

CITY OF MERCED
Planning Commission

Resolution #4104

WHEREAS, the Merced City Planning Commission at its regular meeting of January 18, 2023, held a public hearing and considered **Conditional Use Permit #1268, and Site Plan Review #506**, submitted by Circle K Stores, Inc., on behalf of Ashley Investments, property owner. This application involves a request for tobacco sales and alcohol sales for off-site consumption for a new gas station that will be generally located at the southwest corner of R Street and Loughborough Drive, within a Zoning classification of Planned Development (P-D) #8, with a General Plan Designation of Regional Community Commercial (RC); also known as a portion of Assessor's Parcel Number (APN) 058-030-010.1; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through O (Exhibit B) of Staff Report #23-035; 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 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 Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #22-45, and approve Conditional Use Permit #1268, and Site Plan Review #506, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by 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)

PLANNING COMMISSION RESOLUTION #4104

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January 18, 2023

Adopted this 18th day of January, 2023

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachments:

Exhibit A - Conditions of Approval

Exhibit B - Findings

Conditions of Approval
Planning Commission Resolution #4104
Conditional Use Permit #1268 and Site Plan Review Permit #506

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan), Exhibit 2 (floor plan), Exhibit 3 (elevations), and Exhibit 4 (landscape plan) -- Attachments C, D, E , and F of Staff Report #23-035 except as modified by the conditions.
2. All conditions contained in Resolution #1249-Amended (“Standard Conditional Use Permit Conditions”—except for Condition #16 which has been superseded by Code) shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply, including the Post Construction Standards for Storm Water that became effective July 1, 2015.
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, 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 (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, suits, or proceeding. Developer/applicant shall be responsible to immediately prefund the litigation cost of the City including, but not limited to, City’s attorney’s fees and costs. If any claim, action, suits, or proceeding is filed challenging this approval, the

developer/applicant shall be required to execute a separate and formal defense, indemnification, and deposit agreement that meets the approval of the City Attorney and to provide all required deposits to fully fund the City's defense immediately but in no event later than five (5) days from that date of a demand to do so from City. In addition, the developer/applicant shall be required to satisfy any monetary obligations imposed on City by any order or judgment.

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. Appropriate turning radii shall be provided within the parking areas to allow for Fire engine and refuse truck access.
8. The developer shall work with the City Engineer to determine the requirements for storm drainage on the site. The developer shall provide all necessary documentation for the City Engineer to evaluate the storm drain system. All storm drain systems shall be installed to meet City Standards and state regulations.
9. Merced Municipal Code Section 20.38.080 -Bicycle Parking identifies Gas and Service Stations as being exempt from installing short term and long-term bicycle parking. However, bicycle parking spaces may still be required per the California Green Code during the building permit stage.
10. Any missing or damaged improvements along the property frontage shall be installed/repaired to meet City Standards. Any improvements that don't meet current City Standards shall be replaced to meet all applicable standards.
11. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
12. The applicant shall work with the City's Refuse Department to determine the proper location for a trash enclosure and if a recycling container will be required to comply with AB 341. The container(s) shall be enclosed within a refuse enclosure built to City Standards.

13. All signs shall comply with the City's Sign Ordinance. All signs shall be located outside of the 10-foot visual corner at the driveway entrances on Loughborough Drive and R Street and shall maintain a minimum 3-foot setback from all property lines.
14. Sufficient lighting shall be provided throughout the site to provide a safe environment for employees and patrons of the business.
15. Future signage (including gas price signs), parking lot lights, and building lights shall be shielded or oriented in a way that does not allow "spill-over" onto adjacent lots or be a nuisance to adjacent residential properties. This shall be done in compliance with the California Energy Code requirements. Any lighting on the building shall be oriented to shine downward and not spill-over onto adjacent parcels.
16. All mechanical equipment shall be screened from public view.
17. All landscaping in the public right-of-way shall comply with State Water Resources Control Board Resolution No. 2015-0032 "To Adopt an Emergency Regulation for Statewide Urban Water Conservation" and the City's Water Conservation Ordinance (Merced Municipal Code Section 15.42). Xeriscape or artificial turf shall be used in place of natural sod or other living ground cover. If turf is proposed to be installed in park-strips or on-site, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed. All irrigation provided to street trees, parking lot trees, or other landscaping shall be provided with a drip irrigation or micro-spray system.
18. All landscaping shall be kept healthy and maintained in good condition, and any damaged or missing landscaping shall be replaced immediately.
19. Detailed landscape plans, including irrigation plans, shall be submitted at the building permit stage.
20. The premises shall remain clean and free of debris and graffiti at all times.
21. It is recommended that the exterior building walls and block walls be treated with an anti-graffiti coating to make graffiti removal easier. In any case, graffiti removal shall take place within 24 hours of appearing and shall be painted over with a paint color that matches the existing color of the building wall.

22. A temporary banner permit shall be obtained prior to installing any temporary signs. Free-standing temporary signs (i.e., sandwich boards, A-frame signs, etc.) are prohibited.
23. Full public improvements shall be installed/repared if the permit value of the project exceeds \$100,000.00. Public improvements may include, but not be limited to, installing traffic calming measures, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they comply with ADA standards and other relevant City of Merced/State/Federal standards and regulations.
24. The parking lot layout shall comply with all applicable City Standards. Parking lot trees shall be provided at a ratio of one tree for every six parking spaces. These trees shall be installed per the City's Parking Lot Landscape Standards, 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).
25. No beer or wine shall be displayed or stored outside of the cooler areas.
26. The proprietor and/or successors in interest and management shall be prohibited from advertising or promoting beer & wine and/or distilled spirits on the motor fuel islands and no self-illuminated advertising for beer or wine shall be located on the building or in the windows.
27. No sale of alcoholic beverages shall be made from a drive-in window.
28. No display or sale of beer or wine shall be made from an ice tub.
29. Employees on duty between the hours of 10 p.m. and 2 a.m. shall be at least 21 years of age to sell beer and wine.
30. The proprietor and/or successors in interest and management shall comply with all Municipal Codes relating to loitering, open container laws and other nuisance-related issues.
31. The area within the convenience market dedicated to the display and sale of alcoholic beverages (beer and wine) shall not be more 115 square feet as shown in the floor plan at Attachment D of Staff Report #22-035.
32. A grease interceptor may be required. This will be determined at the building permit stage based on the type of food prepared and served and waste generated.
33. The City reserves the right to periodically review the area for potential problems. If problems (on-site or within the immediate area) arise as

determined by the Police Chief, including but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, disturbing the peace and disorderly conduct result from the proposed land use, the conditional use permit may be subject to review and revocation by the City of Merced after a public hearing and in conformance with the procedures outlined in the Merced Municipal Code.

34. No single-serving containers shall be sold separately unless authorized by the City of Merced Police Department. All single-serving beer and wine containers shall be sold as part of a pack or carton, except for wine bottles at or over 750 ml.
35. Prior to obtaining a license from the Alcoholic Beverage Control to sell alcohol, the business (for the convenience market) shall obtain approval for a Finding of Public Convenience or Necessity from the Merced City Council.
36. This approval is subject to the business owner being in good standing with all laws of the State of California, including the Alcohol Beverage Control (ABC), City of Merced, and other regulatory agencies.
37. 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 issuance of the first certificate of occupancy or filing of a parcel map. 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.
38. The applicant shall work with a traffic engineer to determine the options for vehicle turning movements from the existing driveway from Loughborough Drive. The developer shall be responsible for re-stripping and improvements, as required by the City of Engineer during the building permit stage.
39. Tobacco products shall be stored away from the general public, behind the employee counter that is inaccessible to customers.

40. The applicant shall install tall landscaping along the northern elevations to act as a buffer from tagging. Details to be worked out with Planning staff during the building permit stage.
41. The gas price sign shall meet the requirements set by the State as enforced by the Merced County Wights and Measures Department. If there are conflicts with the Merced Municipal Code, the State code shall prevail.

Findings and Considerations
Planning Commission Resolution #4104
Conditional Use Permit #1263 and Site Plan Review Permit #506

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed project complies with the General Plan designation of Regional/Community Commercial (RC) and the zoning designation of Planned Development (P-D) #8 with approval of a Conditional Use Permit (for tobacco sales, and alcohol sales for off-site consumption) and a Site Plan Review Permit. Gas Stations require a Site Plan Review Permit within a C-C Zone per MMC 20.10.020 and this also applies to Planned Developments with RC General Plan designations. Site Plan Review is also required to establish the development standards for developments within a Planned Development.

The Project would achieve the following General Plan Land Use Goals and Policies:

- 1) Land Use Policy L-2.1: Encourage further development of appropriate commercial and industrial uses throughout the City.
- 2) Land Use Police L-2.6: Provide neighborhood commercial centers in proportion to residential development in the City.

Alcohol Sales

- B) The Merced Municipal Code requires a Conditional Use Permit, because the retail business is less than 20,000 square feet in size [(MMC 20.26.040 (N)]. In addition, alcohol sales shall require a Finding of Public Convenience or Necessity from City Council, because the applicant is seeking a new alcohol license as Merced is listed under Moratorium City for Type 20 alcohol licenses, by the Department of Alcoholic Beverage Control (Condition #36 of Staff Report #23-035).

In order for the Planning Commission to approve or deny a request for the sale of alcoholic beverages for off-site consumption, they must consider the following criteria and make findings to support or deny each criteria per MMC 20.54.320:

Criteria #1

The proposed use will not result in an "undue concentration" of establishments dispensing alcoholic beverages as defined by Section 23958 and 23958.4 of the California Business and Professional Code and giving consideration to the California Department of Alcoholic Beverage Control's guidelines related to number and proximity of such establishments within a 1,000-foot radius of the site.

Finding #1

The subject site is located within Alcoholic Beverage Control Census Tract 13.01. In checking with the State of California Alcoholic Beverage Control District, this census tract is allowed 10 off-sale licenses. Merced is listed under "Moratorium City" for Type 20 alcohol licenses by the Department of Alcoholic Beverage Control. If the applicant were to use an existing alcohol license, they may not need a Finding of

Public Convenience or Necessity, but because they are purchasing a new alcohol State license, they will need to obtain a Finding of Public Convenience or Necessity, which the City of Merced requires be approved by the City Council.

Criteria #2

The proposed use will not adversely affect the economic and societal welfare of the pertinent community or residentially zoned community in the area of the City involved, after giving consideration to the distance of the proposed use from residential buildings, churches, schools, hospitals, public playgrounds, and other similar uses; and other establishments dispensing, for sale or other considerations, alcoholic beverages including beer and wine.

Finding #2:

Residential uses (multi-family) and parks (Fahrens Park) are located within 1,000 feet of the subject site.

Criteria #3

The crime rate in the area of the proposed site. Particular attention shall be given to those crimes involving public drunkenness, the illegal sale of narcotics, disturbing the peace, and disorderly conduct.

Finding #3:

Between December 1, 2021, and December 2, 2022, the Merced Police Department recorded 121 incidents within a 500-foot radius of the subject site. The table on the next page shows the number of incidents within that area involving public intoxication, assaults, MMC violations, and narcotics violations (totaling 9 incidents during the 12 month period). As shown on the attached Incident Map (Attachment H of Staff Report #23-035), the majority of those incidents were traffic-related incidents at the intersection of R Street and Loughborough Drive, and the rest were spread out within residential zones and some commercial properties. The number of incidents reported City-wide for the same time period was 77,779. Based on the total number of calls within the City, the 121 calls to this area equals 0.15% of the overall calls for service within the City. As shown on the attached Crime Hot Spot Map for the City of Merced (Attachment G of Staff Report #22-035), crime rates in this area are considered Moderate compared to the rest of the City. However, most of those incidents were not related to alcohol. Alcohol sales for off-site consumption should not have a significant impact on Police Department resources.

Incidents and Cases Reported (December 2021 - December 2022)

Incident/Case Type	Number of Incidents
Public Intoxication	4
Disturbance (assaults)	4
MMC*	0
Narcotics violations	1

*Municipal Code Violations regarding open containers, drinking in public, etc.

Planning staff consulted with the Merced Police Department regarding alcohol sales at this location. The Police Department did not have significant concerns with this request and is not requiring any conditions of approval not normally associated with alcohol sales for off-site consumption. Based on the information provided by the Police Department, staff does not anticipate that the approval of this request would not adversely affect the economic and social welfare of the surrounding area.

Neighborhood Impact

- C) The subject site is located in northcentral Merced and is surrounded by a variety of commercial and high-density residential uses. The tobacco sales ordinance (MMC 20.44.160 – Tobacco Sales Prohibited Near Schools) was adopted in 2016 through the City’s comprehensive Zoning Ordinance Update, and then amended again in 2020. As such, there are several businesses throughout the community that were in operation prior to the adoption of the ordinance, selling tobacco products near schools and youth-oriented facilities. There are currently several businesses within a two-block radius selling tobacco and alcohol products which includes, but is not limited to, 7-11, 76 Gas Station, Chevron, etc. Given the existing businesses selling alcohol and tobacco in the area, staff does not anticipate that the approval of this convenience market with tobacco sales would create any unusual circumstances for the neighborhood.

A public hearing notice was circulated in the Merced County Times and mailed to property owners within 300 feet of the subject site three weeks prior to this public hearing. As of the date that this report was prepared, staff did not receive any comments from the public about this project.

Building Elevations

- D) The proposed 3,700-square-foot building (for the convenience market) has a contemporary design with a stucco finish and storefront windows on the southern (main) elevation. There are three 23-foot-tall towers at the center and edges of the building, creating a focal architectural point to the main entrance. Stone veneers would be installed along the base of the building and portions of the columns.

There is no maximum height within a CC designation. A maximum height of 60 feet only applies if there is an adjacent residential zone, which is not the case for this project. The surrounding properties all contain commercial buildings with heights between 20 feet and 40 feet. The proposed 23-foot-tall building would be within the

range of the existing surrounding buildings and would blend in with the overall height line for this area.

Floor Plan

- E) The floor plan shows the proposed layout for the site which includes main access from the south elevation and additional exits on the west and east elevations. The floor plan includes a coffee station, a hot food station, several aisles of snacks and goods, walk in coolers, restrooms, an office, and a cashier area. The square footage dedicated to alcohol sales would be 115 square feet out of 2,930 square feet (Attachment D of Staff Report #23-035 showing sales floor area) totaling 3.92% of the total sales floor space. The majority of the alcohol would be stocked within the freezers and shelves located in the western portion of the floor plan.

Signage

- F) The applicant has yet to determine the location of signs and type of signs they would install. Staff will review signs during the building permit stage to ensure compliance with the City's Sign Ordinance, Building Codes. The convenience market shall be prohibited from advertising or promoting alcohol on the motor fuel island and from using illuminated signs (promoting alcohol) on building elevations or windows (Condition #26 of Staff Report #23-35). A digital LED gas price sign may be allowed, but shall be designed, located, and illuminated in a way that does not impact the traffic signal at the intersection of R Street and Loughborough Drive. The gas price sign is also subject to State Code Requirements (Condition #41 of Staff Report #23-035).

Traffic/Circulation

- G) The subject site is located at the southwest corner of R Street and Loughborough Drive. Vehicle access would be available from two existing driveways along R Street and one driveway along Loughborough Drive. R Street is an arterial road with 2 lanes traveling north and 2 lanes traveling south with a median occasionally separating the bound lanes. Arterial roads are intended to carry large volumes of traffic and are considered primary corridors that carry vehicles across the community. Arterial roads generally intersect with other arterial roads, or second tier streets known as collector roads, such as Loughborough Drive, that help alleviate traffic congestion and eventually branch out to local roads that lead to residential subdivision and other low density uses with lower traffic counts.

The average peak hour trips for the proposed gas station is expected to generate 96 trips (12 trips per pump). As such, staff anticipates that the existing City streets and traffic system can adequately serve this Project.

Parking

- H) The parking requirement for a convenience market is one parking space for every 250 square feet of floor area. Based on the proposed 3,700-square-foot building, 15 parking spaces are required for those uses (fuel island parking does not count towards required parking). The subject site has a total of 24 parking spaces, mostly along the

main entrance (southern elevation) and the northeastern portion of the project site. This request complies with City parking requirements.

Public Improvements/City Services

- I) Any damaged or missing public improvements shall be repaired if the permit value of the project exceeds \$100,000.00. The need for repairs or replacement of any missing improvements would be evaluated at the building permit stage by the City's Engineering Department (Condition #23 of Planning Commission Staff Report #23-035). The developer shall be required to hire a traffic engineer to determine the allowable vehicle turning movements out of the existing driveway from Loughborough Drive (Condition #38 of Planning Commission Staff Report #23-035).

Site Design

- J) The subject site is in the process of being subdivided (via parcel map) into a new parcel of 0.77-acres for the gas station. Vehicle access would be available from one existing driveway along Loughborough Drive, and two driveways along R Street. The driveways would be approximately 30 feet wide. The proposal would consist of two primary structures: a gas station canopy for 8 fuel pumps (2,592 square feet) and a convenience market (3,700 square feet). The gas pump canopy would be located along the southern portion of the pending outparcel, and the convenience market would be located within the northern portion of the outparcel. Customer parking would primarily be located along the main entrance along the southern elevation and along the east elevation. The refuse enclosure for the site would be located near the driveway along Loughborough Drive on the western portion of the parcel.

Landscaping

- K) The proposal includes landscaping along R Street, Loughborough Drive, and throughout the project site (Attachment F of Planning Commission Staff Report #22-035). Landscaping includes a mixture of mulch, turf, shrubs, and trees. Plant species should be drought tolerant and all irrigation systems must comply with the latest requirements for water conservation (Condition #17 of Staff Report #22-035). In addition, parking lot trees shall be installed as required by the City's Parking Lot Landscape Standards at a ratio of one tree for every six parking spaces. Parking lot trees shall be selected from the City's approved tree list, providing a 30-foot minimum canopy at maturity (Condition #24 of Planning Commission Staff Report #22-035). Missing street trees shall also be installed along R Street and Loughborough Drive as required by City standards. All trees shall be planted away from the City's 10-foot visual corner triangle area.

Conditional Use Permit Findings

- L) In order for the Planning Commission to approve or deny a conditional use permit, they must consider the following criteria and make findings to support or deny each criteria per MMC 20.68.020 (E) – Findings for Approval.

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

As shown under Finding A, the proposed project complies with the General Plan designation of Regional Community Commercial (RC) and the zoning classification of Planned Development (P-D) #8 with approval of this conditional use permit.

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 shown under Finding C -Neighborhood Impact, Finding D – Building Elevation, and Finding J – Site Design, staff believes that the location, size, design, and operating characteristics of the proposal would be compatible 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.*

As shown under Finding B – Alcohol Sales, staff does not anticipate that this proposal would be detrimental to the public health, safety, and welfare of the City. Planning staff consulted with the Merced Police Department regarding alcohol sales at this location; the Police Department did not have any significant concerns with this request and is not requiring any conditions of approval not normally associated with alcohol sales for on-site and off-site consumption. Based on the information provided by the Police Department, staff does not anticipate that the approval of this request would adversely affect 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.*

The propose development is considered outparcel development which is properly located within the City and adequately served by existing or planned services and infrastructure such as street access, sewer connections, water connections, and other utilities.

Zoning Ordinance Compliance – Mandatory Site Plan Review Findings

- M) A Site Plan Review Permit is required for this project for two reasons: to develop a project within a Planned Development Zone, and also because a gas station is listed as a use that requires site plan review under the Land Use Table 20.10-1 – Permitted Land Uses in the Commercial Zoning Districts. This section applies to Planned Development Zones with General Plan designations of Regional Community Commercial. 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.

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.*

Approval of the proposed Site Plan Review Permit and implementation of the conditions of approval for CUP #1268 and Site Plan Review #506 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.*

As shown under Finding C -Neighborhood Impact, Finding D – Building Elevations, and Finding J – Site Design, staff believes that the location, size, design, and operating characteristics of the proposal would be compatible existing and future land uses in the vicinity. 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.*

As shown under Finding D – Building Elevations, the applicant is proposing a contemporary design with a mixture of materials, colors, and textures. The building exterior would consist of a stucco finish with stone veneers. All structures onsite would generally consist of a uniform design and aesthetic. Staff believes that 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 plan materials, as well as provisions for irrigation, maintenance, and protection of landscaping elements, will complement structures and provide an attractive environment.*

As shown on the Landscape Plans at Attachment F of Planning Commission Staff Report #22-035, the development would include a variety of plant and tree species that would be planted throughout the site. Trees would be planted throughout the parking lot and along street frontages. Parking lot trees would have to conform with minimum City Standards regarding quantity (1 tree per 6 required parking stalls), gallon size (15 gallons), and branch width (30-foot canopy). Parking lot trees shall be from the City's list of approved tree species found within City Engineering Standards (Condition #24 of Staff Report #23-

035). Street trees shall be reviewed by the Engineering and Public Works Departments to ensure conformance with City Standards in regard to species type, irrigation plan, and tree spacing. All landscaping must comply with local regulations and State regulations regarding water conservation, as found under Merced Municipal Code Section 20.36 – Landscaping, and affiliated sections found under the WELLO Act (MMC 17.60).

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 with implementation of the conditions of approval for the Conditional Use Permit and Site Plan Review Permit. 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.

Tobacco Sales

- N) Merced Municipal Code Land Use 20.44.160 – Tobacco Sales Prohibited Near Schools, states that a conditional use permit is required for tobacco sales within 600 feet of “youth oriented” facilities. Tobacco Sales is a discretionary permit that does not require adoption of specific findings (such as is required for alcohol sales), but the general findings required for all conditional use permits is required and are being included under Finding L. The subject site is within 600 feet of Fahrens Park.

Environmental Clearance

- O) Planning staff conducted an environmental review (Environmental Review #22-43) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (no further environmental review is required) is being recommended (Attachment I of Staff Report #23-035).