

Correspondence presented at the City Council Meeting of May 4, 2020.

**From:** [planningweb](#)  
**To:** [McBride, Scott](#); [Espinosa, Kim](#); [Nelson, Julie](#)  
**Subject:** FW: McKee & Yosemite project  
**Date:** Wednesday, January 22, 2020 4:47:36 PM

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This just came through on PlanningWeb, I will print copies for the Commission.

Taylor Gates  
Administrative Assistant I  
City of Merced  
Planning Department  
678 W. 18th Street  
Merced, CA 95340  
gatest@cityofmerced.org  
209-385-6954

-----Original Message-----

From: Karen Albright [REDACTED]  
Sent: Wednesday, January 22, 2020 4:41 PM  
To: planningweb <planningweb@cityofmerced.org>  
Subject: McKee & Yosemite project

After reading the proposal for this new plan for the property at McKee and Yosemite, in Merced, we are adamantly against this plan. Just the idea of storing excess sewage underground on the site is appalling. The additional traffic created in the immediate area will be impossible.

In the past we have been informed about any development plans within our immediate area. We were not notified by the City Planning Department or the City Council this time. Since this plan is going before the Planning Commission, is that really possible without any prior neighborhood input?

When several of the proposed area developments were put forth by developers in the past, we were always notified and attended public meetings on the details of the project. Why not this one? Please put us on notification lists for any future changes to our neighborhood.

Since we are unable to attend tonight's meeting, this shows our stand on the issue.

Richard and Karen Albright  
[REDACTED] Dunn Road  
Merced, CA 95340-8683

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

January 21, 2020

Casey Steed



Merced, Ca 95344

Director of Development Services

City of Merced

678 w. 18<sup>th</sup> Street

Merced, Ca 95340

Submitted at  
Planning  
Commission meeting  
on 1/22/2020

Subject: "The Hub" project. Yosemite Ave. and McKee Rd. Merced, Ca. Conditional Use Permit #1238 Initial Study #19-37. City of Merced Planning Commission Resolution #4035. Previous CUP #1231.CEQA Review and reports. Merced Holdings, LP.

Dear Director of Development Services,

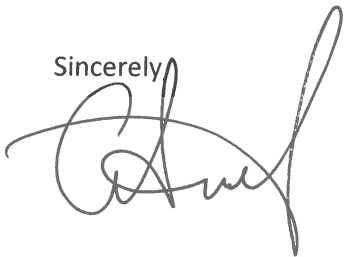
We are concerned that the above subject previous and current staff reports, initial study(s), and proposed mitigation measures proposed for the above subject project are inadequate as submitted. We believe that the project as currently proposed requires a full and complete new and current environmental impact report (EIR). This project was previously submitted to the city for approval in 2019. The new project now submitted is essentially the same design and layout as before with the main revision on this application being the reduction of 62 bedrooms from the project. While some interior walls have been removed, the project layout, style of design and bedrooms, common areas and the site are the same as the previous submission. Based on the number of bedrooms, the project has a density of 61 units per acre which is above the HD designation allowance of 36 units per acre. The previous submission was 72 units per acre. This project is vastly different from the previous CEQA submission and mitigated negative declaration submission for the zone change in 2014 from an R-1 to CN, neighborhood commercial designation. Some of the same supporting documents used in 2014 are being used for this current project submission. Specifically, but not limited to Appendix "C" greenhouse gas analysis. This 2014 analysis is based on a project much smaller than what is proposed now. Quantity of parking stalls, building sizes, occupancy and use are much greater than what was previously studied. The traffic study does not include the impact of additional traffic generated by the campus parkway extension that will be complete soon and contribute to the traffic volume in the area. The existing City of Merced sewage system will not accept the GPD generated by this proposed project. The sewer line in Yosemite Ave is constricted and would require an alternative means of discharging wastewater from the site during peak flow times thru use of an onsite wastewater storage system, which could cause impacts to the existing

wastewater infrastructure in the area. The City has never approved such a system before and therefore, has no experience with long term maintenance and upkeep of such a facility. There is the possibility of a hazardous waste spill or an accidental discharge of sewage that could end up in nearby Black Rascal Creek, local MID irrigation distribution systems or neighboring properties with this type of design. A complete (EIR) should be done for this project.

The previous CUP submissions for approval for this subject property have been controversial with the surrounding community as to site occupancy, density, parking, wastewater / storm water containment and discharge concerns. Also there are many concerns about pedestrian, bicycle and motor vehicle traffic safety and circulation. Transit stops on both sides of Yosemite Ave should be provided as per previous traffic studies. The previous project for this site was denied by the planning commission and that denial was subsequently upheld by the Merced City Council on October 7<sup>th</sup> 2019 at their regular council meeting. Proper mitigation measures have not been proposed for this project. The negative mitigated declaration, initial study 19-37 specifically and inclusively and the proposed course of action does not address all of the impacts to the environment caused by this project. Therefore a new and current full EIR for the project should be prepared and submitted for approval to address these deficiencies.

Please do not hesitate to contact me to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Casey Steed', with a large, stylized loop at the end.

Casey Steed



CASEY STEED

STAFF REPORT

20-01

CUP # 1238

MERCED, CA 95340

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

WANT TO SEE POSITIVE DEVELOPMENT

• ORIGINALLY ZONED R-1 WHEN ANNEXED INTO CITY

• 2014 - THE SHOPPES @ UNIV VILLAGE. RED ZONE TO CUB - SHOPPING CTR 62K  $\square$  216 PARKING SPACES

• 2019 - CUP - 428 UNITS ALL 1 BEDROOM W/ A BATH - PLANNING COMM DENIED CITY COUNCIL 10/7 UPHOLD DENIAL -

REASONS FOR DENIAL 4 REASONS

FINDINGS OF DENIAL OF CUP #1231 EXHIBIT A-C W/O PREJUDICE - WAIT 1 YEAR - CAN'T

• NEW PROJECT - CUP DEFINITION - BROAD INTERPRET  
• 366 DORMS - REDUCTION OF 62 BEDROOMS FROM PREVIOUS 428. CITY BASED DENSITY ON 1 BEDROOM = 1 UNIT. DESIGN HAS NOT SUBSTANTIALLY CHANGED. UNIT PER ACRE CALCULATIONS SHOULD BE SIMILAR. ONLY COMMON HALL/KITCHEN IN MULTI-BEDROOM UNITS. REDUCTION OF KITCHENS.

- MERCED STATION 290 UNITS 17 AC = 15 UNITS/AC  
80% OF FLOOR SPACE IS FOR RESI USE  
20%  $\downarrow$   $\downarrow$   $\downarrow$   $\downarrow$   $\downarrow$  OFFICE/RETAIL USE  
(13% OF  $\square$  IS RETAIL  $\square$ )

NOT MUCH  $\square$  FOR CA - NEIGHBORHOOD

THE HUB 1-22-2020 2 OF 5

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

THE HUB 1-22-2020 3 OF 5

GO TO  
SECURITY

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

GO TO  
PARKING

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

- # OF PARKING SPOTS NOT ENOUGH 30% REDUCTION + 5% FOR TRANSIT STOP CREDIT - TOO MUCH. TRASH ENCL. TAKE PARKING - WILL PARK OFFSITE

- TRAFFIC STUDY - BUS STOP BOTH SIDES OF YOSEMITE - NORTH SIDE. HARD TO GET

TRAFFIC  
STUDY

- MOVE EXIST UCM BUS STOP @ VIA MORAGA TO THIS PROJECT. WHAT ABOUT THAT STOP. NOW WALK TO THIS ONE? NEED ON SITE TRANSIT STOP. PED TRAFFIC TO GET TO THIS ONE.

- HOW DO YOU PREVENT UNAUTHORIZED PARKING

- INTERSECTIONS IN AREA LOS "F"

- POSSIBLE PARKING STRUCTURE - ABOVE GROUND OR BELOW GROUND.

OFFSITE PARKING A PROBLEM NOW.  
VIA MORAGA.

BUILDINGS

- BLDG #2 - ROOF TOP DECK - NO
- HOURS OF OPERATION  
USE SHOWS DINING FIRE PIT, SEATING  
FOR ALL FOUR BUILDINGS.
- NOISE, LIGHT POLLUTION - LOUD  
PARTIES - NOISE CARRIES UP HIGH.
- NO RESTROOMS FOR COMMON  
AREAS - GROUND FLOOR OR ROOF.  
TENANT TO PROVIDE.
- LAUNDRY ON 1 FLOOR NOT ALL
- TRASH CHUTE - COLLECTION. WALK ALL  
THE WAY TO DUMPSTER.
- NEIGHBORS WANTED COMM USE - ~~DAY~~ &  
NIGHT USES/REST, COFFEE ETC. NEED TO  
DESIGNATE PARKING FOR RETAIL/COMM  
USERS.
- PROJECT GENERATES LOTS OF TRAFFIC,  
WASTEWATER, OCCUPANCY CONCERNS.  
HIGH DENSITY IN THE MIDDLE OF  
LOW DENSITY RESIDENTIAL. REASON 4  
DENIAL. INFILL DEVELOPMENT, NOT  
OVERFILL DEVELOPMENT

THE HUB 1-22-2020

50FS

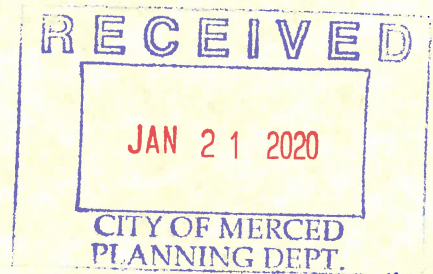
- IF AU DORMS HAVE 4 PER ~~100~~ - OCCUPANCY IS OVER 1400 PEOPLE NOT COUNTING COMM/RETAIL USE & VISITORS.
- VISUAL BUILT FROM SOLAR PANEL ARRAYS. ANY PARKING LOT SOLAR POSSIBLE HEAT ISLAND WITH SUCH LITTLE GREENSPACE.
- ENVIRO / CEQA / NEG MITIGATED DEC. SHOULD HAVE A COMPLETE NEW PROJECT EIR DUE TO NUMEROUS CHANGES. APPENDIX "C" TOO OLD. GHG ANALYSIS 2014. ALSO TRAFFIC STUDY SHOULD TAKE IN CAMPUS PARKWAY IMPACT
- MUST ASK TO DENY BASED ON THE LARGE # OF UNANSWERED QUESTIONS AND INSUFFICIENT CEQA REVIEW.



January 21, 2020

Director of Development Services  
City of Merced

678 W. 18<sup>th</sup> Street  
Merced, California 95340



To Whom it May Concern:

I am writing in opposition to the conditional use permit 1238 for the HUB 2.0 project.

My major concerns: ① the underground sewage storage tank. Why aren't the developers required to provide sufficient sewage system for the number of units being built? Underground tank could lead to expensive problems in the future.

② Public Safety- Traffic on Yosemite and Mc Kee road has increased greatly already. Unless the City plans on expanding Yosemite to 4 lanes all the way out to the University I can see future traffic accidents and commute delay. Also a signal at Parsons and Yosemite would be a necessity!

③ In my opinion High Density usually means too many people for the space and that leads to problems.

If this project was previously denied  
by Merced City Planning Commission  
and upheld by Merced City Council in  
October 2019, I must wonder why is  
it being brought up again?

"No is No"!

Sincerely,  
Judith L. Howerton  
[REDACTED] Pinehurst Drive  
Merced, California 95340



Date: January 22, 2020

To: Merced City Planning Commissioners

From: Michael Belluomini, former City Council Member and City Planner



Ref: CUP #1238 for 214 Apartments SE Corner Yosemite Avenue & McKee Road

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

**Density** - The project is still too dense at 214 units. The staff report states it will have the maximum density of 36 apartments per acre allowed by the highest residential general plan designation HMD PLUS have retail shops and business offices allowed by the Neighborhood Commercial CN plan designation and zoning. It was not the intent of the city in approving the general plan/zoning to STACK or COMPOUND the permitted land uses to allow the maximum number of apartments and then add commercial uses. The General Plan designation of Medium Density Housing is a more appropriate density for this project at 24 units per acre instead of the High Density use of 36 units per acre. Therefore, I recommend the Commission reduce the density and number of apartments to 24 units per acre to yield a project of 144 units instead of 214, as follows:

- 1) Building #1 Convert the ground floor apartments to neighborhood commercial shops or offices. This decreases project apartments by 22.
- 2) **BUILDING #2** Delete the third floor, leave the roof top outdoor recreation space. This decreases the project apartments by 34 units.
- 3) Unit Sizes - Reduce the number of the one bedroom units to achieve a maximum of 144 apartments.

**Safe and Enjoyable Environment** - In 2016, the City Council approved a major revision of the zoning ordinance. It anticipated the increase in the requests for new apartment projects to serve the UC community and others. After much discussion, the council approved Residential Design Standards for Multi-Family Dwellings as part of the zoning ordinance (pages 171 and 172) Section 20.46.030 (Attached). It states that EVERY apartment should have a useable private outdoor patio or balcony of a minimum of 5 feet by 8 feet. It encourages common recreational areas for apartment dwellers to increase tenants knowing each other and being able to distinguish strange intruders from tenants. These Design Standards are critical making apartments safe and an enjoyable living environment for citizens of Merced. Therefore, I urge you to change the design of the apartment portion of the project as follows:

- 4) Building #1 Create common courtyard for tenants at the landing of the apartment stairs by converting three apartments to a courtyard. Convert one apartment area to a laundry. (See Attached Plan)
- 5) Building #2 and #3 Similarly, create a common courtyard for tenants at the landing of the apartment stairs by converting three apartments to a courtyard.
- 6) Change the design so that EVERY apartment has a balcony of a minimum size of 8 feet by 8 feet..

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

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

The role of the Planning Commission is to allow the land developer to succeed in a profitable project **while protecting** the citizens of Merced and **ensuring** that the project provides a safe living environment for future tenants, current and future neighbors and all citizens of Merced by 1) preventing crowding and congestion of streets, parking lots and apartment areas; 2) providing a living environment that fosters a neighborhood association for apartment dwellers, thereby increasing their safety from intruders and assistance in time of need; 3) providing outdoor space for every resident so that they can enjoy the beauty of Merced's climate, gain fresh air and sunshine and escape "cabin fever" claustrophobia of apartment living and 4) using the Neighborhood Commercial designation and zoning to provide shopping and service opportunities for the neighborhood.

**RECOMMENDATION** - I recommend you approve CUP #1238 with the addition of Items 1 through 7 above as conditions of approval for the project.



**F. Apartment Unit.**

1. Each apartment unit shall have unique identification (i.e. numbers, letters, etc.) and all unit identification shall be in proper sequential order.
2. Unit identifications shall be 6 inches to 8 inches in height.
3. Unit identifications shall be treated so that it is clearly read from a street or access.
4. The project "mail directory" required by the postal service shall be located to be only accessible to the postal carrier, and not to the general public.

**G. Location.** Each dwelling shall face or have frontage upon a street or permanent means of access to a street by way of a public or private easement other than an alley. Such easements shall not be less than 10 feet in width.**H. Safety and Defensible Space.**

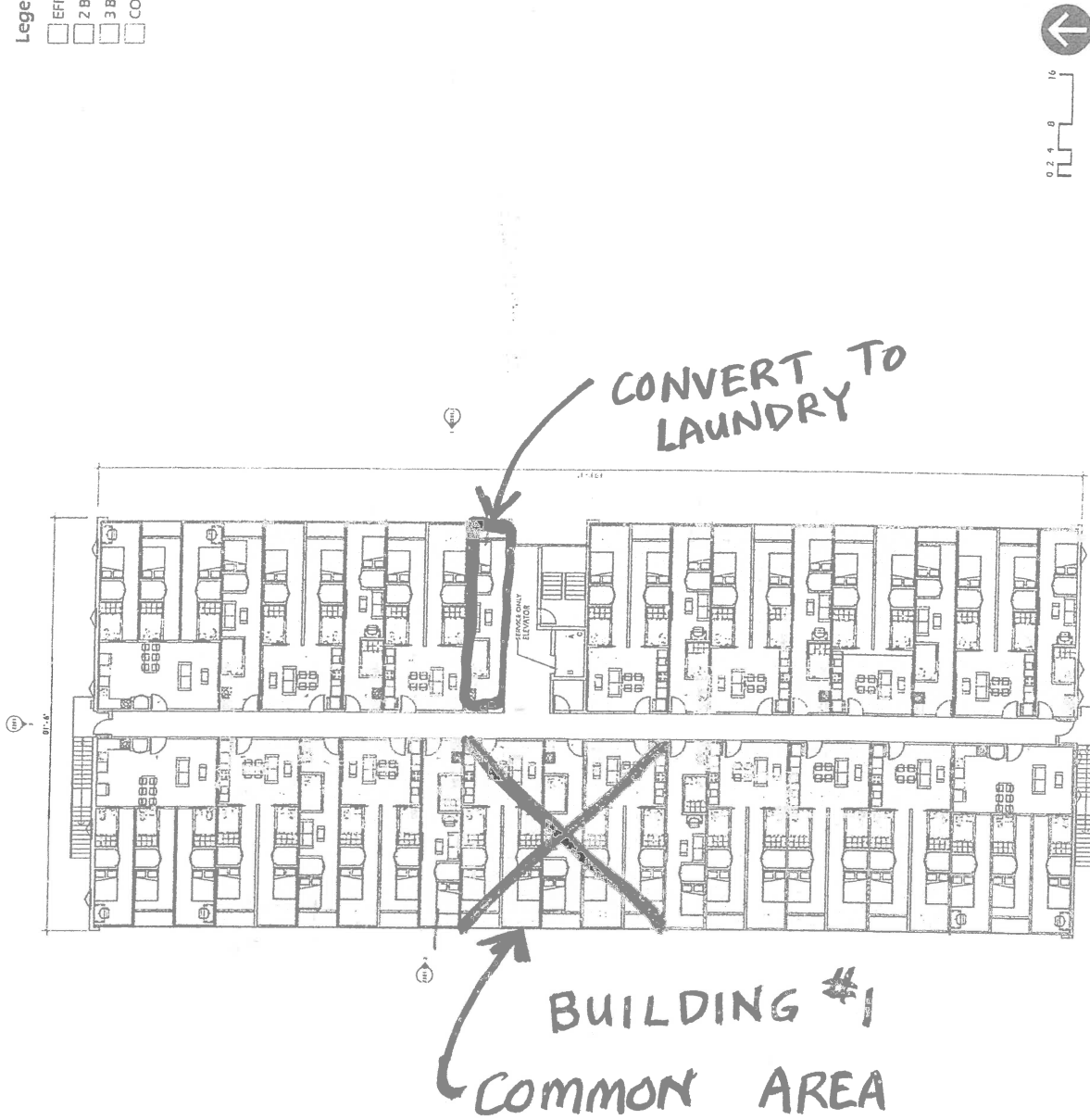
1. Placement of windows and doors should facilitate neighborhood surveillance of their neighbor's entryways.
2. The number of apartments that enter their front door from the same hallway or courtyard should be limited to no more than 12 (or as otherwise approved by City staff) so that residents can learn to distinguish fellow neighbors from visitors and/or intruders.
3. Apartment common recreational areas should be easily viewed by residents within the units and shall be defined by a physical boundary.
4. Physical changes (such as picket fences, porches, decks, or landscape features) to mark and define areas near a dwelling as that unit's "territory" should be installed.
5. Keyed access gates and surveillance cameras should be installed to enter common areas.

**I. Private Outdoor Space.**

1. **Ground Floor Units.** Every dwelling unit which is on the ground floor should have a private outdoor usable space, if feasible, of a minimum size of 5 feet by 8 feet.

2. **Units Above Ground Floor.** Every dwelling unit which is above the ground floor should, if feasible, have a useable outdoor balcony space of a minimum size of 5 feet by 8 feet.

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



## COMMENTS REGARDING INITIAL STUDY # 19-37

The City of Merced does *not* have a sewer master plan. The subject property is *not* within the North Merced Sewer District (NMSD) boundary (see the attached boundary map with the NMSD area shaded).

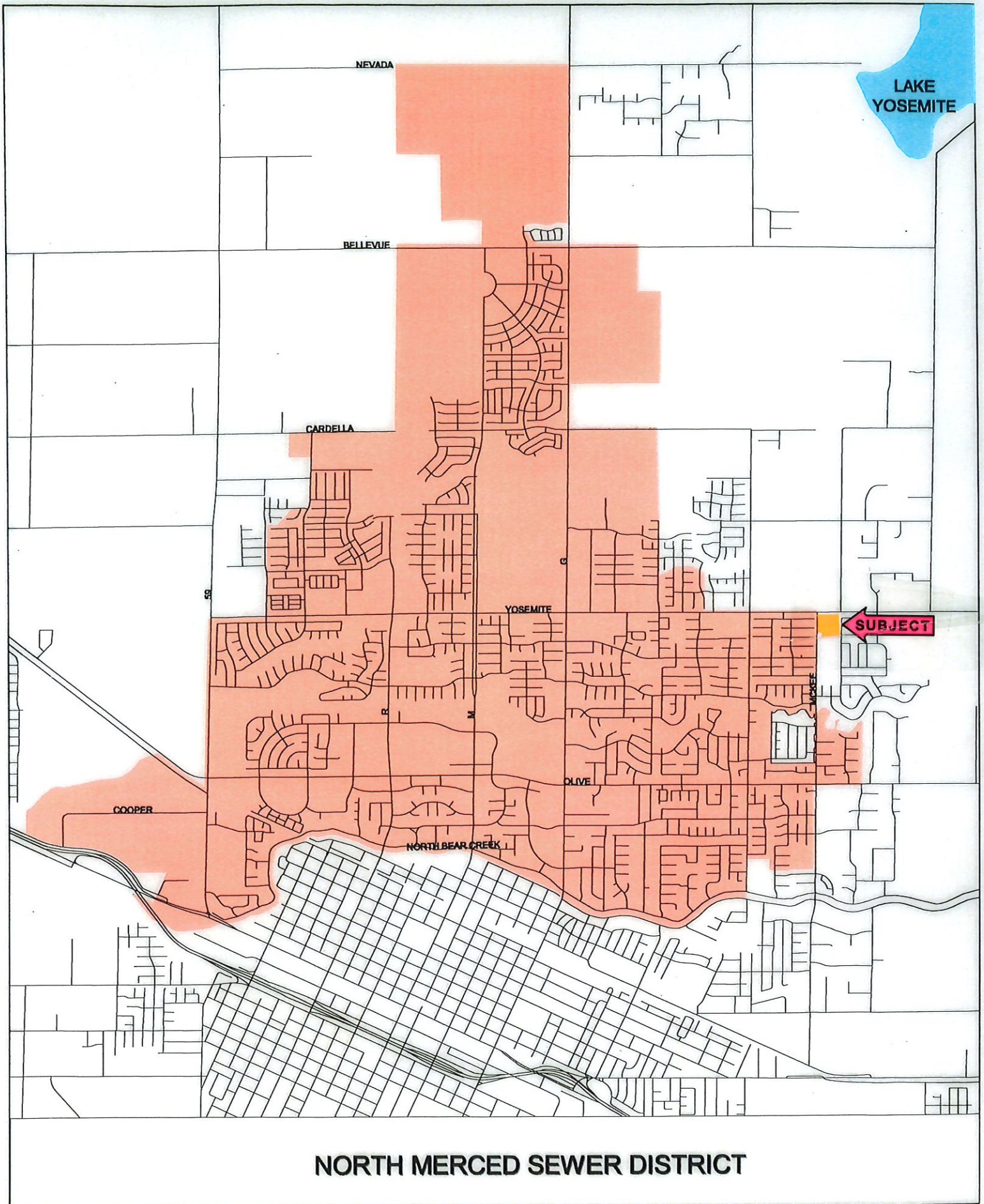
The NMSD was established in the early 1980s, decades prior to the subject property being included within the City's January, 2012 General Plan, or even considered for urban development. The NMSD property owners paid for the sewer line capacity along the Yosemite Avenue frontage of the subject (without contemplating the subject for urban development), as well as the sewer line infrastructure at the "G" Street and Yosemite Avenue intersection, together with the sewer infrastructure downstream from that intersection. The City has already negatively impacted the sewer line capacity in Yosemite Avenue between "G" Street and Gardner Road (as determined by the City's consultant – Stantec Consulting Services), in addition to the infrastructure at the "G" Street and Yosemite Avenue intersection when it allocated unanticipated sewer line capacity to UC Merced, as well as other properties that were not included in the NMSD boundary.

The proposed project should not receive entitlements to proceed without thoroughly evaluating the environmental impacts on the existing NMSD properties that have a **vested right** to the sewer line capacity as a result of having paid money over decades to retire the assessment district bonds. Further, this project cannot rely on a proposed, as yet unadopted, city-wide sewer master plan.

Also, there needs to be an analysis completed that shows how much more sewer fees will the City need to charge and collect from this development in order to balance out with those properties within the NMSD who have paid for their existing sewer line capacity.

January 21, 2020





## COMMENTS REGARDING INITIAL STUDY # 19-37

Reference is made to pages 66 thru 68 of Initial Study # 19-37 (Attached). Section 15 (“**Public Services**”) totally and completely omits any mentioning of wastewater, except reference to “v. Other Public Facilities” in section 15. a). Point of fact, there is absolutely no mention of wastewater impact(s) in the “**Impact Analysis**” portion of the Initial Study, except to say that the “...development of the project could impact the maintenance of public facilities...” and that the “(P)ayment of the fees required under the Public Facilities Financing Program (PFFP)...would mitigate these impacts...”. Since no impacts to the City’s wastewater system were identified, the project proponent would be exempt from the payment of any PFFP fees relating to the City’s wastewater system.

Section 15, subsection a) v. is woefully inadequate in determining this project’s impact to the City’s wastewater system, given that the city’s own paid consultant (Stantec Consulting Services, “City of Merced Sewer Master Plan – DRAFT, October 28, 2016, Figure 6-5) has previously identified a problem that has continued unresolved. In light of the fact that City desires to finance hundreds of millions of dollars for construction of a master sewer system (not yet approved) by obligating property owners within the Sphere of Influence to pay for it, I, as well as others, would expect that an Initial Study for environmental impacts would be more detailed and forthcoming rather than merely saying that “...the project *could impact ... public facilities and could generate impacts to other governmental services*” [Emphasis added].



- b) *Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?*

Implementation of the proposed project would not displace any existing housing. There were previously two single-family dwellings on the site, but these homes were in a blighted condition and were demolished in 2017. There is **no impact**.

## 15. Public Services

### SETTING AND DESCRIPTION

#### Fire Protection

The City of Merced Fire Department provides fire protection, rescue, and emergency medical services from five fire stations throughout the urban area. The City's Central Fire Station is located in the downtown area at 16<sup>th</sup> and G Streets. The City also has four other stations throughout the City. Station #55, located at 3520 Parsons Avenue would serve the project site.

#### Police Protection

The City of Merced Police Department provides police protection for the entire City. The Police Department employs a mixture of sworn officers, non-sworn officer positions (clerical, etc.), and unpaid volunteers (VIP's). The service standard used for planning future police facilities is approximately 1.37 sworn officers per 1,000 population, per the Public Facilities Financing Plan.

#### Schools

The public school system in Merced is served by three districts: 1) Merced City School District (elementary and middle schools); 2) Merced Union High School District (MUHSD); and, 3) Weaver Union School District (serving a small area in the southeastern part of the City with elementary schools). The districts include various elementary schools, middle (junior high) schools, and high schools. The Project site falls within the Merced City School District and Merced Union High School District (MUHSD).

As the City grows, new schools will need to be built to serve our growing population. According to the Development Fee Justification Study for the MUHSD, Merced City Schools students are generated by new multi-family development at the following rate:

*Student Generation Rates*

Commercial/Industrial Category	Elementary (K-8) (Students per 1,000 sq.ft.)	High School (9-12) (Students per 1,000 sq.ft.)
Retail	0.13	0.038
Restaurants	0.00	0.157
Offices	0.28	0.048
Services	0.06	0.022
Wholesale/Warehouse	0.19	0.016
Industrial	0.30	0.147
Multi-Family	0.559 (per unit)	0.109 (per unit)

Based on the table above, the proposed mixed-use project would be expected to generate 158 total new students [132 Elementary School (K-8) students, and 26 High School students].

## Parks

Richard Bernasconi Park located within the Moraga subdivision to the east of the site would be the closest park to the project site. Rahilly Park is located approximately 1 mile southwest of the site and Davenport Park is located approximately 1 mile northwest of the site.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>15. <u>Public Services.</u></b> Would the project:				
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services:				
i. Fire Protection?			✓	
ii. Police Protection?			✓	
iii. Schools?			✓	
iv. Parks?			✓	
v. Other Public Facilities?			✓	

## Impact Analysis

Would the project:

- a) *Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services:*

- i. *Fire Protection* - The City of Merced Fire Department would provide fire protection services to the site. The project site is located within Fire District #5 and would be served by Fire Station #55, located at 3520 Parsons Avenue. The response from this station would meet the desired response time of 4 to 6 minutes, citywide. The proposed change in land use designation would not affect the City's ability to provide fire protection. The project would be required to be constructed with a fire sprinkler system and to meet all requirements of the California Fire Code and the Merced Municipal Code.

At the time a building permit is issued, the developer would be required to pay the fees required by the Public Facility Financing Plan (PFFP). A portion of

this fee goes to cover the City's costs for fire protection such as fire stations, etc. In addition, the developer would be required to annex into the City's Community Facilities District for Services (CFD #2003-2). This would result in an assessment paid with property taxes in which a portion of the tax would go to pay for fire protection services.

Compliance with all Fire, Building, and Municipal Code requirements as well as payment of the Impact Fees required by the Public Facilities Financing Program, and annexation into the City's CFD for services would reduce any potential impacts to a **less than significant level**.

- ii. *Police Protection* - Development of the project would require additional police services in the area. The proposed mixed-use project is located on a site that is currently vacant. Any change to the status of the site would require additional services. However, the impacts from the proposed project would not substantially increase the impacts beyond what was anticipated with the previous General Plan Amendment and Zone Change that changed the land use for this site to Neighborhood Commercial. Payment of the required Public Facilities Impact Fees and annexation into the City's Community Facilities District (CFD) for services would reduce any potential impacts to a **less than significant level**.
- iii. *Schools* - Based on the table provided in the "Settings and Description" section above, the proposed mixed-use project would generate 132 Elementary School (K-8) students and 26 High School students. This project is intended primarily for college students and faculty, however, it is not exclusively limited to this. Therefore, there could be some impact on schools. Therefore, as with all development, the project would be required to pay all fees required by the Leroy F. Greene School Facilities Act of 1988. The payment of this statutory fee under California Government Code §65995 is deemed "full and complete mitigation" of school impacts.
- iv. *Parks* - The development of the mixed use project would not trigger the need to construct a new park in the area. Payment of the fees required under the Public Facilities Financing Program (PFFP) as described above and payment of Quimby Act fees would be required at time of building permit issuance to help fund future parks and maintenance of existing parks as well as the payment of fees in lieu of land dedication for future parks would be required at the building permit stage. The proposed amenities onsite and the payment of fees would reduce this potential impact to **less than significant**.
- v. *Other Public Facilities* - The development of the project could impact the maintenance of public facilities and could generate impacts to other governmental services. Payment of the fees required under the Public Facilities Financing Program (PFFP) as described above would mitigate these impacts to a **less than significant level**.



From: Ann Kelley [REDACTED]  
Sent: Friday, April 10, 2020 7:15 AM  
To: planningweb <planningweb@cityofmerced.org>  
Subject: Oppose Site Plan Review #455

Honorable Commissioners:

I have reviewed the information in the Notice for the above referenced public hearing and desire to voice my opposition of this project. There is already a traffic issue on Yosemite Avenue from Mc Kee to G St. The intersection of Parsons and Yosemite is currently problematic with long lines of traffic on Yosemite Ave. Yosemite Avenue from G to McKee is in disrepair and has been for several years with no current plans to fix it. Yosemite Avenue from Parsons to McKee Ave, it is unclear if it is a 3 lane road or a 2 lane road, which causes confusion. McKee Ave from Yosemite Ave. to Olive Ave will also be negatively impacted by this project. In addition to traffic issues, there is an issue of water usage and sewage drainage which will be severely impacted upon the city. I am concerned as well about parking for the proposed tenants. 214 apartment units which will house up to 800 individuals and perhaps animals, dogs and cats , in a 2 or 3 story building on this size parcel is just TOO many. I oppose the proposed project.

However, if a smaller project might be more suitable for this parcel. I might also add that perhaps apartments for the UC Students be built much closer to the University, such as all that vacant land on Bellevue Rd.

Respectfully submitted,

Ann Kelley, J. D.

[REDACTED] Spanish Bay Ct., Merced, CA.

From: Dene Silveira [REDACTED]

Sent: Saturday, April 11, 2020 8:48 PM

To: planningweb <planningweb@cityofmerced.org>

Subject: Site Plan Review #455

Hello, I reside on Pebble Beach Ct. directly across from the proposed site. I attended two previous meetings concerning Site Plan #455. One by the developer and the other a Planning Commission meeting allowing public comment. I was one of the residents that spoke in opposition to the project with my main concern of the small compact size of these apartments along with the density of entire project on such a small parcel of land. And now I will be perfectly frank and honest on how I felt after leaving at the conclusion of the meeting. The PC listened to all who wished to speak. It was clear to me at the conclusion of meeting, that the Planning Commissioners had their minds made up before this meeting was called to order. This was obviously only a legal formality which had to be met by the Commissioners and City of Merced. I say that with what were some comments and responses to some of the concerns voiced by neighboring residents. I am paraphrasing here, with comments "chalk it up to growing pains" or "be glad it is not a homeless camp" Seriously???? Frankly, not impressed by any of these commissioners and the responsive comments given. By the immediate and simultaneous green go ahead vote by the PC, I can only speak for myself, but it was obvious to me, that this meeting was a waste of time for those of us who were mailed notifications and invited to attend and speak.

I still stand in opposition and feel such a project would be better served being built within walking distance of campus. Also as pointed out at meeting, there is absolutely no guarantee those TINY units will be leased to only students. This could be a project disaster in later years. Sadly this is a "guinea pig" project that could have been a better community neighborhood project for everyone if the original zoning was kept in place.

Sincerely,

Daralene W. Silveira

[REDACTED] Pebble Beach Ct.

Merced, CA 95340

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

April 13, 2020

**VIA EMAIL TRANSMISSION**  
**[planningweb@cityofmerced.org]**

Planning Commission  
City of Merced  
678 W. 18th Street, 1st Fl.  
Merced, CA 95340

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

Re: Site Plan Review #455  
Merced Holdings LP Project at Yosemite Avenue and McKee Road  
Objections to Approval of Site Plan  
Planning Commission Hearing Date: April 13, 2020 at 7:00 p.m.

Dear Chairman Harris and Members of the Commission:

Pursuant to the instructions contained in the Public Notice of the hearing of this matter at tonight's meeting of the City Planning Commission, this office objects to the approval of the above-referenced Site Plan on behalf of Casey Steed, Merced Smart Growth Advocates (MSGa), a California unincorporated association, the San Joaquin Valley Environmental Defense Center, a California non-profit corporation, and other neighbors who have previously expressed public opposition to this project for the reasons set forth on the attached Comments hereby submitted to the Planning Commission for its review and consideration during this evening's hearing of this matter. Please enter these Comments into the record and have them read at this evening's hearing.

Respectfully submitted,

*/s/ Richard L. Harriman*  
RICHARD L. HARRIMAN  
Attorney for Casey Steed, MSGa,  
and San Joaquin Valley Environmental  
Defense Center

## **COMMENTS IN OPPOSITION**

[Casey Steed, Merced Smart Growth Advocates (MSGA), a California unincorporated association, the San Joaquin Valley Environmental Defense Center, a California non-profit corporation, and other neighbors]

1. Under “**FINDINGS/CONSIDERATIONS**”, Staff Report #20-03 states, :  
“Although the General Plan encourages mixed-use developments, it does not specifically address the density allowed within a commercial zone for a mixed-use project.” [p. 6, para. A]  
Since neither High-Medium Density (HMD) and High Density (HD) is expressly included in the Neighborhood Commercial (CN) land use designation nor in the zoning classification of Neighborhood Commercial (C-N) Commercial, The proper legal inference should be that the City Council did not intend to include either HMD nor HD within the CN land use nor the C-N zoning designation. Absent express language to the contrary, the Applicant needs to apply for a General Plan Amendment and a Zoning Amendment to include express language to provide internally consistency between the General Plan Land Use Element and the Zoning Ordinance, before the Site Plan may rely upon either HD or HMD entitlement sought by the Applicant.
2. The Site Plan is not consistent with the future upgrade of Yosemite Avenue between McKee Road and Campus Parkway to 118’ shown in Table 4.1, at page 4.3 of the City’s Transportation and Circulation Element of the General Plan and the Circulation map.[MCC Sections 20.68.050 (F)(1) and (6)]
3. The Traffic Study included in the Mitigated Negative Declaration relied on by Staff for the environmental review for this project does not include an internal circulation plan nor disclose, analyze, or mitigate the potentially significant cumulative adverse impacts to peak a.m. traffic safety and congestion caused by right turns from the curb cut on Yosemite Avenue.[MCC Section 20.68,050 (F)(6)]
4. The Site Plan provides no identification of the location of the 43,000-gallon underground waste water storage facility to be designed and constructed on site (Conditions 9 and 10 and mitigation measure) to store and pump untreated effluent in the Yosemite Avenue sewer main during off-peak hours. This infrastructure and the location of the storm water discharge point into the Merced Irrigation District irrigation canal adjacent to the project need to be identified in the Site Plan. [MCC Sections 20.68,050 (F)(3) and (6)]
5. There is a pending appeal of CUP # 1238, which should be remanded to this Commission to be heard with this matter. [Merced Municipal Code (MCC) Section 20.32].

4/13/20

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

Meeting Backup

-----Original Message-----

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

Dear City Council,

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

Sincerely, Daralene Silveira  
[REDACTED] Pebble Beach Ct.  
Merced, CA 95340

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

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

backup

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

Attached is my comment to be read at the public hearing for CUP 1238 at tonight's city council meeting.  
Michael Belluomini

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

Date: May 4, 2020

To: Merced City Council Members

From: Michael Belluomini, former Council Member

Ref: CUP #1238 for 214 Apartments

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

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

- 1) Building #1 Convert the ground floor apartments to neighborhood commercial shops or offices. This decreases project apartments by 22.
- 2) Delete the third floor. This decreases the project apartments by 34 units.
- 3) Unit Sizes - Reduce the number of the one bedroom units to achieve a maximum of 144 apartments.
- 4) Delete some units to create tenant common courtyards (explained in 5 & 6 below)

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

- 5) Building #1 Create common courtyard for tenants at the landing of the apartment stairs by converting three apartments to a courtyard. Convert one apartment area to a laundry. (See Attached Plan)
- 6) Building #2 and #3 Similarly, create a common courtyard for tenants at the landing of the apartment stairs by converting three apartments to a courtyard.
- 7) Change the design so that EVERY apartment has a balcony of a minimum size of 5 feet by 8 feet..

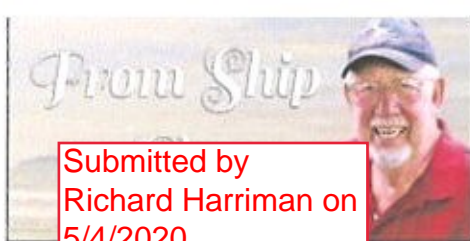
**Shops and Services** - Though the developer has designed this project for UC student tenants, you as City Council members must have a long-term view and broader view to all the citizens of Merced using this project. The site is designated a Neighborhood Commercial Center because it meets the General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

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

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

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





Submitted by  
Richard Harriman on  
5/4/2020

## It's Too Early For Us To Stop Hunkering Down

By JOHN M. DERBY  
Times Publisher

We all would like to see this coronavirus pandemic stopped and get back to business as usual; however, it is too early and it would be a major mistake.

All we need to do is take a look at other states like New York to see that there are still 400 deaths a day.

This pandemic has not run its course.

In Merced County, where there is a 60 percent Hispanic population, many people who may have contacted COVID-19 are not being tested because they do not trust government and are hesitant to visit local test sites, unless it was made mandatory.

Even our readers are sending in letters, saying that there is a shadow over the whole coronavirus testing process in our county. One reader suggested that we are not getting the facts.

California has been at the forefront regarding the pandemic, and it could be our state which takes the lead in testing and finding a vaccine to cure the disease.

We are not there yet.

In time, we feel that a great many people will build up antibodies which will help them defend themselves against further infection. Even the elderly will have those antibodies in their system so they will not feel the life-threatening effects of the disease.

Today, so little is known. Our testing processes are not good. We have heard that a person can be tested one day and found not to have the disease, and then a day or a week later, they end up being infected. This is not satisfactory.

The only way to protect our families, and particularly our elderly, is keep them out of harm's way. Isolate our family and tell them: "Stay at Home."

We can do this for another month or two if necessary. This is war.

If our soldiers were holed up in a foreign country fighting the enemy, they would not be out wandering around like nothing was wrong. They are Hunkered Down in some fortification for protection.

This is no different. Yes, the war is of a different nature, but War is War. People are dying and that will continue until we find a weapon which will defend us against the cause. An anti-coronavirus cannon.

Think of it like a soldier. Don't come out of your Fox hole unless you want to get your head shot off.

HUNKER DOWN!

## FAA revises airport grant funding — by a lot

The Federal Aviation Administration has announced it revised the amount of funding the Merced Regional Airport will receive from the CARES Act to \$3,364,156.

Last week, it was first announced by Congressman Jim Costa and Merced Mayor Mike Murphy that the airport would receive a whopping \$16,885,618 from the U.S. Department of Transportation's Federal Aviation Administration (FAA) as a result of the CARES Act.

The CARES Act is a more than \$2 trillion economic relief package, with \$10 billion allocated for airport improvement grants. The grants were designed to provide economic relief to airports around the country affected

# Leaders would be wise to seek Merced County Times 4/30/20 compromise on housing project

This Monday, the Merced City Council will consider an appeal of the neighbors protesting a proposal for 214 apartments at McKee and Yosemite Avenue. This proposal was unanimously approved by the Planning Commission on Jan. 22, in a process that disrespected the city's General Plan, the zoning ordinance, the principles of safe-living environment, and the concerns expressed by the neighbors at the public hearing.

The Commissioners indicated that they needed to provide apartments to serve UC Merced students, to comply with new state law that they believe compelled them to approve it and to give the out-of-town developer what he wanted.

They rejected a compromise proposal for apartments that all participants might have reluctantly agreed to.

The General Plan states that neighborhood shopping centers should be provided one mile apart from each other. In 2017, I voted along with other City Council members to change the zoning on this six acre site from low density residential to neighborhood commercial. The council and neighbors who supported the zone change anticipated development of convenience commercial cafes, a 7-11 and salons. There was no discussion of apartments.

The General Plan allows



By MICHAEL  
BELLUOMINI

for medium density apartments (24 units per acre) near shopping centers for the convenience of tenants. The proposed development is for high density apartments, (36 units per acre). The Zoning Ordinance allows apartments in the neighborhood shopping center only with a conditional use permit (CUP). It is defined as "a discretionary permit...to ensure that a proposed use is consistent with all General Plan goals and policies and will not create negative impacts to adjacent properties or the general public". The city has discretion and freedom to use its judgment over how apartments are allowed.

In 2016, anticipating requests to build apartments to serve UC students and others, the City Council approved apartment design standards to promote safety, health and defensibility from intruders and crime. These standards re-

quire design that facilitates surveillance of doorways by neighboring apartments; creates courtyards visible to apartment residents and predominantly, for their use only and includes a balcony or patio of at least five feet by eight feet for every apartment. The proposed development design does not follow these standards.

At the Planning Commission public hearing, approximately, 15 people spoke against the proposal. They cited inadequate parking spaces and the traffic congestion that the 214 apartments PLUS 40,000 square feet of convenience commercial/offices will cause. The staff report indicated stop and go traffic congestion will occur due to the proposed project. The proposed project includes three story buildings with a rooftop recreation area overlooking the surrounding neighborhood. Neighbors opposed this loss of privacy and peace and quiet.

Some Commissioners stated that recent state law promoting housing construction eliminated their ability to condition or deny the project. These laws are aimed at cities that discourage apartments and housing.

Merced is building 500 houses annually and has approved over 300 apartments in the last five years. These new state laws require long-term dedication of a portion of the project to affordable low-income

housing and the paying of prevailing wages to contractors, as if it was a government construction project. If a proposed development follows all these requirements then a conditional use permit is not required by State law. It seems this proposal does not meet all the requirements because it applied for a conditional use permit.

The compromise alternative proposal rejected by the Planning Commission is as follows: 1) Reduce the number of apartments from 214 to 144. This complies with the General Plan medium density definition; reduces traffic congestion and reduces parking shortage; 2) Use all the ground floor development for businesses not apartments. This fulfills the general plan designation of neighborhood commercial and the expectations of the neighbors who supported the zone change to allow convenience shopping; 3) Follow the city apartment design standards exactly to foster a safe, healthy environment that discourages crime and 4) Delete the third floor of any building.

It would be a serious mistake to approve this project as proposed, but it would also be a mistake to deny it completely. I urge the City Council to fulfill its role as guardian of the living environment of current and future residents of Merced and approve the compromise alternative proposal.

## FARM TEAM ACTION ALERT

### Possible executive order threatens local Ag employers

According to the California Farm Bureau Federation, Governor Gavin Newsom is considering issuing an executive order (EO) creating a conclusive presumption of work-relatedness for all employees deemed "essential" during the COVID-19 crisis.

- This includes any "essential" employee not sheltering-in-place, including all farm employees, allowing these employees to claim workers' comp benefits regardless of whether they have contracted the illness at work or otherwise.

- The Governor's EO will extend eligibility for benefits to "exposure" to COVID-19 even in the absence of symptoms or actual illness; this will impose workers'

comp costs on employers for employees who have no actual illness or injury.

- The EO will also require workers' comp benefits paid for by employers to bear the cost of temporary housing to quarantine employees, regardless of the presence or absence of actual illness.

- Allows any doctor of any kind who is able to treat employees through the workers' comp system including chiropractors, orthopedists and podiatrists to conclude an employee is eligible for these expanded COVID-19 workers' comp benefits without any testing to demonstrate presence or exposure to COVID-19.

The potential costs of this possible EO are massive.

The Workers Compensation Insurance Rating Board (WCIRB) has estimated the cost of a COVID-19 conclusive presumption for essential workers could range from \$2.2 billion to \$33.6 billion, depending on the scope of the workforce covered. WCIRB estimates the mid-range of their cost estimate to be \$11.2 billion, or 61 percent of the annual cost of the workers' comp system prior to COVID-19.

Employers throughout California, including agricultural employers, are struggling to survive the economic hardship imposed by the Governor's shelter-in-place orders. This order will impose massive new costs that will discourage employers from

re-opening, re-employing workers and getting the California economy moving again.

The Farm Bureau urges residents to take action today to urge Governor Newsom to refrain from issuing this EO and you're your legislators to do whatever they can to OPPOSE this extremely expensive EO.

1. Call the office of Governor Newsom: 916-445-2841. Urge Governor Newsom to refrain from issuing this extremely expensive workers' comp COVID-19 conclusive presumption that will impose enormous costs of already-reeling California employers.

2. Send a message to your local legislator.



Correspondence presented at the City Council Meeting of June 1, 2020.

Date: May 4th, 2020

To: Merced City Council Members

On behalf of Merced Holdings

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

**VIA EMAIL TRANSMISSION**

Merced City Council

City of Merced

678 W. 18th Street

Merced, CA 95340

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

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

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

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

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

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

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

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

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

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

Thank You for time,

Sincerely,

Joseph Englanoff, Trustee

Merced Holdings

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

backup

-----Original Message-----

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

Dear City Council:

We are asking you to consider modifying the permit to reflect Michael Belluomini's Opinion Article published in today's Merced Sun Star: Former Merced city council member says too units planned in apartment project. We believe the Permit is a violation of the General Plan and would create congestion and noise in a residential area. Specifically, we are asking the Council to follow the General Plan which allows for 24 units per acre and not to allow a third story on any of the buildings.

Thank you for your consideration,

Benjamin & RoseMary Duran

[REDACTED] E Yosemite Avenue

Merced, CA 95340

Sent from my iPad

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

May 29, 2020

To : Merced City Council

From : Michael Belluomini

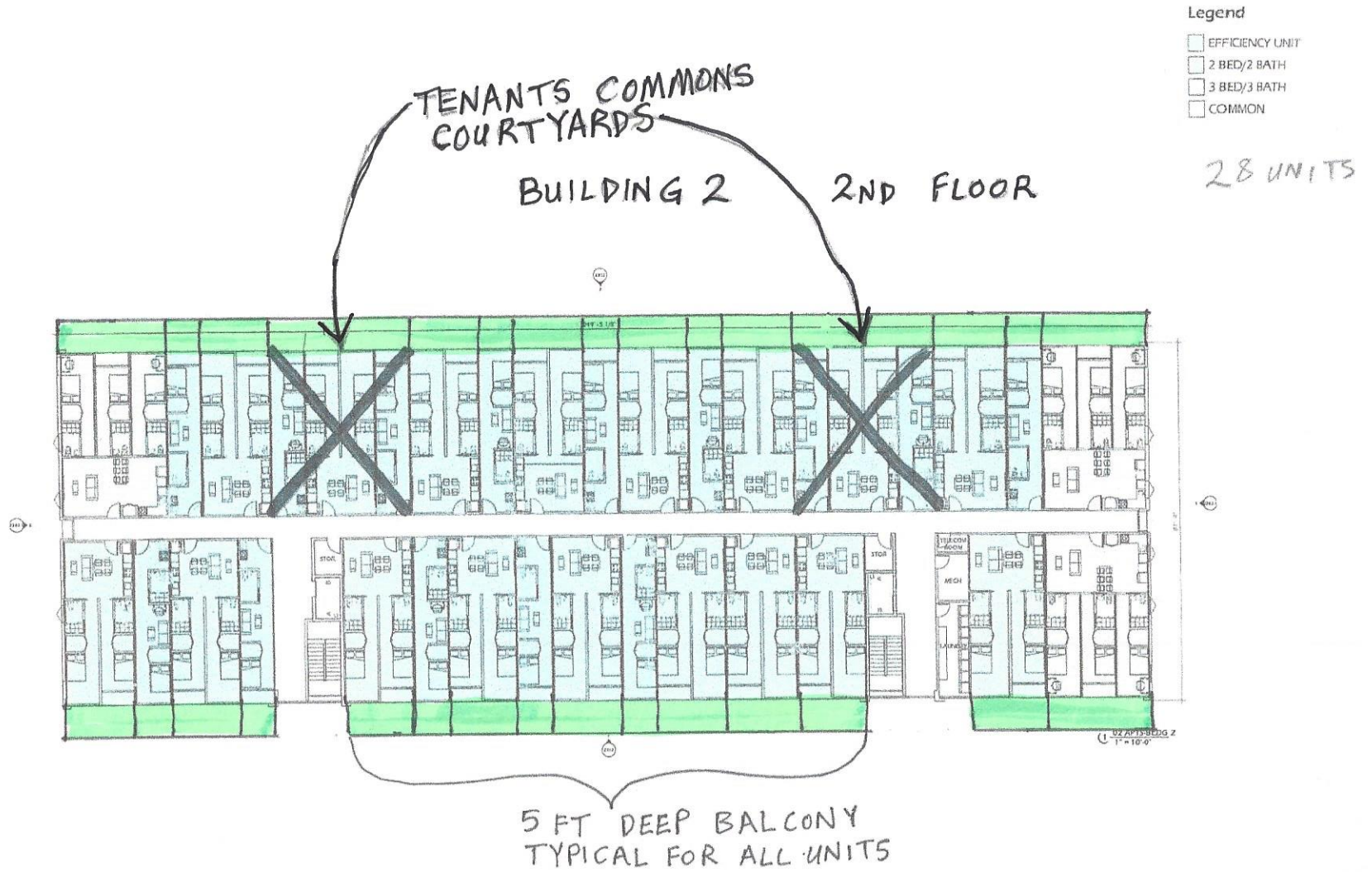
Ref : Appeal of CUP 1238

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

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

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

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





SIDE YARD PROPERTY LINE  
SIDE YARD LANDSCAPE SETBACK  
SIDE YARD SETBACK

SIDE YARD SETBACK  
SIDE YARD LANDSCAPE SETBACK  
SIDE YARD PROPERTY LINE

YOSEMITE AVE

BUS TURN OUT

Mc KEE RD

Mc KEE RD

FRONT YARD PROPERTY LINE  
FRONT YARD LANDSCAPE SETBACK  
FRONT YARD SETBACK

REAR YARD SETBACK  
REAR YARD LANDSCAPE SETBACK  
REAR YARD PROPERTY LINE

**BLDG 1**  
BUILDING 1  
2 FLOORS OF RES.  
49 UNITS  
30,456 SF

**BLDG 2**  
BUILDING 2  
2 FLOORS OF RES.  
GROUND FLOOR COMMUNITY SPACE AND RETAIL  
67 UNITS  
57,623 SF

**BLDG 3**  
BUILDING 3  
1 FLOOR OF RES.  
GROUND FLOOR OFFICE  
29 UNITS  
30,533 SF

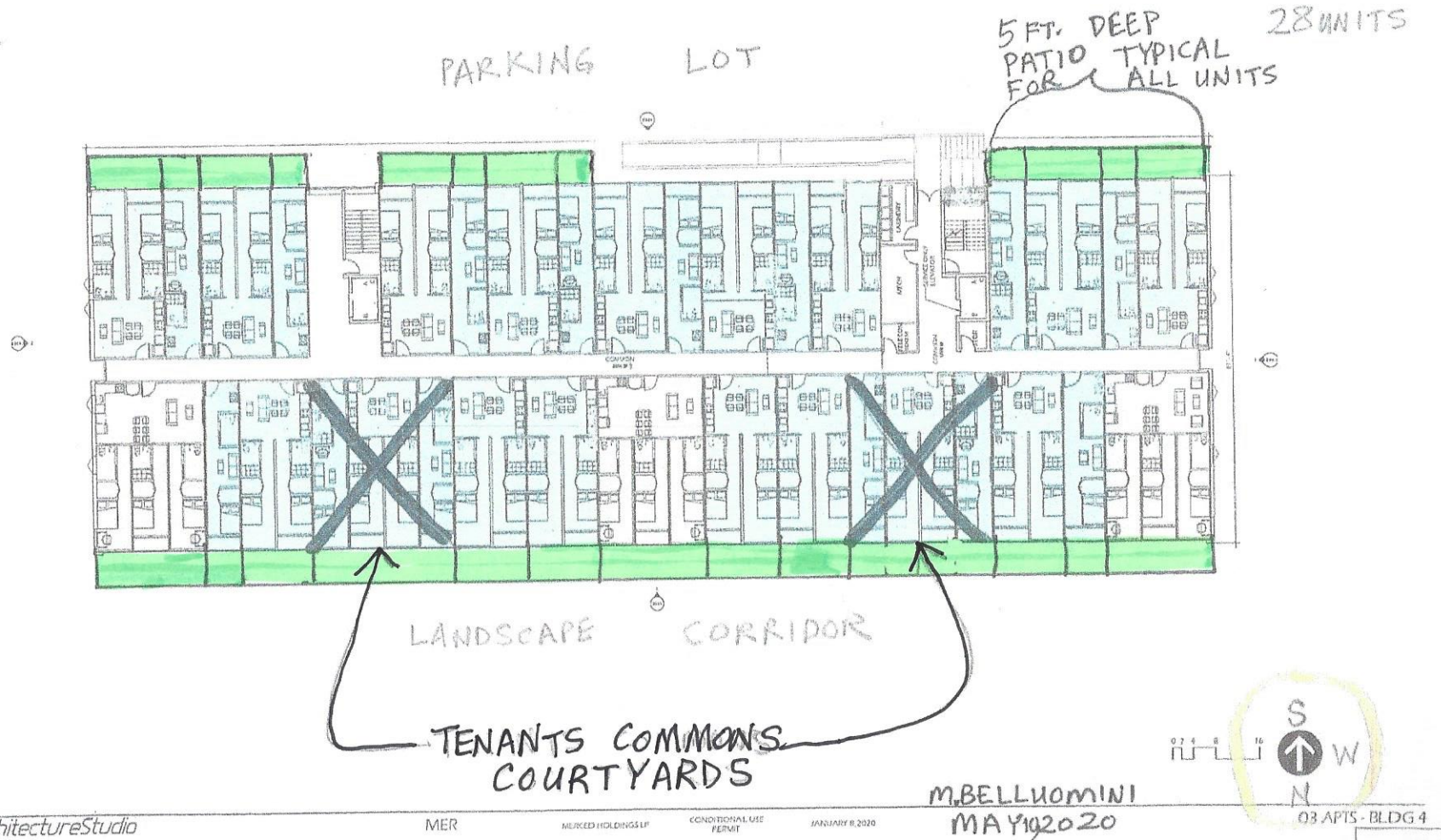
**BLDG 4**  
BUILDING 4  
2 FLOORS OF RES.  
GROUND FLOOR COMMUNITY SPACE AND RETAIL  
69 UNITS  
58,262 SF

AREA SCHEDULE		
BUILDING NUMBER	NAME	AREA
1	COMMUNITY SPACE	10,187 SF
2	COMMUNITY SPACE	11,800 SF
3	OFFICE	12,244 SF
4	OFFICE	14,450 SF
5	RESIDENTIAL	10,916 SF
6	RESIDENTIAL	10,644 SF
7	RESIDENTIAL	11,500 SF
8	RESIDENTIAL	12,322 SF
9	RESIDENTIAL	12,725 SF
10	TOTAL	101,513 SF
11	TOTAL	204,732 SF

# BUILDING 4 GROUND FLOOR

## Legend

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



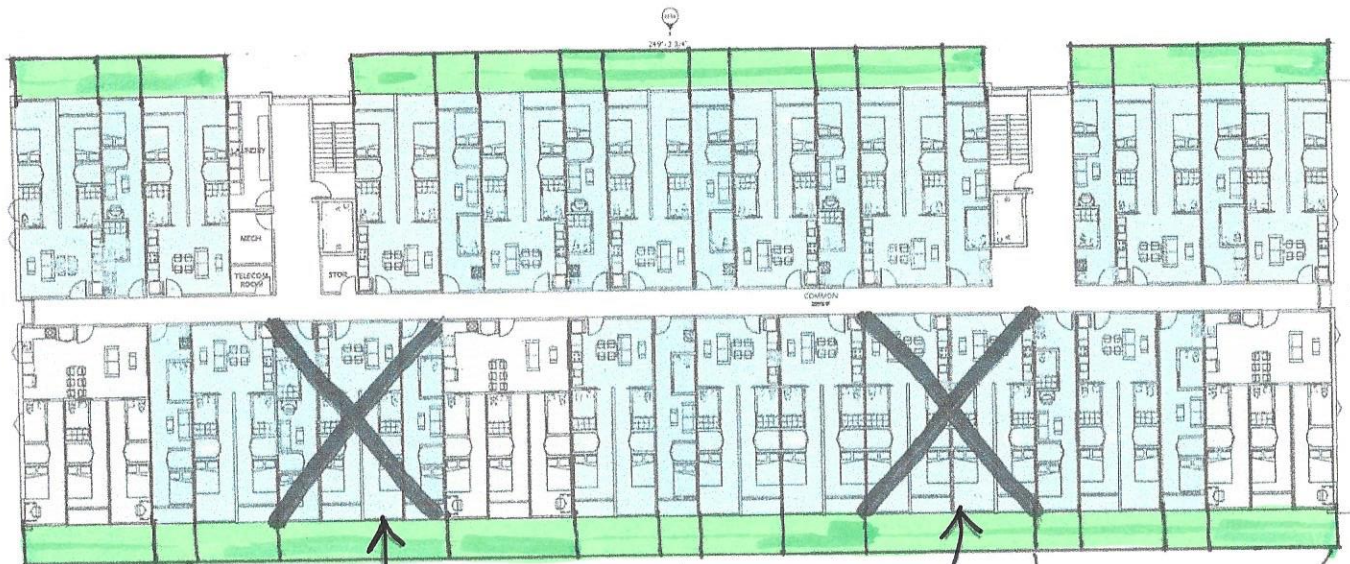


Legend

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

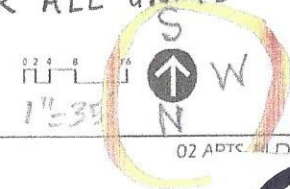
29 UNITS

BUILDING 4 2ND FLOOR



TENANT  
COMMONS  
COURTYARDS

5 FT. DEEP BALCONY  
TYPICAL FOR ALL UNITS



ferrierArchitectureStudio

MER

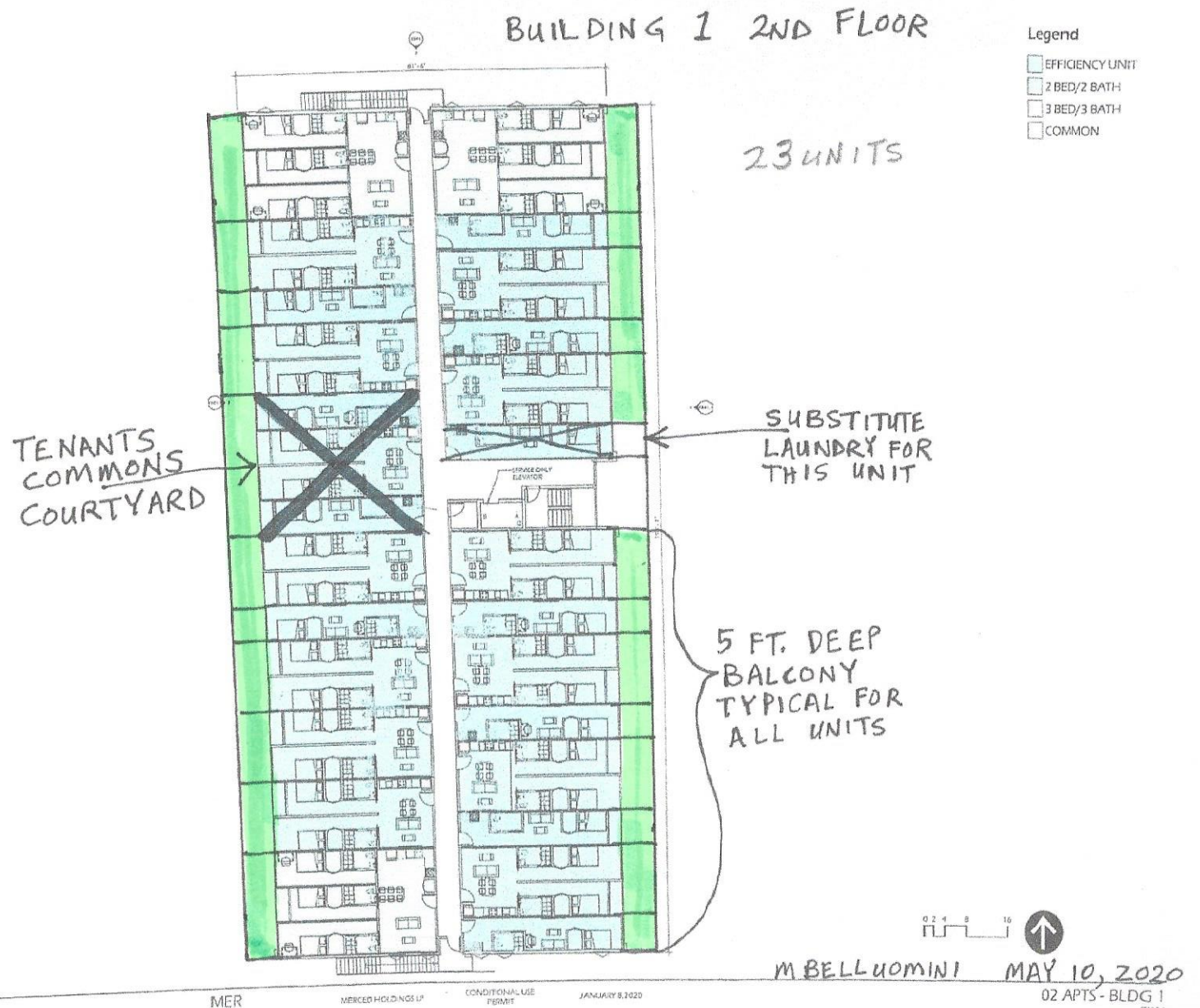
MERCED HOLDINGS LP

CONDITIONAL USE  
PERMIT

JANUARY 8, 2020

M BELLUOMINI  
MAY 10, 2020

02 ADTC BLDG.4





# BUILDING 3 GROUND FLOOR

# BUILDING 3 2ND FLOOR

## Legend

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

10 UNITS

25 UNITS

OFFICES

LANDSCAPED  
CORRIDOR

PARKING

TENANT  
COMMONS  
COURTYARD

5 FT. DEEP  
BALCONY  
TYPICAL  
FOR ALL UNITS

TENANTS  
COMMONS  
COURTYARD

5 FT. DEEP  
PATIO  
TYPICAL  
FOR ALL  
UNITS

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JANUARY 8, 2020

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Correspondence presented at the City Council Meeting of June 15, 2020.

June 11, 2020

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VIA E-MAIL

Mayor Murphy & Councilmembers  
City of Merced  
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Merced, CA 95340  
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Re: Denial of Appeal of Conditional Use Permit (CUP) #1238 and Site Plan Review #455

Dear President Murphy and Councilmembers:

We write on behalf of our client, Merced Holdings LP (“Applicant”), with regards to the appeal of Conditional Use Permit (CUP) #1238 and Site Plan Review #455 and the associated CEQA clearances to allow construction of a Mixed-Use Development consisting of 214 Apartments, approximately 22,000 square feet of Retail Commercial Space, and approximately 14,000 square feet of Office Space located within four buildings ranging from approximately 26 feet to 33 feet 11 inches (the “Project”) on a 5.94-Acre parcel generally located at the southeast corner of Yosemite Avenue and McKee Road (the “Property”).

We respectfully request that you deny the appeal and approve the Project. Failure to do so will be a blatant violation of the State’s Housing Accountability Act and will subject the City to significant legal liability and financial liability of upwards of \$10 million. The State is facing a severe housing crisis and denial of the Project or reduction of the density of the Project would be an abuse of the law. Applicant will take all necessary measures, including litigation, to protect its rights. We hope the City Council will carefully consider this matter and do the right thing to protect the community.

Moreover, given the ongoing health pandemic and the risks associated with travelling, Applicant will be participating in the June 15, 2020 hearing by telephone. Applicant also requests the opportunity to address the City Council at the June 15, 2020 meeting. We will coordinate with City staff to ensure that Applicant’s due process rights are fully protected.

**I. The June 1, 2020 Hearing Was Illegal Under The Brown Act, As Was The Closure Of The Public Hearing.**

As discussed in our June 1, 2020 letter, the City failed to provide proper notice of the June 1, 2020 hearing. At its May 4, 2020 hearing, the City Council continued the Project to a future date. However, the motion adopted by the City Council provided no specific time and place for the next meeting, in direct violation of the Brown Act and City regulations of continued hearings (see Govt. Code § 54955, § 54655.1; Merced Municipal Code [MMC] § 20.70.40.C). The City Municipal Code, which is consistent with the Brown Act, allows for continued hearings without further notice, only when, “the chair of the hearing body announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.” The City Council clearly violated these state and City requirements by providing only vague direction as to when the next hearing would be held:

**Mayor:**

Ok—is there a motion to continue? Would someone like to put forward that?

**Echevarria:**

Yes mayor—I will; motion to continue.

**Mayor:**

Motion by Echevarria.

Is there a second to that motion?

**Serratto:**

Second.

**Mayor:**

Is that Serratto?

**Serratto:**

Yes.

**Mayor:**

Ok. and just asking, I think we are talking about 2 weeks, but I would just say if it needs to be 4 and staff feels like it would make a meaningful difference, then perhaps,

**Carrigan:**

Could we just leave it open ended? Cause I think it’s going to be between 2 and 4. I promise you that.

**Mayor:**

Ok.

So, within 2 to 4 weeks, we’ll bring it back.

This ambiguous direction does not constitute sufficient notice to the Applicant or the public as to when the next hearing on the Project would occur, thus violating the City Municipal Code and the Brown Act. Because the City did not comply with

applicable state and local regulations on continued hearings, new notice of the continued hearing should have been provided according to the City's Municipal Code for project hearings under MMC § 20.70.20.B.

Applicant did not receive new written notice of the hearing in accordance with MMC § 20.70.20.B, which requires written notice to the property owner and applicant no less than 10 days prior to the hearing. This City requirement is consistent with the state Planning and Zoning Law, which also requires no less than a 10-day notice to property owners and applicants for project hearings (see Government [Gov't] Code § 65091). The only notice Applicant received, in addition to the vague direction identified above, was a phone call from City staff late in the week prior to the June 1st hearing. Had the City provided proper notice of a continued hearing directly after the May 4th hearing, Applicant would have had approximately one month to prepare for the June 1st hearing. Had the City acknowledged the error and provided new notice, Applicant would have had at least 10 days to prepare for the June 1st meeting. Instead, Applicant had less than 72 hours to prepare for the June 1st hearing. Given the practical complications of doing business and attending public meetings during a global pandemic, this 72-hour notice certainly does not meet the minimum notice requirements for project applicants in violation of both the City Municipal Code and state Planning and Zoning Law.

Further, the City's failure to provide proper notice deprived Applicant of its constitutional due process rights. The federal and state constitutions require that, "notice must, at a minimum, be reasonable calculated to afford affected persons the realistic opportunity to protect their interests. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 617.) The California Supreme Court noted that while notice requirements, "may well suffice to encourage the generalized public participation ...they [still may be] inadequate to meet due process standards where fundamental interests are substantially affected." (*Id.* at 617-18.) In the Horn case, much like our case, the aggrieved property owner received last-minute notice and was able to attend the hearing. However, the Court importantly noted that the fact that plaintiff received actual notice of the hearing and was able to attend the hearing did not waive his right to assert constitutional defects because the notice received led to no "meaningful vindication" of his due process rights. (*Id.* at 620.)

The notice provided by the City to Applicant was not reasonably calculated to afford Applicant the realistic opportunity to protect its interests. While it is true that, like in the Horn case, Applicant received actual notice of the June 1st hearing, this notice was not sufficient to allow Applicant to meaningfully defend its due process rights. Applicant was not able to meaningfully prepare for the June 1, 2020 hearing, and due to the lack of proper notice Applicant was not able to attend the hearing in person. As discussed in our June 1, 2020 letter, Applicant was not able to physically attend the public hearing due to short notice and the ongoing pandemic.



While the City called Applicant's representative to participate in some of the meeting, the City did not equitably allocate time to Applicant's representative or give Applicant equal access to address the City Council, as compared to the appellant's representative, Mr. Harriman. For example, on multiple occasions, the appellant's representative approached the dais and spoke, even though the public hearing was already closed. Instead of advising Mr. Harriman to sit down because the public hearing was closed, Council President Murphy engaged in conversation with Mr. Harriman, and the Council President entertained and ultimately granted Mr. Harriman's request to prohibit the submission of any other evidence. Applicant was given no opportunity to participate or comment on this proposal; in stark contrast to the opportunities given to the appellant's representative. The noticing requirements described above (i.e., for new and continued hearings) is the minimum required to protect due process rights. The City's blatant violation of these requirements is evidenced in and of itself of a violation of Applicant's procedural due process rights. Applicant's inability to attend and properly prepare for the June 1 hearing is additional evidence that the notice was insufficient to afford Applicant a meaningful opportunity to protect its interests. Given that Applicant is especially aggrieved by the City's decisions, there is no question that the City's actions to close the June 1 hearing without input from Applicant is a violation of Applicant's substantive and procedural due process rights, in addition to a violation of the Brown Act and state Planning and Zoning Law, and of the City's own regulations.

The City should have continued the hearing so Applicant would have an opportunity to meaningfully participate in the process. Instead, the City Council totally ignored Applicant's reasonable request and further prejudiced Applicant by closing the record. The City Council gave no justifiable reason to deny Applicant's request for a continuance. In stark contrast, the City Council granted another applicant's request for a continuance - a request made at the dais on the evening of June 1, 2020. The City Council's failure to grant an identical request from Applicant demonstrates the City Council's bias against the Applicant and the Project.

## **II. Denial Of The Project or Reduction Of Project Density Will Violate The Housing Accountability Act**

The Housing Accountability Act (HAA) applies to both low-income and market rate housing projects, despite the erroneous advice given to the City Council by the City Attorney at its June 1, 2020 meeting. (See Govt. Code § 65589.5(j)(1); *Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1069.) The HAA specifically prohibits the City from reducing the density of the Project or from denying the Project unless it makes written findings - based on a preponderance of the evidence - that the housing project would have a "specific, adverse impact upon the public health or safety" of the community unless the Project is disapproved and that there is "no feasible method to satisfactorily mitigate or avoid the adverse impact identified."

(See Govt. Code § 65589.5(j)(1); *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993 (23 Cal.App.4th 704, 715.) “[A] specific, adverse impact’ means a significant, quantifiable, direct and unavoidable impact, based on objective, identified written public or safety standards...” No facts in the record exist that could support these findings, quite the opposite.

The Planning Commission already made findings in approving the Project that it is consistent with applicable plans and policies, that it will be compatible with existing and future land uses, that it will not be detrimental to the public health, safety, and welfare of the City, and that it can be adequately served by existing or planned services and infrastructure. It is also consistent with the City’s objective standards, and nothing in the City’s materials suggest otherwise. We note that there is a typo - the height of the three-story buildings is 33 feet and 11 inches. This was brought up by the Applicant at the Planning Commission, but not corrected. The staff report for the June 1, 2020 hearing repeats the findings made by the Planning Commission and recommends approval of the Project based on such compliance. There is no rationale - certainly none based on identified written public health and safety standards - to deny the Project.

Indeed, if the City did think that the Project was inconsistent with applicable plans, policies and ordinance, then the City was obligated to inform the Applicant in writing of such alleged deficiencies within 60 days of the date that the application was deemed complete. (Govt. Code § 65589.5(j)(2)(A)(ii).) The City never informed the Applicant of any inconsistencies. Therefore, as specified by Government Code Section 65589.5(j)(2)(B), the Project “shall be deemed consistent, compliant and in conformity with the applicable plan, program, policy, ordinance, standard, requirement or other similar provision” and there is no grounds to deny the Project based on non-compliance.

The record is replete with statements by the City Council about reduction of density and/or modifications to the Project, even though it meets the City’s objective standards. Here are just a few of those statements:

- “My personal view is that the density is too much.” (Mayor Murphy, May 4, 2020)
- “Talking about the density—we need to bring that down to 24 [du/acre]...” (Councilmember Echevarria, May 4, 2020)

The appellant also expressed support for the proposal from Mike Belluomini, which would reduce the Project density to 144 units. Any reduction of density is a blatant violation of the HAA which will subject the City to significant legal and financial liability.

**III. Denial Of The Project Will Subject The City To A Penalty Of Up To \$10,700,000.**

Because housing is a matter of statewide importance and because the State is facing a severe housing crisis, the Housing Accountability Act sets a minimum penalty of \$10,000 per dwelling unit for local agencies violating its provisions. (Govt. Code § 65589.5(k).) That fine is multiplied fivefold if the court finds that the City acted in bad faith. This means that the minimum fine for denying the Project is \$2,140,000; given the City's bad faith behavior discussed herein, a court could increase that penalty to \$10,700,000. This amount is four percent of the City's proposed 20-21 budget; it is more than the City is budgeting to pay the Fire Department personnel; it is approximately \$4,000,000 more than the City's budget for development services; and it is more than three times the amount of the budget for all of recreation and parks. It's hard to believe that the City would subject itself to such a huge fine, especially when the City is facing a \$5.4 million loss of revenue for the 2020-2021 budget projections.

**IV. The Results Of The Public Records Act Request Must Be Included In the Administrative Record.**

The integrity and transparency of the process is of the utmost importance to us. As you know, the entitlement process here is a quasi-judicial hearing process and the City Council must be neutral. (*Woody's Group, Inv. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1021.) We have submitted a Public Records Act request to the City. We request that all records provided to us as part of that request be included in the City's Administrative Record for this matter. We also strongly suggest that this matter be continued until all of those documents are produced.

**V. Appellant's Contentions Are Without Merit.**

Appellant Casey Steed, along with Merced Smart Growth Advocates (MSGAs), a California unincorporated association, and the San Joaquin Valley Environmental Defense Center, a California non-profit corporation, raise multiple issues in their appeal that lack merit. Appellants seek one thing: reduction of density. As that is patently illegal under the Housing Accountability Act, we hope the City Council sees through the patently illegal request. We will briefly respond to appellants' points here.

1. The City Council denied Applicant's prior project without prejudice at the October 7, 2019 hearing, thereby allowing Applicant to reapply within one year. Moreover, the prior project was not substantially the

same as the current Project. Table 1 summarizes the significant differences.

2. There is no defect in the Planning Commission hearings for the CUP on the Site Plan Review, regardless of whether or not the Planning Commission heard the two entitlement together. Even if there was a deficiency at the Planning Commission, which is not the case, the hearings at the City Council have cured any issue.
3. The Planning Commission, not the appellants, are in the best position to interpret the meaning of the General Plan and the Zoning Code with regards to density permitted in the CN land use designation and CN zone. The findings contain substantial evidence that mixed-use developments are encouraged in the City, including in the CN land use designation, at a density consistent with the High-Density designation.

Table 1		
	The Hub 2.0 Current Project	“The Hub” Prior Project
Number of Units	214 Dwelling Units	428 Efficiency units
Provided Parking Spaces	386 spaces	376 spaces
Setback of Building 1 & 3 from McKee Rd and Whitewater Way	85’ / 82’4”	64’3” / 63’ 2”
Building 1 & 3 height	2 Story/ 3 Story	3 Story
Outdoor Promenade	29,500 sf	11,300 sf
Average Daily Trips (Before Reductions)	1,876 ADT	2,214 ADT
Office space	14,445 sf	0 sf
Commercial/Retail space	22,672 sf	17,999 sf

4. The CEQA findings are supported by substantial evidence. The traffic study makes reasonable assumptions about the residents of the Project. Specifically, the traffic study uses trip generation rates for off-campus student housing for the single occupancy units and for multi-family housing for the two-and three-bedroom units. Given the proximity of the Project to nearby colleges and the demand for student housing, the assumption for the one-bedroom units is reasonable and supportable. Appellant’s concerns about traffic patterns is unsubstantiated by any evidence. CEQA does not require the alleged “safety analysis” of the parking lot requested by appellants.

5. Neither the CEQA Thresholds in Appendix G nor the City's own regulations requires an internal circulation plan. Indeed, CEQA does not require a project to disclose impacts on itself, which is what appellants are requesting.
6. The City has not deferred a decision on the right-of-way. Required rights-of-way are set forth in the City's General Plan. As noted by MMC §§ 12.04 et seq., the City has adopted an official plan for streets and highways (the Transportation and Circulation Element) and all development must comply with the standards therein. It is an existing regulatory measure.
7. Conditions of approval 8, 9 and 10 are enforceable mitigation measures related to wastewater with quantifiable standards that can be implemented by the City.
8. Similarly, the Initial Study discusses the capture of stormwater, the capacity of the City's system, and existing regulatory measures that will be implemented for stormwater. Conditions 17 and 18 further provide detail as to what standards must be met, and reference the City's MS-4 Permit with which Applicant must comply.
9. Condition 30 is also an enforceable measure and is properly delegated to staff. Indeed, MMC § 20.38.050 specifically discusses reductions in parking and delegates approval of reductions to staff.

Therefore, for all the reasons set forth herein, we request that the City Council provide the Applicant the opportunity to address it during a public hearing at the June 15, 2020 hearing, that you deny the appeal and approve the Project with 214 units. Failure to do so will expose the City to significant legal and financial liability. Notwithstanding the above, Applicant retains all legal rights and remedies.

Sincerely,

*Elisa Paster*

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

ELP:ep

cc: Scott McBride, Merced Planning Department, McBrideS@cityofmerced.org  
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