. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map approval or issuance of a building permit, whichever comes first. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.

8. The project shall comply with all mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #19-37 (Exhibit B of Planning Commission Resolution #4035 - Attachment K of Planning Commission Staff Report #20-01) and all applicable mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #14-32 (Appendix A of Initial Study #19-37, Attachment K of Staff Report #20-01).

9. The project shall comply with all applicable Design Standards established by Merced Municipal Code (MMC) Sections 20.46.030 and 20.46.040.

10. All buildings shall be regularly maintained to keep the building finishes in good condition and aesthetically pleasing.

11. The building height for Buildings 2 and 4 are approved as follows: top of parapet – 35' 7 -7/8"; top of mechanical enclosure – 37' 1-7/8"; top of roof access – 43' 5".

Findings and Considerations
Planning Commission Resolution # 4036
Site Plan Review #455

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

A) The proposed mixed-use project complies with the General Plan designation of Neighborhood Commercial (CN) and the Zoning classification of Neighborhood Commercial (C-N). The proposed commercial uses comply with the General Plan designation of Neighborhood Commercial (CN). Although the General Plan encourages mixed-use developments, it does not specifically address the density allowed within a commercial zone for a mixed-use project. The *Merced Vision 2030 General Plan* includes two classifications for higher density residential uses – High-Medium Density (HMD) and High Density (HD). The High-Medium designation allows 12 to 24 units per acre, while the High Density designation allows 24 to 36 units per acre. The proposed project has a density of 36 units per acre, which is consistent with the High Density (HD) designations. Therefore, because there is no definitive designation for a mixed use project and there are General Plan policies that encourage higher density and alternate housing types (see below), the City has relied upon the High Density designation to determine compliance with the General Plan. Based on this designation, the proposed multi-family portion of the project would comply with the General Plan.

The Housing Element of the *Merced Vision 2030 General Plan* includes policies supporting affordable housing, mixed-use development, and higher densities.

Policy H-1.1 *Support Increased in Residential Zoning Districts*

Although the proposed project would not be located within a residential zone, it does provide an opportunity for a higher density project to provide needed housing within the City.

Policy H 1.1.c *Encourage Mixed Use Development*

The proposed project would provide a mixture of retail commercial uses to serve the neighborhood and the multi-family dwelling units.

Policy 1.1.e *Encourage Alternate Housing Types*

The proposed project would include one, two, and three-bedroom apartments. The units range in size from 276 square feet for a one-bedroom unit with a balcony, to 876 square feet for a 3 bedroom unit. This mixture provides a variety of different housing types to meet the growing need of housing within the community and supports this policy of providing alternate housing types.

Policy 1.8b *Prioritize City efforts to encourage residential development by focusing on in-fill development and densification within the existing City Limits.*

The proposed project is on an in-fill site and meets the density requirements of the City's highest density classification.

The following are Land Use Policies and Implementing Actions of the General Plan that could be met with the proposed project.

Policy L-1.1 *Promote Balanced Development Which Provides Jobs, Services, and Housing.*

Implementing Action 1.1.a: *Promote mixed use development combining compatible employment, service and residential elements.*

Implementing Action 1.1.c: *Determine the types of housing opportunities needed for the type of employment opportunities being created in the City.*

The Zoning Ordinance does not specify a density for multi-family housing allowed within a C-N zone, it merely states that multi-family uses are allowed within the C-N zone as a Conditional Use. Therefore, the approval of the CUP #1238 satisfied this requirement. The Zoning Ordinance requires a Site Plan Review permit to address interface requirements. The approval of Site Plan Review #455 would bring the project into compliance with the Zoning Ordinance.

Zoning Ordinance Compliance – Mandatory Site Plan Review Findings

B) The proposed project is subject to MMC Section 20.32 – Interface Regulations. As such, a Site Plan Review Permit is required for this project. MMC Section 20.32 does not specify particular findings be made regarding interface, but MMC Section 20.68.050 (F) requires

specific findings for a Site Plan Review Permit to be approved. Therefore, in order for the Planning Commission to approve or deny a site plan review permit, they must consider the following criteria and make findings to support or deny each criteria. The Findings required by MMC Section 20.68.050 (F) "Findings for Approval for Site Plan Review Permits" are provided below along with recommended reasons to support each finding. If the Planning Commission wishes to deny the Site Plan Review Permit, they will need to provide findings for denial and direct staff to prepare a resolution for denial to be adopted at a future meeting.

1. *The proposed project is consistent with the General Plan, and any adopted area or neighborhood plan, specific plan, or community plan.*

   As described in Finding A above, the project meets the requirements of the General Plan. There are no other area, specific, or neighborhood plans for this area.

2. *The proposed project complies with all applicable provisions of the Zoning Ordinance and Municipal Code.*

   Merced Municipal Code Section 20.46.030 provides general design standards for multi-family dwellings. Section 20.46.040 provides specific standards for multi-family dwellings. Planning staff has reviewed the proposed project with both sets of standards and found it to be in compliance with the majority of these standards. However, to ensure compliance, Condition # 9 requires the project to comply with all applicable design standards listed in these sections.

   As described above, the proposed mixed-use project is subject to the approval of a Conditional Use Permit and a Site Plan Review Permit. The Planning Commission approved the Conditional Use Permit on January 22, 2020. Approval of the proposed Site Plan Review Permit and implementation of the conditions of approval for CUP #1238 and Site Plan Review #455 would bring the project into compliance with the applicable provisions of the Zoning Ordinance and Municipal Code.

3. *The design and layout of the proposed project will not interfere with the use and enjoyment of existing and future neighboring properties and structures.*

   The project site is zoned Neighborhood Commercial (C-N) which is appropriate for the proposed mixed-use development. The residential component of the project was subject to Conditional Use Permit approval and received approval on January 22, 2020. The setbacks exceed the minimum standards of the C-N zone, which requires a minimum 20-foot setback from exterior property lines. As shown on the site plan at Attachment B, the front building (Building 2) is set back approximately 75 feet from Yosemite Avenue. Building 1 is approximately 85 feet from McKee Road, Building 3 is approximately 82 feet from the eastern property line near Whitewater Way, and Building 4 is approximately 125 feet from the southern property line.

   The maximum building height within the C-N zone is 35 feet when adjacent to a residential zone. However, through the Site Plan Review process, an exception may be granted to allow heights in excess of 35 feet. Through the CUP process there were several changes made to the plans and elevations. The plans provided in the staff report were the correct plans, but the information provided in the staff report was based on a previous version of the plans, which showed all buildings being less than 35 feet. Unfortunately, the final version of the plans had buildings heights that exceed 35 feet for Buildings 2 and 4. The building heights at the top of the building parapet for Buildings 2 and 4 are just over 35 feet at 35 feet, 7-7/8 inches. The height to the mechanical enclosure is 37 feet, 1-7/8 inches, and to the top of the roof-top access is 43 feet, 5 inches. It should also be noted that the roof deck for Building 2 is at a height of 32 feet 1-7/8 inches. This is the floor height for the roof-top deck tenant common area on the top of Building 2. There is approximately a 4-foot difference between the floor of the roof-top deck and the parapet as well as a set back of approximately 25 feet from the building edge to the roof-top tenant space. The roof-top access and mechanical enclosure are also set back from the building edge. Given the increased setback of the

buildings (75 feet from Yosemite Avenue for Building 2 and 125 feet from the southern property line for Building 4), the fact that the highest point of the buildings are only a small area, not the entire building, and that the highest point would also be set back from the building edge, the additional height over 35 feet does not appear intrusive or an element that would prevent the adjacent neighbors from enjoying their property. If the Planning Commission wishes to approve the additional height for Buildings 2 and 4, Condition #11 has been added to allow the additional height.

Buildings 1 and 3 are under 35 feet to the top of the parapet, the top of the mechanical enclosure, and the top of the roof-top access.

With the implementation of the proposed conditions of approval and the conditions approved with CUP #1238, the proposed project is in compliance with the design standards for multi-family dwellings (MMC Sections 20.46.030 and 20.46.040).

The project has been designed to have the retail uses mixed throughout Buildings 2, 3, and 4. The retail uses will provide services that will not only serve the residential tenants but will also serve the surrounding neighborhood.

Building 2 includes a roof-top deck to provide the tenants with additional outdoor space. This area would provide an additional outdoor area for tenants to lounge and socialize. The lounge area would be located near the center of the roof and would include tables, chairs, and landscaping, (including trees). The lounge area would be approximately 25 feet from the north and south edges of the building and approximately 70 feet from the east and west areas. There would be a 42-inch-high railing around the lounge area separating it from the rest of the roof-top area for safety purposes. Conditions of approval adopted with CUP #1238 restrict access to the roof-top deck to 7:00 a.m. to 10:00 p.m. daily.

It should also be noted that the site is surrounded by residential uses and a church to the north. Therefore, residential uses are common in this area. Another apartment complex is currently

under construction east of this site at the corner of Yosemite and Lake Road, in the same general vicinity, which provides a mixture of housing units for the area. Given the proximity to the UC, multi-family uses are appropriate for this area.

The proposed project meets the minimum design and zoning standards. Therefore, with the implementation of the conditions of approval, the proposed project would not interfere with the enjoyment of the existing and future land uses in the vicinity.

4. *The proposed architectural design makes use of appropriate materials, texture, and color, and will remain aesthetically appealing and appropriately maintained.*

   The building design includes a mixture of materials, textures, and colors. The building façade would consist of composite cement panels, metal storefronts for buildings 2, 3, and 4, metal window frames for the residential units, and metal railings. The architecture of the buildings include clean lines with a modern flair. Although this style is different that the homes in the area, it is consistent with the multi-family project currently under construction at Yosemite Avenue and Lake Road as well as Yosemite Church to the north across Yosemite Avenue. Condition #10 requires that the buildings be maintained to remain aesthetically appealing.

5. *Any proposed landscaping design, including color, location, size, texture, type, and coverage of plan materials, as well as provisions for irrigation, maintenance, and protection of landscaping elements, will complement structures and provide an attractive environment.*

   The project includes approximately 29,500 square feet of outdoor greenspace and promenade area. As shown on the site plan, the four buildings would surround a large promenade area. This area would be used by customers of the commercial uses and the residential tenants. In addition, the project would be required to comply with the landscape standards called out in MMC Section 20.46.040 requiring 1 tree for each 3 units as well as "foundation plantings", the parking lot landscape standards requiring 1 parking lot tree for each 6 parking spaces,

and Condition #11 of Planning Commission Resolution #4035 requiring a minimum of 15% of the site to be covered with landscaping.

6. *The proposed design will not be materially detrimental to the public health, safety, or welfare, or be injurious to the property or improvements in the vicinity of the proposed project.*

   The proposed project does not include any uses that would be detrimental to the public health, safety, and welfare of the City. The project would be required to annex to the City's Community Facilities District to pay for costs related to police and fire safety. Implementation of the conditions of approval and adherence to all Building and Fire Codes, and City Standards would prevent the project from having any detrimental effect on the health safety, and welfare of the City.

Environmental Clearance

C) The Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and concluded that Environmental Review #20-05 is a second tier environmental document, based upon the City's determination that the proposed development remains consistent with the current general plan and provision of CEQA Guidelines, Section 15162 (Initial Study #19-37 for CUP #1238). A Copy of the Section 15162 Findings can be found at Attachment I of Planning Commission Staff Report #20-03.

Planning Commission Minutes Excerpt
April 13, 2020
Special Meeting Held Via Teleconference

4.1 Site Plan Application #455, initiated by Merced Holdings, LP, property owner. This application is a review of Interface Regulations found in Section 20.32 of the City of Merced Zoning Ordinance as they relate to the proposed project approved by Conditional Use Permit #1238. The project is a mixed-use development with 214 apartment units and approximately 37,000 square feet of commercial uses within four buildings (two 2-story buildings and two 3-story buildings) on an approximately 5.94-acre parcel, generally located at the southeast corner of Yosemite Avenue and McKee Road. The property has a General Plan designation of Neighborhood Commercial (CN) and is zoned Neighborhood Commercial (C-N).

Associate Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #20-03 - Addendum. Staff also received three emails in opposition to the project prior to the meeting from ANN KELLEY, DARALENE W. SILVEIRA, and RICHARD HARRIMAN, those emails were read into the record, and provided to the Planning Commission via email. (Members of the public were given the opportunity to leave voice mail messages as well prior to the meeting, but none were received).

Public testimony was opened at 7:30 p.m. via teleconference.

Speaker in Favor Via Teleconference:

RAJ JOSHI, Applicant, Los Angeles

Speaker in Opposition Via Teleconference:

RICHARD HARRIMAN, Merced

Public testimony was completed at 8:00 p.m.

M/S RASHE-DELGADILLO, and carried by the following vote, to find that the previous environmental review (Initial Study #19-37 for Conditional Use Permit #1238) remains sufficient and no further documentation is required (CEQA Section 15162 Findings), and approve Site Plan Review Permit #455,

DRAFT

subject to the Findings and 11 (eleven) Conditions set forth in Staff Report #20-03 - Addendum (RESOLUTION #4036):

AYES: Commissioners Butticci, Camper, Delgadillo, Dylina, Rashe, White, and Chairperson Harris
NOES: None
ABSENT: None
ABSTAIN: None

DRAFT

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT:	**#20-03 -Addendum**	**AGENDA ITEM:**	**4.1**
FROM:	Kim Espinosa, Planning Manager	**PLANNING COMMISSION MEETING DATE:**	April 13, 2020
PREPARED BY:	Julie Nelson, Associate Planner		

SUBJECT: **Site Plan Review #455,** initiated by Merced Holdings, LP, property owner. This application is a review of Interface Regulations found in Section 20.32 of the City of Merced Zoning Ordinance as they relate to the proposed project approved by Conditional Use Permit #1238. The project is a mixed-use development with 214 apartment units and approximately 37,000 square feet of commercial uses within four buildings (two 2-story buildings and two 3-story buildings) on an approximately 5.94-acre parcel, generally located at the southeast corner of Yosemite Avenue and McKee Road. The property has a General Plan designation of Neighborhood Commercial (CN) and is zoned Neighborhood Commercial (C-N). *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify

1) Environmental Review #20-05 (CEQA Section 15162 Findings)
2) Site Plan Review #455

SUMMARY

The information provided in this report is basically the same as what was provided prior to the March 18, 2020, Planning Commission meeting. That meeting was cancelled due to the Covid-19 situation. There have been a few changes to the report since that time. Those changes have been underlined to make it easier to see the changes.

The proposed project is located at the southeast corner of Yosemite Avenue and McKee Road (Attachment A). The applicant received Conditional Use Permit approval for a mixed-use project consisting of 214 dwelling units and approximately 37,117 square feet of commercial space (retail and office uses) on January 22, 2020. The Site Plan approved with CUP #1238 is provided at Attachment B. Planning Commission Resolution #4035 approving CUP #1238 is provided at Attachment C and Planning Commission Staff Report #20-01 for CUP #1238 is provided at Attachment D.

Although The Planning Commission reviewed and approved Conditional Use Permit (CUP) #1238, it has since been determined that a Site Plan Review Permit is also required to address the interface regulations established in Merced Municipal Code (MMC) Section 20.32 (Attachment E).

The purpose of MMC Section 20.32 – Interface, is to review projects proposed near existing land

uses that might be negatively impacted by the new use. The interface regulations are intended to protect existing residential neighborhood and to ensure that development is designed in a manner to minimize negative impacts on nearby uses. There are no specific findings required by this section, but this section does require a Site Plan Review Permit to approve the interface regulations. Planning Commission Staff Report #20-01 for CUP #1238 addressed these regulations, but the findings required by MMC 20.68.050(F) were not included in the staff report or Planning Commission Resolution #4035.

Traditionally, Planning Staff has relied on MMC Section 20.66.040 (C) (Attachment F) to combine the review of the interface regulations with the CUP review. This section states: "If a proposed project requires multiple permit approvals by both the Planning Commission and the Development Services Department, the Planning Commission shall act upon all required permits as part of a single application." However, it has been determined that this is not sufficient and the Site Plan Review Permit is required along with the findings established by MMC Section 20.68.050 (F) (Attachment G).

Typically, a Site Plan Review application is reviewed by the Site Plan Review Committee which is comprised of the Director of Development Services, the Chief Building Official, and the City Engineer (or their designees). However, because MMC Section 20.66.040 (C) states that applications requiring multiple permit approvals shall be acted upon by the Planning Commission, Site Plan Review #455 is being referred to the Planning Commission for action. Additionally, there has been a lot of concern from the surrounding neighborhood and City staff wants to ensure the neighbors have an opportunity to voice their concerns at a public hearing.

A summary of the description of the project as it was approved by Conditional Use Permit (CUP) #1238 is provided in the "Project Description" section of this report. The Findings required for the approval of a Site Plan Review application are found in the "Findings" section of the report. The Planning Commission's review is limited to the interface regulations and the findings required by MMC Section 20.68.050 (F).

An appeal of the Planning Commission's approval of CUP #1238 was filed by Casey Steed on January 29, 2020. This appeal is tentatively scheduled to be heard by the City Council on April 20, 2020. The Planning Commission's action on Site Plan Review #455 may also be appealed in accordance with MMC Section 20.74 – Appeals. Any appeal of Site Plan Review #455 shall be made within 5 business days of the Planning Commission's action (excluding official City holidays).

Planning Staff has determined that the project complies with the Findings of Section 20.68.050 (F) and recommends approval of the project subject to the conditions below.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #20-05 (CEQA Section 15162 Findings) and Site Plan Review #455, subject to the following conditions (and the Draft Resolution at Attachment J of Planning Commission Staff Report #20-03):

*1) The proposed project shall be constructed/designed in substantial compliance with the Site Plan, Floor Plan, Elevations, and Renderings (Attachments B, C, D, and E of Planning Commission Staff Report #20-01, Attachment D of Planning Commission Staff Report #20-03), except as modified by the conditions.

*2) The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.

*3) The Project shall comply with the applicable conditions set forth in Planning Commission Resolution #3049 for General Plan Amendment #14-06 and Zone Change #421, Planning Commission Resolution #4025 for General Plan Amendment #19-02 and Zone Change #426, and Planning Commission Resolution #4035 for Conditional Use Permit #1238 previously approved for this site.

*4) All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.

*5) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

*6) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

*7) Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map approval or issuance of a building permit, whichever comes first. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.

*8) The project shall comply with all mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #19-37 (Exhibit B of Planning Commission Resolution #4035 - Attachment K of Planning Commission Staff Report #20-01) and all

applicable mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #14-32 (Appendix A of Initial Study #19-37, Attachment K of Staff Report #20-01).

*9) The project shall comply with all applicable Design Standards established by Merced Municipal Code (MMC) Sections 20.46.030 and 20.46.040.

*10) All buildings shall be regularly maintained to keep the building finishes in good condition and aesthetically pleasing.

11) The building height for Buildings 2 and 4 are approved as follows: top of parapet – 35' 7 -7/8"; top of mechanical enclosure – 37' 1-7/8"; top of roof access – 43' 5".

(*) Denotes non-discretionary conditions.

PROJECT DESCRIPTION

The proposed project would be located on a 5.94-acre parcel at the southeast corner of Yosemite Avenue and McKee Road (Attachment A). The project is a mixed-use project consisting of 214 dwelling units and approximately 37,117 square feet of commercial space (retail and office). These uses would be contained within four separate buildings on the site (refer to the Site Plan at Attachment B). This number was reduced from 224 units subsequent to the public hearing notice for the project being published. Buildings 1 and 3 would be 2-story buildings and Buildings 2 and 4 would be 3-story buildings. Building 1 would contain residential units on both floors of the building. Buildings 2 and 4 would have a combination of retail space and common area for the residents. Building 3 would have office uses on the first floor and residential uses on the second floor. The project would provide a total of 127,206 square feet of residential living space, 12,544 square feet of community space for the residential tenants, 12,255 square feet of office space, and 22,672 square feet of retail commercial space.

The residential units would include one, two, and three bedroom units. The development would have 82 - 1 bedroom/1bath units; 112 - 2 bedroom/2 bath units; and, 20 - 3 bedroom/3 bath units. The one-bedroom units would vary in size depending on whether the unit includes a balcony. A one-bedroom unit with a balcony would have 276 square feet and without a balcony, it would have 300 square feet. The two-bedroom units would be 576 square feet with a 24-square-foot balcony, and the three bedroom units would be 876 square feet with a 24-square-foot balcony.

The apartment complex would have an on-site manager and would use a key-fob entry system to increase security and allow better monitoring of the number of tenants residing in the complex. Each apartment would be issued a certain number of key-fobs which would give them access to the buildings, their apartment, and the common areas. The key-fobs would also be required to enable power to the units which would make it more difficult for an unregistered tenant to stay in the unit.

No specific tenants have been identified for the retail portions of the project located within Buildings 2 and 4. However, the Floor Plans for Buildings 2 and 4 identify the types of tenants the developer envisions for this project. These uses could include service related uses such as barbershops and nail salons, general retail uses, and restaurant/food uses. The first floor of Building 3 is designated for office space. The developer is currently working with UC Merced to occupy the office space and some of the residential units for grad-student housing. Planning Commission Staff Report #20-01 included a reference to a Letter of Intent (LOI) from UC Merced

regarding their interest in occupying a portion of this project. The letter provided by UC Merced was not a Letter of Intent, but a letter of interest. This letter is provided at Attachment G of Staff Report #20-01.

Surrounding Uses
Attachment A

Surrounding Land	Existing Use of Land	Zoning Designation	City General Plan Land Use Designation
North	Single-Family Residential/Church/School (across Yosemite Avenue)	County	Rural Residential (RR)
South	Single-Family Residential	R-1-6	Low Density Residential (LD)
East	Single-Family Residential (across Whitewater Way)	P-D #52	Low Density Residential (LD)
West	Single-Family Residential (across McKee Road)	R-1-6	Low Density Residential (LD)

BACKGROUND

The project site was annexed to the City in 2003 as part of the Hunt Farms Annexation. The project site is currently vacant, but was previously occupied by two single-family dwellings (these were demolished in 2017). The site is currently zoned Neighborhood Commercial (C-N). The subject site consists of two individual lots [Assessor's Parcel Numbers (APN's): 008-310-053 and -038 totaling 5.94 acres]. Recently, 22,670 square feet of lot area was acquired from the neighboring property to the south. On October 7, 2019, the City Council approved a General Plan and Zone Change changing the land use designation for this newly acquired area consistent with the rest of the site (C-N).

In 2014, the owner applied for a General Plan Amendment and Zone Change to change the entire site from Low Density Residential (LD) and R-1-6 to Neighborhood Commercial (CN). At that time, the owner proposed the construction of a 62,000-square-foot retail commercial center that would have included a small grocery store, a fast-food restaurant (with a drive-through), and other retail uses appropriate to the Neighborhood Commercial (C-N) zone. The City Council approved the General Plan Amendment and Zone Change to Neighborhood Commercial in 2015.

When the General Plan Amendment and Zone Change were approved in 2015, the City Council had two options for the Shopping Center design on the project site. One option included providing direct access to Whitewater Way from Yosemite Avenue, and the other option did not provide access other an entrance-only service road to serve commercial uses proposed on the site. The City Council voted to prohibit direct access from Yosemite Avenue to Whitewater Way and instead, approved the option with an entrance-only service road.

When the City Council approved the General Plan Amendment and Zone Change on October 7, 2019, they also considered the appeal of the Planning Commission's denial of Conditional Use Permit (CUP) #1231 to allow a mixed-use project consisting of 428 Efficiency Dwelling Units and approximately 18,000 square feet of retail commercial space. The City Council upheld the

Planning Commission's denial of CUP #1231 based on density, traffic congestion, and concerns regarding sewer capacity.

On January 22, 2020, the Planning Commission held a public hearing and considered Conditional Use Permit (CUP) #1238 to allow the construction of a mixed-use development that included 214 apartment units and over 37,000 square feet of commercial space. At this meeting, the Planning Commission unanimously voted to approve CUP #1238. Planning Commission Resolution #4035 approving CUP #1238 is provided at Attachment C. The minutes from the Planning Commission meeting of January 22, 2020 are provided at Attachment H and Staff Report #20-01 is provided at Attachment D.

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

A) The proposed mixed-use project complies with the General Plan designation of Neighborhood Commercial (CN) and the Zoning classification of Neighborhood Commercial (C-N). The proposed commercial uses comply with the General Plan designation of Neighborhood Commercial (CN). Although the General Plan encourages mixed-use developments, it does not specifically address the density allowed within a commercial zone for a mixed-use project. The *Merced Vision 2030 General Plan* includes two classifications for higher density residential uses – High-Medium Density (HMD) and High Density (HD). The High-Medium designation allows 12 to 24 units per acre, while the High Density designation allows 24 to 36 units per acre. The proposed project has a density of 36 units per acre, which is consistent with the High Density (HD) designations. Therefore, because there is no definitive designation for a mixed use project and there are General Plan policies that encourage higher density and alternate housing types (see below), the City has relied upon the High Density designation to determine compliance with the General Plan. Based on this designation, the proposed multi-family portion of the project would comply with the General Plan.

The Housing Element of the *Merced Vision 2030 General Plan* includes policies supporting affordable housing, mixed-use development, and higher densities.

Policy H-1.1 *Support Increased in Residential Zoning Districts*

Although the proposed project would not be located within a residential zone, it does provide an opportunity for a higher density project to provide needed housing within the City.

Policy H 1.1.c *Encourage Mixed Use Development*

The proposed project would provide a mixture of retail commercial uses to serve the neighborhood and the multi-family dwelling units.

Policy 1.1.e *Encourage Alternate Housing Types*

The proposed project would include one, two, and three-bedroom apartments. The units range in size from 276 square feet for a one-bedroom unit with a balcony, to 876 square feet for a 3 bedroom unit. This mixture provides a variety of different housing types to

meet the growing need of housing within the community and supports this policy of providing alternate housing types.

Policy 1.8b — *Prioritize City efforts to encourage residential development by focusing on in-fill development and densification within the existing City Limits.*

The proposed project is on an in-fill site and meets the density requirements of the City's highest density classification.

The following are Land Use Policies and Implementing Actions of the General Plan that could be met with the proposed project.

Policy L-1.1 — *Promote Balanced Development Which Provides Jobs, Services, and Housing.*

Implementing Action 1.1.a: — *Promote mixed use development combining compatible employment, service and residential elements.*

Implementing Action 1.1.c: — *Determine the types of housing opportunities needed for the type of employment opportunities being created in the City.*

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Zoning Ordinance Compliance – Mandatory Site Plan Review Findings

B) The proposed project is subject to MMC Section 20.32 – Interface Regulations. As such, a Site Plan Review Permit is required for this project. MMC Section 20.32 does not specify particular findings be made regarding interface, but MMC Section 20.68.050 (F) requires specific findings for a Site Plan Review Permit to be approved. Therefore, in order for the Planning Commission to approve or deny a site plan review permit, they must consider the following criteria and make findings to support or deny each criteria. The Findings required by MMC Section 20.68.050 (F) "Findings for Approval for Site Plan Review Permits" are provided below along with recommended reasons to support each finding. If the Planning Commission wishes to deny the Site Plan Review Permit, they will need to provide findings for denial and direct staff to prepare a resolution for denial to be adopted at a future meeting.

1. *The proposed project is consistent with the General Plan, and any adopted area or neighborhood plan, specific plan, or community plan.*

   As described in Finding A above, the project meets the requirements of the General Plan. There are no other area, specific, or neighborhood plans for this area.

2. *The proposed project complies with all applicable provisions of the Zoning Ordinance and Municipal Code.*

   Merced Municipal Code Section 20.46.030 provides general design standards for multi-family dwellings. Section 20.46.040 provides specific standards for multi-family dwellings. Planning staff has reviewed the proposed project with both sets of standards and found it to be in compliance with the majority of these standards. However, to ensure compliance, Condition # 9 requires the project to comply with all applicable design standards listed in these sections.

   As described above, the proposed mixed-use project is subject to the approval of a Conditional Use Permit and a Site Plan Review Permit. The Planning Commission approved the Conditional Use Permit on January 22, 2020. Approval of the proposed Site Plan Review Permit and implementation of the conditions of approval for CUP #1238 and Site Plan Review #455 would bring the project into compliance with the applicable provisions of the Zoning Ordinance and Municipal Code.

3. *The design and layout of the proposed project will not interfere with the use and enjoyment of existing and future neighboring properties and structures.*

   The project site is zoned Neighborhood Commercial (C-N) which is appropriate for the proposed mixed-use development. The residential component of the project was subject to Conditional Use Permit approval and received approval on January 22, 2020. The setbacks exceed the minimum standards of the C-N zone, which requires a minimum 20-foot setback from exterior property lines. As shown on the site plan at Attachment B, the front building (Building 2) is set back approximately 75 feet from Yosemite Avenue. Building 1 is approximately 85 feet from McKee Road, Building 3 is approximately 82 feet from the eastern property line near Whitewater Way, and Building 4 is approximately 125 feet from the southern property line.

   The maximum building height within the C-N zone is 35 feet when adjacent to a residential zone. However, through the Site Plan Review process, an exception may be granted to allow heights in excess of 35 feet. Through the CUP process there were several changes made to the plans and elevations. The plans provided in the staff report were the correct plans, but the information provided in the staff report was based on a previous version of the plans, which showed all buildings being less than 35 feet. Unfortunately, the final version of the plans had buildings heights that exceed 35 feet for Buildings 2 and 4. The building heights at the top of the building parapet for Buildings 2 and 4 are just over 35 feet at 35 feet, 7-7/8 inches. The height to the mechanical enclosure is 37 feet, 1-7/8 inches, and to the top of the roof-top access is 43 feet, 5 inches. It should also be noted that the roof deck for Building 2 is at a height of 32 feet 1-7/8 inches. This is the floor height for the roof-top deck tenant common area on the top of Building 2. There is approximately a 4-foot difference between the floor of the roof-top deck and the parapet as well as a set back of approximately 25 feet from the building edge to the roof-top tenant space. The roof-top access and mechanical enclosure are also set back from the building edge. Given the increased setback of the buildings (75 feet from Yosemite

Avenue for Building 2 and 125 feet from the southern property line for Building 4), the fact that the highest point of the buildings are only a small area, not the entire building, and that the highest point would also be set back from the building edge, the additional height over 35 feet does not appear intrusive or an element that would prevent the adjacent neighbors from enjoying their property. If the Planning Commission wishes to approve the additional height for Buildings 2 and 4, Condition #11 has been added to allow the additional height.

Buildings 1 and 3 are under 35 feet to the top of the parapet, the top of the mechanical enclosure, and the top of the roof-top access.

With the implementation of the proposed conditions of approval and the conditions approved with CUP #1238, the proposed project is in compliance with the design standards for multi-family dwellings (MMC Sections 20.46.030 and 20.46.040).

The project has been designed to have the retail uses mixed throughout Buildings 2, 3, and 4. The retail uses will provide services that will not only serve the residential tenants but will also serve the surrounding neighborhood.

Building 2 includes a roof-top deck to provide the tenants with additional outdoor space. This area would provide an additional outdoor area for tenants to lounge and socialize. The lounge area would be located near the center of the roof and would include tables, chairs, and landscaping, (including trees). The lounge area would be approximately 25 feet from the north and south edges of the building and approximately 70 feet from the east and west areas. There would be a 42-inch-high railing around the lounge area separating it from the rest of the roof-top area for safety purposes. Conditions of approval adopted with CUP #1238 restrict access to the roof-top deck to 7:00 a.m. to 10:00 p.m. daily.

It should also be noted that the site is surrounded by residential uses and a church to the north. Therefore, residential uses are common in this area. Another apartment complex is currently under construction east of this site at the corner of Yosemite and Lake Road, in the same general vicinity, which provides a mixture of housing units for the area. Given the proximity to the UC, multi-family uses are appropriate for this area.

The proposed project meets the minimum design and zoning standards. Therefore, with the implementation of the conditions of approval, the proposed project would not interfere with the enjoyment of the existing and future land uses in the vicinity.

4. *The proposed architectural design makes use of appropriate materials, texture, and color, and will remain aesthetically appealing and appropriately maintained.*

The building design includes a mixture of materials, textures, and colors. The building façade would consist of composite cement panels, metal storefronts for buildings 2, 3, and 4, metal window frames for the residential units, and metal railings. The architecture of the buildings include clean lines with a modern flair. Although this style is different that the homes in the area, it is consistent with the multi-family project currently under construction at Yosemite Avenue and Lake

Road as well as Yosemite Church to the north across Yosemite Avenue. Condition #10 requires that the buildings be maintained to remain aesthetically appealing.

5. *Any proposed landscaping design, including color, location, size, texture, type, and coverage of plan materials, as well as provisions for irrigation, maintenance, and protection of landscaping elements, will complement structures and provide an attractive environment.*

   The project includes approximately 29,500 square feet of outdoor greenspace and promenade area. As shown on the site plan, the four buildings would surround a large promenade area. This area would be used by customers of the commercial uses and the residential tenants. In addition, the project would be required to comply with the landscape standards called out in MMC Section 20.46.040 requiring 1 tree for each 3 units as well as "foundation plantings", the parking lot landscape standards requiring 1 parking lot tree for each 6 parking spaces, and Condition #11 of Planning Commission Resolution #4035 requiring a minimum of 15% of the site to be covered with landscaping.

6. *The proposed design will not be materially detrimental to the public health, safety, or welfare, or be injurious to the property or improvements in the vicinity of the proposed project.*

   The proposed project does not include any uses that would be detrimental to the public health, safety, and welfare of the City. The project would be required to annex to the City's Community Facilities District to pay for costs related to police and fire safety. Implementation of the conditions of approval and adherence to all Building and Fire Codes, and City Standards would prevent the project from having any detrimental effect on the health safety, and welfare of the City.

Public Comment

The email found at Attachment K was received prior to the staff report going out. Other public comment will be heard at the time of the meeting. If additional written comments are received prior to the meeting, those will be provided to the Commissioner's and read into the record at the meeting.

Environmental Clearance

C) The Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and concluded that Environmental Review #20-05 is a second tier environmental document, based upon the City's determination that the proposed development remains consistent with the current general plan and provision of CEQA Guidelines, Section 15162 (Initial Study #19-37 for CUP #1238). A Copy of the Section 15162 Findings can be found at Attachment I.

Attachments:

A) Location Map
B) Site Plan
C) Planning Commission Resolution #4035
D) Planning Commission Staff Report #20-01

E) MMC Section 20.32
F) MMC Section 20.66.040
G) MMC Section 20.68.050
H) Planning Commission Minutes Excerpt from January 22, 2020
I) CEQA Section 15162 Findings
J) Draft Planning Commission Resolution #4036
K) Letter of Opposition from A. Kelley
L) Presentation

Ref: *N:\SHARED\PLANNING\STAFFREP\SR2020\SR 20-03- SP 455 (Yosemite & McKee).docx*

Staff Report #20-03-Addendum Attachment	Administrative Report Attachment
Attachment A – Location Map	Attachment 1 – Location Map
Attachment B – Site Plan	Attachment 2 – Site Plan
Attachment C – Planning Commission Resolution #4035	Attachment 9 – Planning Commission Resolution #4035
Attachment D –Staff Report #20-01	Attachment 11 – Staff Report #20-01
Attachment H – Planning Commission Minute Excerpt for 1/22/2020	Attachment 10 – Planning Commission Minute Excerpt for 1/22/2020
Attachment J – Draft Planning Commission Resolution #4036	Attachment 12 – Planning Commission Resolution #4036

Chapter 20.32 - INTERFACE REGULATIONS

Sections:

20.32.010 Purpose

20.32.020 Definitions

20.32.030 Site Plan Review

20.32.040 Exceptions

20.32.010 Purpose

This chapter establishes special permit requirements for projects proposed near to existing land uses that might be negatively impacted by the new use. These requirements are intended to protect existing residential neighborhoods and to ensure that new development is designed in a manner to minimize negative impacts on nearby uses to the greatest extent possible to promote harmonious and orderly development, and the stability of land values and investments.

20.32.020 Definitions

The following terms when used in this chapter are defined as follows:

A. A parcel is "abutting" another parcel if it is located immediately adjacent to another parcel and shares at least one property lot line.

B. A parcel is "across from" another parcel if any of its property lines when extended across the street or alley touch the parcel on the other side of the street.

C. A parcel is "developed" if there is a minimum of 20 percent lot coverage and the parcel contains a land use legally conforming to the zoning district within which it is located.

20.32.030 Site Plan Review

A. A proposed use in a "High Impact" zoning district shall require a Site Plan Review Permit if it is abutting or across from a developed parcel in a "Low Impact" zoning district. For example, if a proposed use is located in the R-3 zoning district and is abutting or across from a parcel in the R-1 zoning district, then a Site Plan Review Permit is required. Table 20.32-1 lists out all cases that require a Site Plan Review Permit pursuant to this chapter. Figure 20.32-1 illustrates the concept.

B. A Site Plan Review Permit (with a public hearing and public notice per Section 20.68.050.E and Chapter 20.70) shall also be required for a proposed use in a High Impact zoning district that is abutting or across from either:

1. A developed parcel that is zoned Planned Development with a use similar to a permitted use within the corresponding Low Impact zoning district; or,
2. A parcel outside the Merced City limits with a use similar to a permitted use within the corresponding Low Impact zoning district.

C. The Director of Development Services may refer any application to the Planning Commission for review and final decision.

TABLE 20.32-1 SITE PLAN REVIEW PERMIT REQUIRED

Low Impact Zoning District	High Impact Zoning District: R-3	R-4	R-MH	C-N	C-SC	C-C	D-CM	C-O	C-T	C-G	B-P	I-L	I-H	A-G
R-1	■	■	■	■	■	■	■	■	■	■	■	■	■	
R-2				■	■	■	■	■	■	■	■	■	■	
R-3										■		■	■	
R-4										■		■	■	
R-MH										■		■	■	
C-O										■		■	■	
A-G	■	■	■	■	■	■	■	■	■	■	■	■	■	

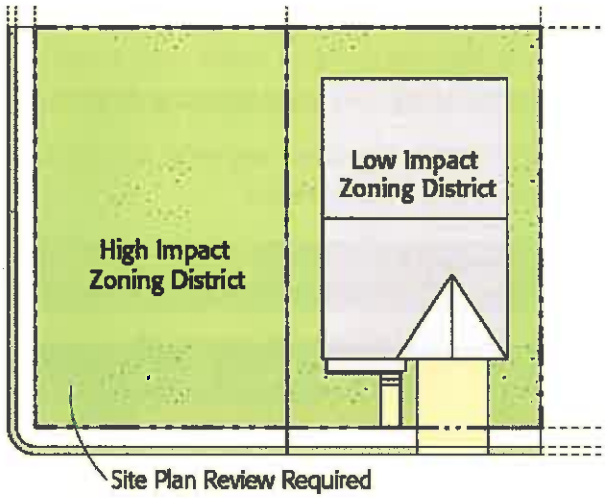
■ Site Plan Permit Required

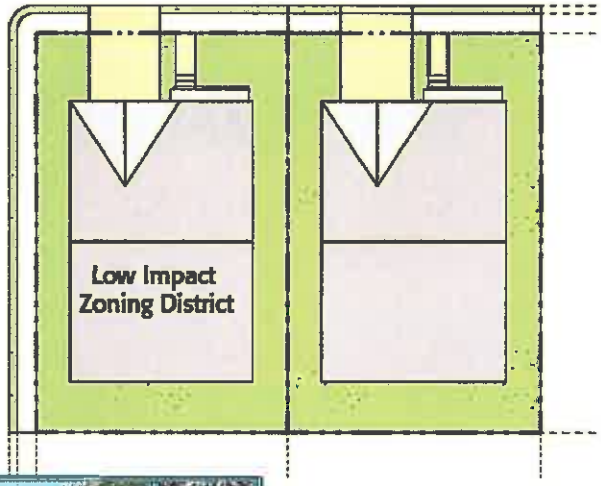
No Site Plan Permit Required





FIGURE 20.32-1 --SITE PLAN REVIEW REQUIREMENT







20.32.040 Exceptions

This section shall not apply to parcels across the street if the street is a proposed or existing arterial or higher order street as shown on the General Plan Circulation map.



20.66.040 Application Review

A. Review for Completeness.

1. **Initial Review.** The Development Services Department (Planning Division) shall review each application for completeness and accuracy before it is accepted as being complete and officially filed.
2. **Basis for Determination.** The Development Services Department acceptance shall be based on the City's list of required application contents and any additional written instructions provided to the applicant in a pre-application conference or during the initial application review period.
3. **Notification of Applicant.** Within 30 calendar days of application acceptance, the Development Services Department shall inform the applicant in writing if the application is incomplete and that additional information is required. If no such written notice is issued, then the application is deemed to be complete.
4. **Submittal of Additional Information.** When the Development Services Department determines that an application is incomplete, the time used by the applicant to submit the required additional information shall not be considered part of the time within which the determination of completeness for resubmitted materials shall occur. The additional required information shall be submitted in writing or in a form deemed acceptable by the Planning Division.
5. **Environmental Information.** After the City has accepted an application as complete, the Development Services Department may require the applicant to submit additional information for the environmental review of the project in compliance with the California Environmental Quality Act (CEQA).

B. Referral of Application. At the discretion of the Development Services Department, or where otherwise required by the Zoning Code, State, or federal law, an application may be referred to any public agency that may have an interest in the proposed project.

C. Multiple Applications. If a proposed project requires multiple permit approvals by both the Planning Commission and the Development Services Department, the Planning Commission shall act upon all required permits as part of a single application.

F. Findings for Approval. To approve a Minor Modification application, the Director of Development Services shall make all of the following findings:



1. The modification will be compatible with adjacent structures and uses and is consistent with the character of the neighborhood or district where it is located.
2. The modification will not adversely impact neighboring properties or the community at large.
3. The modification is necessary due to unique characteristics of the subject property, structure, or use.
4. Unique characteristics necessitating the modification generally do not apply to other properties in the vicinity or in the same zoning district as the subject property.
5. There are no feasible design alternatives that meet the project objectives while eliminating the need for the requested modification.
6. The modification will be consistent with the purpose of the zoning district, the General Plan, and any adopted area, community, or neighborhood plan.
7. The modification will not establish an undesirable precedent.

G. Conditions of Approval. The granting of a Minor Modification for approval by the Director of Development Services may include such conditions as deemed reasonable and necessary to carry out the intent of this chapter, the Zoning Code, Merced Municipal Code, and the General Plan.

20.68.050 Site Plan Review Permit

A. Purpose. A Site Plan Review Permit is a discretionary action that enables the City to determine a project's compliance with the Zoning Ordinance and ensure that it will not create negative impacts to adjacent properties or the general public.

B. Applicability. The following uses and structures require a Site Plan Review Permit:

1. All uses as shown in Part 2 (Zoning District Standards), and,
2. All proposed uses and structures within the Light Industrial (I-L) and Heavy Industrial (I-H) zoning districts.

C. Review Authority.

1. The Site Plan Review Committee shall take action on all Site Plan Review Permits.
2. The Site Plan Review Committee may refer any Site Plan Review Permit application to the Planning Commission for review and final decision.

D. **Application Submittal and Review.** Application for a Site Plan Review Permit shall be filed and reviewed in compliance with Chapter 20.66 (Permit Application and Review).

E. **Public Notice and Hearing.** No public notice and hearing for a Site Plan Review Permit shall be provided in compliance with Chapter 20.70 (Public Notice and Hearing), except for:

1. Those properties that are directly adjacent to any residentially zoned property in the City; or,

2. Site Plan Review Permits required for Interface (Chapter 20.32).

In those cases, public notice shall be given to those adjacent properties at least 10 days prior to the Site Plan Review Meeting.

F. **Findings for Approval.** The Site Plan Review Committee may approve an application for a Site Plan Review Permit only if all of the following findings can be made:

1. The proposed project is consistent with the General Plan, and any adopted area, specific, community, or neighborhood plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance and Municipal Code.
3. The design and layout of the proposed project will not interfere with the use and enjoyment of existing and future neighboring properties and structures.
4. The proposed architectural design makes use of appropriate materials, texture and color, and will remain aesthetically appealing and appropriately maintained.
5. Any proposed landscaping design, including color, location, size, texture, type, and coverage of plant materials, as well as provisions for irrigation, maintenance, and protection landscaping elements, will complement structures and provide an attractive environment.
6. The proposed design will not be materially detrimental to the public health, safety, or welfare, or be injurious to the property or improvements in the vicinity of the proposed project.

G. **Appeals.** Decisions on Site Plan Review Permits may be appealed as provided for in Chapter 20.74 (Appeals).

H. **Post-Decisions Procedures.** Procedures and requirements relating to effective dates, time limits, changes to approved projects, resubmittals, and permit revocation shall apply to Site Plan Review Permits as provided in Chapter 20.72 (Post-Decision Procedures).

The California Environmental Quality Act
(CEQA) Section 15162 Findings:

Application: Site Plan Review #455

Assessor Parcel Number or Location: Assessor's Parcel Number (APN): 008-310-053 and -038

Previous Initial Study/EIR Reference: This site was previously reviewed through the Initial Study #19-37, resulting in a Mitigated Negative Declaration. The current proposal is to construct 214 apartment units on approximately 5.94 acres of land.

Original Project Date: Environmental Review #19-37 for Conditional Use Permit #1238, resulting in a Mitigated Negative Declaration, was adopted by the Merced City Planning Commission on January 22, 2020.

Section A - Previous Studies

	Yes	No
1. Substantial changes are proposed in the project that will require major revisions of the previous project EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects?		X

Comment/Finding: There are no changes to the project. This application is strictly to review the Interface Requirements of Section 20.32 of the City of Merced Zoning Ordinance.

	Yes	No
2. Substantial changes have occurred with respect to the circumstances under which the project is undertaken that will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects?		X

Comment/Finding: There have been no changes in the circumstances under which the project is undertaken that would require major revisions in the previous Mitigated Negative Declaration. There are no new significant environmental effects or substantial increases in the severity of previously identified environmental effects, and the area under consideration remains the same area previously evaluated. This application is strictly to review the Interface Requirements of Section 20.32 of the City of Merced Zoning Ordinance.

	Yes	No
3. New information of substantial importance that was not known and could not have been know with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, has been revealed? (If "Yes" is checked, go to Section "B" below)		X

Comment/Finding: There is no new information of substantial importance that was not known and could not have been known with the reasonable diligence at the time the previous Mitigated Negative Declaration was adopted. This application is strictly to review the Interface Requirements of Section 20.32 of the City of Merced Zoning Ordinance.

Section B - New Information

	Yes	No
A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration.		X
B) Significant effects previously examined will be substantially more severe than shown in the previous EIR.		X
C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative.		X
D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.		X

Comment/Finding: All previously identified mitigation measures will be enforced with this project. Therefore, the resulting impacts are no greater than those previously analyzed and the previously imposed mitigation measures remain sufficient to address all impacts from this project.

On the basis of this evaluation, in accordance with the requirements of Section 15162 of the CEQA Guidelines:

	1. It is found that subsequent negative declaration will need to be prepared.
	2. It is found that an addendum Negative Declaration will need to be prepared.
	3. That a subsequent EIR will need to be prepared.
X	4. No further documentation is required.

Date: February 24, 2020
Prepared By:

Julie Nelson,
Associate Planner

From: planningweb
To: Nelson, Julie
Subject: FW: Oppose Site Plan Review #455
Date: Friday, April 10, 2020 9:00:16 AM

Here you go!

From: Ann Kelley [redacted]
Sent: Friday, April 10, 2020 7:15 AM
To: planningweb <planningweb@cityofmerced.org>
Subject: Oppose Site Plan Review #455

Honorable Commissioners:
I have reviewed the information in the Notice for the above referenced public hearing and desire to voice my opposition of this project. There is already a traffic issue on Yosemite Avenue from Mc Kee to G St. The intersection of Parsons and Yosemite is currently problematic with long lines of traffic on Yosemite Ave. Yosemite Avenue from G to McKee is in disrepair and has been for several years with no current plans to fix it. Yosemite Avenue from Parsons to McKee Ave, it is unclear if it is a 3 lane road or a 2 lane road, which causes confusion. McKee Ave from Yosemite Ave. to Olive Ave will also be negatively impacted by this project. In addition to traffic issues, there is an issue of water usage and sewage drainage which will be severely impacted upon the city. I am concerned as well about parking for the proposed tenants. 214 apartment units which will house up to 800 individuals and perhaps animals, dogs and cats , in a 2 or 3 story building on this size parcel is just TOO many. I oppose the proposed project.
However, if a smaller project might be more suitable for this parcel. I might also add that perhaps apartments for the UC Students be built much closer to the University, such as all that vacant land on Bellevue Rd.
Respectfully submitted,
Ann Kelley, J. D.
[redacted], Merced, CA.

[NOTICE: This message originated outside of City of Merced -- **DO NOT CLICK** on **links** or open **attachments** unless you are sure the content is safe.]

DRAFT

The Hub 2.0

Site Plan Review #455


SUBJECT SITE
YOSEMITE AVE
EXPLORADOR DR
PEBBLE BEACH DR
SPANISH BAY CT
LEGENDS CT
SPY GLASS CT
CYPRESS POINT DR
CAPILANO CT
SILVERADO AVE
PRINCEVILLE CT
MCKEE RD
WHITEWATER WAY
MAGELLAN DR
BONIFACIO WAY
DE SOTO WAY
PEREZ DR
URDANETA WAY
VIA MORAGA
GABRIEL DR
NARVAEZ WAY
JARDIN WAY
VALDEZ WAY
AVILES DR
DRAFT

Project & Site Details

- 5.94 Acre Parcel
- Neighborhood Commercial Zone
- Mixed Use Development (residential uses allowed with CUP)
- 214 Residential Units (mixture of 1, 2, and 3-Bedroom units)
- Density – 36 units/acre (consistent with High Density Residential/General Plan)
- 14,445 Square Feet of Office Space
- 22,672 Square Feet of Commercial Retail Space
- 386 Vehicle Parking Spaces
- 70 Bicycle Parking Spaces

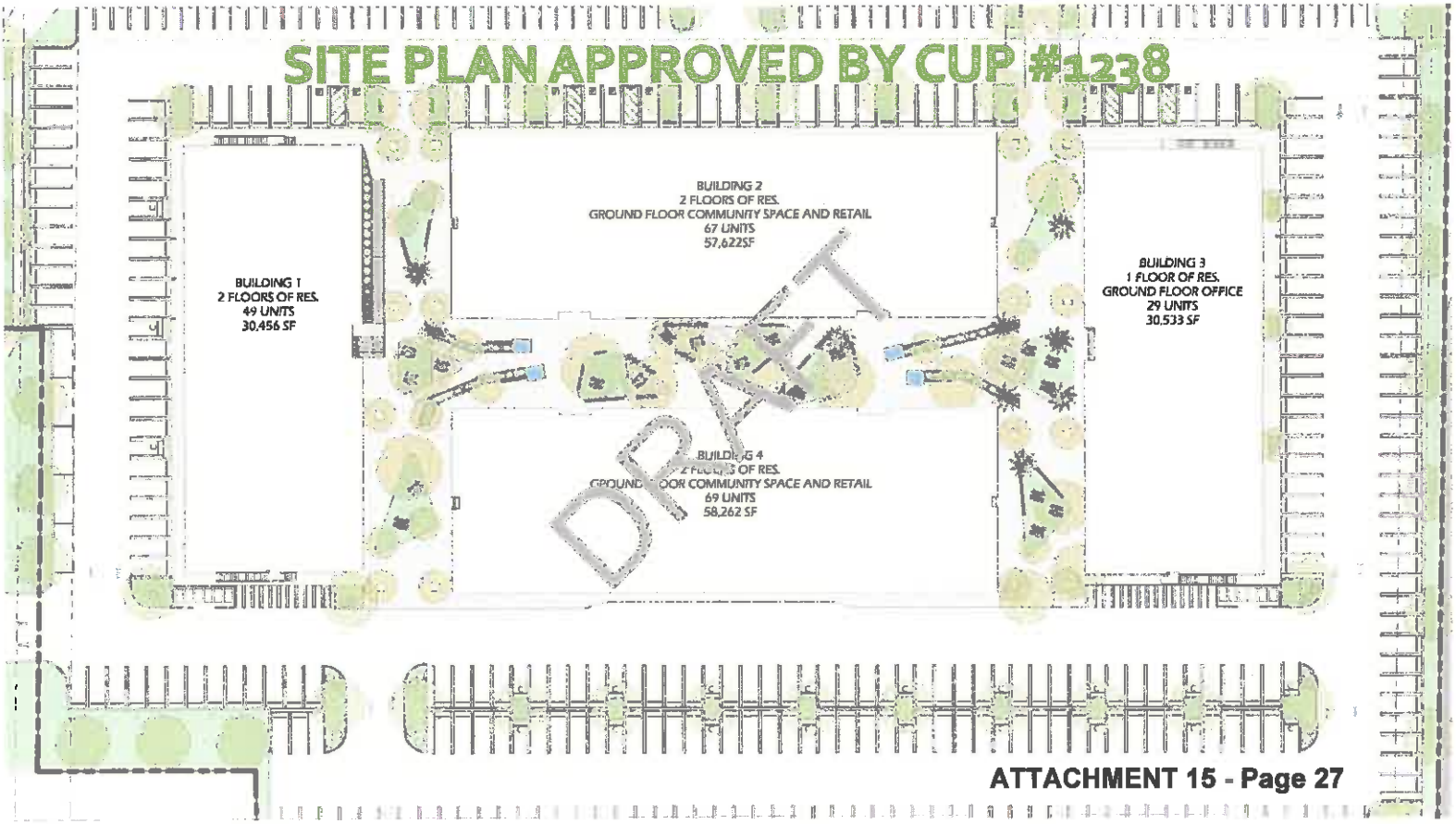
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Background

- 2014 – Proposed 60,000 s.f. Shopping Center.
- 2019 – Proposed Mixed-Use Project with 428 residential units.
- 2019 – Denial of Mixed-Use Project (428 units).
- 2019 – Project redesigned and reduced to 214 units. Office space was added.
- Jan. 22, 2020 – Planning Commission approved CUP #1238 to allow the redesigned project.

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SITE PLAN APPROVED BY CUP #1238



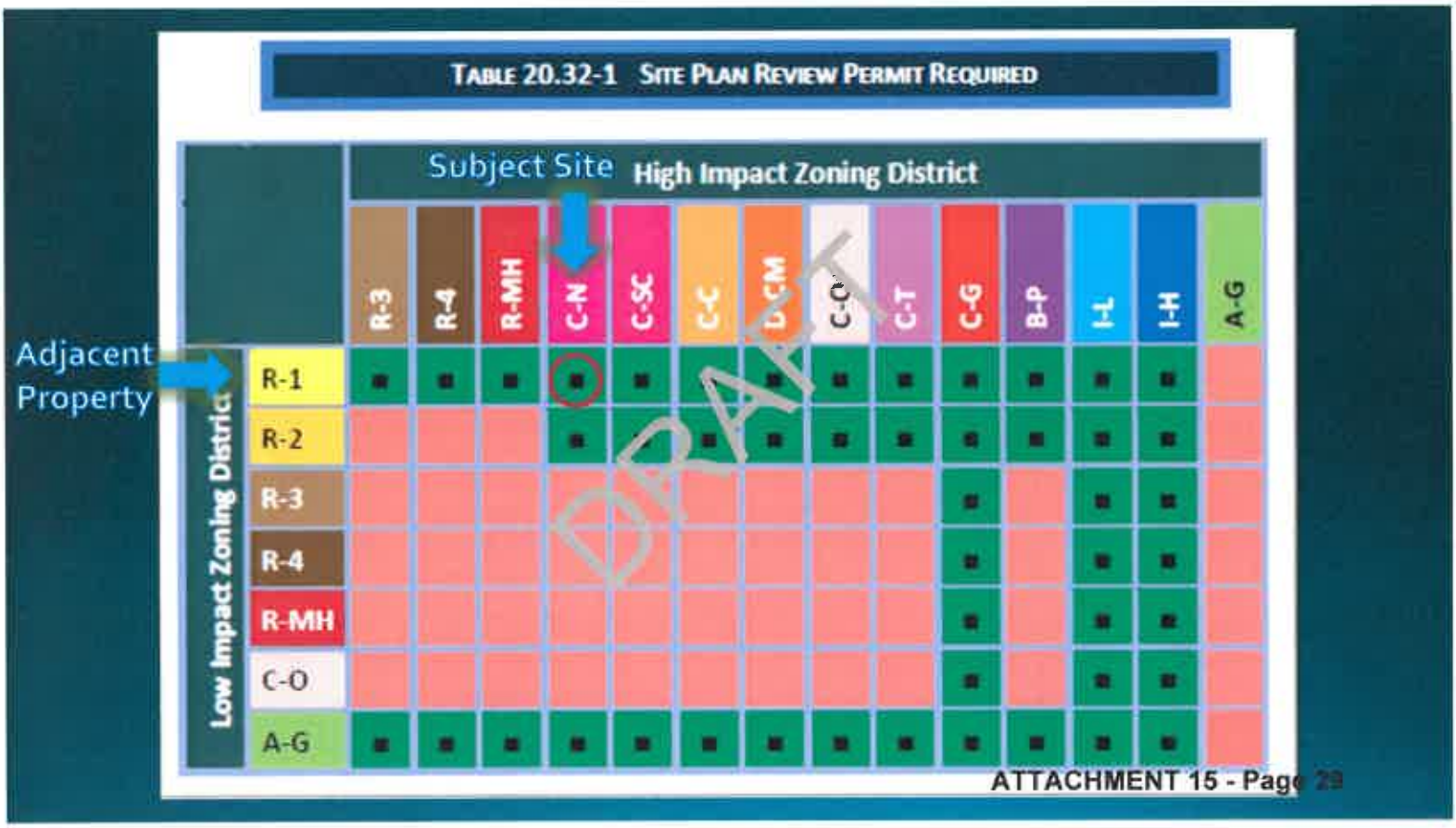
Why Site Plan Review?

Interface Regulations – MMC Section 20.32

- Purpose of Interface Regulations:
  - Established to protect existing residential neighborhoods and to ensure that new development is designed in a manner to minimize negative impacts on nearby uses to the greatest extent possible to promote harmonious and orderly development, and the stability of land values and investments.

- Interface applies to the project site due to Residential Zones (Low Impact Zones) to the east, west, and south. Interface does not apply to parcels across the street if the street is an arterial (such as Yosemite Avenue).

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TABLE 20.32-1 SITE PLAN REVIEW PERMIT REQUIRED
Subject Site
High Impact Zoning District
R-3
R-4
R-MH
C-N
C-SC
C-C
C-CM
C-O
C-T
C-G
B-P
I-L
I-H
A-G
Adjacent Property
Low Impact Zoning District
R-1
R-2
R-3
R-4
R-MH
C-O
A-G
DRAFT

Conditional Use Permit #1238

- CUP #1238 approved the proposed project, but did not address the necessary Findings for the Site Plan Review required by the Interface Regulations.
- The Staff Report addresses the required Findings for the Site Plan Review.
- There is no change in the project.

DRAFT

Site Plan Review Findings

1. The proposed project is consistent with the General Plan, and any adopted area or neighborhood plan, specific plan, or community plan.

The commercial aspect of the mixed-use project complies with the Neighborhood Commercial General Plan land use designation.

The General Plan encourages mixed-used development, but does not specify a density for the residential component of a mixed-use development.

The Residential component of the development complies with the High Density land use designation at 36 units/acre.

The project satisfies several polices in the General Plan as described beginning on page 6 of the Staff Report.

DRAFT

Determination:
The project meets the requirements of the General Plan. There are no other area, specific, or neighborhood plans for this area.

Site Plan Review Findings

2. The proposed project complies with all applicable provisions of the Zoning Ordinance and Municipal Code.

The Neighborhood Commercial (C-N) zone allows mixed-use development, subject to Conditional Use Permit approval.

Interface Requirements apply which require Site Plan Review.

Merced Municipal Code Section 20.46.030 provides general design standards for multi-family dwellings.

Section 20.46.040 provides specific standards for multi-family dwellings.

Planning staff has reviewed the proposed project with both sets of standards and found it to be in compliance with the majority of these standards. However, to ensure compliance, Condition # 9 requires the project to comply with all applicable design standards listed in these sections.

DRAFT

Determination:
Approval of the proposed Site Plan Review Permit and implementation of the conditions of approval for CUP #1238 and Site Plan Review #455 would bring the project into compliance with the applicable provisions of the Zoning Ordinance and Municipal Code.

Site Plan Review Findings

3. The design and layout of the proposed project will not interfere with the use and enjoyment of existing and future neighboring properties and structures.

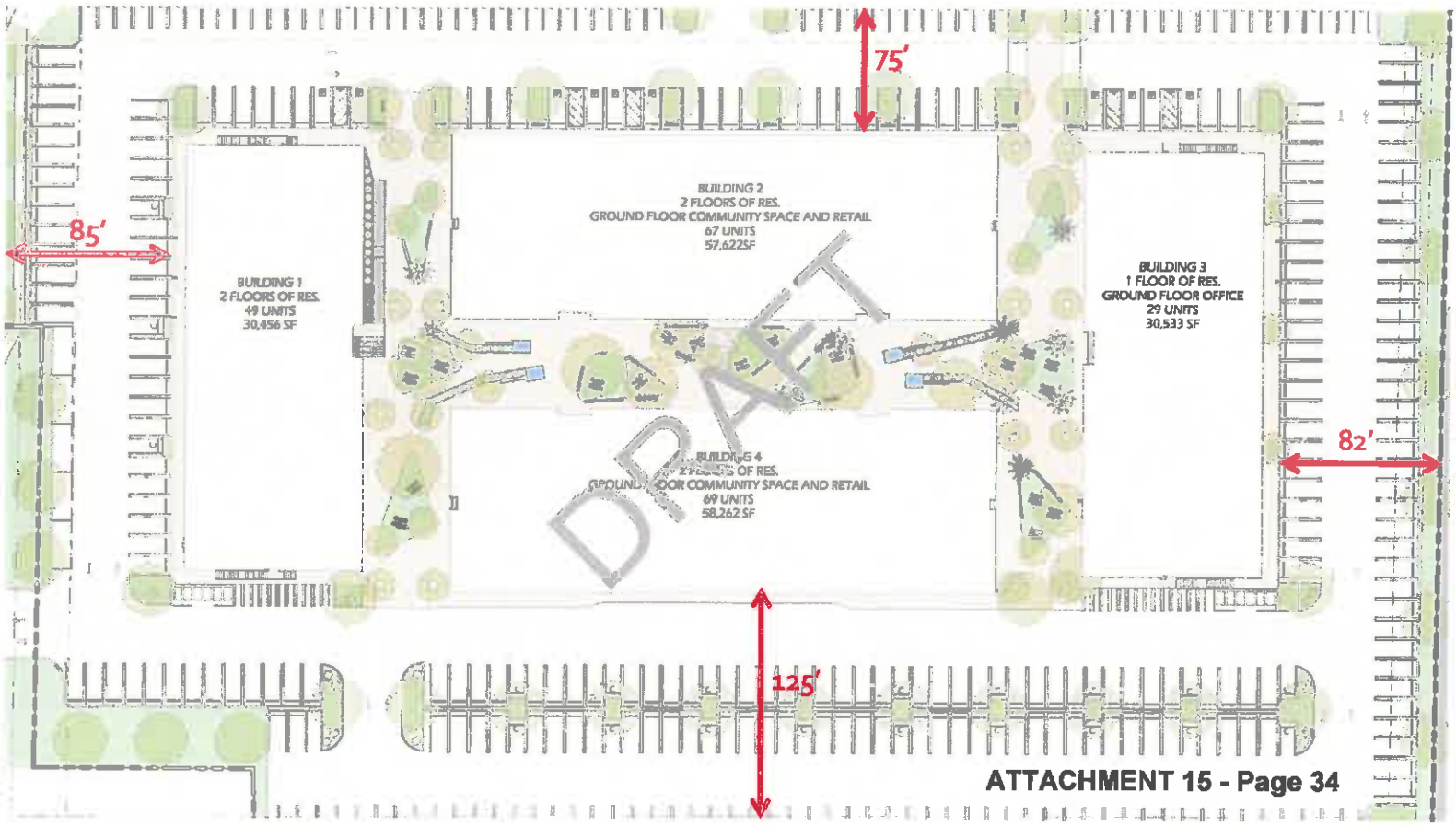
Setbacks

The setbacks exceed the minimum standards of the C-M Zone, which requires a minimum 20-foot setback from exterior property lines.

The front building (Building 2) is set back approximately 75 feet from Yosemite Avenue. Building 1 is approximately 85 feet from McKee Road, Building 3 is approximately 82 feet from the eastern property line near Whitewater Way, and Building 4 is approximately 125 feet from the southern property line.

DRAFT

Refer to the Site Plan at Attachment B of the Staff Report.


75'
85'
BUILDING 1
2 FLOORS OF RES.
49 UNITS
30,456 SF
BUILDING 2
2 FLOORS OF RES.
GROUND FLOOR COMMUNITY SPACE AND RETAIL
67 UNITS
57,622SF
BUILDING 3
1 FLOOR OF RES.
GROUND FLOOR OFFICE
29 UNITS
30,533 SF
BUILDING 4
GROUND FLOOR COMMUNITY SPACE AND RETAIL
69 UNITS
58,262 SF
82'
125'
DRAFT

Site Plan Review Findings

Finding 3 continued -

Building Heights

The maximum height allowed within a C-N zone, when adjacent to a residential zone, is 35 feet, unless approved with a Site Plan Review Permit.

Buildings 1 and 3 are below 35 feet.

Buildings 2 and 4 exceed the 35 feet height limit. Condition #11 allows the height in excess of 35' for Buildings 2 and 4.

DRAFT

Refer to the Building Elevations at Attachment D of the Staff Report #20-01.

Elevations

BUILDINGS 2 & 4

37' 1-7/8"
Mechanical
Enclosure

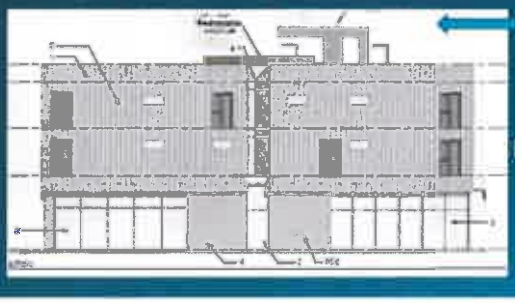


NORTH
ELEVATION

35' 7-7/8"
Building Height

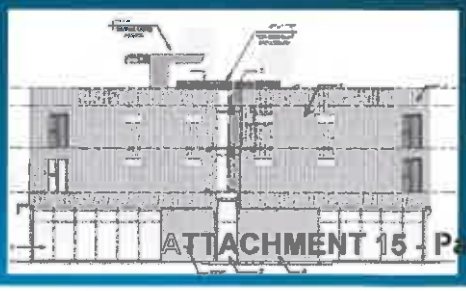


SOUTH
ELEVATION



43' 3"
Roof Top Access

WEST
ELEVATION



EAST
ELEVATION

Site Plan Review Findings

Finding 3 Continued -

Surrounding Uses

The site is surrounded by residential uses and a church/school;

The retail uses would serve the neighborhood as well as on-site tenants.

DRAFT

Determination:
The proposed project meets the minimum design and zoning standards. Therefore, with the implementation of the conditions of approval, the proposed project would not interfere with the enjoyment of the existing and future land uses in the vicinity.

Site Plan Review Findings

4. The proposed architectural design makes use of appropriate materials, texture, and color, and will remain aesthetically appealing and appropriately maintained.

   The building design includes a mixture of materials, textures, and colors. The architecture of the buildings include clean lines with a modern flair. Although this style is different than the homes in the area, it is consistent with the multi-family project currently under construction at Yosemite Avenue and Lake Road as well as Yosemite Church to the north across Yosemite Avenue. Condition #10 requires that the buildings be maintained to remain aesthetically appealing.

DRAFT

Determination:
The proposed design and materials is appropriate for the area and will remain aesthetically appealing and appropriately maintained.

Site Plan Review Findings

5. Any proposed landscaping design, including color, location, size, texture, type, and coverage of plant materials, as well as provisions for irrigation, maintenance, and protection of landscaping elements, will complement structures and provide an attractive environment.

Project includes over 29,000 s.f. of outdoor greenspace and promenade area to serve the residential tenants and commercial customers.

The project is required to comply with the Landscape Standards in the Municipal Code requiring one tree for each unit and "foundation plantings" around the perimeter of the buildings.

The project shall provide one parking lot tree for each six parking spaces.

Condition #11 for CUP #1238 requires 15% of the site to be covered with landscaping.

DRAFT

Determination:

The proposed landscaping and irrigation either meets with the requirements of the Merced Municipal Code or would do so with the implementation of Condition #11 for CUP #1238. The proposed landscaping would enhance the site and appearance of the buildings.

Site Plan Review Findings

6. The proposed design will not be materially detrimental to the public health, safety, or welfare, or be injurious to the property or improvements in the vicinity of the proposed project.

   The proposed project does not include any uses that would be detrimental to the public health, safety, and welfare of the City.

   The project would be required to annex to the City's Community Facilities District to pay for costs related to police and fire safety.

   Implementation of the conditions of approval and adherence to all Building and Fire Codes, and City Standards would prevent the project from having any detrimental effect on the health safety, and welfare of the City.

DRAFT

Determination:
The proposed project does not include any uses that would be detrimental to the public health, safety, or welfare. The project would pay for impacts to the police and fire departments through the CFD program. Conditions of approval and compliance with all codes prevent any detrimental effect on the City.

Environmental Review

- CEQA Section 15162 Determination
- Previous Initial Study #19-37 for CUP #1238 remains sufficient.
- Initial Study #19-37 resulted in a Mitigated Negative Declaration.

DRAFT

CEQA

PLANNING COMMISSION ACTION

- APPROVE/DISAPPROVE/MODIFY
  - Environmental Review #20-05 (CEQA Section 15162 Findings)
  - Site Plan Review #455

DRAFT

Staff recommends approval subject to the Findings and Conditions outlined in Staff Report #20-03.

Questions...



	"The Hub" (Initial submission)	"The Hub 2.0" New Design
Number of Units	428	224 Units 1 bed/1 bath-97 2 Bed/2 Bath-112 3 Bed/3 Bath-15
Automobile Parking Spaces Total including Motorcycle	376 Automobile 410 total	361 Automobile 386 Total
Electric Charging Stations		10 Electric Charging stations
Setback of Building 1 & 3 from McKee Rd and Whitewater Way	64'3" / 63' 2"	85' / 82'4" ***(Nearly 20 Foot increase in building setback on both East and West perimeter)***
Building 1 & 3 height	3 Story	2 Story **(Reduced 2 major buildings by a whole story)**
Outdoor Greenspace/Promenade	11,300 sq/ft	**29,500 sq/ft (Nearly tripled)**
Average Daily Trips (Before Reductions)	2,214 ADT	1,876 ADT (1,184 ADT after allowed reductions)
LEED Certified Silver or Higher	No	**Yes!**
Office space	0 sq / ft	**14,445 Sq Ft**-Greatly decreasing site occupancy/activity during evenings and weekends when offices are closed
Commercial/Retail space	17,999 sq/ft	22,672 Sq/ft

ATTACHMENT 16

CORRESPONDENCE RECEIVED

REGARDING CONDITIONAL USE PERMIT #1238

From: planningweb
To: McBride, Scott; Espinosa, Kim; Nelson, Julie
Subject: FW: McKee & Yosemite project
Date: Wednesday, January 22, 2020 4:47:36 PM

This just came through on PlanningWeb, I will print copies for the Commission.

Taylor Gates
Administrative Assistant I
City of Merced
Planning Department
678 W. 18th Street
Merced, CA 95340
gatest@cityofmerced.org
209-385-6954

-----Original Message-----
From: Karen Albright [redacted]
Sent: Wednesday, January 22, 2020 4:41 PM
To: planningweb <planningweb@cityofmerced.org>
Subject: McKee & Yosemite project

After reading the proposal for this new plan for the property at McKee and Yosemite, in Merced, we are adamantly against this plan. Just the idea of storing excess sewage underground on the site is appalling. The additional traffic created in the immediate area will be impossible.

In the past we have been informed about any development plans within our immediate area. We were not notified by the City Planning Department or the City Council this time. Since this plan is going before the Planning Commission, is that really possible without any prior neighborhood input?

When several of the proposed area developments were put forth by developers in the past, we were always notified and attended public meetings on the details of the project. Why not this one? Please put us on notification lists for any future changes to our neighborhood.

Since we are unable to attend tonight's meeting, this shows our stand on the issue.

Richard and Karen Albright
[redacted] Dunn Road
Merced, CA 95340-8683

[NOTICE: This message originated outside of City of Merced -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Submitted at Planning Commission meeting on 1/22/2020

January 21, 2020

Casey Steed

PO Box 3453

Merced, Ca 95344

Director of Development Services

City of Merced

678 w. 18th Street

Merced, Ca 95340

Subject: "The Hub" project. Yosemite Ave. and McKee Rd. Merced, Ca. Conditional Use Permit #1238 Initial Study #19-37. City of Merced Planning Commission Resolution #4035. Previous CUP #1231.CEQA Review and reports. Merced Holdings, LP.

Dear Director of Development Services,

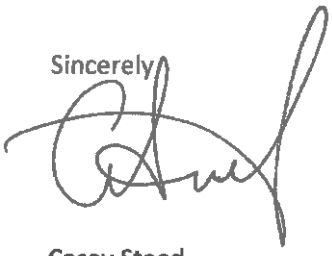
We are concerned that the above subject previous and current staff reports, initial study(s), and proposed mitigation measures proposed for the above subject project are inadequate as submitted. We believe that the project as currently proposed requires a full and complete new and current environmental impact report (EIR). This project was previously submitted to the city for approval in 2019. The new project now submitted is essentially the same design and layout as before with the main revision on this application being the reduction of 62 bedrooms from the project. While some interior walls have been removed, the project layout, style of design and bedrooms, common areas and the site are the same as the previous submission. Based on the number of bedrooms, the project has a density of 61 units per acre which is above the HD designation allowance of 36 units per acre. The previous submission was72 units per acre. This project is vastly different from the previous CEQA submission and mitigated negative declaration submission for the zone change in 2014 from an R-1 to CN, neighborhood commercial designation. Some of the same supporting documents used in 2014 are being used for this current project submission. Specifically, but not limited to Appendix "C" greenhouse gas analysis. This 2014 analysis is based on a project much smaller than what is proposed now. Quantity of parking stalls, building sizes, occupancy and use are much greater than what was previously studied. The traffic study does not include the impact of additional traffic generated by the campus parkway extension that will be complete soon and contribute to the traffic volume in the area. The existing City of Merced sewage system will not accept the GPD generated by this proposed project. The sewer line in Yosemite Ave is constricted and would require an alternative means of discharging wastewater from the site during peak flow times thru use of an onsite wastewater storage system, which could cause impacts to the existing

wastewater infrastructure in the area. The City has never approved such a system before and therefore, has no experience with long term maintenance and upkeep of such a facility. There is the possibility of a hazardous waste spill or an accidental discharge of sewage that could end up in nearby Black Rascal Creek, local MID irrigation distribution systems or neighboring properties with this type of design. A complete (EIR) should be done for this project.

The previous CUP submissions for approval for this subject property have been controversial with the surrounding community as to site occupancy, density, parking, wastewater / storm water containment and discharge concerns. Also there are many concerns about pedestrian, bicycle and motor vehicle traffic safety and circulation. Transit stops on both sides of Yosemite Ave should be provided as per previous traffic studies. The previous project for this site was denied by the planning commission and that denial was subsequently upheld by the Merced City Council on October 7th, 2019 at their regular council meeting. Proper mitigation measures have not been proposed for this project. The negative mitigated declaration, initial study 19-37 specifically and inclusively and the proposed course of action does not address all of the impacts to the environment caused by this project. Therefore a new and current full EIR for the project should be prepared and submitted for approval to address these deficiencies.

Please do not hesitate to contact me to discuss this matter further.

Sincerely,



Casey Steed

CASEY STEED
P.O. BOX 3453
MERCED, CA 95340

STAFF REPORT
20-01
CUP # 1238

PROJECT NOTES - THE HUB 1/22/2020 1 OF 5

- WANT TO SEE POSITIVE DEVELOPMENT
- ORIGINALLY ZONED R-1 WHEN ANNEXED INTO CITY

- 2014 - THE SHOPPES @ UNN VILLAGE. RE'D ZONE TO CN - SHOPPING CTR 62K □ 216 PARKING SPACES

- 2019 - CUP - 428 UNITS ALL 1 BEDROOM W/ A BATH - PLANNING COMM DENIED CITY COUNCIL 10/7 UPHELD DENIAL - REASONS FOR DENIAL 4 REASONS FINDINGS OF DENIAL OF CUP #1231 EXHIBIT A-C W/O PREJUDICE - WAIT 1 YEAR - CAN'T
- NEW PROJECT - CUP DEFINITION - BROAD INTERPRET
  - 366 DORMS - REDUCTION OF 62 BEDROOMS FROM PREVIOUS 428. CITY BASED DENSITY ON 1 BEDROOM = 1 UNIT. DESIGN HAS NOT SUBSTANTIALLY CHANGED. UNIT PER ACRE CALCS SHOULD BE SIMILAR. ONLY COMMON HALL/KITCHEN IN MULTI-BEDROOM UNITS. REDUCTION OF KITCHENS.

- MERCED STATION 290 UNITS 19 AC = 15 UNITS/AC
  - 80% OF FLOOR SPACE IS FOR RESI USE
  - 20% ↓ ↓ ↓ ↓ ↓ OFFICE/RETAIL USE (13% OF □ IS RETAIL □)
  - NOT MUCH □ FOR CN - HEIGHTS DESC

THE HUB 1-22-2020 2 OF 5

- UCM PARTICIPATION - PAGE 6 OF STAFF REPORT.
  35 MIN CONVO WITH TUE 1/21/20 9AM
  - VICE CHANCELLOR MCLEOD - NOT A LETTER OF INTENT. LETTER OF INTEREST DOES NOT RISE TO INTENT LEVEL
  - 49% MAX SET ASIDE FOR UCM
  - NO GUARANTEE TO NEGOTIATE
  - UCM IS CUSTOMER - PROVIDES NO BUS SERVICES OR SECURITY.
  - NOT PLANNING ON RENTING OFFICE-HOURS OF OPERATION 5PM
  - UCM JUST COMPLETED 2000 BEDS
  - DEMAND BASED ON ENROLLMENT (CANT FORCE PEOPLE TO RENT)
  - CURRENTLY HAVE AGREEMENT W/ HERITAGE APARTMENTS - SECURITY
  - SAYS STAFF REPORT IS NOT CORRECT PAGE 6
  - LAST PARAGRAPH DISCLAIMER
  - COULD BE STUDENTS &/OR FACULTY
  -
  - LAST PARAGRAPH DISCLAIMER - GOOD NEIGHBOR LETTER

GO TO SECURITY

- NO SECURITY CAMERAS - TALK ABOUT 100 MONITORED BY OTHERS. KEY FOB POWER TO UNIT. CALL BOXES - 911 - PATROLS

GO TO PARKING

- PARKING - ON SITE DROP OFF USER/ RIDE SHARING. RENTAL CARS - TAKE AWAY FROM PARKING. SHOULD HAVE A TRANSIT STOP ON SITE.

- # OF PARKING SPOTS NOT ENOUGH. 30% REDUCTION + 5% FOR TRANSIT STOP CREDIT - TOO MUCH. TRASH ENCL. TAKE PARKING - WILL PARK OFFSITE.
- TRAFFIC STUDY - BUS STOP BOTH SIDES OF YOSEMITE - NORTH SIDE HARD TO FIT.

TRAFFIC STUDY

- MOVE EXIST UCM BUS STOP @ VIA MORAGA TO THIS PROJECT. WHAT ABOUT THAT STOP - NOW WALK TO THIS ONE?
  NEED ON SITE TRANSIT STOP. PED TRAFFIC TO GET TO THIS ONE.
- HOW DO YOU PREVENT UNAUTHORIZED PARKING.
- INTERSECTIONS IN AREA LOS "F"
- POSSIBLE PARKING STRUCTURE - ABOVE GROUND OR BELOW GROUND.
  OFFSITE PARKING A PROBLEM NOW. VIA MORAGA.

BUILDINGS

- BLDG #2 - ROOF TOP DECK - NO HOURS OF OPERATION
- USE SHOWS DINING FIRE PIT, SEATING FOR ALL FOUR BUILDINGS.
- NOISE, LIGHT POLLUTION - LOUD PARTIES - NOISE CARRIES UP HIGH.
- NO RESTROOMS FOR COMMON AREAS - GROUND FLOOR OR ROOF. TENANT TO PROVIDE.
- LAUNDRY ON 1 FLOOR NOT ALL
- TRASH CHUTE - COLLECTION. WALK ALL THE WAY TO DUMPSTER.
- NEIGHBORS WANTED COMM USE - ~~DAY~~ & NIGHT USES/REST, COFFEE ETC. NEED TO DESIGNATE PARKING FOR RETAIL/COMM USERS.
- PROJECT GENERATES LOTS OF TRAFFIC, WASTEWATER, OCCUPANCY CONCERNS. HIGH DENSITY IN THE MIDDLE OF LOW DENSITY RESIDENTIAL. REASON 4 DENIAL. INFILL DEVELOPMENT, NOT OVERFILL DEVELOPMENT.

THE HUB 1-22-2020 5 OF 5

- IF ALL DORMS HAVE 4 PER [redacted] - OCCUPANCY IS OVER 1400 PEOPLE NOT COUNTING COMM/ RETAIL USE & VISITORS

- VISUAL BLIGHT FROM SOLAR PANEL ARRAYS. ANY PARKING LOT SOLAR POSSIBLE HEAT ISLAND WITH SUCH LITTLE GREENSPACE

- ENVIRO / CEQA / NEG MITIGATED DEC, SHOULD HAVE A COMPLETE NEW PROJECT EIR DUE TO NUMEROUS CHANGES. APPENDIX "C" TOO OLD. GHG ANALYSIS 2014. ALSO TRAFFIC STUDY SHOULD TAKE IN CAMPUS PARKWAY IMPACT
- MUST ASK TO DENY BASED ON THE LARGE # OF UNANSWERED QUESTIONS AND INSUFFICENT CEQA REVIEW.

January 21, 2020

Director of Development Services
City of Merced
678 W. 18th Street
Merced, California 95340

RECEIVED
JAN 21 2020
CITY OF MERCED
PLANNING DEPT.

To Whom it May Concern:

I am writting in opposition to the conditional use permit 1238 for the HUB 2.0 project.

My major concerns: ① the underground sewage storage tank. Why aren't the developers required to provide sufficient sewage system for the number of units being built? Underground tank could lead to expensive problems in the future

② Public Safety- Traffic on Yosemite and McKee road has increased greatly already. Unless the City plans on expanding Yosemite to 4 lanes all the way out to the University I can see future traffic accidents and commute delay. also a signal at Parsons and Yosemite would be a necessity!

③ In my opinion High Density usually means too many people for the space and that leads to problems.

If this project was previously denied by Merced City Planning Commission and upheld by Merced City Council in October 2019, I must wonder why is it being brought up again?

"No is No"!

Sincerely,

Judith L. Hoverton
[redacted] Pinehurst Drive
Merced, California 95340

Submitted at the Planning Commission meeting of 1/22/2020

Date: January 22, 2020

To: Merced City Planning Commissioners

From: Michael Bellnomini, former City Council Member and City Planner

Ref: CUP #1238 for 214 Apartments SE Corner Yosemite Avenue & McKee Road

I am writing you to urge you to approve CUP #1238 contingent on several significant changes to the project design.

Density - The project is still too dense at 214 units. The staff report states it will have the maximum density of 36 apartments per acre allowed by the highest residential general plan designation HMD PLUS have retail shops and business offices allowed by the Neighborhood Commercial CN plan designation and zoning. It was not the intent of the city in approving the general plan/zoning to STACK or COMPOUND the permitted land uses to allow the maximum number of apartments and then add commercial uses. The General Plan designation of Medium Density Housing is a more appropriate density for this project at 24 units per acre instead of the High Density use of 36 units per acre. Therefore, I recommend the Commission reduce the density and number of apartments to 24 units per acre to yield a project of 144 units instead of 214, as follows:

1) Building #1 Convert the ground floor apartments to neighborhood commercial shops or offices. This decreases project apartments by 22.

BUILDING #2

2) Delete the third floor, leave the roof top outdoor recreation space. This decreases the project apartments by 34 units.

3) Unit Sizes - Reduce the number of the one bedroom units to achieve a maximum of 144 apartments.

Safe and Enjoyable Environment - In 2016, the City Council approved a major revision of the zoning ordinance. It anticipated the increase in the requests for new apartment projects to serve the UC community and others. After much discussion, the council approved Residential Design Standards for Multi-Family Dwellings as part of the zoning ordinance (pages 171 and 172) Section 20.46.030 (Attached). It states that EVERY apartment should have a useable private outdoor patio or balcony of a minimum of 5 feet by 8 feet. It encourages common recreational areas for apartment dwellers to increase tenants knowing each other and being able to distinguish strange intruders from tenants. These Design Standards are critical making apartments safe and an enjoyable living environment for citizens of Merced. Therefore, I urge you to change the design of the apartment portion of the project as follows:

4) Building #1 Create common courtyard for tenants at the landing of the apartment stairs by converting three apartments to a courtyard. Convert one apartment area to a laundry. (See Attached Plan)

5) Building #2 and #3 Similarly, create a common courtyard for tenants at the landing of the apartment stairs by converting three apartments to a courtyard.

6) Change the design so that EVERY apartment has a balcony of a minimum size of 8 feet by 8 feet..

Shops and Services - Though the developer has designed this project for UC student tenants, you as City Planning Commissioners must have a long-term view and broader view to all the citizens of Merced using this project. The site is designated a Neighborhood Commercial Center because it meets the General Plan Policy spacing of being one mile from the nearest shopping center of the Promenade/Raley's. Therefore, I urge you to designate the ground floor of all buildings to be retail businesses or offices as follows:

7) Building #2 Convert the ground floor, non-business uses to retail commercial shops or business offices.

The role of the Planning Commission is to allow the land developer to succeed in a profitable project ***while protecting*** the citizens of Merced and ***ensuring*** that the project provides a safe living environment for future tenants, current and future neighbors and all citizens of Merced by 1) preventing crowding and congestion of streets, parking lots and apartment areas; 2) providing a living environment that fosters a neighborhood association for apartment dwellers, thereby increasing their safety from intruders and assistance in time of need; 3) providing outdoor space for every resident so that they can enjoy the beauty of Merced's climate, gain fresh air and sunshine and escape "cabin fever" claustrophobia of apartment living and 4) using the Neighborhood Commercial designation and zoning to provide shopping and service opportunities for the neighborhood.

RECOMMENDATION - I recommend you approve CUP #1238 with the addition of Items 1 through 7 above as conditions of approval for the project.

F. Apartment Unit.



1. Each apartment unit shall have unique identification (i.e. numbers, letters, etc.) and all unit identification shall be in proper sequential order.
2. Unit identifications shall be 6 inches to 8 inches in height.
3. Unit identifications shall be treated so that it is clearly read from a street or access.
4. The project "mail directory" required by the postal service shall be located to be only accessible to the postal carrier, and not to the general public.

G. Location. Each dwelling shall face or have frontage upon a street or permanent means of access to a street by way of a public or private easement other than an alley. Such easements shall not be less than 10 feet in width.

H. Safety and Defensible Space.

1. Placement of windows and doors should facilitate neighborhood surveillance of their neighbor's entryways.
2. The number of apartments that enter their front door from the same hallway or courtyard should be limited to no more than 12 (or as otherwise approved by City staff) so that residents can learn to distinguish fellow neighbors from visitors and/or intruders.
3. Apartment common recreational areas should be easily viewed by residents within the units and shall be defined by a physical boundary.
4. Physical changes (such as picket fences, porches, decks, or landscape features) to mark and define areas near a dwelling as that unit's "territory" should be installed.
5. Keyed access gates and surveillance cameras should be installed to enter common areas.

I. Private Outdoor Space.



1. **Ground Floor Units.** Every dwelling unit which is on the ground floor should have a private outdoor usable space, if feasible, of a minimum size of 5 feet by 8 feet.

2. **Units Above Ground Floor.** Every dwelling unit which is above the ground floor should, if feasible, have a useable outdoor balcony space of a minimum size of 5 feet by 8 feet.

Legend

- EFFICIENCY UNIT
- 2 BED/2 BATH
- 3 BED/3 BATH
- COMMON

02 APTS - BLDG 1

CONVERT TO LAUNDRY

BUILDING #1

COMMON AREA

MER

ferrierArchitectureStudio

COMMENTS REGARDING INITIAL STUDY # 19-37

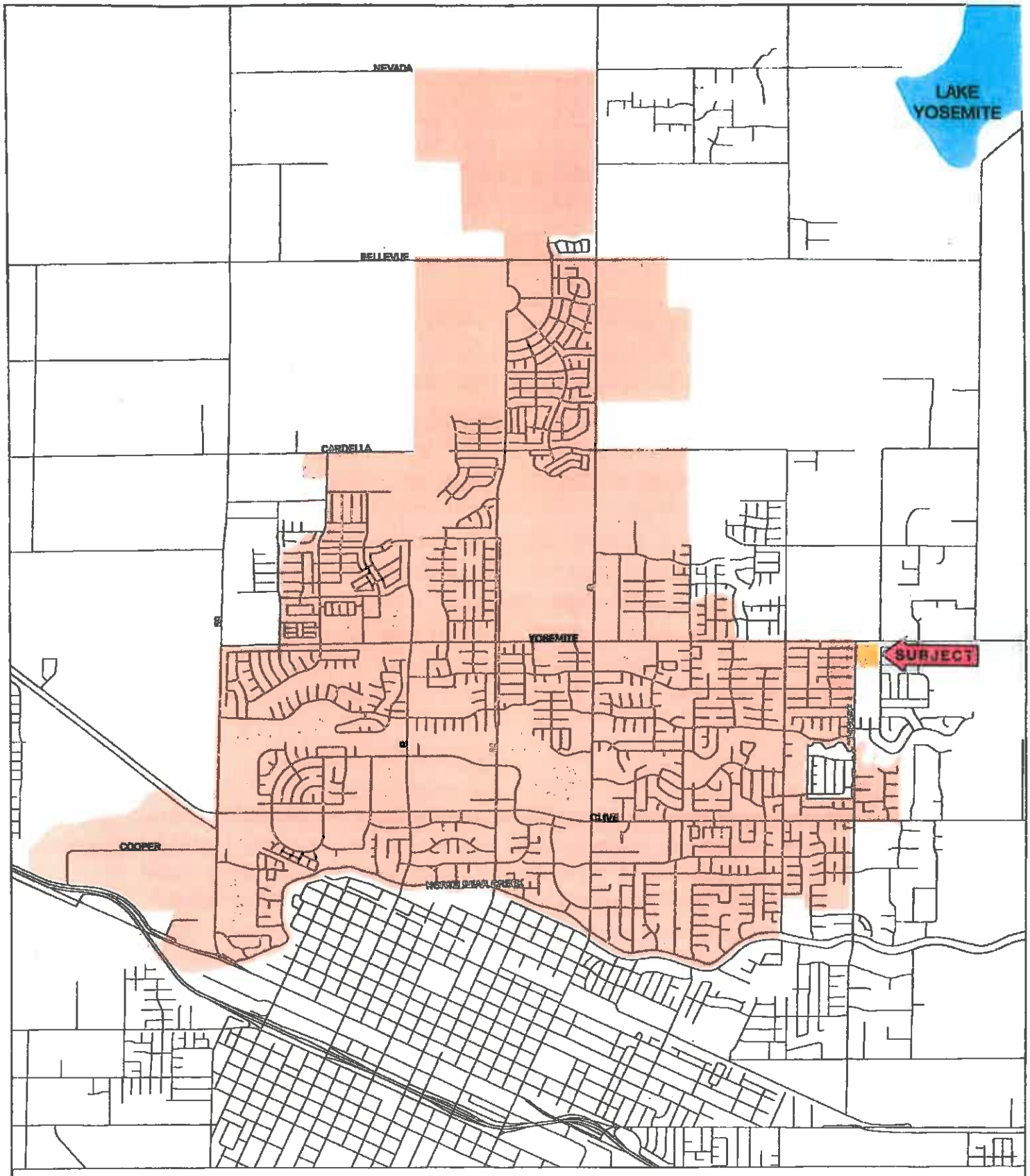
The City of Merced does *not* have a sewer master plan. The subject property is *not* within the North Merced Sewer District (NMSD) boundary (see the attached boundary map with the NMSD area shaded).

The NMSD was established in the early 1980s, decades prior to the subject property being included within the City's January, 2012 General Plan, or even considered for urban development. The NMSD property owners paid for the sewer line capacity along the Yosemite Avenue frontage of the subject (without contemplating the subject for urban development), as well as the sewer line infrastructure at the "G" Street and Yosemite Avenue intersection, together with the sewer infrastructure downstream from that intersection. The City has already negatively impacted the sewer line capacity in Yosemite Avenue between "G" Street and Gardner Road (as determined by the City's consultant – Stantec Consulting Services), in addition to the infrastructure at the "G" Street and Yosemite Avenue intersection when it allocated unanticipated sewer line capacity to UC Merced, as well as other properties that were not included in the NMSD boundary.

The proposed project should not receive entitlements to proceed without thoroughly evaluating the environmental impacts on the existing NMSD properties that have a **vested right** to the sewer line capacity as a result of having paid money over decades to retire the assessment district bonds. Further, this project cannot rely on a proposed, as yet unadopted, city-wide sewer master plan.

Also, there needs to be an analysis completed that shows how much more sewer fees will the City need to charge and collect from this development in order to balance out with those properties within the NMSD who have paid for their existing sewer line capacity.

January 21, 2020



NORTH MERCED SEWER DISTRICT

COMMENTS REGARDING INITIAL STUDY # 19-37

Reference is made to pages 66 thru 68 of Initial Study # 19-37 (Attached). Section 15 ("**Public Services**") totally and completely omits any mentioning of wastewater, except reference to "v. Other Public Facilities" in section 15. a). Point of fact, there is absolutely no mention of wastewater impact(s) in the "***Impact Analysis***" portion of the Initial Study, except to say that the "...development of the project could impact the maintenance of public facilities..." and that the "(P)ayment of the fees required under the Public Facilities Financing Program (PFFP)...would mitigate these impacts...". Since no impacts to the City's wastewater system were identified, the project proponent would be exempt from the payment of any PFFP fees relating to the City's wastewater system.

Section 15, subsection a) v. is woefully inadequate in determining this project's impact to the City's wastewater system, given that the city's own paid consultant (Stantec Consulting Services, "City of Merced Sewer Master Plan – DRAFT, October 28, 2016, Figure 6-5) has previously identified a problem that has continued unresolved. In light of the fact that City desires to finance hundreds of millions of dollars for construction of a master sewer system (not yet approved) by obligating property owners within the Sphere of Influence to pay for it, I, as well as others, would expect that an Initial Study for environmental impacts would be more detailed and forthcoming rather than merely saying that "...the project *could impact ... public facilities and could generate impacts to other governmental services*" [Emphasis added].

b) *Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?*

Implementation of the proposed project would not displace any existing housing. There were previously two single-family dwellings on the site, but these homes were in a blighted condition and were demolished in 2017. There is **no impact.**

15. Public Services

SETTING AND DESCRIPTION

Fire Protection

The City of Merced Fire Department provides fire protection, rescue, and emergency medical services from five fire stations throughout the urban area. The City's Central Fire Station is located in the downtown area at 16th and G Streets. The City also has four other stations throughout the City. Station #55, located at 3520 Parsons Avenue would serve the project site.

Police Protection

The City of Merced Police Department provides police protection for the entire City. The Police Department employs a mixture of sworn officers, non-sworn officer positions (clerical, etc.), and unpaid volunteers (VIP's). The service standard used for planning future police facilities is approximately 1.37 sworn officers per 1,000 population, per the Public Facilities Financing Plan.

Schools

The public school system in Merced is served by three districts: 1) Merced City School District (elementary and middle schools); 2) Merced Union High School District (MUHSD); and, 3) Weaver Union School District (serving a small area in the southeastern part of the City with elementary schools). The districts include various elementary schools, middle (junior high) schools, and high schools. The Project site falls within the Merced City School District and Merced Union High School District (MUHSD).

As the City grows, new schools will need to be built to serve our growing population. According to the Development Fee Justification Study for the MUHSD, Merced City Schools students are generated by new multi-family development at the following rate:

Student Generation Rates

Commercial/Industrial Category	Elementary (K-8) (Students per 1,000 sq.ft.)	High School (9-12) (Students per 1,000 sq.ft.)
Retail	0.13	0.038
Restaurants	0.00	0.157
Offices	0.28	0.048
Services	0.06	0.022
Wholesale/Warehouse	0.19	0.016
Industrial	0.30	0.147
Multi-Family	0.559 (per unit)	0.109 (per unit)

Based on the table above, the proposed mixed-use project would be expected to generate 158 total new students [132 Elementary School (K-8) students, and 26 High School students].

Parks

Richard Bernasconi Park located within the Moraga subdivision to the east of the site would be the closest park to the project site. Rahilly Park is located approximately 1 mile southwest of the site and Davenport Park is located approximately 1 mile northwest of the site.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
15. Public Services. Would the project:				
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services:				
i. Fire Protection?			✓	
ii. Police Protection?			✓	
iii. Schools?			✓	
iv. Parks?			✓	
v. Other Public Facilities?			✓	

Impact Analysis

Would the project:

a) *Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services:*

i. *Fire Protection* - The City of Merced Fire Department would provide fire protection services to the site. The project site is located within Fire District #5 and would be served by Fire Station #55, located at 3520 Parsons Avenue. The response from this station would meet the desired response time of 4 to 6 minutes, citywide. The proposed change in land use designation would not affect the City's ability to provide fire protection. The project would be required to be constructed with a fire sprinkler system and to meet all requirements of the California Fire Code and the Merced Municipal Code.

At the time a building permit is issued, the developer would be required to pay the fees required by the Public Facility Financing Plan (PFFP). A portion of

this fee goes to cover the City's costs for fire protection such as fire stations, etc. In addition, the developer would be required to annex into the City's Community Facilities District for Services (CFD #2003-2). This would result in an assessment paid with property taxes in which a portion of the tax would go to pay for fire protection services.

Compliance with all Fire, Building, and Municipal Code requirements as well as payment of the Impact Fees required by the Public Facilities Financing Program, and annexation into the City's CFD for services would reduce any potential impacts to a **less than significant level.**

ii. *Police Protection* - Development of the project would require additional police services in the area. The proposed mixed-use project is located on a site that is currently vacant. Any change to the status of the site would require additional services. However, the impacts from the proposed project would not substantially increase the impacts beyond what was anticipated with the previous General Plan Amendment and Zone Change that changed the land use for this site to Neighborhood Commercial. Payment of the required Public Facilities Impact Fees and annexation into the City's Community Facilities District (CFD) for services would reduce any potential impacts to a **less than significant** level.

iii. *Schools* - Based on the table provided in the "Settings and Description" section above, the proposed mixed-use project would generate 132 Elementary School (K-8) students and 26 High School students. This project is intended primarily for college students and faculty, however, it is not exclusively limited to this. Therefore, there could be some impact on schools. Therefore, as with all development, the project would be required to pay all fees required by the Leroy F. Greene School Facilities Act of 1988. The payment of this statutory fee under California Government Code §65995 is deemed "full and complete mitigation" of school impacts.

iv. *Parks* - The development of the mixed use project would not trigger the need to construct a new park in the area. Payment of the fees required under the Public Facilities Financing Program (PFFP) as described above and payment of Quimby Act fees would be required at time of building permit issuance to help fund future parks and maintenance of existing parks as well as the payment of fees in lieu of land dedication for future parks would be required at the building permit stage. The proposed amenities onsite and the payment of fees would reduce this potential impact to **less than significant.**

v. *Other Public Facilities* - The development of the project could impact the maintenance of public facilities and could generate impacts to other governmental services. Payment of the fees required under the Public Facilities Financing Program (PFFP) as described above would mitigate these impacts to **a less than significant level.**

CORRESPONDENCE RECEIVED

REGARDING SITE PLAN REVIEW #455

From: Ann Kelley [redacted]

Sent: Friday, April 10, 2020 7:15 AM

To: planningweb <planningweb@cityofmerced.org>

Subject: Oppose Site Plan Review #455

Honorable Commissioners:

I have reviewed the information in the Notice for the above referenced public hearing and desire to voice my opposition of this project. There is already a traffic issue on Yosemite Avenue from Mc Kee to G St. The intersection of Parsons and Yosemite is currently problematic with long lines of traffic on Yosemite Ave. Yosemite Avenue from G to McKee is in disrepair and has been for several years with no current plans to fix it. Yosemite Avenue from Parsons to McKee Ave, it is unclear if it is a 3 lane road or a 2 lane road, which causes confusion. McKee Ave from Yosemite Ave. to Olive Ave will also be negatively impacted by this project. In addition to traffic issues, there is an issue of water usage and sewage drainage which will be severely impacted upon the city. I am concerned as well about parking for the proposed tenants. 214 apartment units which will house up to 800 individuals and perhaps animals, dogs and cats , in a 2 or 3 story building on this size parcel is just TOO many. I oppose the proposed project.

However, if a smaller project might be more suitable for this parcel. I might also add that perhaps apartments for the UC Students be built much closer to the University, such as all that vacant land on Bellevue Rd.

Respectfully submitted,

Ann Kelley, J. D.

[redacted] Spanish Bay Ct., Merced, CA.

From: Dene Silveira [redacted]

Sent: Saturday, April 11, 2020 8:48 PM

To: planningweb <planningweb@cityofmerced.org>

Subject: Site Plan Review #455

Hello, I reside on Pebble Beach Ct. directly across from the proposed site. I attended two previous meetings concerning Site Plan #455. One by the developer and the other a Planning Commission meeting allowing public comment. I was one of the residents that spoke in opposition to the project with my main concern of the small compact size of these apartments along with the density of entire project on such a small parcel of land. And now I will be perfectly frank and honest on how I felt after leaving at the conclusion of the meeting. The PC listened to all who wished to speak. It was clear to me at the conclusion of meeting, that the Planning Commissioners had their minds made up before this meeting was called to order. This was obviously only a legal formality which had to be met by the Commissioners and City of Merced. I say that with what were some comments and responses to some of the concerns voiced by neighboring residents. I am paraphrasing here, with comments "chalk it up to growing pains" or " be glad it is not a homeless camp" Seriously???? Frankly, not impressed by any of these commissioners and the responsive comments given. By the immediate and simultaneous green go ahead vote by the PC , I can only speak for myself, but it was obvious to me, that this meeting was a waste of time for those of us who were mailed notifications and invited to attend and speak.

I still stand in opposition and feel such a project would be better served being built within walking distance of campus. Also as pointed out at meeting, there is absolutely no guarantee those TINY units will be leased to only students. This could be a project disaster in later years. Sadly this is a "guinea pig" project that could have been a better community neighborhood project for everyone if the original zoning was kept in place.

Sincerely,

Daralene W. Silveira

[redacted] Pebble Beach Ct.

Merced, CA 95340

Law Offices of
Richard L. Harriman
1078 Via Verona Drive
Chico, California 95973-1031
Telephone: (530) 343-1386
Email: harrimanlaw1@sbcglobal.net

April 13, 2020

VIA EMAIL TRANSMISSION
[planningweb@cityofmerced.org]

Planning Commission
City of Merced
678 W. 18th Street, 1st Fl.
Merced, CA 95340

Attention: Kim Espinosa, Planning Manager and Julie Nelson, Associate Planner

Re: Site Plan Review #455
Merced Holdings LP Project at Yosemite Avenue and McKee Road
Objections to Approval of Site Plan
Planning Commission Hearing Date: April 13, 2020 at 7:00 p.m.

Dear Chairman Harris and Members of the Commission:

Pursuant to the instructions contained in the Public Notice of the hearing of this matter at tonight's meeting of the City Planning Commission, this office objects to the approval of the above-referenced Site Plan on behalf of Casey Steed, Merced Smart Growth Advocates (MSGA), a California unincorporated association, the San Joaquin Valley Environmental Defense Center, a California non-profit corporation, and other neighbors who have previously expressed public opposition to this project for the reasons set forth on the attached Comments hereby submitted to the Planning Commission for its review and consideration during this evening's hearing of this matter. Please enter these Comments into the record and have them read at this evening's hearing.

Respectfully submitted,

/s/ *Richard L. Harriman*
RICHARD L. HARRIMAN
Attorney for Casey Steed, MSGA,
and San Joaquin Valley Environmental
Defense Center

COMMENTS IN OPPOSITION

[Casey Steed, Merced Smart Growth Advocates (MSGA), a California unincorporated association, the San Joaquin Valley Environmental Defense Center, a California non-profit corporation, and other neighbors]

1. Under "**FINDINGS/CONSIDERATIONS",** Staff Report #20-03 states,: "Although the General Plan encourages mixed-use developments, it does not specifically address the density allowed within a commercial zone for a mixed-use project." [p. 6, para. A] Since neither High-Medium Density (HMD) and High Density (HD) is expressly included in the Neighborhood Commercial (CN) land use designation nor in the zoning classification of Neighborhood Commercial (C-N) Commercial, The proper legal inference should be that the City Council did not intend to include either HMD nor HD within the CN land use nor the C-N zoning designation. Absent express language to the contrary, the Applicant needs to apply for a General Plan Amendment and a Zoning Amendment to include express language to provide internally consistency between the General Plan Land Use Element and the Zoning Ordinance, before the Site Plan may rely upon either HD or HMD entitlement sought by the Applicant.

2. The Site Plan is not consistent with the future upgrade of Yosemite Avenue between McKee Road and Campus Parkway to 118' shown in Table 4.1, at page 4.3 of the City's Transportation and Circulation Element of the General Plan and the Circulation map.[MCC Sections 20.68.050 (F)(1) and (6)]

3. The Traffic Study included in the Mitigated Negative Declaration relied on by Staff for the environmental review for this project does not include an internal circulation plan nor disclose, analyze, or mitigate the potentially significant cumulative adverse impacts to peak a.m. traffic safety and congestion caused by right turns from the curb cut on Yosemite Avenue.[MCC Section 20.68,050 (F)(6)]

4. The Site Plan provides no identification of the location of the 43,000-gallon underground waste water storage facility to be designed and constructed on site (Conditions 9 and 10 and mitigation measure) to store and pump untreated effluent in the Yosemite Avenue sewer main during off-peak hours. This infrastructure and the location of the storm water discharge point into the Merced Irrigation District irrigation canal adjacent to the project need to be identified in the Site Plan. [MCC Sections 20.68,050 (F)(3) and (6)]

5. There is a pending appeal of CUP # 1238, which should be remanded to this Commission to be heard with this matter. [Merced Municipal Code (MCC) Section 20.32].

4/13/20

City of Merced

MEMORANDUM

DATE: December 4, 2019

TO: Planning Commission

FROM: Kim Espinosa, Planning Manager

SUBJECT: Training by City Attorney's Office on Conditional Use Permits, Findings, and California Housing Laws

ACTION: Receive brief training on Conditional Use Permits, Findings, and California Housing Laws

The City Attorney's office will be providing training on Conditional Use Permits, Findings, and California Housing Laws. Attachment A is an excerpt from the City's Municipal Code regarding required findings for Conditional Use Permits. Attachments B through F are a couple of summaries of recent California Housing Law changes and three recent bills (SB 167, AB 678, and AB 1515).

Attachments

A) Excerpt from Zoning Ordinance Regarding Conditional Use Permits
B) California's 2020 Housing Laws: What You Need to Know
C) A Closer Look at California's New Housing Production Laws
D) SB 167 (Housing Accountability Act)
E) AB 678 (Housing Accountability Act)
F) AB 1515 (Planning and Zoning: Housing)

20.68.020 - Conditional use and minor use permits.

A. Purpose. A conditional use or minor use permit is required for uses that are generally appropriate within a zoning district but potentially unsuitable in a particular location or in large numbers. A conditional use or minor use permit is a discretionary action that enables the city to ensure that a proposed use is consistent with all general plan goals and policies and will not create negative impacts to adjacent properties or the general public.

B. Application Submittal and Review. Application for a conditional use or minor use permit shall be filed and reviewed in compliance with Chapter 20.66 (Permit Application and Review).

C. Review Authority.

1. Conditional Use Permits. The planning commission shall take action on all conditional use permit applications.
2. Minor Use Permits.
   a. The director of development services shall take action on all minor use permit applications.
   b. The director of development services may refer any minor use permit application to the planning commission for review and final decision.

D. Public Notice and Hearing.

1. Public notice and hearing for a conditional use permit shall be provided in compliance with Chapter 20.70 (Public Notice and Hearing).
2. No public notice or hearing is required for a minor use permit although all records relating to the permit shall be public records and shall be available for review upon request.

E. Findings for Approval. The review authority may approve an application for a conditional use or minor use permit application only if all of the following findings can be made:

1. The proposed use is consistent with the purpose and standards of the zoning district, the general plan, and any adopted area or neighborhood plan, specific plan, or community plan.
2. The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the subject property.
3. The proposed use will not be detrimental to the public health, safety, and welfare of the city.
4. The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.

F. Conditions of Approval. The review authority may attach conditions to the approval of a conditional use or minor use permit as needed to ensure compliance with the general plan, zoning ordinance, Merced Municipal Code, city design standards, or any applicable specific

plan, community plan, or area plan, policy, or ordinance adopted by the city.

G. Appeals. Decisions on conditional use and minor use permits may be appealed as provided for in Chapter 20.74 (Appeals).

H. Post-Decision Procedures. Procedures and requirements relating to effective dates, time limits, changes to approved projects, resubmittals, and permit revocation shall apply to conditional and minor use permits as provided in Chapter 20.72 (Post-Decision Procedures).

I. Time Limits. If not exercised within five (5) years of approval, the conditional use permit shall expire. Time extensions of up to two (2) years may be approved by the director of development services. (Refer to Section 20.72.060(B) and (C) for definition of "exercised" and time extension procedures.)

(Ord. No. 2465, § 2(Exhs. A., B.), 9-19-2016)

Holland & Knight

California's 2020 Housing Laws: What You Need to Know

A Statewide Rent Control Measure, New Procedural Protections, Significant Steps Forward for Accessory Dwelling Units, Surplus Land Amendments and Regional Funding Authorities Are Among the Highlights

October 18, 2019

Holland & Knight Alert

Chelsea Maclean | Daniel R. Golub | Kevin John Ashe | Paloma Perez-McEvoy

Highlights

- The biggest news out of Sacramento in housing law is a historic measure providing statewide rent control and "just cause" eviction requirements for California renters.
- For advocates of increased housing production, the most significant effort enacted into law is the "Housing Crisis Act," which creates important new vesting rights for housing developments and limits on local review procedures.
- The California Legislature also again embraced Accessory Dwelling Units (ADU), with a package of laws that some are calling "the end of single-family zoning," allowing most single-family homes to be converted into three separate housing units.
- In its first year, the Newsom Administration is focusing on planning for housing development on surplus state lands and further reforming the regional housing needs allocation process. It remains to be seen whether next year's legislative session will yield the major steps forward on streamlining housing approvals that will be necessary for the administration to come close to meeting its goal of building 3.5 million homes by 2025.

As California's housing supply and homelessness crisis continues, the State Legislature has for the past several years passed numerous pieces of housing legislation in each legislative session. (See Holland & Knight's previous alerts, "A Closer Look at California's New Housing Production Laws," Dec. 6, 2017 and "California's 2019 Housing Laws: What You Need to Know," Oct. 8, 2018.) This year was no exception, with more than 30 individual pieces of housing legislation enacted into law.

This Holland & Knight alert takes a closer look at these laws, grouped into following categories:

- **Tenant Protections.** A statewide rent control measure that will take effect in 2020, among other tenant protection measures.
- **Streamlining, Increasing Density and Reducing Barriers to Production.** Sen. Nancy Skinner's "Housing Crisis Act" creates important new vesting rights for housing developments, and the Legislature has also enacted important new reforms to the Density Bonus Law and clarifications to SB 35's Streamlined Ministerial Approval Process.
- **Accessory Dwelling Units and "Triplexes."** A groundbreaking package of new laws that some are calling "the end of single-family zoning" will create new incentives and streamlined processes to build ADUs and triplexes.
- **Surplus Land Availability / Planning and Impact Fee Data.** New laws significantly expand Surplus Lands Act requirements for local agencies in an effort to achieve more affordable housing on surplus publicly owned properties.
- **CEQA and Housing.** The major transit stop definition was broadened to make more projects eligible for streamlining and a handful of limited California Environmental Quality Act (CEQA) exemptions were created for specific homelessness projects.

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- **Funding.** Gov. Gavin Newsom vetoed a bill that would have created an "Affordable Housing and Community Development Investment Program" that would have revived redevelopment, but he signed a number of smaller funding bills, including laws that will create new regional finance agencies in the Bay Area and the San Gabriel Valley.

This alert also includes some observations about the important work California still needs to do to stem the housing crisis, and consider what may be around the corner in the 2020 legislative session. Except where noted, these new laws take effect Jan. 1, 2020.

Tenant Protections

The most significant housing law of the 2019 legislative session was the enactment of a statewide rent control law.

AB 1482 (Assembly Member David Chiu) – The Tenant Protection Act of 2019 enacts a cap of 5 percent plus inflation per year on rent increases statewide for the next 10 years. The new law does not apply a cap to vacant units, and owners can continue to reset rents to market rate at vacancy. It also prevents landlords from evicting certain tenants without landlords first providing a reason for the eviction and requires relocation assistance. The law does not apply to properties built in the last 15 years, nor does it apply to single-family home rentals (unless owned by large corporations) or to projects already under construction or under current rent control schemes. The new law defers to more stringent local measures, including existing local rent control with lower limits and local just cause eviction laws. The law's anti-eviction protections, which would limit evictions to lease violations or require relocation assistance, will kick in after a tenant has lived in an apartment for a year. Gov. Newsom's enactment of a rent cap comes less than a year after California voters rejected a ballot measure that would have expanded local rent control policies statewide, which would have likely resulted in tighter restrictions in some cities than those now offered by AB 1482. (For additional detail, please see Holland & Knight's previous alert, "Rent Control Bill Gets Gov. Newsom's Support as Clock Ticks on Deadline for New Laws," Sept. 9, 2019.)

AB 1110 (Assembly Member Laura Friedman) – Noticing Rent Increases requires 90-day notice, rather than 60-day notice, before a landlord may increase the rent of a month-to-month tenant by more than 10 percent.

SB 329 (Assembly Member Holly Mitchell) – Housing Discrimination prohibits landlords from discriminating against tenants who rely on housing assistance paid directly to landlords, such as a Section 8 voucher, to help them pay the rent.

SB 18 (Sen. Nancy Skinner) – The Keep Californians Housed Act removes the Dec. 31, 2019, sunset date on a state law which gives tenants at least 90 days' notice before their tenancy can be terminated if a landlord loses ownership of their rental property as a result of a foreclosure sale.

Streamlining, Increasing Density and Reducing Barriers to Production

Sen. Skinner's SB 330, the "Housing Crisis Act of 2019," stands out as the most important new law affecting large-scale housing developments.

SB 330 (Skinner) – Housing Crisis Act of 2019 includes a number of new procedural protections, including the following:

- *Preliminary Application Protections* – limitations on a jurisdiction's ability to change development standards and zoning applicable to the project once a "preliminary application" is submitted
- *Application Completeness Streamlining* – amends the Permit Streamlining Act to specify what constitutes a "preliminary application" and states that a jurisdiction has one chance to identify incomplete items in an initial application and after that may not request the submission of any new information that was not in the initial list of

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missing items

- *Fees/Exactions Limitations* – prevents jurisdictions from increasing exactions or fees during a project's application period, but allows such increases if the resolution or ordinance establishing the fee calls for automatic increases in the fee over time
- *Hearing Limitations* – prohibits cities or counties from conducting more than five hearings if a proposed housing development complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete
- *Downzoning Prohibitions* – prohibits a jurisdiction (with some exceptions) from enacting development policies, standards or conditions that would change current zoning and general plan designations of land where housing is an allowable use to "lessen the intensity of housing"; from placing a moratorium or similar restrictions on housing development; from imposing subjective design standards established after Jan. 1, 2020; and limiting or capping the number of land use approvals or permits that will be issued in the jurisdiction, unless the jurisdiction is predominantly agricultural

Some of the most important provisions in SB 330 sunset on Jan. 1, 2025, if not extended. (For additional detail on SB 330, see Holland & Knight's previous alert, "California Legislature Passes Housing Crisis Act of 2019 and Rent Control Bill, Among Others," Sept. 12, 2019; For background on the Housing Accountability Act, upon which SB 330 builds, see Holland & Knight's previous alert, "California Governor Signs into Law Major Reforms to Housing Accountability Act," Sept. 29, 2017.)

AB 1763 (Chiu) – Density Bonuses for 100 Percent Affordable Projects creates enhanced density bonus options, including a potential 80 percent increase in base density and unlimited density bonuses for qualifying projects within a half-mile of a major transit stop, under the State Density Bonus Law. However, this only applies to projects that consist of 100 percent affordable housing (no more than 20 percent moderate-income, and the remainder for lower-income).

AB 1485 (Assembly Member Buffy Wicks) – Amendments to SB 35's Streamlined Ministerial Approval Process makes a number of important clarifications to SB 35 of 2017, a law that allows qualifying housing and housing-rich mixed-use projects to qualify for a streamlined, ministerial CEQA-exempt approval process if the project meets the local government's objective zoning, subdivision and design review standards, provides a specific minimum number of affordable housing units, agrees to pay prevailing wages to construction workers, and meets other qualifying criteria. AB 1485 amends SB 35 in several ways:

- *Moderate-Income Options* – broadens eligibility for SB 35 to Bay Area projects that provide 20 percent of their units for moderate-income households (less than 120 percent of area median income), under certain conditions
- *Calculating "Two-Thirds" Mixed-Use Projects* – clarifies that the calculation to determine if a project qualifies for SB 35 where it consists of two-thirds residential excludes underground space such as parking garages and basements
- *Approval Expiration Dates* – clarifies that the three-year expiration for SB 35 approvals in case of litigation expires three years after a final judgment upholding the approval, and clarifies that the approval also remains valid as long as vertical construction of the development has begun and is in progress
- *Subsequent Permits* – clarifies that local governments must issue subsequent permits – such as demolition, grading, building permits and final maps – without unreasonable delay, as long as those subsequent permit applications substantially comply with the approved SB 35 permit
- *Standards of Review and Consistency with Other Laws* – clarifies that the standard for determining whether a project qualifies for SB 35 is highly deferential *to the project applicant*: a project complies with SB 35's criteria as long as "there is substantial evidence that would allow a reasonable person to conclude" that the development

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complies

- *Housing Accountability Act*– clarifies that under existing law, SB 35 projects are entitled to protection under the Housing Accountability Act

(For further information on SB 35's streamlined ministerial approval process, see Holland & Knight's previous alerts, "California Issues Initial Implementation Guidance on 2017 Housing Laws," Feb. 15, 2018, and "A Closer Look at California's New Housing Production Laws," Dec. 6, 2017.)

AB 101 – Housing Development and Housing 2019-20 Budget Act – requires local governments to provide "by right," CEQA-exempt approvals to certain qualifying navigation centers that move homeless Californians into permanent housing. The law, which took effect on July 31, 2019, also creates additional incentives for cities to comply with their mandates to plan for sufficient housing in their Housing Elements, and provides some modest additional remedies that the state can use in court when cities fail to comply with housing element law. These reforms fall well short of Gov. Newsom's proposal at the beginning of 2019 to withhold state money from cities that fail to plan for and approve sufficient housing.

AB 430 (Assembly Member James Gallagher) – The Camp Fire Housing Assistance Act of 2019 is intended to create housing relief in areas of Butte County, where the housing stock was devastated by the 2018 Camp Fire. The new law creates a streamlined, ministerial CEQA-exempt approval process in and adjacent to the cities of Biggs, Corning, Gridley, Live Oak, Orland, Oroville, Willows and Yuba City for qualifying housing developments that comply with those localities' objective zoning, subdivision and design review standards.

AB 1783 (Robert Rivas) – Farmworker Housing creates a streamlined, ministerial CEQA-exempt approval process for qualifying agricultural employee housing developments on land zoned primarily for agricultural uses.

Accessory Dwelling Units and "Triplexes"

Accessory Dwelling Units (ADU) are additional living quarters on the same lot as a primary dwelling unit. While California laws have paved the way for increased ADU development, some cities have enacted ordinances that render ADU development infeasible or cost prohibitive. By further reducing barriers to ADU development, the new bills discussed below could bring tens of thousands of new ADUs online over the next few years.

AB 68 (Assembly Member Phil Ting) / AB 881 (Assembly Member Richard Bloom) – Processing Timelines, Ordinance Prohibitions and Triplexes requires local agencies to either approve or deny an ADU project within 60 days of receiving a complete building permit application on a ministerial (CEQA-exempt) basis. The new law further prohibits local agencies from adopting ADU ordinances that: impose minimum lot size requirements for ADUs; set certain maximum ADU dimensions; require replacement off-street parking when a "garage, carport or covered parking structure" is demolished or converted to construct the ADU. Notably, the new law allows for an ADU as well as a "junior" ADUs where certain access, setback and other criteria are met – this has been referred to the "tripelex-ation" of single-family zoning. The new law has also explicitly identified opportunities for ADUs in multifamily buildings, including storage rooms, boiler rooms, etc., where building standards are met. New enforcement mechanisms have also been added. The Department of Housing and Community Development (HCD) may now notify the Attorney General's Office of any violations of these new provisions.

SB 13 (Sen. Bob Wieckowski) – Owner-Occupancy Prohibitions and Fee Limitations provides, until Jan. 1, 2025, that cities may not condition approval of ADU building permit applications on the applicant being the "owner-applicant" of either the primary dwelling or the ADU. Additionally, agencies cannot impose impact fees on ADUs under 750 square feet.

AB 587 (Friedman) – Separate Conveyances provides that local agencies may now allow ADUs to be sold or

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conveyed separately from a primary residence if certain conditions are met. Prior law that prohibited ADUs from being sold or conveyed separately from the primary residence in which they are co-located hindered shared ownership models, such as tenancies in common. This law, therefore, is expected to increase the ability of affordable housing organizations to sell deed-restricted ADUs to eligible low-income homeowners.

AB 670 (Friedman) – HOA Limitations prevents homeowners' associations from barring ADUs. Many single-family neighborhoods in California were established as common-interest developments under the Davis-Stirling Common Interest Development Act. These properties are typically governed by a set of Covenant, Conditions and Restrictions (CC&Rs), which often restrict the types of construction that can occur within and adjacent to a member's home. AB 670 makes unlawful any HOA condition that "prohibits or unreasonably restricts" the construction of ADUs on single-family residential lots.

AB 671 (Friedman) – Local Government Assistance requires local governments to include in their General Plan housing elements plans to incentivize and promote the creation of affordable ADUs. The law also requires HCD to develop, by Dec. 31, 2020, a list of state grants and financial invectives for ADU development.

Surplus Land Availability, Planning and Impact Fee Data

Several new laws intend to collect and make information available regarding surplus state and local land suitable for affordable residential development and to revamp the Surplus Lands Act procedures to ensure that affordable housing entities have early opportunities to purchase available land. (For additional information on HCD's release of interactive maps identifying surplus properties, see Holland & Knight's previous alert, "New California Surplus Lands Maps and Legislation to Facilitate Affordable Housing," Sept. 17, 2019.) Other notable laws require reporting on impact fees and HCD to prepare a 10-year housing data strategy.

AB 1486 (Ting) – Surplus Lands Act Process Amendments expands the Surplus Lands Act's (Act) requirements for local agencies in an effort to achieve more affordable housing on surplus properties. Existing law requires agencies, when disposing of surplus land, to first offer it for sale or lease for the purpose of developing affordable housing. The bill analysis states that local agencies have attempted to circumvent the Act process in the past. Notable amendments include a new requirement for a local agency to provide information about its disposition process to HCD and for HCD to submit, within 30 days, written findings of any process violations that have occurred. Amendments also provide that a local agency that violates the Act is liable for 30 percent to 50 percent of the final sale price.

SB 6 (Sen. James Beall) – Available Residential Land requires local agencies preparing a housing element or amendment on or after Jan. 1, 2021, to submit an inventory of land suitable residential development. Additionally, new law requires HCD to provide to the Department of General Services a list of lands suitable and available for residential development that were identified by a local government as part of the housing element. The Department of General Services must create a database of information regarding available local and state lands available and searchable by the public online.

AB 1255 (Rivas) – Surplus Public Land Inventory further requires agencies to make a central inventory of all surplus land and to report such information to HCD by April 1 of each year, beginning April 1, 2021. Agencies are further required to provide a list of its surplus land to requesting parties without charge. HCD must then report the information to the Department of General Services for inclusion in a digitized inventory or surplus properties.

AB 1483 (Assembly Member Tim Grayson) – Housing Impact Fee Data Collection and Reporting requires local agencies to make information available on housing development fees, applicable zoning ordinances and standards, annual fee reports and archived nexus fee studies. Such agencies are then required to update the information within 30 days of any changes. Additionally,HCD will be required, on or after Jan. 1, 2020, to prepare a 10-year housing data strategy that identifies the data useful to enforce existing housing laws and inform state housing policymaking. Among

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other information requirements, the strategy must include information that provides a better understanding of project appeals, approvals, delays and denials and provides an understanding of the process, certainty, costs and time to approve housing.

SB 235 (Sen. Bill Dodd) – Napa Regional Housing Need Allocation Reporting allows the City of Napa (city) and County of Napa (county) to reach an agreement under which the county would be allowed to count housing units built within the city in connection with the approximately 700 unit Napa Pipe project toward the county's regional housing needs assessment requirement. The governor's signing statement included an unusually direct message that the governor "expects permits will be issued expeditiously by the local jurisdictions, allowing [the] project to proceed immediately."

CEQA and Housing

Legislative efforts regarding CEQA include an important revision broadened the definition of a major transit stop as well as streamlining the process for supportive housing and homeless shelter projects.

AB 1560 (Friedman) – Defining "major transit stop" broadens the definition of a "major transit stop" under Public Resources Code Section 21064.3 to include bus rapid transit. Projects located within a half-mile of a qualifying bus rapid transit stop that meet other qualifying conditions may qualify for multiple benefits: parking reductions pursuant to the State Density Bonus Law; CEQA infill housing, aesthetic and parking exemptions; SB 375 streamlining for qualifying transit priority projects; a less than significant Vehicle Miles Traveled (VMT) impact presumption. The new definition also applies to local incentives, such as those adopted per Measure JJJ and implemented in the City of Los Angeles' Transit Oriented Guidelines, for residential projects located within 1,500 feet of a major transit stop.

SB 744 (Sen. Anna Caballero) – No Place Like Home Projects streamlines the approval process for supportive housing projects by clarifying that a decision to seek funding through the No Place Like Home program is not a project for the purpose of CEQA. No Place Like Home is a voter-approved bond measure that will allocate up to $2 billion for the development of permanent supportive housing and wrap around mental health services. The new law also provides a number of clarifying amendments that ensures a local government's design standards, impact fees and exactions are applied similarly to supportive housing projects as other residential projects in the same zone.

AB 1197 (Assembly Member Miguel Santiago) – CEQA Exemption for Supportive Housing and Emergency Shelters exempts from CEQA, until Jan. 1, 2025, any action taken by certain local public agencies to convey, lease, encumber land or provide financial assistance in furtherance of providing emergency shelters or supportive housing in the City of Los Angeles. The legislation carried an urgency clause, making the new law effective on Sept. 26, 2019.

Funding

Hopes of a return to Redevelopment Authority days were dashed when Gov. Newsom vetoed SB 5 (Beall), which would have created the "Affordable Housing and Community Development Investment Program,"a program similar to redevelopment in which cities and counties could redirect local property tax revenues toward projects such as affordable housing. In his veto message, Gov. Newsom cited the potential for the program to cost $2 billion annually. The governor and Legislature did, however, successfully enact into law a number of bills aimed at increasing overall funding for housing development, including laws that will create new regional finance agencies in the Bay Area and the San Gabriel Valley. Such housing bills include:

AB 1487 (Chiu) – Bay Area Housing Finance Authority (BAHFA) establishes a new regional authority to raise, administer and allocate funding for affordable housing in the San Francisco Bay area, and provide technical assistance at a regional level for tenant protection, affordable housing preservation and new affordable housing production. BAHFA will be governed by the Metropolitan Transportation Commission (MTC) Board and staffed with MTC personnel, but will operate as a separate legal entity than MTC. The law permits BAHFA, with approval from the

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Association of Bay Area Governments, to place measures on the regional ballot measure to raise funding for affordable housing, including parcel taxes (on per parcel basis) or special taxes on businesses (measured by gross receipts).

SB 751 (Sen. Susan Rubio) – San Gabriel Valley Regional Housing Trust (Trust) authorizes the creation of the Trust, a joint powers authority, by the County of Los Angeles and any or all of the cities within the jurisdiction of the San Gabriel Valley Council of Governments, with the stated purpose of funding housing to assist the homeless population and persons and families of extremely low, very low and low income within the San Gabriel Valley. SB 751 authorizes the Trust to fund the planning and construction of housing, receive public and private financing and funds, and issue bonds.

AB 116 (Ting) – Enhanced Infrastructure Financing District Creation removes the requirement that Enhanced Infrastructure Financing Districts (EIFDs) must receive voter approval prior to issuing bonds. EIFDs were created by the Legislature in 2014 after the demise of redevelopment in order to allow local governments to devote tax-increment financing for public and private projects such as transportation facilities, environmental remediation and affordable housing. Instead of requiring voter approval, the law will now permit the EIFD's governing body to issue bonds as long as its resolution to do so contains specified information related to the issuance of the bonds, and the board holds at least three public hearings on an enhanced infrastructure financing plan. (For more information on EIFDs and related infrastructure financing mechanisms that could assist your project, see Holland & Knight's previous alerts, "Enhanced Infrastructure Financing Districts," Nov. 12, 2014, and "What's Old, What's New and What Works," October 2016.)

SB 196 (Beall) – Community Land Trust Tax Exemption enacts a new welfare exemption for property owned by a Community Land Trust (CLT) that is being or will be developed or rehabilitated as housing. Traditionally, under California law property used for religious, hospital, scientific or charitable purposes is exempt from property taxes under the "welfare exemption." The new legislation extends the exemption during the construction phase until the homes are sold, but provides that a CLT will be liable for property taxes if the property was not developed, rehabilitated, or in the course of construction within 5 years of the lien date following its acquisition.

AB 1743 (Bloom) – Welfare Exemption expands the properties that are exempt from Community Facilities District (CFD) taxes to include properties that qualify for the property tax welfare exemption, and limits the ability of local agencies to reject housing projects because they qualify for the exemption.

SB 113 (Committee on Budget and Fiscal Review) – National Mortgage Special Deposit Fund (Fund) enables $331 million in state funds to be transferred to the Fund to provide funding for borrower relief and legal aid to vulnerable homeowners and renters.

AB 1010 (Assembly Member Eduardo Garcia) – Housing Program Eligible Entities allows duly constituted governing bodies of Native American reservations and Rancherias eligible applicants to participate in various state affordable housing programs.

Conclusion

The Legislature's housing output is certainly impressive in terms of total volume – and the new ADU package and SB 330 are important steps forward for homebuilders and housing advocates alike. But it is important to put these efforts within the context of the immense scale of California's housing supply crisis.

California home values remain the highest in the nation, and California renters pay 43 percent above the nationwide median, leading to immense strain on low- to moderate-income households. The homelessness crisis is evident on the streets of every city, and the state's homeless residents represent a quarter of the national total. Yet homebuilding in California has averaged less than 100,000 new units per year, much slower than in other states.

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Prompted by the important work of the "Three P's" Coalition for Housing Production, Protection and Preservation, the governor pushed for a major effort that would take dramatic steps forward on all three of these areas, by limiting the ability of local governments to obstruct housing development, and even promising to withhold state transportation funding from local governments that fail to approve their fair share of affordable housing.

In the end, the Legislature's statewide rent control bill represented an historic step forward for "Protection" and "Preservation." But laws that would have represented a comparably dramatic step forward for housing production, such as Sen. Scott Wiener's SB 50, were not enacted. (SB 50, which will return next session, would eliminate highly restrictive zoning rules near existing job centers and public transportation.) The governor abandoned his proposal to withhold transportation funds from local governments that fail to meet their fair share of housing goals. Meanwhile, midyear statistics show that 2019 new housing starts may even decline in production from prior years -- and certainly will come nowhere near the 500,000 units annually that would be necessary to stay on pace to meet the administration's goals.

In this year's package of housing laws, the Legislature has continued emphasizing (as seen in AB 68, AB 881, AB 101, AB 1485, SB 744, AB 1197, AB 1763 and AB 430) that it believes that the best way to build housing is to reform and streamline the local review process and move toward a "by right" model for housing that complies with local zoning and planning rules. However, the Legislature continues to apply this principle on a very limited scale rather than to advance the construction of the 3.5 million homes that Gov. Newsom has said must be built by 2025. In next year's session, builders and housing advocates must be active and vocal to ensure that California rises to the challenge of the housing crisis.

Information contained in this alert is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem. Moreover, the laws of each jurisdiction are different and are constantly changing. If you have specific questions regarding a particular fact situation, we urge you to consult competent legal counsel.

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A Closer Look at California's New Housing Production Laws

By Chelsea Maclean

With the statewide housing crisis at the forefront of the California Legislature's 2017 agenda, legislators unleashed an avalanche of more than 130 bills this year. Housing advocates have argued, backed by staggering statistics, that California's local land use approval process has slowed housing production and made it more expensive.[1] After vetoing housing bills in the past, Gov. Jerry Brown approved 15 housing bills for the first time in his tenure on Sept. 29, 2017. Some of these laws streamline entitlement processing and attempt to reduce local agencies' discretionary approval rights in order to remove local hurdles to housing. These laws provide political "coverage" to decision-makers in development-friendly jurisdictions looking to approve projects in the face of vocal community opposition and also increase the ability to enforce development rights in less friendly jurisdictions where decision-makers oppose new development. More generally, other laws evidence the statewide goal to encourage housing production now that the lack of housing supply is reaching emergency levels.

The following analysis summarizes each new law, grouped into the following categories: (I) Enforceability, (II) Streamlining and Other Incentives, (III) Housing Element Law Amendments, (IV) Funding and (V) Other.

I. Enforceability

1. **SB 167 (Skinner)/AB 678 (Bocanegra) and AB 1515 (Daly) Housing Accountability Act amendments.** These laws strengthen the Housing Accountability Act (HAA), also known also known as the "Anti-NIMBY (Not In My Backyard) Act." As background, the purpose of the HAA is to limit the ability of local agencies to deny or make infeasible qualifying housing developments without making specified findings that require the analysis of the environmental, economic and social effects of the action. In short, SB 167/AB 678 strengthens the HAA by increasing the standard of proof required for a local government to justify a denial of low- and moderate-income housing development projects. AB 1515 provides for a broader range of housing projects to be afforded the protections of the HAA if the project is consistent with local planning rules. Taken together, and as reported previously (see Holland & Knight's alert, "California Governor Signs into Law Major Reforms to Housing Accountability Act," Sept. 29, 2017), amendments to the HAA include the following:

    a) Increased Eligibility for Mixed-Use Projects. The HAA previously permitted a limited set of mixed-use projects to qualify for the Act's protections. Under the revised HAA, a mixed-use project qualifies as long as at least two-thirds of its square footage is designated for residential use.

[1] See, e.g., White House, *Housing Development Toolkit*, September 2016, available here: https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf; Bay Area Council Economic Institute, *Solving the Affordability Crisis*, October 2016, available here: http://www.bayareaeconomy.org/report/solving-the-housing-affordability-crisis/

b) Tightening the Definition of "Objective Standards." Some anti-housing jurisdictions have attempted to avoid the HAA by making claims that a project does not comply with the jurisdiction's "objective" standards and criteria. The reformed HAA establishes a standard that is very favorable to housing developers and advocates: A project must be considered consistent with objective standards as long as "there is substantial evidence that would allow a reasonable person to conclude" that a project complies. If a local government determines that a project does not comply with the jurisdiction's objective standards, it must inform applicants of the basis for this conclusion on a specific timeline, and if the local government fails to do so, the project is legally deemed to be consistent. The new law also clarifies that a project's eligibility for a bonus under California's Density Bonus Law does not render it inconsistent with the local jurisdiction's objective standards.

c) Jurisdictions Can Apply Only Those Standards in Effect at the Time the Application Is Complete. Some jurisdictions have attempted to adopt new objective standards for the purpose of avoiding the HAA. The revised act clarifies that, for affordable housing projects as well as market-rate projects, changes to the change to the zoning ordinance or general plan made subsequent to the date the application was deemed complete are not a valid basis to disapprove a project.

d) Increasing the Burden on Jurisdictions that Reject Housing. Any local government that disapproves or reduces the size of a housing development project must now meet the more demanding "preponderance of the evidence" standard – rather than the more deferential "substantial evidence" standard – in proving that it had a permissible basis under the HAA to reject the project or reduce its density.

e) Increased Availability of Attorney's Fees. California's Fifth District Court of Appeal had previously interpreted the Act to authorize an award of plaintiff's attorney's fees only when a local government rejects an affordable housing project. The revised HAA overrules this interpretation, making attorney's fees available – and presumptively required – regardless of whether the project contains affordable housing.

f) Increased Fines and Increased Authority for Court to Order Projects to Be Approved. The Act previously limited the circumstances under which a court could issue fines or directly order a local government to approve a project. Under the revised HAA, after a successful court challenge, a court must issue an order compelling compliance with the HAA, and any local government that fails to comply with such order within 60 days must be fined a minimum of $10,000 per housing unit and also may be ordered directly to approve the project. If an agency does not carry out a court order within 60 days, a court may also directly order the jurisdiction to approve the project rather than merely order it to comply with the Act. If a local jurisdiction acted in bad faith when rejecting the housing development, the applicable fines must be multiplied by five.

2. **AB 72 (Santiago/Chiu) HCD oversight.** This law strengthens the ability of the California Department of Housing and Community Development (HCD) to enforce housing laws that require local governments to achieve housing goals.

a) Increased HCD Oversight of Local Agency Compliance with Housing Element Law. Specifically, it requires HCD to review any action or failure to act by a local agency that it determines is inconsistent with an adopted housing element and to issue findings whether the action or failure to act substantially complies with the housing element. If HCD finds that the action or failure to act by the agency does not substantially comply with the housing element, HCD may, after allowing no more than 30 days for a local agency response, revoke its findings until it determines that the city, county, or city and county has come into compliance with the housing element.

b) HCD Obligation to Report Violation to Attorney General's Office. The law also requires HCD to notify the city, county, or city and county as well as authorizes HCD to notify the Office of the Attorney General that the city, county, or city and county is in violation of state law (including the HAA, state density bonus law and "no net loss" in zoning density law) if HCD makes certain findings of noncompliance or a violation.

II. Streamlining and Other Incentives

3. **SB 35 (Weiner) "By Right" Approval Processing.** This law streamlines the approval process for infill developments in local communities that have failed to meet their regional housing needs.

   a) Ministerial Approval Processing. The law authorizes a development proponent to submit an application for ministerial processing where a multifamily housing development satisfies specified planning objective standards and specified criteria. The law includes a long list of qualifying criteria, including payment of prevailing wages, use of a "skilled and trained workforce, and consistency with objective development standards. The law will apply only if it is shown in a housing production report (the first reports are due April 1, 2018) that a city is not achieving affordable housing targets. The law requires a local government to notify the development proponent in writing within 90 days of submittal (for projects of more than 150 units) if the local government determines that the development conflicts with any of those objective standards; otherwise, the development is deemed to comply with those standards. Design review or other public oversight of the development may still be conducted but is directed to the "objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as reasonable objectives design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within that jurisdiction." The design review or public oversight process must be completed within 180 days (for projects of more than 150 units) of submittal of the development.

   b) Limitations on Local Government Imposition of Parking or Other Requirements for Qualifying Projects. The law limits the authority of a local government to impose parking standards on a streamlined development approved. The law also prohibits a local government from adopting any requirement that applies to a project solely or partially on the basis that the project receives ministerial or streamlined approval pursuant to SB 35.

c) Limitations on Approval Expiration. The law provides that if a local government approves a project pursuant to that process, that approval will not expire if that project includes investment in housing affordability where more than 50 percent of units are affordable. The approval of a project that contains less than 50 percent affordable units expires automatically after three years, unless that project qualifies for a one-time, one-year extension of that approval. Separately, the law provides that an approval shall remain valid for three years from the date of the final action establishing that approval and shall remain valid thereafter so long as vertical construction of the development has begun and is in progress; it also authorizes a discretionary one-year extension.

d) Local Government Housing Production Reporting. The law also requires local governments to include in the annual general plan report specified information regarding units of net new housing, including rental housing and for-sale housing that have been issued a completed entitlement, building permit or certificate of occupancy. The law also requires local governments to report on the housing produced pursuant to SB 35's requirements.

4. **SB 540 (Roth) Workforce Housing Opportunity Zones.** This law streamlines the environmental review and planning process for certain housing projects located within to-be-established "Workforce Housing Opportunity Zones" and meeting affordable housing, prevailing wage and other specified criteria.

   a) Workforce Housing Opportunity Zone Planning and Environmental Review. The law encourages local agencies to prepare an environmental impact report (EIR) under the California Environmental Quality Act (CEQA) and adopt a specific plan. A local government may submit an application to HCD for funding to support the local government's efforts to develop a specific plan and EIR within a Workforce Housing Opportunity Zone.

   b) Streamlining for Compliant Housing Project Processing. Housing projects meeting certain criteria (including providing affordable housing and paying prevailing wages), would not require a separate CEQA review, and the local jurisdiction would be required to take action on such projects within 60 days after an application is deemed complete.

5. **AB 73 (Chiu) Housing Sustainability Districts.** This law gives local governments incentives to create housing in "Housing Sustainability Districts" on infill sites near public transportation.

   a) Creation of Housing Sustainability Districts. The law prescribes the contents of the ordinance that must be established to create a Housing Sustainability District, including the obligation to require that at least 20 percent of the residential units constructed within the district are affordable. The law requires the agency to prepare an EIR when designating a Housing Sustainability District. However an EIR is not required if, when reviewing a housing project, the agency has certified an EIR within 10 years of the lead agency's review of a housing project.

b) Zoning Incentive Payment for Compliant Housing Sustainability Districts. The law requires HCD to approve a zoning incentive payment for those agencies that apply for such payment if its housing sustainability ordinance meets the specified requirements and the city's housing element is in compliance with specified law. The law requires HCD to issue a certificate of compliance if the agency meets specified criteria pertaining to the continued compliance.

c) Streamlining Compliant Housing Project Processing. The law authorizes a developer to develop a project in a Housing Sustainability District in accordance with the housing sustainability ordinance or the agency's otherwise applicable general plan and zoning ordinances. The law imposes deadlines for an agency's processing of a project within a Housing Sustainability District and limits the instances in which an approving authority may deny a qualifying project.

Notably, the law requires that prevailing wages be paid and a skilled workforce be employed in connection with all projects within the Housing Sustainability District. The law establishes procedures for review of an application by an approving authority, including requiring the approving authority to conduct a public hearing on an application and issue a written decision within 120 days of receipt of the application. The law also prescribes procedures for review of a decision of the approving authority to deny or approve with conditions an application for a permit within a Housing Sustainability District in the appropriate superior court.

d) HCD Obligation to Prepare Housing Sustainability District Program Report. The law requires HCD to publish a report containing specified information about the Housing Sustainability District program on its website no later than Nov. 1, 2018, and each Nov. 1 thereafter.

III. Housing Element Law Amendments

6. **SB 166 (Skinner) Residential Density.** Existing "no net loss" in zoning density law requires that local governments identify adequate sites to meet regional housing needs when a housing element is adopted. This new law bolsters existing law to ensure that agencies maintain an ongoing supply of housing construction sites for residents of various income levels, throughout the entirety of a housing element planning period.

a) Prohibitions on Reducing Density. Specifically, the law prohibits an agency from reducing residential density to a density that is below the density utilized by HCD in determining compliance with housing element law unless the agency makes findings that the reduction is consistent with the general plan and that the remaining sites identified in the housing element are adequate to meet the jurisdiction's share of the regional housing need. It also prohibits local agencies from causing their inventories of housing sites to be insufficient to meet their required housing needs for lower-income and moderate-income households. The law also requires agencies to make specified written findings if the agency allows development of any parcel with fewer units by income category than identified in the housing element for that parcel. If the approval of a development project results in fewer units by income category than identified in the housing element for that

parcel and the remaining sites in the housing elements are not adequate to accommodate the jurisdiction's share of the regional housing need by income level, the agency must then identify additional adequate sites within 180 days.

7. **AB 1397 (Low) Residential Development Inventory.** Existing law requires an agency's housing element to contain an inventory of land suitable for residential development, including vacant sites and sites having the potential for redevelopment. The new law strengthens housing element law by limiting the reliance of local governments on sites that do not have a realistic capacity for development of housing.

   a) Modified Analysis of Land for Residential Development. Specifically, the new law makes changes to the definition of land suitable for residential development to increase the number of sites where new multifamily housing can be built. Specifically, the law requires the inventory of land to be *available* for residential development in addition to being *suitable* for residential development and to include vacant sites and sites that have "realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level."

   b) Local Agency Obligation to Consider Infrastructure and Resource Availability. The law also includes new requirements for requiring parcels included in the inventory to have sufficient water, sewer and dry utilities supply available, or be included in an existing general plan program or other mandatory program or plan to secure sufficient water, sewer and dry utilities supply to support housing development and to be accessible to support housing development. This law requires the agency to specify for each site the number of units that can *realistically* be accommodated on that site and whether the site is adequate to accommodate lower-income housing, moderate-income housing or above-moderate-income housing.

   c) Local Agency Obligation to Consider Local Experience in Housing Production. The new law requires the agency's discussion of the methodology used to determine development potential to consider, among other things, the city's or county's past experience with converting existing uses to higher-density residential development, the current demand for the existing use, and an analysis of existing leases or other contracts that would perpetuate the existing use or prevent redevelopment.

8. **AB 879 (Grayson) Housing Production Reporting, Development Constraints Analysis and Local Fees Study.** This law requires additional analysis of housing production and housing constraints in an agency's annual general plan report as well as an HCD-prepared study of local fees charged to new residential developments that will also include a proposal to substantially reduce such fees.

   a) Local Agency Obligation to Report on Housing Production. Specifically, the law now requires an agency, as part of its annual general plan report, to report on the number of housing development applications received in the prior year, units approved and disapproved in the prior year, and a listing of sites rezoned to accommodate that portion of the city's or county's share of the regional housing need for each income level that

could not be accommodated on specified sites. The law also extends the obligation to prepare the general plan report to charter cities.

b) Local Agency Obligation to Analyze Housing Constraints. The law also now requires an analysis of governmental constraints upon the maintenance or development of housing to also include any locally adopted ordinances that directly impact the cost and supply of residential development. The law requires the analysis of nongovernmental constraints to also include the requests to develop housing at densities below those anticipated in a specified analysis as well as the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development. The law requires the analysis of nongovernmental constraints to demonstrate local efforts to remove nongovernmental constraints that create a gap between the locality's planning for the development of housing for all income levels and the construction of that housing.

c) HCD Obligation to Prepare Local Fees Study and Recommend Means to Reduce Fees. This law also requires HCD, by June 30, 2019, to complete a study to evaluate the reasonableness of local fees charged to new developments. The law requires the study to include findings and recommendations regarding potential amendments to the California Mitigation Fee Act to substantially reduce fees for residential development.

IV. Funding

9. **SB 2 (Atkins) Building Homes and Jobs Act.** This law establishes a permanent funding source for affordable housing to fill the gap in funding lost from the loss of redevelopment agencies and the exhaustion of prior bond funds. Specifically, the law establishes funding through a $75 fee on real estate transaction documents. The fee is capped at $225 per transaction and exempts real estate sales. The fees would generate roughly $225 million per year, which would be split among state and local housing programs.

10. **SB 3 (Beall) Veterans and Affordable Housing Bond Act of 2018.** This law authorizes $4 billion in general obligation bonds for affordable housing programs and a veteran's home ownership program. SB 3 must be approved by voters in November 2018.

V. Other

11. **AB 1505 (Bloom/Bradford/Chiu/Gloria) "*Palmer* Fix."** The law declares the legislative intent to supersede the holding and dicta in *Palmer/Sixth Street Properties L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 (*Palmer*) to the extent that the decision conflicts with a local jurisdiction's authority to impose inclusionary housing requirements on rental housing.

a) Authorization of Inclusionary Housing Ordinances for Residential Rental Units. Specifically, this law authorizes cities and counties to adopt an inclusionary ordinance for residential rental units in order to create affordable housing.

b) HCD Review of Inclusionary Housing Ordinances. This law also authorizes HCD – within 10 years of the adoption or amendment of an inclusionary ordinance by a county or city after Sept. 15, 2017, requiring more than 15 percent of the total number of units

rented in the development be affordable to, and occupied by, households at 80 percent or less of the area median income – to review that ordinance if the county or city fails to meet specified conditions (i.e., that the county or city has failed to meet at least 75 percent of its share of the regional housing need allocated or that the agency has failed to submit its annual general plan report). The law authorizes HCD to request – and require that the county or city provide – evidence that the ordinance does not unduly constrain the production of housing by submitting an economic feasibility study that meets specified standards.

c) Limitation on Inclusionary Housing Obligations if Not Economically Feasible. If HCD finds that the economic feasibility study does not meet specified standards, or if the county or city fails to submit the study within 180 days, the law would require the county or city to limit any requirement to provide rental units in a development affordable to households at 80 percent or less of the area median income to no more than 15 percent of the total number of units in the development.

12. **AB 1521 (Bloom/Chiu) Preservation Notice Law Amendments.** This law strengthens the Preservation Notice Law by requiring additional notice of a scheduled expiration of rental restrictions and by requiring owners of expiring affordable rental properties to accept any market-rate purchase offer from a qualified preservation entity that intends to maintain the property's affordability restrictions. The law requires HCD to monitor compliance and allows tenants the right to enforce the law. The law applies to an "assisted housing development," defined as a multifamily rental housing development that receives governmental assistance pursuant to specified federal or local programs. The granting of density bonuses, concessions or incentives is included as a type of local assistance that renders a project subject to the law. However, assisted housing developments in which 25 percent or less of the units are subject to affordability restrictions are exempt from the requirement to accept any market-rate purchase offer from a qualified preservation entity that intends to maintain the property's affordability restrictions.

13. **AB 571 (E. Garcia) Farmworker Housing Tax Credits.** This law makes it easier to develop farmworker housing by easing qualifications for the Farmworker Housing Tax Credit.

SB-167 Housing Accountability Act. (2017-2018)

SECTION 1. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) ~~(1)~~ The Legislature finds and declares all of the following:

~~(A)~~ *(1)* The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

~~(B)~~ *(2)* California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

~~(C)~~ *(3)* Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

~~(D)~~ *(4)* Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

~~(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:~~

~~(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.~~

~~(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.~~

~~(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.~~

~~(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.~~

~~(E) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only one-half of California's households are able to afford the cost of housing in their local regions.~~

~~(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.~~

~~(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.~~

~~(H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.~~

~~(I) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working and middle class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.~~

~~(J) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.~~

~~(K) The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.~~

~~(L) It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.~~

~~(3) It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently.~~

(b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low, low-, and moderate-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a)

of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

~~(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.~~

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Disapprove the housing development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.

(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by a preponderance of the evidence in the

record. For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(j) (1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(3) For purposes of this section, the receipt of a density bonus pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

~~(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.~~

~~(5)~~ *(4)* For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(k) (1) (A) The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that either (i) the local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making findings supported by a preponderance of the evidence, or (ii) the local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence, the court shall issue an

order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. For purposes of this section, "lower density" includes conditions that have the same effect or impact on the ability of the project to provide housing.

(B) (i) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within 60 days issued pursuant to subparagraph (A), the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund. The fine shall be in a minimum amount of ten thousand dollars ($10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to Section 65943. In determining the amount of fine to impose, the court shall consider the local agency's progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund, for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

(ii) If any money derived from a fine imposed pursuant to this subparagraph is deposited in the Housing Rehabilitation Loan Fund, then, notwithstanding Section 50661 of the Health and Safety Code, that money shall be available only upon appropriation by the Legislature.

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

(2) For purposes of this subdivision, "housing organization" means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce this section.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in subdivision (k), the court, in addition to any other remedies provided by this section, shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five. For purposes of this section, "bad faith" includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency, unless

the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court's order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

SEC. 1.5. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) (1) The Legislature finds and declares all of the following:

(A) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(B) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(C) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(D) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:

(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.

(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.

(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.

(E) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only ~~one-half~~ *half* of California's households are able to afford the cost of housing in their local regions.

(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.

(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.

(H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.

(I) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.

(J) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.

(K) The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.

(L) It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

~~(3) It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently.~~

(b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low, low-, and moderate-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and

policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Disapprove the housing development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.

(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by a preponderance of the evidence in the record. For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(j) (1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(3) For purposes of this section, the receipt of a density bonus pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

~~(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.~~

~~(5)~~ *(4)* For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(k) (1) (A) The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action

brought to enforce this section, a court finds that either (i) the local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making findings supported by a preponderance of the evidence, or (ii) the local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. For purposes of this section, "lower density" includes conditions that have the same effect or impact on the ability of the project to provide housing.

(B) (i) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within 60 days issued pursuant to subparagraph (A), the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund. The fine shall be in a minimum amount of ten thousand dollars ($10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to Section 65943. In determining the amount of fine to impose, the court shall consider the local agency's progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund, for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

(ii) If any money derived from a fine imposed pursuant to this subparagraph is deposited in the Housing Rehabilitation Loan Fund, then, notwithstanding Section 50661 of the Health and Safety Code, that money shall be available only upon appropriation by the Legislature.

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

(2) For purposes of this subdivision, "housing organization" means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce this section.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in subdivision (k), the court, in addition to any other remedies

provided by this section, shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five. For purposes of this section, "bad faith" includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court's order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 65589.5 of the Government Code proposed by both this bill and Assembly Bill 1515. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 65589.5 of the Government Code, and (3) this bill is enacted after Assembly Bill 1515, in which case Section 1 of this bill shall not become operative.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

AB-678 Housing Accountability Act. (2017-2018)

SECTION 1. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) ~~(1)~~ The Legislature finds and declares all of the following:

~~(A)~~ *(1)* The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

~~(B)~~ *(2)* California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

~~(C)~~ *(3)* Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

~~(D)~~ *(4)* Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

~~(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:~~

~~(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.~~

~~(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.~~

~~(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.~~

~~(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.~~

~~(E) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only one-half of California's households are able to afford the cost of housing in their local regions.~~

~~(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.~~

~~(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.~~

~~(H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.~~

~~(I) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.~~

~~(J) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.~~

~~(K) The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.~~

~~(L) It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.~~

~~(3) It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently.~~

(b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low, low-, and moderate-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a)

of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

~~(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.~~

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Disapprove the housing development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.

(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by a preponderance of the evidence in the

record. For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(j) (1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(3) For purposes of this section, the receipt of a density bonus pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

~~(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.~~

~~(5)~~ *(4)* For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(k) (1) (A) The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that either (i) the local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making findings supported by a preponderance of the evidence, or (ii) the local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence, the court shall issue an

order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. For purposes of this section, "lower density" includes conditions that have the same effect or impact on the ability of the project to provide housing.

(B) (i) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within 60 days issued pursuant to subparagraph (A), the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund. The fine shall be in a minimum amount of ten thousand dollars ($10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to Section 65943. In determining the amount of fine to impose, the court shall consider the local agency's progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund, for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

(ii) If any money derived from a fine imposed pursuant to this subparagraph is deposited in the Housing Rehabilitation Loan Fund, then, notwithstanding Section 50661 of the Health and Safety Code, that money shall be available only upon appropriation by the Legislature.

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

(2) For purposes of this subdivision, "housing organization" means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce this section.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in subdivision (k), the court, in addition to any other remedies provided by this section, shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five. For purposes of this section, "bad faith" includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency, unless

the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court's order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

SEC. 1.5. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) (1) The Legislature finds and declares all of the following:

(A) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(B) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(C) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(D) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:

(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.

(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.

(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.

(E) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only ~~one-half~~ *half* of California's households are able to afford the cost of housing in their local regions.

(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.

(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.

(H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.

(I) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.

(J) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.

(K) The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.

(L) It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

~~(3) It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently.~~

(b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low, low-, and moderate-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and

policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Disapprove the housing development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.

(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by a preponderance of the evidence in the record. For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(j) (1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(3) For purposes of this section, the receipt of a density bonus pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

~~(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.~~

~~(5)~~ *(4)* For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(k) (1) (A) The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action

brought to enforce this section, a court finds that either (i) the local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making findings supported by a preponderance of the evidence, or (ii) the local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. For purposes of this section, "lower density" includes conditions that have the same effect or impact on the ability of the project to provide housing.

(B) (i) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within 60 days issued pursuant to subparagraph (A), the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund. The fine shall be in a minimum amount of ten thousand dollars ($10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to Section 65943. In determining the amount of fine to impose, the court shall consider the local agency's progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund, for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

(ii) If any money derived from a fine imposed pursuant to this subparagraph is deposited in the Housing Rehabilitation Loan Fund, then, notwithstanding Section 50661 of the Health and Safety Code, that money shall be available only upon appropriation by the Legislature.

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

(2) For purposes of this subdivision, "housing organization" means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce this section.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in subdivision (k), the court, in addition to any other remedies

provided by this section, shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five. For purposes of this section, "bad faith" includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court's order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

SEC. 2. *Section 1.5 of this bill incorporates amendments to Section 65589.5 of the Government Code proposed by both this bill and Assembly Bill 1515. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 65589.5 of the Government Code, and (3) this bill is enacted after Assembly Bill 1515, in which case Section 1 of this bill shall not become operative.*

SEC. 3. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.*

AB-1515 Planning and zoning: housing. (2017-2018)

SECTION 1. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) (1) The Legislature finds and declares all of the following:

(A) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(B) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(C) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(D) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing ~~development~~ projects, reduction in density of housing projects, and excessive standards for housing ~~development~~ projects.

(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:

(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.

(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.

(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.

(E) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only ~~one-half~~ *half* of California's households are able to afford the cost of housing in their local regions.

(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.

(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.

(H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.

(I) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.

(J) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.

(K) The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.

(L) It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

~~(3) It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently.~~

(b) It is the policy of the state that a local government not reject or make infeasible housing ~~development projects,~~ *developments,* including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the ~~housing development~~ project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon ~~a preponderance of the~~ *substantial* evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the ~~housing development~~ project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The ~~housing~~ development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the ~~housing development~~ project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The ~~housing~~ development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The ~~housing~~ development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. ~~For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.~~

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the ~~housing~~ development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very ~~low, low-,~~ *low* and ~~moderate-income~~ *low-income* categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Nothing in this section shall be construed to prohibit a local agency from requiring the ~~housing~~ development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a)

of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the ~~housing~~ development project or emergency shelter.

(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses ~~with at least two-thirds of the square footage designated for residential use.~~ *in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.*

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Disapprove the ~~housing~~ development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is ~~disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.~~ *disapproved.*

(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes ~~conditions,~~ *restrictions,* including design changes, ~~lower density, or~~ a reduction of *allowable densities or* the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or

the imposition of ~~conditions~~ *restrictions* on the development is the subject of a court action which challenges the ~~denial or the imposition of conditions,~~ *denial,* then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by ~~a preponderance of the~~ *substantial* evidence in the record. ~~For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.~~

(j) ~~(1)~~ When a proposed housing development project complies with applicable, objective general ~~plan, zoning,~~ ***plan*** and ~~subdivision~~ *zoning* standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to ~~impose a~~ *approve* ***it upon the*** condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by ~~a preponderance of the~~ ***substantial*** evidence on the record that both of the following conditions exist:

~~(A)~~ ***(1)*** The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

~~(B)~~ *(2)* There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

~~(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:~~

~~(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.~~

~~(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.~~

~~(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.~~

~~(3) For purposes of this section, the receipt of a density bonus pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.~~

~~(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.~~

~~(5) For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.~~

(k) (1) ~~(A)~~ The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that ~~either (i) the local agency, in violation of subdivision (d), disapproved a housing development~~ ***the local agency disapproved a*** project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or

moderate-income households, including farmworker housing, without making the findings required by this section or without making *sufficient* findings supported by ~~a preponderance of the evidence, or (ii) the local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence, the~~ *substantial evidence, the* court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the ~~housing~~ development project or emergency shelter. The court ~~may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court~~ shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or ~~petitioner,~~ *petitioner who proposed the housing development or emergency shelter,* except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. ~~For purposes of this section, "lower density" includes conditions that have the same effect or impact on the ability of the project to provide housing.~~ *If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency, in which case the application for the project, as constituted at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed approved unless the applicant consents to a different decision or action by the local agency.*

~~(B) (i) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within 60 days issued pursuant to subparagraph (A), the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund. The fine shall be in a minimum amount of ten thousand dollars ($10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to Section 65943. In determining the amount of fine to impose, the court shall consider the local agency's progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund, for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.~~

~~(ii) If any money derived from a fine imposed pursuant to this subparagraph is deposited in the Housing Rehabilitation Loan Fund, then, notwithstanding Section 50661 of the Health and Safety Code, that money shall be available only upon appropriation by the Legislature.~~

~~(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.~~

(2) For purposes of this subdivision, "housing organization" means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the ~~housing development~~ project. A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing

development by a local agency. ~~A housing organization shall be entitled to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce this section.~~

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in subdivision (k), the court, in addition to any other remedies provided by this section, ~~shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five.~~ *may impose fines upon the local agency that the local agency shall be required to deposit into a housing trust fund. Fines shall not be paid from funds that are already dedicated for affordable housing, including, but not limited to, redevelopment or low- and moderate-income housing funds and federal HOME and CDBG funds. The local agency shall commit the money in the trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.* For purposes of this section, "bad faith" ~~includes, but is not limited to,~~ *shall mean* an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local ~~agency, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h).~~ *agency.* Upon entry of the trial court's order, a party ~~may,~~ *shall,* in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause ~~allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure.~~ *allow.* If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

SEC. 1.5. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) (1) The Legislature finds and declares all of the following:

(A) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(B) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(C) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(D) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:

(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of

the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.

(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.

(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.

(E) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only one-half of California's households are able to afford the cost of housing in their local regions.

(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.

(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.

(H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.

(I) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.

(J) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.

(K) The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.

(L) It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

~~(3) It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently.~~

(b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development

project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low, low-, and moderate-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the

identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with

adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Disapprove the housing development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.

(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by a preponderance of the evidence in the record. For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(j) (1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(3) For purposes of this section, the receipt of a density bonus pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in

conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

~~(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.~~

~~(5)~~ *(4)* For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(k) (1) (A) The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that either (i) the local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making findings supported by a preponderance of the evidence, or (ii) the local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. For purposes of this section, "lower density" includes conditions that have the same effect or impact on the ability of the project to provide housing.

(B) (i) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within 60 days issued pursuant to subparagraph (A), the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund. The fine shall be in a minimum amount of ten thousand dollars ($10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to Section 65943. In determining the amount of fine to impose, the court shall consider the local agency's progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund, for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

(ii) If any money derived from a fine imposed pursuant to this subparagraph is deposited in the Housing Rehabilitation Loan Fund, then, notwithstanding Section 50661 of the Health and Safety Code, that money shall be available only upon appropriation by the Legislature.

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing

development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

(2) For purposes of this subdivision, "housing organization" means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce this section.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in subdivision (k), the court, in addition to any other remedies provided by this section, shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five. For purposes of this section, "bad faith" includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court's order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 65589.5 of the Government Code proposed by this bill, Assembly Bill 678, and Senate Bill 167. That section shall only become operative if (1) Assembly Bill 678 or Senate Bill 167, or both those bills, and this bill are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 65589.5 of the Government Code, and (3) this bill is enacted after Assembly Bill 678 or Senate Bill 167, or both bills, in which case Section 1 of this bill shall not become operative.

The Hub 2.0

Appeal of Conditional Use Permit #1238 and Site Plan Review #455

City Council Meeting 5/4/2020


Location Map
SUBJECT SITE
YOSEMITE AVE
EXPLORADOR DR
PEBBLE BEACH DR
SPANISH BAY CT
VACA WAY
URDANETA WAY
PEREZ DR
VIA MORAGA
MALASPINA DR
GABRIEL DR
LEGENDS CT
CYPRESS POINT DR
MCKEE RD
NARVAEZ WAY
NARVAEZ WAY
SPY GLASS CT
WHITEWATER WAY
MAGELLAN DR
BONIFACIO WAY
DE SOTO WAY
JARDIN WAY
CAPILANO CT
SILVERADO AVE
VALDEZ WAY
PRINCEVILLE CT
AVILES DR

Project & Site Details

- 5.94 Acre Parcel
- Neighborhood Commercial Zone
- Mixed Use Development (residential uses allowed with CUP)
- 214 Residential Units (mixture of 1, 2, and 3-Bedroom units)
- Density – 36 units/acre (consistent with High Density Residential/General Plan)
- 14,445 Square Feet of Office Space
- 22,672 Square Feet of Commercial Retail Space
- 386 Vehicle Parking Spaces – Parking Analysis provided to allow reduction in parking spaces.
- 70 Bicycle Parking Spaces
- LEED Certified Construction

Background

- 2014 – Proposed 60,000 s.f. Shopping Center.
- 2019 – Proposed Mixed-Use Project with 428 residential units.
- 2019 – Denial of Mixed-Use Project (428 units).
- 2019 – Project redesigned and reduced to 214 units. Office space was added.
- December 4, 2019 - The Planning Commission received training regarding Conditional Use Permits, Findings, and California Housing Laws.
- Jan. 22, 2020 – Planning Commission approved CUP #1238 to allow the redesigned mixed-use project.
- Jan. 29, 2020 – An appeal of CUP #1238 was filed by Casey Steed.
- April 13, 2020 – Planning Commission approved Site Plan Review #455 at a Special Meeting.
- April 20, 2020 – An appeal of SP #455 was filed by Richard Harriman on behalf of Casey Steed.

CUP & SP Findings

Conditional Use Permit

- MMC Section 20.68.020 (E) – Findings for Approval
  - The Review Authority may approve an application for a CUP only if the Four Findings listed in this section can be made.

Site Plan Review

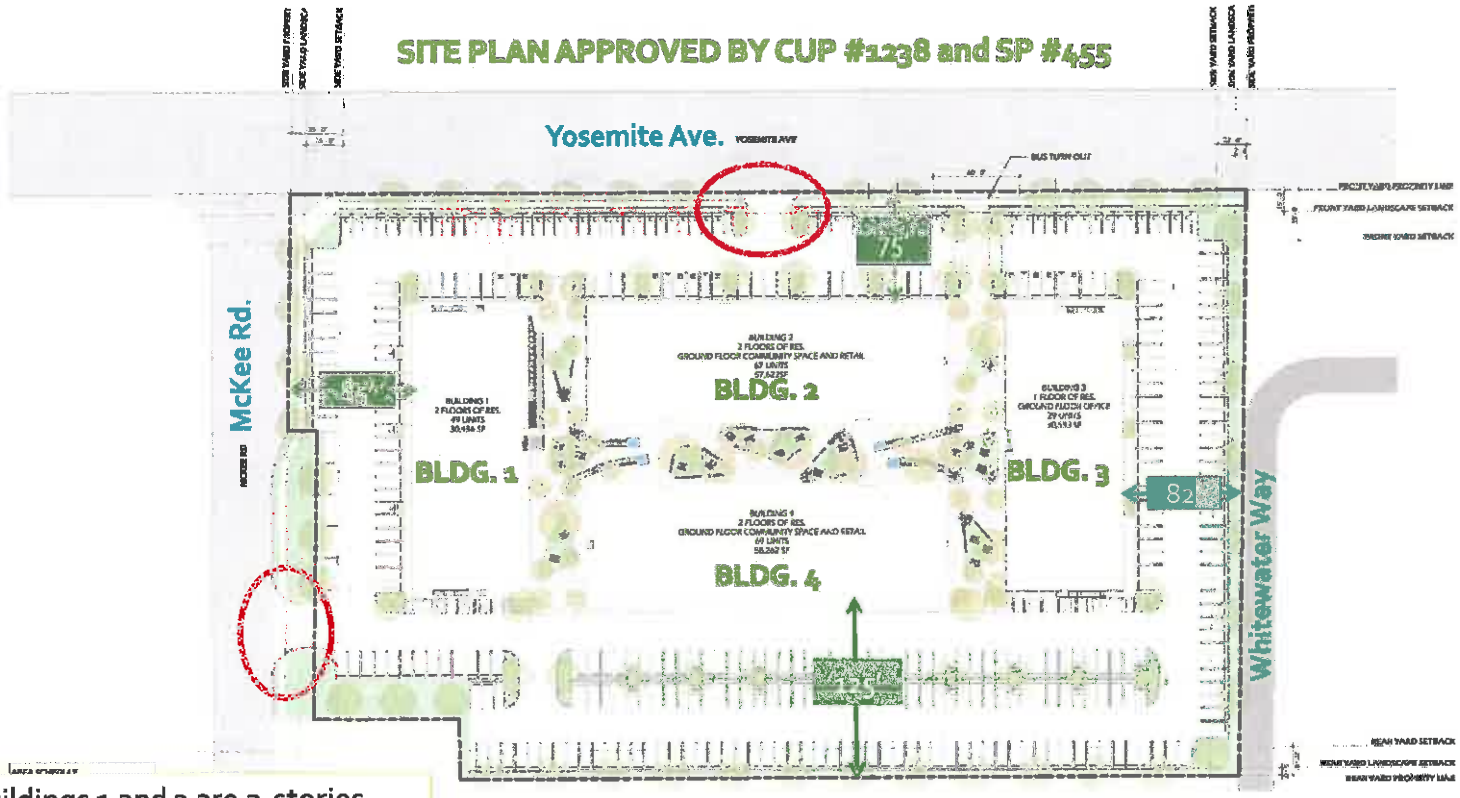
- MMC Section 68.050 (F)
  - The Review Authority may approve an application for a Site Plan Review Permit only if the Six Findings listed in this section can be made.

All the Findings made by the Planning Commission are included in the Administrative Report.

California Housing Laws

- Housing Accountability Act (HAA)
  - Purpose of law is to limit the ability of local agencies to deny or make infeasible housing developments.
  - Developments that comply with all "applicable, objective, general plan, zoning, and subdivision standards and criteria" may not be denied or reduced in size unless they find the project would have an unavoidable impact on public health and safety that cannot be mitigated.
  - Local governments cannot deny or reduce the size of a qualifying affordable housing project except under specific circumstances.
  - Any local government that disapproves or reduces the size of a housing development project must meet the "preponderance of evidence" standard.
  - A mixed-use project qualifies under the HAA as long as 2/3 of its square footage is designated for residential use.

SITE PLAN APPROVED BY CUP #1238 and SP #455



Buildings 1 and 3 are 2-stories.
Buildings 2 and 4 are 3-stories.

YOSEMITE AVE. ACCESS - RIGHT IN/RIGHT OUT ONLY

Parking

- 386 Parking Spaces Provided (including 25 motorcycle/scooter spaces).
- 70 Bicycle Parking Spaces.
- Typical parking requirement would be 452 spaces.
- Proposed spaces are approximately 15% less than required spaces.
- May be allowed a 30% reduction for a Mixed-Use Project.
- Condition #30 of PC Resolution #4035 allows the Director of Development Services to approve a reduction based on a Parking Demand Analysis.
- Parking Analysis submitted and is being reviewed.

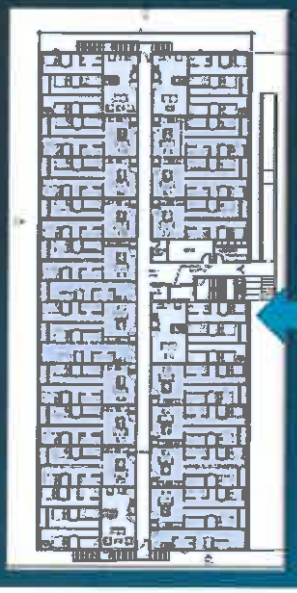




Buildings 1 & 3



Buildings
1 & 3
2nd Floor
29 Units



Building 1
1st
Floor
22 Units

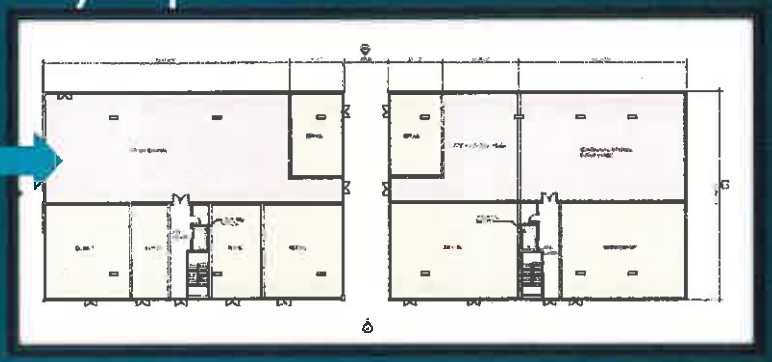
Building 3
1st Floor
Office Space



2-Story Buildings

Buildings 2 & 4 – Commercial/Community Space

Building 2
1st
Floor

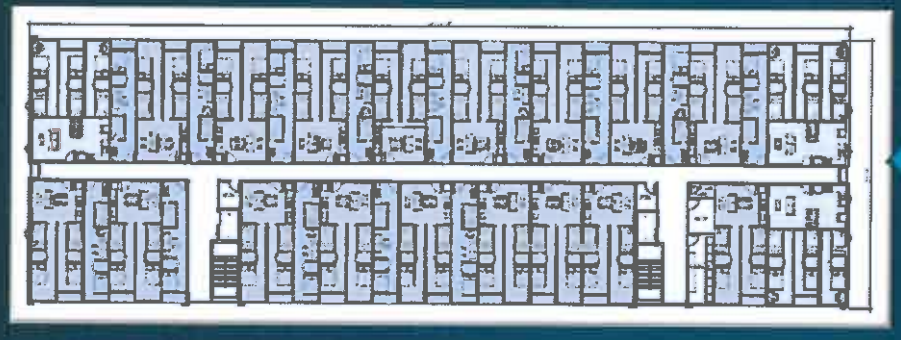




Building 4
1st
Floor

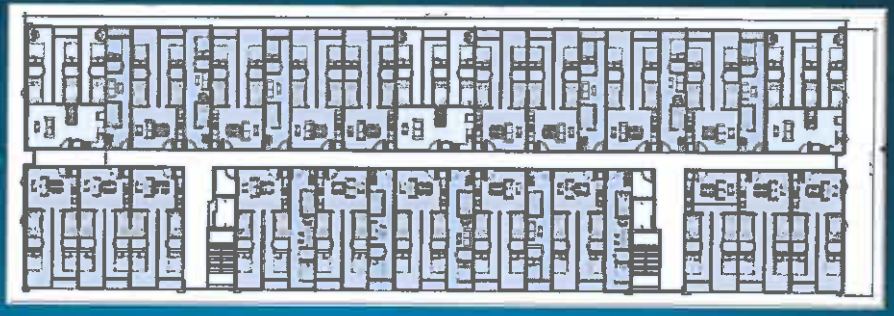
3-Story Buildings

Buildings 2 & 4

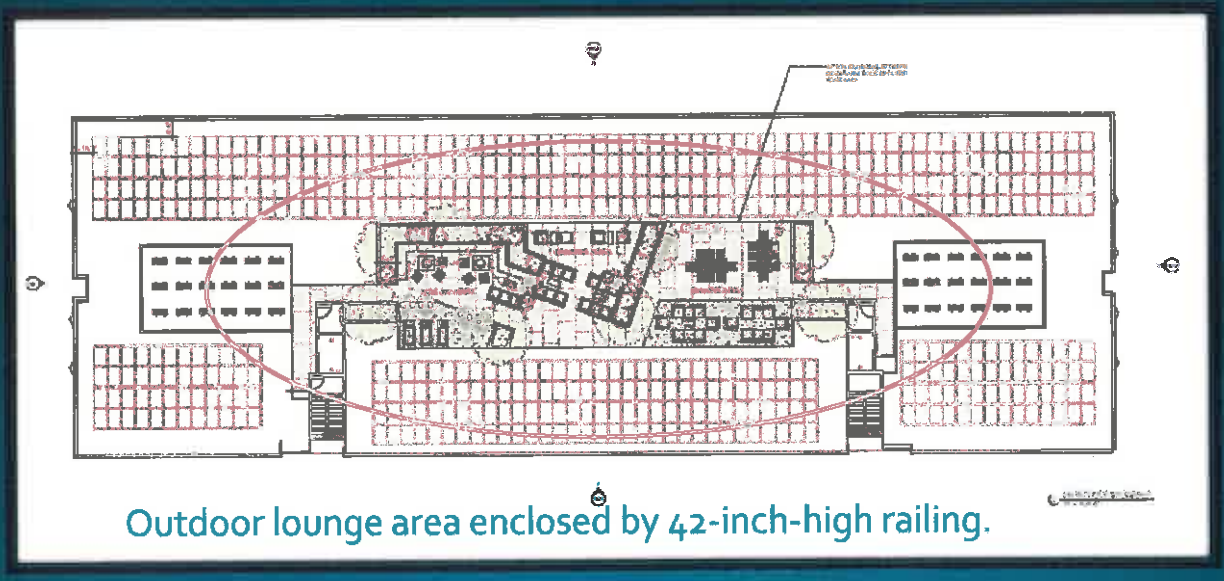


2nd Floor
34 Units

3rd Floor
33 Units – Building 2
35 Units – Building 4



Building 2 – Roof-Top Deck



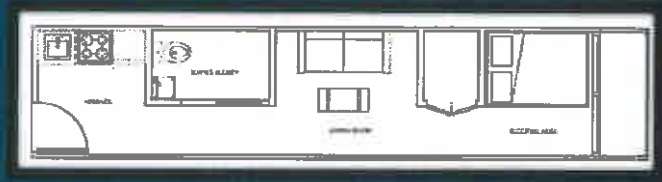
Outdoor lounge area enclosed by 42-inch-high railing.

Access to Roof-Top Deck limited to 7:00 a.m. to 10:00 p.m.

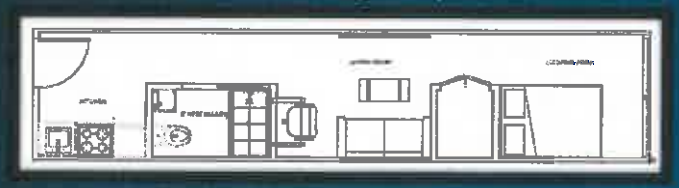
Residential Units

- Mixture of 1, 2, and 3 Bedroom Units.

ONE BEDROOM WITH BALCONY – 276 Sq. Ft. + 24 Sq. Ft. Balcony



ONE BEDROOM WITHOUT BALCONY – 300 Sq. Ft.





82 ONE BEDROOM UNITS

TWO BEDROOM/TWO BATH WITH BALCONY
– 576 Sq. Ft. + 24 Sq. Ft. Balcony



112 TWO BEDROOM UNITS



THREE BEDROOM/THREE BATH WITH
BALCONY – 876 Sq. Ft. + 24 Sq. Ft. Balcony



20 THREE BEDROOM UNITS

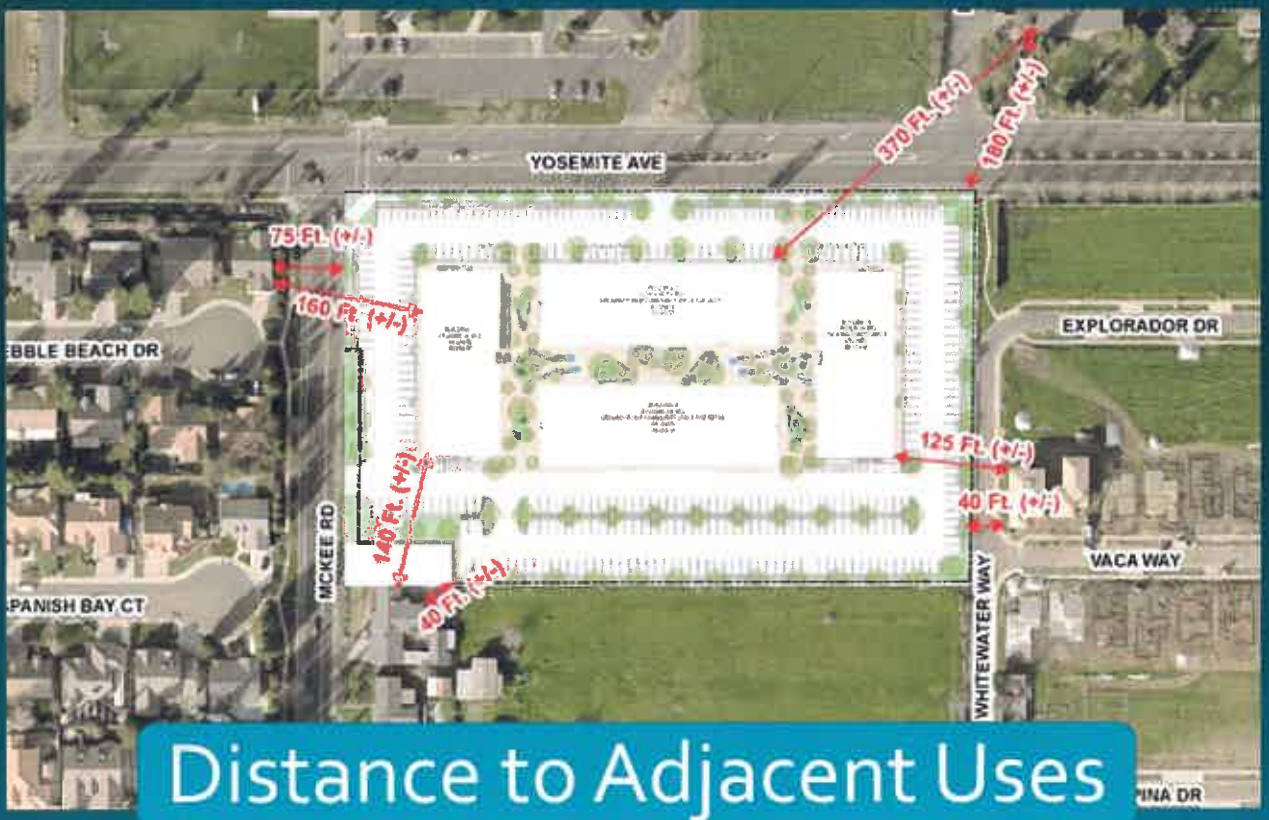


Traffic Impacts

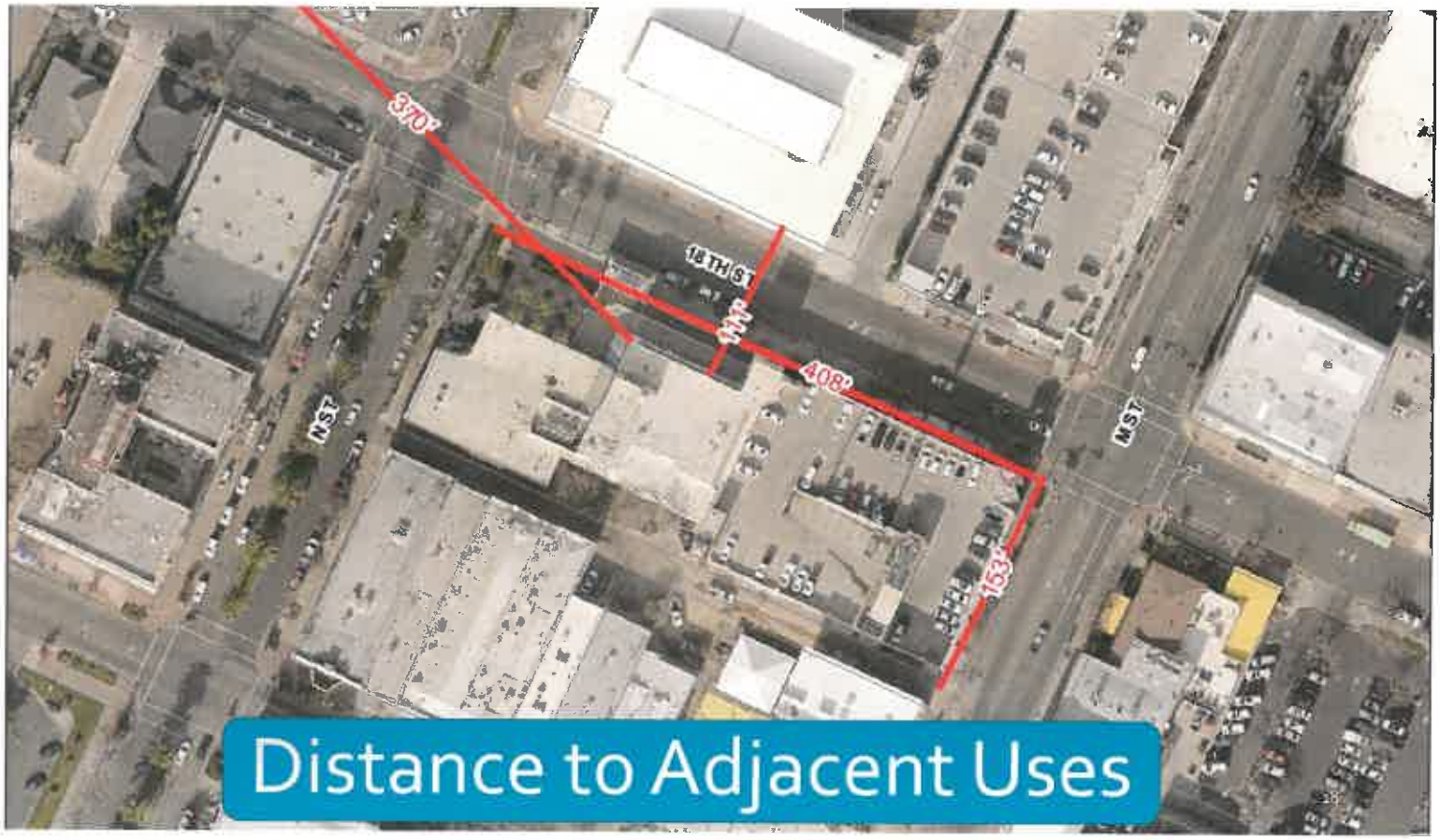
- Traffic Study conducted.
- Existing conditions are below the City's standard level of service (LOS) D.
- Intersections studied:
  - Yosemite and Parsons/Gardner
  - Olive and McKee
  - Yosemite and McKee
  - Yosemite and Hatch

A project cannot be made to mitigate existing problems. A project is only responsible for the incremental increase from the project.

THE ADDITION OF THE PROJECT TRAFFIC DID NOT REDUCE THE LEVEL OF SERVICE FOR THESE INTERSECTIONS, EXCEPT FOR OLIVE AND MCKEE WHICH FELL FROM LOS D TO LOS E



Distance to Adjacent Uses


370'
18TH ST
444'
408'
153'
MST
MST
Distance to Adjacent Uses

Sewer

- Due to constrictions in the Yosemite Avenue line, the project site is limited to discharging a maximum of 8,000 gallons per day of wastewater during peak hours.
- Additional wastewater shall be contained onsite and discharged at off-peak hours.
- The specific plan for on-site storage and pumping has not been approved, but the Public Works Director has approved the concept.
- On-site storage and pumping would be the same concept as the City's pump stations.
- Tentative location for the tank would be on the _____ portion of the site.

Conditional Use Permit #1238

- CUP #1238 approved the proposed project, but did not address the necessary Findings for the Site Plan Review required by the Interface Regulations.
- The required Findings for approval of a CUP are outlined in the Administrative Report.

Site Plan Review #455

- SP #455 approved the project in regards to the Interface Regulations and the height of buildings 2 and 4 being slighting over the 35-foot height limit.
- The required Findings for Site Plan Review are outlined in the Administrative Report.

Public Comment

Conditional Use Permit - Planning Commission meeting of 1/22/20

- 4 people spoke in favor of the project;
- 15 people spoke in opposition to the project;
- 4 letters/emails submitted in opposition to the project;
- 1 email submitted in support of the project.

Site Plan Review – Planning Commission meeting of 4/13/20

- 1 person spoke in favor of the project;
- 1 person spoke in opposition of the project;
- 3 letters/e-mails submitted in opposition to the project.

Appeal

- Conditional Use Permit #1238
  - Letter submitted 1/29/20, from Casey Steed (Attachment 3 of Administrative Report)

- Site Plan Review #455
  - Letter submitted 4/20/20, from Richard Harriman on behalf of Casey Steed (Attachment 3 of Administrative Report)

Environmental Review

CEQA

Conditional Use Permit #1238

- Initial Study #19-37 resulted in a Mitigated Negative Declaration

Site Plan Review #455

- CEQA Section 15162 Determination
- Previous Initial Study #19-37 for CUP #1238 remains sufficient.

MMC Section 20.74.030 - Appeals

1. The review authority may take action on the specific basis for the appeal, or may reconsider the project in its entirety ("de novo" review). The review authority shall make its own decision supported by findings. In doing so, it may:
   a. Affirm, affirm in part, or reverse the action that is the subject of the appeal; or,
   b. Adopt additional conditions of approval that address the matter appealed; or,
   c. Remand the appeal for further review, recommendation, or action to the previous review authority.
2. The review authority's action shall be based upon findings of fact about the particular case. The findings shall identify the reasons of the action on the appeal and verify the compliance of the subject of the appeal with the Zoning Ordinance.
3. A matter being heard on appeal may be continued for good cause (e.g., additional CEQA review is required).
4. If the hearing body is unable to reach a decision on the matter appealed, the decision of the previous review authority shall remain in effect.

City Council Action

- Provide direction to staff, along with Findings, to either approve or deny the appeal.
- Staff will prepare a Resolution along with Findings, based on that direction and return at a future Council meeting for Council to take final action on the appeal.
- If the appeal is to be granted, Council should provide direction as to whether the decision is made with/without prejudice.
- If the appeal is to be denied and the project is to be approved, staff recommends City Council include the adoption of the Findings and Conditions in Planning Commission Resolutions #4035 and 4036 (this includes the adoption of the Environmental Reviews).

QUESTIONS....