



# CITY OF MERCED

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

## Minutes Planning Commission

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Wednesday, December 7, 2022

7:00 PM

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### A. CALL TO ORDER

Chairperson HARRIS called the Regular Meeting to order at 7:00 PM.

A.1. Moment of Silence

A.2. Pledge of Allegiance to the Flag

Commissioner WHITE led the Pledge of Allegiance to the Flag.

### B. ROLL CALL

**Clerk's Note:** The Planning Commission has 1 vacancy at this time.

**Present:** 6 - Chairperson Michael Harris, Member Dorothea White, Member Jose Delgadillo,  
Vice Chair Mary Camper, Member Jeremiah Greggains, and Member Anthony  
Gonzalez

**Absent:** 0

### C. ORAL COMMUNICATIONS

There were no public comments.

### D. CONSENT CALENDAR

D.1 **SUBJECT:** Planning Commission Minutes of November 7, 2022

**ACTION:**

Approving and filing the Planning Commission Minutes of November 7, 2022

**A motion was made by Member Greggains, seconded by Member Gonzalez and carried by the following vote, to approve the Consent Agenda.**

**Aye:** 6 - Chairperson Harris  
Member White  
Member Delgadillo  
Vice Chair Camper  
Member Greggains  
Member Gonzalez

**No:** 0

Absent: 0

## E. PUBLIC HEARINGS AND ACTION ITEMS

### E.1

**SUBJECT:** Conditional Use Permit #1267, submitted by Ahmed Mosleh, on behalf of Sam and Sue Malaythong, property owners. This application involves a request for tobacco sales (for off-site consumption) at 235 W. 12th Street, Suite B, generally located on the north side of W. 12th Street, approximately 75 feet east of Martin Luther King Jr. Way, within a Zoning classification of General Commercial (C-G), with a General Plan Designation of General Commercial (CG). \*PUBLIC HEARING\*

**ACTION:** Approve/Disapprove/Modify:

- 1) Environmental Review #22-43 (*Categorical Exemption*)
- 2) Conditional Use Permit #1267

### SUMMARY

Ahmed Mosleh is requesting approval to operate a convenience market with tobacco sales for off-site consumption at 235 W. 12th Street, Suite B. The convenience market would be located within an approximately 525-square-foot suite. A conditional use permit is required for “tobacco sales” for off-site consumption for sites within 600 feet of a “youth center” per Merced Municipal Code Section 20.44.160 - Tobacco Sales Prohibited Near Schools. The youth center located near the convenience market is Little Angels Park, a park, is located at 121 W. 11th Street. The primary use of a convenience market is principally permitted within the site’s Zoning classification of General Commercial (C-G), and General Plan designation of General Commercial (CG). However, tobacco sales requires conditional use permit approval as noted above. Staff is recommending approval of this application subject to conditions.

### RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #22-43 [*Categorical Exemption*] including the adoption of the Draft Resolution at Attachment A subject to the conditions in Exhibit A and the findings/considerations in Exhibit B.

Associate Planner MENDOZA-GONZALEZ reviewed the report on this item. For further information, refer to Staff Report #22-824.

There was no one present wishing to speak regarding the project; therefore, public testimony was opened and closed at 7:13 PM.

**A motion was made by Member Delgadillo, seconded by Member Gonzalez and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #22-35 and approve Conditional Use Permit #1267, subject to the Findings and nineteen (19) Conditions set forth in Staff Report #22-910 (RESOLUTION #4101).**

**Aye:** 6 - Chairperson Harris  
Member White  
Member Delgadillo  
Vice Chair Camper  
Member Greggains  
Member Gonzalez

**No:** 0

**Absent:** 0

## E.2

**SUBJECT:** Zone Change #431 and Tentative Subdivision Map #1323, initiated by Sam Sahota, property owner. This application involves a request for a Zone Change from an Urban Transition (U-T) Zone to a Low Density Residential (R-1-5) Zone at 385 S. Coffee Street. The applicant is also requesting to subdivide one parcel (approximately 10 acres) into 45 single-family lots ranging in size from 6,000 square feet to 8,691 square feet with an additional tot lot and basin lot. The 10-acre subject site is generally located at the west side of S. Coffee Street, 300 feet north of E. Gerard Avenue. \*PUBLIC HEARING\*

### **ACTION:**

#### PLANNING COMMISSION:

Recommendation to City Council

- 1) Environmental Review #22-32 (*Negative Declaration*)
- 2) Zone Change #431

Approve/Disapprove/Modify:

- 1) Environmental Review #22-32 (*Negative Declaration*)
- 2) Tentative Subdivision Map #1323  
(subject to City Council approval of Zone Change

#431)

#### CITY COUNCIL:

Approve/Disapprove/Modify:

- 1) Environmental Review #22-32 (*Negative Declaration*)

## 2) Zone Change #431

**SUMMARY**

The subject site is a mostly undeveloped 10-acre lot located in Southeast Merced at 385 S. Coffee Street. The subject site is generally located on the west side of Coffee Street, 300 feet north of Gerard Avenue. The applicant would like to change the site's current Zoning designation of Urban Transition (U-T) to Low Density Residential (R-1-5). The applicant would also like to subdivide the subject site into 45 independent parcels for single-family homes (with two parcels reserved for a tot lot and a basin). The residential lots would range in size from 6,000 square feet to 8,691 square feet. The proposed density of approximately 4.5 dwelling units per acre would be within the existing allowed General Plan designation of Low Density Residential (LDR) which allows between 2 to 6 dwelling units per acre. Staff is recommending approval with conditions.

**RECOMMENDATION**

Planning staff recommends that the Planning Commission recommend approval of Environmental Review #22-32 [Negative Declaration] and Zone Change #431; and approve Tentative Subdivision Map #1323 (subject to City Council adopting the Zone Change) including the adoption of the Draft Resolutions at Attachments A and B of Staff Report #22-915, subject to the conditions in Exhibit A and the findings/considerations in Exhibit B of each attachment.

Vice Chair CAMPER recused herself and left the dais at 7:15 PM due to a personal financial conflict of interest.

Associate Planner, MENDOZA-GONZALEZ reviewed the report on this item. For further information, refer to Staff Report #22-915.

Staff received 2 emails in opposition from DEBORAH LARSEN and WILLIAM BATES. Those emails were provided to the Planning Commission via email prior to the meeting and posted to the City's website.

Public Testimony was opened at 7:29 PM.

Speaker from the Audience in Favor

JIM XU, Applicant, Merced, CA

Speaker from the Audience in Opposition

JULIO GONZALEZ, Resident, Merced, CA

Speaker from the Audience (Neutral)

ROBERT BRIAN HITTLE, Resident, Merced, CA

Public Testimony was closed at 7:39 PM.

Public Testimony was reopened at 7:56 PM.

Speaker from the Audience in Favor

JIM XU, Applicant, Merced, CA

Speaker from the Audience (Neutral)

ROBERT BRIAN HITTLE, Resident, Merced, CA

Public Testimony was closed at 8:11 PM.

The Engineering Department requested nine new conditions as follows:

(Note: Strikethrough deleted language, underline added language.)

"35. A portion of the proposed basin lot shall be dedicated for the future extension of Mira Court, as required by the City Engineer.

"36. The developer shall remove the existing cul-de-sac at Capella Court for the extension of Capella Court.

"37. Along the Coffee Street frontage, the developer shall dedicate 48 feet towards public right-of-way for the widening of Coffee Street, or as determined by the City Engineer.

"38. the developer shall reach-out to the Merced Irrigation District to determine if a storm drainage agreement is required for storm drainage discharge to MID facilities.

"39. The developer shall re-reroute or replace the private irrigation line from MID Well No. 87 that goes through the subject site to serve the adjacent parcels to the south at Assessor Parcel Numbers 061-261-030 and 061-261-031. The developer shall work with MID to determine the need, size, and location of these lines.

"40. If there is a private irrigation line form the MID Doane Lateral A that goes through the subject site along the west side of Coffee Street, the

applicant shall re-route or replace the line so that it may continue to serve nearby properties. The applicant shall work with MID to determine the need, size, and location of these lines.

"41. A signature block shall be provided for MID for the relocation of all MID facilities."

The Planning Commission proposed adding Condition #42 as follows:

(Note: Strikethrough deleted language, underline added language.)

"42. The 7-foot-high wood fence along the southern property line shall be designed with reinforcements, such as larger baseboards or other such design features. Details to be worked out with staff at the Final Map stage."

A motion was made by Member Greggains, seconded by Member Gonzalez, and carried by the following vote to recommend adoption of a Negative Declaration regarding Environmental Review #22-32 and recommend approval of Zone Change #431, subject to the Findings and nine (9) Conditions set forth in Staff Report #22-915 (RESOLUTION #4098) and to approve Vesting Tentative Subdivision Map #1323 (contingent upon City Council approval of Zone Change #431), subject to the Findings and thirty-four (34) Conditions set forth in Staff Report #22-915 (RESOLUTION #4102) with the addition of Conditions #35 through #41 as requested by the Engineering Department and the addition of Condition #42 as requested by the Planning Commission (as shown above).

**Aye:** 5 - Chairperson Harris  
Member White  
Member Delgadillo  
Member Greggains  
Member Gonzalez

**No:** 0

**Absent:** 0

**Recused:** 1 - Vice Chair Camper

### E.3

**SUBJECT:** General Plan Amendment #22-03, initiated by Eric Pluim on behalf of Gateway Park Development Partners, LLC, property owners. This application involves a request to change the General Plan roadway classification from Divided Arterial to Collector for a portion of Mission Avenue from Coffee Street to the east side of Pluim Drive (extended).\*\*PUBLIC HEARING\*\*

**ACTION:** Continue the matter to the January 18, 2023, Planning Commission meeting.

**SUMMARY**

This is a request to amend the General Plan Circulation Element by changing the roadway classification from Divided Arterial to Collector for a portion of Mission Avenue from Coffee Street to the east side of Pluim Drive (extended). This change is requested to improve the circulation for future development in the area.

#### RECOMMENDATION

Planning staff recommends that the Planning Commission continue this matter to the Planning Commission meeting of January 18, 2023.

At 8:13 PM, Vice Chair CAMPER returned to the dais.

Planning Manager ESPINOSA reviewed the report on this item on behalf of Senior Planner NELSON and indicated that the applicants had asked for a continuance to January 18, 2023. For further information, refer to Staff Report #22-939.

There was no one present wishing to speak regarding the project; therefore, public testimony was opened and closed at 8:15 PM.

**A motion was made by Member White, seconded by Member Delgadillo and carried by the following vote, to continue the public hearing to the Planning Commission Meeting of January 18, 2023.**

**Aye:** 6 - Chairperson Harris  
Member White  
Member Delgadillo  
Vice Chair Camper  
Member Greggains  
Member Gonzalez

**No:** 0

**Absent:** 0

#### E.4

**SUBJECT:** WITHDRAWAL of the Appeal the Site Plan Review Committee's approval of a one-year extension for Vesting Tentative Subdivision Map (VTSM) #1291 for Bright Development which would allow for the subdivision of approximately 39.8 acres of land into 161 single-family lots, generally located on the east side of G Street at Merrill Place (extended).

**ACTION:** No action required.

#### SUMMARY

The appellant has withdrawn the appeal to the Site Plan Review Committee's approval of a one-year extension for Vesting Tentative Subdivision Map #1291.

**RECOMMENDATION**

The appellant has withdrawn the appeal. The Planning Commission should take no action on this matter.

Planning Manager ESPINOSA reviewed the report on this item on behalf of Senior Planner NELSON. No action was taken on this item due to the withdrawal.

**E.5**

**SUBJECT:** Cancellation of January 4, 2023, Planning Commission Meeting due to lack of items

**ACTION:**

Cancel the Planning Commission Meeting of January 4, 2023

**A motion was made by Member Greggains, seconded by Member Delgadillo and carried by the following vote, to cancel the Planning Commission meeting of January 4, 2023, due to a lack of items.**

**Aye:** 6 - Chairperson Harris  
Member White  
Member Delgadillo  
Vice Chair Camper  
Member Greggains  
Member Gonzalez

**No:** 0

**Absent:** 0

**F. INFORMATION ITEMS****F.1**

**SUBJECT:** Report by Planning Manager of Upcoming Agenda Items

**ACTION**

Information only.

Planning Manager ESPINOSA went over items for the next several Planning Commission meetings.

**F.2**

**SUBJECT:** Calendar of Meetings/Events

Dec. 5 City Council, 6:00 p.m.  
7 Planning Commission, 7:00 p.m.  
13 Bicycle and Pedestrian Advisory Commission, 4:00 p.m.  
19 City Council, 6:00 p.m.  
21 Planning Commission, 7:00 p.m. (**Cancelled due to Holiday**)

Jan. 3 City Council, 6:00 p.m.  
4 Planning Commission, 7:00 p.m. (**To be Cancelled**)  
17 City Council, 6:00 p.m. (**Tuesday**)  
18 Planning Commission, 7:00 p.m.

## G. ADJOURNMENT

**Clerk's Note:** The Regular Meeting adjourned at 8:22 PM.

**A motion was made by Member Gonzalez, seconded by Member Greggains and carried by the following vote, to adjourn the Regular Meeting.**

**Aye:** 6 - Chairperson Harris  
Member White  
Member Delgadillo  
Vice Chair Camper  
Member Greggains  
Member Gonzalez

**No:** 0

**Absent:** 0

BY:



KIM ESPINOSA, SECRETARY  
MERCED CITY PLANNING COMMISSION

APPROVED:

MICHAEL HARRIS, CHAIRPERSON  
MERCED CITY PLANNING COMMISSION

**CITY OF MERCED**  
**Planning Commission**

**Resolution #4101**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of December 7, 2022, held a public hearing and considered **Conditional Use Permit #1267**, submitted by Ahmed Mosleh, on behalf of Sam and Sue Malaythong, property owners. This application involves a request for tobacco sales (for off-site consumption) at 235 W. 12<sup>th</sup> Street, Suite B, generally located on the north side of W. 12<sup>th</sup> Street, approximately 75 feet east of Martin Luther King Jr. Way, within a Zoning classification of General Commercial (C-G), with a General Plan Designation of General Commercial (CG). The subject site is more particularly described as Lots 21, 22, 23, 24, 25, 26, and 27 of Block 249, as shown on the map entitled "Supplemental Map to Town of Merced" recorded in Volume 2, Page 12, in Merced County Records; also known as a portion of Assessor's Parcel Number (APN) 031-333-008; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings/Considerations A through J (Exhibit B) of Staff Report #22-910; 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 Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #22-43, and approve Conditional Use Permit #1267 subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by reference.

Upon motion by Commissioner Delgadillo, seconded by Commissioner Gonzalez, and carried by the following vote:

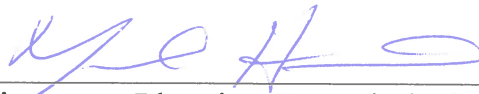
AYES: Commissioner White, Gonzalez, Delgadillo, Greggains, Camper, and Chairperson Harris  
NOES: None  
ABSENT: None (one vacancy)  
ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4101

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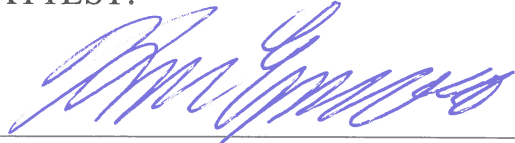
December 7, 2022

Adopted this 7<sup>th</sup> day of December 2022



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 #4101**  
**Conditional Use Permit #1267**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) - Attachment C, and Exhibit 2 (exterior photographs) - Attachment D of Staff Report #22-910, 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 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.

4. 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.
5. Sufficient lighting shall be provided throughout the site to provide a safe environment for employees and patrons of the business.
6. All landscaping shall be kept healthy and maintained in good condition and any damaged or missing landscaping shall be replaced immediately.
7. The premises shall remain clean and free of debris and graffiti at all times. Any damaged materials shall be replaced by matching materials.
8. 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.
9. The proprietor and/or successors in interest and management shall comply with all Municipal Codes relating to loitering, and other nuisance-related issues.
10. The City reserves the right to periodically review the area for potential problems. If in the opinion of the Police Chief, excessive problems (on-site or within the immediate area) including, but not limited to, 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.
11. The business shall comply with all applicable requirements from the Merced County Health Department.
12. The applicant shall obtain proper permits and licenses from the State to sell tobacco products.
13. Building improvement work shall be done by qualified licensed contractors.

14. The applicant shall install exterior video surveillance cameras that continuously record outside activities 24 hours a day, 7 days a week (locations to be worked out with the Police Department). Any video related to criminal investigations must be accessible immediately for viewing by the Merced Police Department or any other law enforcement agency. A recorded copy of surveillance video, requested in connection with a criminal investigation, must be reasonably accessible and available within 24 hours when requested by law enforcement. The business owner is responsible for maintaining the video surveillance equipment in an operable manner at all times.
15. To prepare food onsite, the applicant shall obtain all proper permits and comply with all requirements of the Merced County Health Department and the City of Merced Building Department.
16. Any music played shall be kept to a minimum noise level so as not to travel outside the immediate area around the building.
17. Signage approval is not being included with this request. Future signage shall match or compliment the design of the facade (in regard to color, design, and materials) and be in compliance with MMC 17.36. Article II.
18. Tobacco products and associated paraphernalia shall be kept inaccessible from the general public, stored behind the employee counter.
19. No alcohol sales are allowed unless a conditional use permit and/or Finding of Public Convenience or Necessity is obtained.

**Findings and Considerations  
Planning Commission Resolution #4101  
Conditional Use Permit #1267**

**FINDINGS/CONSIDERATIONS:**

**General Plan Compliance and Policies Related to This Application**

- A) The proposed project complies with the General Plan designation of General Commercial (CG) and the Zoning classification of General Commercial (C-G) with approval of a Conditional Use Permit.

**Tobacco Sales**

- B) Per Merced Municipal Code Land Use 20.44.160 – Tobacco Sales Prohibited Near Schools, a conditional use permit is required for tobacco sales within 600 feet of “youth oriented” facilities. A convenience market is principally permitted within the subject site’s Zoning classification, but the proximity to a park, Little Angels Park, at 121 W. 11<sup>th</sup> Street is triggering the need for a conditional use permit. 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 I.

**Neighborhood Impact**

- C) The subject site is located in southcentral 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 products which includes, but is not limited to, 7 Star Liquor, Merced Food Center, Chevron, etc. Tobacco sales within these businesses is considered legal non-conforming. Given the existing businesses selling 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 Elevation**

- D) The image at Attachment D of Staff Report #22-910 shows the existing façade for this site. The applicant is not proposing any modifications to the site plan or exterior elevations, beyond possibly adding new business signage (not provided). The exterior elevations were originally reviewed when this building was constructed several decades ago.

### **Floor Plan**

- E) As shown on the floor plan at Attachment C of Staff Report #22-910, the convenience market would be accessible through the main entrance along the south elevation. The floor plan includes several racks along the western wall displaying snacks (such as candies and chips), clothing and hats; and there would be large refrigerators with a variety of beverages. Alcohol sales are not included with this request (alcohol sales would require a Conditional Use Permit and possibly a Finding of Public Convenience or Necessity). The floor plan also includes a restroom and break room. Tobacco products would be kept inaccessible to the general public, stored behind the employee counter (see Condition #18 of Planning Commission Staff Report #22-910).

### **Signage**

- F) The applicant is not proposing any specific signage with this request. Typically, a signage plan is produced towards the end of the entitlement process and sometimes after building occupancy. A formal request for permanent signage shall be reviewed with a building permit application and shall require compliance with the signage regulations for General Regulations (MMC 17.36. Article II – Regulations for North Merced) as shown at Condition #17 of Planning Commission Staff Report #22-910.

### **Parking**

- G) The building and site plan will remain as is. There are approximately 66 parking stalls on this parcel for the commercial tenants within this building. The applicant is not proposing anything that would require additional parking, such as adding square footage to the building or intensifying the site with a use that requires more parking. As such, the existing parking lot complies with the City's parking requirements.

### **Operation Details**

- H) The applicant has indicated that they would like to operate daily from 8:00 a.m. to 9:00 p.m. The market would sell snacks, candies, and drinks normally found in convenience markets. Alcohol would not be sold at this location (this requires a conditional use permit and possibly a finding of public convenience or necessity). The business also includes cell phone accessory sales. Tobacco products would be stored away from the public, behind the employee counter. Tobacco products to be sold include, but is not limited to, cigarettes, chewing tobacco, hookah, bongs, and e-cigarettes.

### **Conditional Use Permit Findings**

- I) 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 General Commercial (CG) and the Zoning classification of General Commercial (C-G) 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.*

This application is for a land use request only (for tobacco sales). Modifications will not be made to the exterior of the existing building. 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 Findings B and C, 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 tobacco 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 tobacco 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 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 subject site is existing and currently served by existing infrastructure.

#### **Environmental Clearance**

- J) Planning staff has 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 F of Staff Report #22-910).

**CITY OF MERCED**  
**Planning Commission**

**Resolution #4101**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of December 7, 2022, held a public hearing and considered **Conditional Use Permit #1267**, submitted by Ahmed Mosleh, on behalf of Sam and Sue Malaythong, property owners. This application involves a request for tobacco sales (for off-site consumption) at 235 W. 12<sup>th</sup> Street, Suite B, generally located on the north side of W. 12<sup>th</sup> Street, approximately 75 feet east of Martin Luther King Jr. Way, within a Zoning classification of General Commercial (C-G), with a General Plan Designation of General Commercial (CG). The subject site is more particularly described as Lots 21, 22, 23, 24, 25, 26, and 27 of Block 249, as shown on the map entitled "Supplemental Map to Town of Merced" recorded in Volume 2, Page 12, in Merced County Records; also known as a portion of Assessor's Parcel Number (APN) 031-333-008; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings/Considerations A through J (Exhibit B) of Staff Report #22-910; 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 Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #22-43, and approve Conditional Use Permit #1267 subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by reference.

Upon motion by Commissioner Delgadillo, seconded by Commissioner Gonzalez, and carried by the following vote:

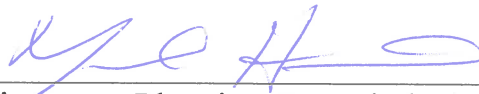
AYES: Commissioner White, Gonzalez, Delgadillo, Greggains, Camper, and  
Chairperson Harris  
NOES: None  
ABSENT: None (one vacancy)  
ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4101

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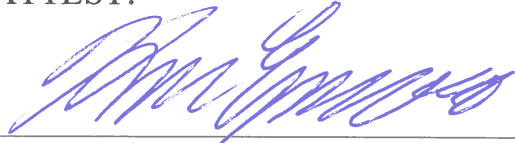
December 7, 2022

Adopted this 7<sup>th</sup> day of December 2022



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 #4101**  
**Conditional Use Permit #1267**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (floor plan) - Attachment C, and Exhibit 2 (exterior photographs) - Attachment D of Staff Report #22-910, 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 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.

4. 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.
5. Sufficient lighting shall be provided throughout the site to provide a safe environment for employees and patrons of the business.
6. All landscaping shall be kept healthy and maintained in good condition and any damaged or missing landscaping shall be replaced immediately.
7. The premises shall remain clean and free of debris and graffiti at all times. Any damaged materials shall be replaced by matching materials.
8. 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.
9. The proprietor and/or successors in interest and management shall comply with all Municipal Codes relating to loitering, and other nuisance-related issues.
10. The City reserves the right to periodically review the area for potential problems. If in the opinion of the Police Chief, excessive problems (on-site or within the immediate area) including, but not limited to, 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.
11. The business shall comply with all applicable requirements from the Merced County Health Department.
12. The applicant shall obtain proper permits and licenses from the State to sell tobacco products.
13. Building improvement work shall be done by qualified licensed contractors.

14. The applicant shall install exterior video surveillance cameras that continuously record outside activities 24 hours a day, 7 days a week (locations to be worked out with the Police Department). Any video related to criminal investigations must be accessible immediately for viewing by the Merced Police Department or any other law enforcement agency. A recorded copy of surveillance video, requested in connection with a criminal investigation, must be reasonably accessible and available within 24 hours when requested by law enforcement. The business owner is responsible for maintaining the video surveillance equipment in an operable manner at all times.
15. To prepare food onsite, the applicant shall obtain all proper permits and comply with all requirements of the Merced County Health Department and the City of Merced Building Department.
16. Any music played shall be kept to a minimum noise level so as not to travel outside the immediate area around the building.
17. Signage approval is not being included with this request. Future signage shall match or compliment the design of the facade (in regard to color, design, and materials) and be in compliance with MMC 17.36. Article II.
18. Tobacco products and associated paraphernalia shall be kept inaccessible from the general public, stored behind the employee counter.
19. No alcohol sales are allowed unless a conditional use permit and/or Finding of Public Convenience or Necessity is obtained.

**Findings and Considerations  
Planning Commission Resolution #4101  
Conditional Use Permit #1267**

**FINDINGS/CONSIDERATIONS:**

**General Plan Compliance and Policies Related to This Application**

- A) The proposed project complies with the General Plan designation of General Commercial (CG) and the Zoning classification of General Commercial (C-G) with approval of a Conditional Use Permit.

**Tobacco Sales**

- B) Per Merced Municipal Code Land Use 20.44.160 – Tobacco Sales Prohibited Near Schools, a conditional use permit is required for tobacco sales within 600 feet of “youth oriented” facilities. A convenience market is principally permitted within the subject site’s Zoning classification, but the proximity to a park, Little Angels Park, at 121 W. 11<sup>th</sup> Street is triggering the need for a conditional use permit. 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 I.

**Neighborhood Impact**

- C) The subject site is located in southcentral 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 products which includes, but is not limited to, 7 Star Liquor, Merced Food Center, Chevron, etc. Tobacco sales within these businesses is considered legal non-conforming. Given the existing businesses selling 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 Elevation**

- D) The image at Attachment D of Staff Report #22-910 shows the existing façade for this site. The applicant is not proposing any modifications to the site plan or exterior elevations, beyond possibly adding new business signage (not provided). The exterior elevations were originally reviewed when this building was constructed several decades ago.

### **Floor Plan**

- E) As shown on the floor plan at Attachment C of Staff Report #22-910, the convenience market would be accessible through the main entrance along the south elevation. The floor plan includes several racks along the western wall displaying snacks (such as candies and chips), clothing and hats; and there would be large refrigerators with a variety of beverages. Alcohol sales are not included with this request (alcohol sales would require a Conditional Use Permit and possibly a Finding of Public Convenience or Necessity). The floor plan also includes a restroom and break room. Tobacco products would be kept inaccessible to the general public, stored behind the employee counter (see Condition #18 of Planning Commission Staff Report #22-910).

### **Signage**

- F) The applicant is not proposing any specific signage with this request. Typically, a signage plan is produced towards the end of the entitlement process and sometimes after building occupancy. A formal request for permanent signage shall be reviewed with a building permit application and shall require compliance with the signage regulations for General Regulations (MMC 17.36. Article II – Regulations for North Merced) as shown at Condition #17 of Planning Commission Staff Report #22-910.

### **Parking**

- G) The building and site plan will remain as is. There are approximately 66 parking stalls on this parcel for the commercial tenants within this building. The applicant is not proposing anything that would require additional parking, such as adding square footage to the building or intensifying the site with a use that requires more parking. As such, the existing parking lot complies with the City's parking requirements.

### **Operation Details**

- H) The applicant has indicated that they would like to operate daily from 8:00 a.m. to 9:00 p.m. The market would sell snacks, candies, and drinks normally found in convenience markets. Alcohol would not be sold at this location (this requires a conditional use permit and possibly a finding of public convenience or necessity). The business also includes cell phone accessory sales. Tobacco products would be stored away from the public, behind the employee counter. Tobacco products to be sold include, but is not limited to, cigarettes, chewing tobacco, hookah, bongs, and e-cigarettes.

### **Conditional Use Permit Findings**

- I) 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 General Commercial (CG) and the Zoning classification of General Commercial (C-G) 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.*

This application is for a land use request only (for tobacco sales). Modifications will not be made to the exterior of the existing building. 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 Findings B and C, 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 tobacco 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 tobacco 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 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 subject site is existing and currently served by existing infrastructure.

#### **Environmental Clearance**

- J) Planning staff has 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 F of Staff Report #22-910).

**CITY OF MERCED**  
**Planning Commission**

**Resolution #4102**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of December 7, 2022, held a public hearing and considered **Vesting Tentative Subdivision Map #1323**, initiated by Sam Sahota, property owner. The applicant is requesting to subdivide one parcel (approximately 9.91 acres) into 45 single-family lots ranging in size from 6,000 square feet to 8,691 square feet with an additional tot lot and basin lot. The 9.91-acre subject site is generally located at the west side of S. Coffee Street, 300 feet north of E. Gerard Avenue. The subject site is more particularly described as portions of Lots 163 and 165 as shown on the map entitled “Map of Merced Colony” recorded in Volume 4, Page 24, in Merced County Records; also known as a portion of Assessor’s Parcel Number (APN) 061-260-025; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings/Considerations A through M of Staff Report #22-915 (Exhibit B); and,

**WHEREAS**, the Merced City Planning Commission concurs with the Findings for Tentative Subdivision Map Requirements in Merced Municipal Code Section 18.16.80, 18.16.90, and 18.16.100 as outlined in Exhibit B; and,

**NOW THEREFORE**, after reviewing the City’s Initial Study and Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Negative Declaration regarding Environmental Review #22-32, and approve Vesting Tentative Subdivision Map #1323, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner Greggains, seconded by Commissioner Gonzalez, and carried by the following vote:

AYES: Commissioner Gonzalez, White, Delgadillo, Greggains, and  
Chairperson Harris

NOES: None

ABSENT: None (one vacancy)

ABSTAIN: Commissioner Camper

PLANNING COMMISSION RESOLUTION #4102

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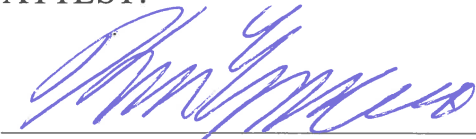
December 7, 2022

Adopted this 7<sup>th</sup> day of December 2022



Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:



Secretary

Exhibits:

Exhibit A – Conditions of Approval

Exhibit B – Findings/Considerations

**Conditions of Approval**  
**Planning Commission Resolution # 4102**  
**Vesting Tentative Subdivision Map #1323**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (Proposed Vesting Tentative Map at Attachment C), and as modified by the conditions of approval within this resolution.
2. All conditions contained in *Resolution #1175-Amended ("Standard Tentative Subdivision Map Conditions")* 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. The Project shall comply with all applicable conditions set forth in the resolutions for Annexation No. 200 (Coffee Street Annexation) previously approved for this site.
5. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
6. Community Facilities District (CFD) annexation 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. 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.
7. 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.

8. 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.
9. The project shall comply with all requirements of the California Building Code and all flood requirements of the Federal Emergency Management Agency (FEMA), as well as the requirements for the California Urban Level of Flood Protection (CA 200-year flood).
10. All public improvements shall be provided as required by the City Engineer along S. Coffee Street, and the extension of Capella Drive within the proposed subdivision. All improvements shall meet City Standards.
11. All landscaping within the public right-of-way shall comply with state and local requirements for water conservation. All irrigation provided to street trees or other landscaping shall be provided with a drip irrigation or micro-spray system and shall comply with the City's Water Efficient Landscape Ordinance (MMC Section 20.36.030). Landscape plans for all public landscaping shall be provided with the Improvement Plans.
12. Prior to final inspection of any home, all front yards and side yards exposed to public view shall be provided with landscaping to include, ground cover, trees, shrubs, and irrigation in accordance with Merced Municipal Code

Section 20.36.050. Irrigation for all on-site landscaping shall be provided by a drip system or micro-spray system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other state or City mandated water regulations dealing with the current drought conditions. All landscaping shall comply with the City's Water Efficient Landscape Ordinance (MMC Section 20.36.030).

13. A 7-foot-tall concrete block wall shall be installed along Coffee Street. The wall shall be treated to allow easy removal of graffiti or the developer shall plant fast-growing vines to cover the wall to deter graffiti. Developer shall submit landscape/irrigation/wall plans for approval by City Engineer. All walls shall be solid masonry. Fast-growing vines or other plants shall be planted on or near the wall to deter graffiti and/or a graffiti resistant coating applied to the wall. Details to be worked out with staff.
14. Landscaping shall be provided along S. Coffee Street between the block wall and the sidewalk. This strip of land shall be dedicated to the City and maintained through the Community Facilities District during the Final Map stage, as required by the City Engineer.
15. Developer shall provide construction plans and calculations for all landscaping and public maintenance improvements. All such plans shall conform to City standards and meet approval of the City Engineer.
16. Traffic control signs, street markings, and striping shall be as directed by the City Engineer.
17. The applicant shall dedicate interior street rights-of-way and all necessary easements as needed for irrigation, utilities, drainage, landscaping, and open space during the Final Map stage as required by the City Engineer.
18. Fire hydrants shall be installed along the street frontage to provide fire protection to the area. The hydrants shall meet all City of Merced standards and shall comply with all requirements of the City of Merced Fire Department. Final location of the fire hydrants shall be determined by the Fire Department.
19. All undeveloped areas shall be maintained free of weeds and debris.
20. Street names shall be approved by the City Engineer.
21. Compliance with the "corner visual triangle" provisions of MMC 20.30.030 is required for corner lots, and may result in the applicant constructing smaller homes on these lots or increasing the front yard setbacks.
22. Valley Gutters may be installed in this subdivision per City standards.

EXHIBIT A  
OF PLANNING COMMISSION RESOLUTION #4102

23. Rolled curbing may be installed in this subdivision consistent with City Standard Design ST-1, if approved by the City Engineer.
24. At the building permit stage, the site plans for each lot shall include a minimum 3-foot by 6-foot concrete pad located in the side yard or backyard for the storage of 3 refuse containers. A paved access to the street from this pad shall be provided.
25. 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, 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.
26. The project shall comply with all the Post Construction Standards required to comply with State requirements for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
27. Sewer manholes shall be installed as determined necessary by the City Engineer.
28. To utilize the proposed basin, the developer shall provide all required calculations to the Engineering Department.
29. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
30. The main water line for the subdivision shall include a loop system designed as required by the Public Works Department, unless otherwise approved by the City Engineer.
31. Minor modifications to the tentative subdivision map may be reviewed and approved through a Site Plan Review Permit, or be referred back to the Planning Commission if deemed necessary by the Director of Development Services.
32. The existing home shall be demolished prior to recording of Final Map (as the structure is not allowed to cross new lot lines).
33. Any existing wells or septic tanks shall be demolished prior to recording of Final Map.
34. This resolution for a Tentative Subdivision Map (TSM #1323) does not become effective until the Zone Change for this site (ZC #431) is approved by the City Council.

EXHIBIT A  
OF PLANNING COMMISSION RESOLUTION #4102

35. A portion of the proposed basin lot shall be dedicated for the future extension of Mira Court, as required by the City Engineer.
36. The developer shall remove the existing cul-de-sac at Capella Court for the extension of Capella Court.
37. Along the Coffee Street frontage, the developer shall dedicate 48 feet towards public right-of-way for the widening of Coffee Street, or as determined by the City Engineer.
38. The developer shall reach-out to the Merced Irrigation District to determine if a storm drainage agreement is required for storm drainage discharge to MID facilities.
39. The developer shall re-route or replace the private irrigation line from MID Well No. 87 that goes through the subject site to serve the adjacent parcels to the south at Assessor Parcel Numbers 061-261-030 and 061-261-031. The developer shall work with MID to determine the need, size, and location of these lines.
40. If there is a private irrigation line from the MID Doane Lateral A that goes through the subject site along the west side of Coffee Street, the applicant shall re-route or replace the line so that it may continue to serve nearby properties. The applicant shall work with MID to determine the need, size, and location of these lines.
41. A signature block shall be provided for MID for the relocation of all MID facilities.
42. The 7-foot-high wood fence along the southern property line shall be designed with reinforcements, such as larger baseboards or other such design features. Details to be worked out with staff at the Final Map stage.

**Findings and Considerations**  
**Planning Commission Resolution #4102**  
**Vesting Tentative Subdivision Map #1323**

**FINDINGS/CONSIDERATIONS:**

**General Plan Compliance and Policies Related to This Application**

- A) The proposed residential subdivision would comply with Zoning with approval of the proposed Zone Change from Urban Transition (U-T) to Low Density Residential (R-1-5). The proposal would also conform with the existing General Plan designation of Low Density Residential (LD). At 45 units on 9.91 acres, the density would be approximately 4.5 dwelling units/acre, which is within the allowable range for the LD General Plan designation (allows residential densities between 2 to 6 dwelling units/acre).

The proposed Tentative Subdivision Map, with conditions of approval, will help achieve the following General Plan land use policies:

- |               |   |
|---------------|---|
| Policy L-1.5: | Protect existing neighborhoods from incompatible developments.    |
| Policy L-1.6: | Continue to pursue quality single-family residential development. |
| Policy L-1.8: | Create livable and identifiable residential neighborhoods.        |
| Policy L-9:   | Ensure connectivity between existing and planned urban areas.     |

**Traffic/Circulation**

- B) It is anticipated that the proposal would generate approximately 430.65 Average Daily Trips (ADT) based on an average daily rate of 9.57 trips per dwelling unit. The subject site would be accessed via a collector street, S. Coffee Street (Attachment C of Planning Commission Staff Report #22-915), which connects with two arterial roads, Childs Avenue and Gerard Avenue. The traffic generated by this subdivision should not exceed the current and projected capacity for the surrounding street system as the area was designed to accommodate a higher density of residential units (per the *Merced Vision 2030 General Plan* (up to 6 dwelling units per acre, compared to the proposed 4.5 dwelling units per acre).

Public improvements would need to be installed to frontage streets. This proposal contains only one street, the extension of Capella Drive (and a minor portion of Coffee Street). This extension would ensure residents have a direct path to the nearest developed major north/south collector road, Coffee Street (Condition #25 of Planning Commission Staff Report #22-915).

The right-of-way width of Capella Drive would be 64 feet. The right-of-way includes 5 feet on each side of the street to accommodate sidewalks, and 8.5 feet park strips between the sidewalks and gutters. Outside the public right-of-way would be a 10-foot public utility easement to accommodate access to utility companies and their infrastructure (cable, internet, etc.). This meets the City's right-of-way requirement for local streets. Improvements will also be installed along the project site fronting Coffee Street, to bring this portion of the street in conformance with the City's Engineering Standards.

### **Site Design**

- C) The proposed subdivision with 45 residential lots is considered relatively smaller than those currently on the City's active Tentative Subdivision Map Activity List, which has 16 active maps with 9 maps over 100 units, three of those maps containing over 249 single family units. The proposed layout for the subdivision does not include any cul-de-sacs, it consists only of one street extension (Capella Drive) being approximately ¼ mile long going east-west bound parallel to Gerard Avenue. Forty-five single-family lots would be located north and south of this road extension, with lots generally being 50 feet wide and 130 feet long. On the western end of the subdivision would be a basin with a pump on a 29,260-square-foot lot and a tot lot for playground equipment on a 8,351-square-foot lot. As mentioned under the Traffic/Circulation Finding, the proposed road extension would serve as a central road extension that would connect the existing subdivisions to the east and west, and provide another vehicle access point for the subdivision to the west out to Coffee Street which links to major arterial roads such as Childs Avenue and Gerard Avenue.

### **Elevations**

- D) At this time, the applicant does not have any proposed elevations. This proposal is not within a Planned Development, so the applicant is not required to provide elevations for architectural review. During the building permit stage, staff would review the elevations to confirm that they meet the Zoning Ordinance's minimum design standards for single-family homes as shown

under Merced Municipal Code 20.46 – Residential Design Standards (Attachment G of Planning Commission Staff Report #22-915). Staff would review plans to confirm compliance with Fire Department standards, and ensure that the architecture is of high quality that provide a variety of colors, textures, materials, and building forms.

### **Public Improvements/City Services**

- E) The developer would be required to install all streets, utilities, and other improvements within the subdivision. City water and sewer lines would be extended from either the east or the west to serve this subdivision. Each lot would be required to pay connection fees for sewer and water connections at the building permit stage. Each parcel would be required to meet the City's storm drainage and run-off requirements for the City's MS-IV permit.

In response to significant growth in Merced without a corresponding increase in the General Fund and other revenues, the City Council adopted public facilities impact fees in 1998, and also established a requirement for Community Facilities Districts (Condition #6 of Planning Commission Staff Report #22-915) to help fund roadway, police, fire, and park infrastructure to help fund operating costs for police and fire services. In addition, this district would cover cost related to streetlights, storm drain, and maintenance of landscaping.

### **Public Facilities Impact Fee Program**

- F) The developer is responsible for paying public facility impact fees for each home, and are typically paid at the time that the building permit is issued by the Building Department. These fees are used to pay for their fair share towards capital facilities and infrastructure generated by new development such as arterial streets, traffic signals, bridges, police/fire stations, bikeways, etc. The City Council adopted new impact fees in early 2022, and this included fee updates to commercial, industrial, and residential projects. The current impact fee per single family home is \$11,671.00. These fees are updated annually at the start of the calendar year, in accordance with the Engineering Construction Cost Index as published by Engineering News Record.

### **Schools**

- G) The Project site falls within the jurisdiction of the Weaver Union School District (elementary schools and middle schools) and the Merced Union High School District (MUHSD). Students from the subdivision would attend elementary schools, middle schools, and the high school surrounding the area.

School fees per State law requirements are considered to be full mitigation for the impacts on schools from new development.

### **Landscaping**

- H) Each lot within the subdivision shall be provided with front yard landscaping in compliance with Zoning Ordinance Section 20.36 – Landscaping. Section 20.36.050 requires all exterior setback areas, excluding areas required for access to the property to be landscaped.

The landscape area within the tot lot or the basin area would be maintained through the Communities Facilities District (CFD).

### **Parking**

- I) The applicant does not have any site plans showing the proposed parking for each single-family residential lot. However, the proposal would be required to comply with the standard parking requirements for single-family homes. Per Merced Municipal Code Section 20.38 – Parking and Loading, the parking requirements for a single-family home is 1 parking stall, indifferent of the number of bedrooms or bathrooms in the home. The applicant has noted that they expect to exceed the parking requirement with 2 car garages for each home. During the building permit stage, Planning staff would review each site plan to ensure that each residential lot contains at least 1 parking stall. Each lot would also need to provide a 20-foot-long driveway for vehicle backing space.

### **Neighborhood Impact/Interface**

- J) The subject site is surrounded by single family homes and urban transition parcels. To the east and the west are subdivisions with similar density to what is being proposed by the applicant. To the south are large lot residential parcels sized between 0.30 acres and 1.30 acres with single-family homes with an Urban Transition (U-T) Zoning classification. To the north are several 8-acre Low Density Residential parcels currently being used for agricultural purposes. However, the entire region surrounding the subject site has a General Plan designation of Low Density Residential (LDR), primarily intended for single-family homes. Approving the Zone Change from U-T to R-1-5 would bring the parcel into compliance with the City's General Plan designations for this neighborhood. The extension of Capella Drive with this subdivision would extend missing street network and other utilities bridging the gap in infrastructure between the two subdivisions. The proposed

residential subdivision would not create any unusual circumstances for the neighborhood, as the majority of the surrounding properties are used for residential purposes.

Public hearing notices were sent to all property owners within 300 feet of the project site. At the time that this report was prepared, the City had not received any comments regarding this project.

### **Tentative Subdivision Map Requirements**

- K) Per Merced Municipal Code (MMC) Section 18.16.080 – Information Required, a tentative subdivision map shall include all of the requirements shown at Attachment H of Planning Commission Staff Report #22-915. Said requirements include stating the location of the subject site, the name of the subdivision, and showing the layout of the proposed lots. MMC 18.16.090 – Required Statement, requires the applicant to provide a statement that explicitly states any deviations from tentative subdivision map requirements, standard drawings, or Zoning laws. In this case, the applicant is not requesting any deviations from City requirements. MMC 18.16.100 - Public Hearing – Generally, requires a public hearing to review and approve a tentative subdivision map in conformance with the Subdivision Map Act.

Per the California Environmental Quality Act, a public hearing notice was mailed to property owners within 300 feet of the subject site and published in a qualifying newspaper, Merced County Times, three weeks prior to this meeting. In addition, staff reached out to local utility companies, local school districts, and other relevant government agencies to solicit comments. At the time this staff report was prepared, staff did not receive any comments regarding this application.

### **Affordability Requirements**

- L) In April 2022, the City Council approved Resolution #2022-15 regarding the requirement for 12.5% affordable housing for new single-family residential subdivisions and multifamily residential projects. This requirement is triggered by two qualifiers that need to be met; entitlement type and number of units created. For single-family residential developments, the affordability requirement is triggered for Zone Changes (and annexations or site utilization plan revisions) for projects with over 60 or more single-family residential homes. Projects under 60 single-family residential homes are not required to provide affordable units. The proposed 45-unit subdivision is exempt from having to provide affordable units, as even though the proposal does require a

Zone Change it contains less than the 60 units that trigger the affordability requirement.

**Environmental Clearance**

- M) Infill projects over 5 acres or projects that don't comply with Zoning/General Plan designations require an Initial Study, per the California Environmental Quality Act (CEQA). In this case, the project site is consistent with the City's General Plan, but it is not consistent with Zoning and is over 5 acres – so an Initial Study was required. An Initial Study includes a wide range of analysis required by the State covering an array of subjects including, but not limited to, impacts on traffic, biological resource, public services, cultural resources, utilities, etc. Planning staff has conducted an environmental review of the project in accordance with the requirements of CEQA, and concluded that Environmental Review #22-32 results in a Negative Declaration as the proposal would not have a significant effect on the environment and does not require the preparation of an Environmental Impact Report. A copy of the Initial Study with a Negative Declaration can be found at Attachment J of Planning Commission Staff Report #22-915.