

RESOLUTION NO. 2019-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF MERCED, CALIFORNIA, DENYING AN
APPEAL BY JOE ENGLANOFF ON BEHALF OF
MERCED HOLDINGS, LP, CONCERNING THE
ACTION OF THE PLANNING COMMISSION
RESULTING IN THE DENIAL OF CONDITIONAL
USE PERMIT #1231, AND MAKING CERTAIN
FINDINGS IN CONNECTION THEREWITH**

WHEREAS, the Planning Commission of the City of Merced ("Planning Commission") at its meeting of August 21, 2019 held a public hearing and considered Conditional Use Permit #1231 to allow the construction of 428 Efficiency Dwelling Units and 18,000 square feet of retail on 5.94 acres of land generally located at the southeast corner of Yosemite Avenue and McKee Road, and more particularly described in Exhibit "A" and shown on the map at Exhibit "B" attached hereto; and,

WHEREAS, on August 21, 2019, the Planning Commission, after hearing all evidence and testimony and after exercising its independent judgment, adopted Resolution #4026 denying Conditional Use Permit #1231, subject to the findings attached thereto; and,

WHEREAS, the Appellant (Joe Englanoff on behalf of Merced Holdings, LP) appealed the Planning Commission decision to deny Conditional Use Permit #1231; and,

WHEREAS, the City Council held a de novo review pursuant to a duly noticed public hearing on October 7, 2019, at which time all those interested in the matter were provided the opportunity to speak or to provide written or oral testimony regarding the application and appeal.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council's adoption of Environmental Review #19-18 (Mitigated Negative

Declaration), pursuant to the provisions of the California Environmental Quality Act remains in effect and is unaltered.

SECTION 2. CONSIDERATION. The City Council has considered all of the evidence submitted into the administrative record including, but not limited to:

- A. A location map of the proposed premises at the southeast corner of Yosemite Avenue and McKee Road
- B. An aerial map of the proposed premises
- C. A proposed site plan and floor plans
- D. Proposed elevations
- E. Planning Commission Resolution #4026, denying Conditional Use Permit #1231
- F. Joe Englanoff's, on behalf of Merced Holdings, LP, Appeal of City of Merced Planning Commission Resolution #4026 denying Conditional Use Permit #1231
- G. Environmental Review #19-18 (Mitigated Negative Declaration)
- H. Administrative Report #19-541 for October 7, 2019 City Council meeting, and attachments thereto
- I. Staff presentation

SECTION 3. FINDINGS. In view of all of the record evidence including, but not limited to, the administrative reports and attachments thereto, presentations, comments, written and oral testimony, the actions and decision of the Planning Commission and other information and evidence presented during the Public Hearing, the City Council, having conducted a de novo review, exercising its independent judgment and making its own decision finds, in its discretion, that the proposed project does not meet all applicable provisions of the Merced Municipal Code.

SECTION 4. DETERMINATION. The City Council determines that the evidence in the record constitutes substantial evidence to support the actions taken

and the findings made in this Resolution. The City Council further determines that the facts stated in this Resolution are supported by substantial evidence in the record including, but not limited to, the administrative reports and attachments thereto, presentations, comments, written and oral testimony, the actions and decision of the Planning Commission and other information and evidence presented during the Public Hearing. There is no substantial evidence, nor other facts that detract from the findings made in this Resolution and the City Council expressly declares that it considered all evidence presented and reached these findings after due consideration of all evidence presented to it.

SECTION 5. CONDITIONAL USE PERMIT. The City Council hereby denies Conditional Use Permit #1231 based upon the findings set forth above and Exhibit "C".

SECTION 6. JUDICIAL REVIEW. The time in which to seek judicial review of this decision shall be governed by Code of Civil Procedure Section 1094.6. The City Clerk shall certify to the adoption of this Resolution, transmit copies of the same to the applicant, appellant and their respective counsel, if any, together with a proof of mailing in the form required by law and shall enter a certified copy of this Resolution in the book of resolutions of the City.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ day of _____ 2019, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

Mayor

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

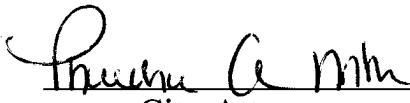
 _____
City Attorney Date 11-24-13

EXHIBIT A
LEGAL DESCRIPTION

“Adjusted Parcel 1” as shown on Certificate of Compliance #2018-23 for Boundary Adjustment #18-06, recorded as Document Number 2019-009885 in Merced County Records; also known as Assessor’s Parcel Number (APN): 008-310-053; and Parcel 1 as shown on that certain map entitled “Parcel Map for Nuketa L. Pretzer-Jensen,” recorded in Book 58, Page 44 of Merced County Records; also known as Assessor’s Parcel Number (APN): 008-310-038.

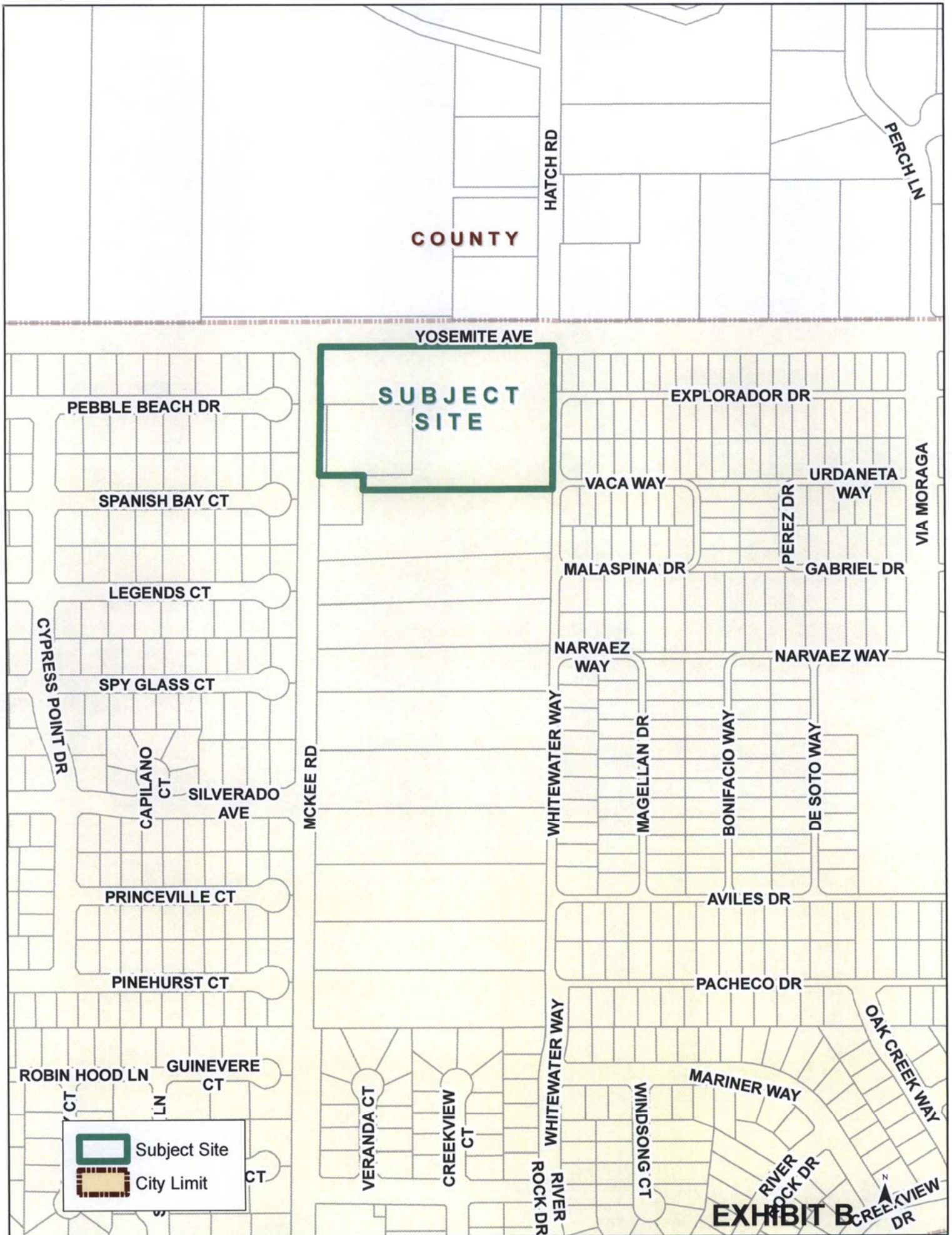


EXHIBIT “C”
CITY COUNCIL
FINDINGS FOR DENIAL OF
CONDITIONAL USE PERMIT #1231

The City Council reviewed Conditional Use Permit #1231 against the required Findings of Approval set forth in Merced Municipal Code 20.68.020 (E) “Findings for Approval for a Conditional Use and Minor Use Permits” which indicates that “the review authority may approve a conditional use permit or minor use permit application only if all of the following findings can be made.” The City Council is not able to make one or more of the following findings for the reasons indicated after each Finding below:

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

The proposed use is not consistent with the purpose and standards of the Neighborhood Commercial (C-N) zoning district and the *Merced Vision 2030 General Plan* Land Use Designation of Neighborhood Commercial (CN) for the following reasons. (There is no adopted area or neighborhood plan, specific plan, or community plan for the subject site.)

The people/acre density, traffic, and parking are not consistent with the City’s General Plan and Zoning Codes. The density for the proposed project using the conventional method of units per acre is 72 units per acre (428 units/5.94 acres). The highest density per acre allowed in the General Plan is 36 units per acre. Therefore, this project’s density of 72 units per acre exceeds the density allowed by the General Plan.

Insufficient parking (412 spaces) is provided for the project. The City’s Zoning Code requires a total of 711 spaces for both the residential and commercial uses. The applicants are asking for almost a 42 percent reduction in parking. The proposed plan does not provide sufficient parking for the mixture of uses on the site, especially in regards to the proposed commercial uses onsite which will serve more than just the onsite tenants and, therefore, is not consistent with the City’s Zoning Code.

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

The proposed use will not be compatible with existing or future land uses in the vicinity of the subject property. The number of units (428) and scale of the proposed project is out of proportion for the size of the parcel (5.94 acres) and would result in 72 people per acre in an area that is mostly zoned for single-family homes on small lots and rural residential homes on large lots.

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

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

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

The proposed use is not adequately served by existing or planned services and infrastructure for the following reasons. The applicants are proposing to provide incentives and infrastructure to support alternative modes of transportation, which could result in some reductions in vehicular traffic, but there are no guarantees that residents would take advantage of these. Traffic in the vicinity of the project is already problematic with high traffic volumes, constrained rights-of-way that make turning movements difficult, and congestion at various times of the day.

The sewer line in Yosemite Avenue is constricted and would require an alternative means of discharging wastewater from the site during peak flow times through the use of an on-site wastewater storage system, which could cause impacts on the existing wastewater infrastructure in the area. The City has never approved such a system before and therefore, has no experience with long-term maintenance and upkeep of such a facility.