



CITY OF MERCED

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

Minutes Planning Commission

Wednesday, January 18, 2023

7:00 PM

A. CALL TO ORDER

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

A.1. Moment of Silence

A.2. Pledge of Allegiance to the Flag

Vice Chair CAMPER led the Pledge of Allegiance to the Flag.

B. ROLL CALL

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

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

Absent: 0

C. ORAL COMMUNICATIONS

There were no public comments.

D. CONSENT CALENDAR

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

ACTION:

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

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

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

No: 0

Absent: 0

E. PUBLIC HEARINGS AND ACTION ITEMS

E.1

SUBJECT: Conditional Use Permit #1269, initiated by Robert Dylina, on behalf of Golden State Realty Association, Inc., property owner. This application involves a request for a master sign program with a double-sided changeable copy sign (63 inches by 137.5 inches) for Auto Resources at 1500 W. 16th Street, generally located at the southwest corner of V Street and 16th Street, within a Zoning classification of General Commercial (C-G), with a General Plan Designation of General Commercial (CG). *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify

- 1) Environmental Review #22-46 (*Categorical Exemption*)
- 2) Conditional Use Permit #1269

SUMMARY

Robert Dylina is requesting approval for a master sign program that includes a double-sided changeable copy sign at 1500 W. 16th Street. The subject site is an existing used automotive dealership and will remain an automotive dealership. The automotive dealership is considered a principally permitted use within the General Commercial (C-G) Zone; however, a changeable copy sign for an automotive dealership requires approval of a master sign program from the Planning Commission, per Merced Municipal Code 17.36.072 - Changeable Copy Sign. The proposed changeable copy sign (63 inches by 137.5 inches) would be installed on the existing freeway pylon sign for this site (without adding additional height). Staff is recommending approval of this application subject to conditions.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #22-46 [*Categorical Exemption*] including the adoption of the Draft Resolution at Attachment A subject to the conditions in Exhibit A and the findings/considerations in Exhibit B.

Associate Planner MENDOZA-GONZALEZ reviewed the report on this item. For further information, refer to Staff Report #23-034.

Public Testimony was opened at 7:16 PM.

Speaker from the Audience in Favor

ROBERT DYLINEA, Applicant, Merced, CA

There were no speakers in opposition to the project.

Public Testimony was closed at 7:21 PM.

The Applicant requested changes to several conditions as follows:

(Note: Strikethrough deleted language, underline added language)

"20. The pylon sign shall be finished with an anti-graffiti protective coat for the first 15 feet.

"21. ~~Prior to construction, an illumination study shall be submitted for the changeable copy sign and approved by the Director of Development Services or designee. The purpose of the study is to ensure that~~ illumination levels of the sign must be set at a level so as not to unduly impact surrounding uses. Details to be worked out with staff.

"22. The changeable copy sign shall be turned off from the hours of 12:00 a.m. to 7:00 a.m. daily.

"24. The existing pylon structure shall be refinished with a fresh coat of paint or other finishes, to match the existing colors. A change in colors shall require staff level design review approval for paint."

A motion was made by Member Delgadillo, seconded by Member Greggains and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #22-46 and approve Conditional Use Permit #1269, subject to the Findings and twenty-five (25) Conditions set forth in Staff Report #23-034 (RESOLUTION #4103) with changes to Conditions #20 through #22 and #24 at the request of the applicant (as shown above).

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

No: 0

Absent: 0

E.2

SUBJECT: Conditional Use Permit #1268 and Site Plan Review #506.

initiated by Circle K Stores, Inc., on behalf of Ashley Investments, LLC, property owner. This application involves a request to construct a new gas station/convenience market with tobacco sales, and beer and wine sales for off-site consumption at the southwest corner of R Street and Loughborough Drive. The subject site is located within Planned Development (PD) #8 with a General Plan designation of Regional/Community Commercial (RC). *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify

- 1) Environmental Review #22-45 (*Categorical Exemption*)
- 2) Conditional Use Permit #1268
- 3) Site Plan Review #506

SUMMARY

Circle K Stores, Inc., is requesting approval to construct an approximate 3,700-square-foot gas station/mini-market (with tobacco sales and alcohol sales for off-site consumption), and an approximate 2,592-square-foot fuel pump canopy (8 pumps) on a pending outparcel located at the southwest corner of R Street and Loughborough Drive (Attachment B). A site plan review permit is required for new developments within this Planned Development, and for gas stations with a land use designation of Regional/Community Commercial (RC). The RC designation also requires a conditional use permit for the sale of tobacco products/paraphernalia within 600 feet of a public park, and alcohol for off-site consumption (for buildings under 20,000 square feet) per MMC 20.10.020. A Finding of Public Convenience or Necessity (adopted by City Council) is also required for alcohol sales because Merced is listed under Moratorium City for Type 20 alcohol licenses by the Department of Alcoholic Beverage Control. The Police Department has determined that they would support the sale of alcohol for off-site consumption if specific conditions are included to reduce the potential for alcohol-related incidents. Staff is recommending approval of this application subject to the conditions.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #22-45 [*Categorical Exemption*], Conditional Use Permit #1268, and Site Plan Review Permit #506, including the adoption of the Draft Resolution at Attachment A subject to the conditions in Exhibit A and the findings/considerations in Exhibit B.

Associate Planner MENDOZA-GONZALEZ reviewed the report on this item. For further information, refer to Staff Report #23-035.

Public Testimony was opened at 7:48 PM.

Speakers from the Audience in Favor

SANDRA AGRAZ, Circle K Stores, Chino Hills, CA

ISAAC SARGIZ, Property Owner, Merced, CA

There were no speakers in opposition to the project.

Public Testimony was closed at 7:57 PM.

A motion was made by Member Greggains, seconded by Member White and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #22-45 and approve Conditional Use Permit #1268 and Site Plan Review #506, subject to the Findings and forty-one (41) Conditions set forth in Staff Report #23-035 (RESOLUTION #4104).

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

No: 0

Absent: 0

E.3

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

ACTION: PLANNING COMMISSION:
Recommendation to City Council
1) Environmental Review #22-25 (*Addendum to General Plan EIR*)
2) General Plan Amendment #22-03
CITY COUNCIL:
Approve/Disapprove/Modify
1) Environmental Review #22-25 (*Addendum to General Plan EIR*)
2) General Plan Amendment #22-03

SUMMARY

This is a request to amend the General Plan Circulation Element by

changing the roadway classification from Divided Arterial to Collector for a portion of Mission Avenue from Coffee Street to the east side of Pluim Drive (extended). This change is requested to improve the circulation for future development in the area. Staff is recommending approval.

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend approval to the City Council of Environmental Review #22-25 (*Addendum to the General Plan EIR*) and General Plan Amendment #22-03 (including the adoption of the Draft Resolution at Attachment A) subject to the conditions in Exhibit A and the findings/considerations in Exhibit B of the Draft Resolution.

Senior Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #22-922.

Public Testimony was opened at 8:06 PM.

Speaker from the Audience in Favor

ERIC PLUIM, Applicant, Merced, CA

There were no speakers in opposition to the project.

Public Testimony was closed at 8:11 PM.

A motion was made by Member Gonzalez, seconded by Vice Chair Camper, and carried by the following vote to recommend to City Council adoption of the Addendum to the Merced Vision 2030 General Plan Environmental Impact Report (Environmental Review #22-25) and approval of General Plan Amendment #22-03, subject to the Findings and seven (7) Conditions set forth in Staff Report #22-922 (RESOLUTION #4097).

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

No: 0

Absent: 0

F. INFORMATION ITEMS

F.1

SUBJECT: Report by Planning Manager of Upcoming Agenda Items

ACTION

Information only.

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

F.2**SUBJECT: Calendar of Meetings/Events**

Jan.	17	City Council, 6:00 p.m. (Tuesday)
	18	Planning Commission, 7:00 p.m.
Feb.	6	City Council, 6:00 p.m.
	8	Planning Commission, 7:00 p.m.
	21	City Council, 6:00 p.m. (Tuesday)
	22	Planning Commission, 7:00 p.m. (May be Cancelled)
	28	Bicycle and Pedestrian Advisory Commission, 4:00 p.m.
Mar.	6	City Council, 6:00 p.m.
	8	Planning Commission, 7:00 p.m.
	20	City Council, 6:00 p.m.
	22	Planning Commission, 7:00 p.m.

G. ADJOURNMENT

Clerk's Note: The Regular Meeting adjourned at 8:16 PM.

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

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

No: 0

Absent: 0

BY:



KIM ESPINOSA, SECRETARY
MERCED CITY PLANNING COMMISSION

APPROVED:



MICHAEL HARRIS, CHAIRPERSON
MERCED CITY PLANNING COMMISSION

CITY OF MERCED
Planning Commission

Resolution #4103

WHEREAS, the Merced City Planning Commission at its regular meeting of January 18, 2023, held a public hearing and considered **Conditional Use Permit #1269**, initiated by Robert Dylina, on behalf of Golden State Realty Association, Inc., property owner. This application involves a request for a master sign program with a double-sided changeable copy sign (63 inches by 137.5 inches) for Auto Resources at 1500 W. 16th Street, generally located at the southwest corner of V Street and 16th Street, within a Zoning classification of General Commercial (C-G), with a General Plan Designation of General Commercial (CG); also known as Assessor's Parcel Number (APN) 031-171-001; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through H (Exhibit B) of Staff Report #23-034; and,

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

WHEREAS, the Merced City Planning Commission concurs with Findings for Design Review Permits in Merced Municipal Code Section 20.68.030 (H) as outlined in Exhibit B; and

NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #22-46, and approve Conditional Use Permit #1269, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

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

NOES: None

ABSENT: None (one vacancy)

ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4103

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January 18, 2023

Adopted this 18th day of January 2023



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

Exhibit B - Findings

Conditions of Approval
Planning Commission Resolution #4103
Conditional Use Permit #1269

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (Master Sign Program) and Exhibit 2 (Pylon Sign), - Attachments C and D of Planning Commission Staff Report #23-032, except as modified by the conditions.
2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
3. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
4. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, suits, or proceeding. Developer/applicant shall be responsible to immediately prefund the litigation cost of the City including, but not limited to, City's attorney's fees and costs. If any claim, action, suits, or proceeding is filed challenging this approval, the developer/applicant shall be required to execute a separate and formal defense, indemnification, and deposit agreement that meets the approval of the City Attorney and to provide all required deposits to fully fund the City's defense immediately but in no event later than five (5) days from

that date of a demand to do so from City. In addition, the developer/applicant shall be required to satisfy any monetary obligations imposed on City by any order or judgment.

5. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
6. No temporary freestanding or moveable signs shall be allowed, unless otherwise authorized by the Municipal Code.
7. Full public improvements shall be installed/repared if the permit value of the project exceeds \$100,000.00. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they comply with ADA standards and other relevant City of Merced/State/Federal standards and regulations.
8. The premises shall remain clean and free of debris and graffiti at all times. Any damaged materials shall be replaced by matching materials.
9. Additional wall mounted and monument signs may be considered for the subject site as allowed by the Merced Municipal Code. Additional signage would be treated as an addendum to this approval and shall be processed with a staff level design review permit for signage.
10. The changeable copy sign shall comply with Merced Municipal Code Section 20.36.667.L.2.C – Free-Standing or Wall-Mounted Signs, including those provisions that allow for advertising for public events as determined by the City of Merced.
11. The proposed changeable copy sign shall not advertise private businesses that are located off-site. Only on-site businesses shall be allowed to advertise on the changeable copy sign, except as allowed for public events.
12. The changeable copy sign cannot include any type of signs deemed a traffic hazard by the City Engineer for vehicles driving along the frontage of this site. This may include the use of scrolling text, flashing signs, or rapidly rotating advertisements.

13. Future wall mounted signs or monument signs shall be designed to match the pylon sign. This shall require using similar colors, textures, material, and overall aesthetic style.
14. Minor modifications to Master Sign Program may be reviewed and approved by the Director of Development Services, or if deemed necessary be referred to the Site Plan Review Commission, or Planning Commission.
15. In the event that the Master Sign Program conflicts with the Merced Municipal Code, the stricter of the two shall be implemented.
16. Final locations of all signs, including required setbacks from intersections and driveways as determined by the Municipal Code, are subject to Planning Division approval at the time of issuance of a sign permit.
17. The changeable copy sign shall not display videos.
18. Advertisement slides on the changeable copy sign shall be spaced apart in time by at least 15 seconds between rotations. The timing between slides may be modified by the Director of Development Services or be referred to the Site Plan Review Committee if determined appropriate by the Director of Development Services.
19. The pylon sign shall be located outside the vision triangle area per Merced Municipal Code Section 20.30.030 – Corner Vision Triangles, and Table 20.32.2 Required Vision Triangle Distance by Street Type.
20. The pylon sign shall be finished with an anti-graffiti protective coat for the first 15 feet.
21. Illumination levels of the sign must be set at a level so as not to unduly impact surrounding uses. Details to be worked out with staff.
22. The changeable copy sign shall be turned off from the hours of 12:00 a.m. to 7:00 a.m. daily.
23. The digital copy sign shall be of variable luminosity to reduce illumination based on the light available. If there are issues with luminosity projections being a driving distraction or causing vehicle accidents, the City Engineer may require reduction in illumination at their discretion.
24. The existing pylon structure shall be refinished with a fresh coat of paint or other finishes, to match the existing colors. A change in colors shall

require staff level design review approval for paint.

25. Approval of this Master Sign Program qualifies as approval of design review.

**Findings and Considerations
Planning Commission Resolution #4103
Conditional Use Permit #1269**

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed project complies with the General Plan designation of General Commercial (CG), with the Zoning designation of General Commercial (CG) with approval of this Conditional Use Permit and Design Review Permit.

Public Improvements/City Services

- B) Full public improvements to be installed/repared if the permit value of the project exceeds \$100,000.00 (Condition #7). Public improvements may include, but not be limited to, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they comply with ADA standards and other relevant City of Merced/State/Federal standards and regulations. The need for any new improvements or repairs to existing improvements would be determined by the Engineering Department at the building permit stage.

Signage

- C) All signs would be required to comply with the Merced Municipal Code. Building permits are required prior to the installation of any permanent signs. The Master Sign Program includes several standards that are consistent with the Design Review District, Freeway District, and Automotive District. In the event that the Master Sign Program conflicts with the Sign Ordinance, the stricter of the two codes shall be implemented (Condition #16). This also applies to usage and duration of temporary signs.

Changeable Copy Sign on Pylon Structure

- D) The applicant has provided the Master Sign Program shown at Attachment C of Planning Commission Staff Report #23-034. Sign permit applications shall be submitted to the Building Department to ensure a cohesive aesthetic between the new changeable copy sign and other new or existing signs on the existing pylon structure. Consideration

for design, materials, and colors as reviewed by the Planning Commission. The existing double-sided freeway pylon sign would remain the same height and placed at the same location, providing visibility for both the north-bound and south-bound lanes along V Street. The pylon sign is placed away from the vision corner triangle area. The pylon sign currently includes two signs, one at the top of the structure and another about 15 feet above ground level. Both of these signs would be refinished or replaced. The applicant is proposing to install the changeable copy sign either above or below the lower existing sign. The changeable copy sign would be double-sided with dimensions being 63 inches by 138 inches.

Per MMC 17.36.667.L.2.C a free-standing sign may include a changeable copy (digital board) if it meets specific standards as shown at Attachment E of Planning Commission Staff Report #23-034, with the inclusion of periodically displaying City/community events or safety campaigns (and other matters) as directed by the City of Merced. Although this section is tied to signs in “North Merced,” staff is recommending this section so the proposal is consistent with other Changeable Copy sign approvals for the shopping centers at G Street and Yosemite Avenue, Campus Parkway Plaza, and El Portal Plaza.

Neighborhood Impact/Public Comments

- E) Due to surrounding uses and proximity to a traffic signal, staff has proposed several conditions (#18, #19, #22, and #23) to minimize impacts of the sign on those uses and vehicles driving in the area regarding slide rotation timing (every 15 seconds), sign placement outside vision triangle area, operation hours (between 7:00 a.m. and 11:00 p.m.), and illumination. Staff mailed a public hearing notice to property owners within 300 feet of the subject site and published the public hearing notice in the *Merced County Times*. As of the time this report was prepared, Planning staff has not received any comments from the public.

Conditional Use Permit

- F) A conditional use permit (CUP) with a master sign program is required to allow a changeable copy for an automotive dealership. In order for the Planning Commission to approve or deny a conditional use permit, they must consider the following criteria and make findings to support or deny

each criteria per Merced Municipal Code (MMC) 20.68.020 (E) Findings for Approval for Conditional Use Permits.

MMC 20.68.020 (E) Findings for Approval.

- 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 changeable copy sign complies with the General Plan designation of General Commercial (CG), and the zoning classification of General Commercial (CG) with approval of this Conditional Use Permit.

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

All signs shall be required to comply with the Merced Municipal Code and the proposed Master Sign Program. In addition, the color scheme, textures, and design of the pylon sign will match or compliment the new building for this site.

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

To ensure the proposal is not detrimental to the public health, safety, and welfare of the City, the applicant shall subsequently apply for sign permits with the City's Building Department. Plans shall be submitted by a design professional and signage installation shall be done by a licensed contractor (license type as required by the California Building Code). Several conditions to limit the impacts of the changeable copy sign on surrounding uses and drivers within this area have been proposed.

- 4. The proposed use is properly located within the city and adequately*

served by existing or planned services and infrastructure.

The proposed signs are located within the City and can be adequately served by existing services and infrastructure. The project will also comply with the following Code section regarding the Freestanding Pylon Sign:

“Merced Municipal Code Section 17.36.667.L.2.C – Free-Standing and Wall-Mounted Signs

Merced Municipal Code Section 17.36.667.L.2.C – Free-Standing and Wall-Mounted Signs note that a “Changeable Copy Sign” may be allowed if the property owner agrees to allow the City to advertise City/community sponsored events, or outreach campaigns (e.g. Safe and Sane Fireworks during 4th of July, etc.) at the discretion of the City as part of a continuous rotation of advertising. Besides this, changeable copy signs may not advertise activities or businesses not occurring on premise. The property owner is aware of this requirement, which is being included under Conditions #10 and #11.

Mandatory Findings - Design Review

- G) The subject site is located within the City’s Design Review District. As such, design review shall be considered with this review. Typically, signs within a design review boundary are processed administratively, but to consolidate the entitlement process this request for conditional use permit would also qualify as design review approval. Attachment F of Planning Commission Staff Report #23-034 contains the Design Review Boundary Map (Figure 20.68-1- Design Review Boundary) along with features to consider [MMC 20.68.030 (F)] and design review principals [MMC 20.68.030 (G)] for the Planning Commission’s consideration.

Per Merced Municipal Code Section 20.68.030 (H) Design Review Permit, the review authority may approve an application for a Design Review Permit application only if all of the following findings can be made:

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

As shown under Finding A, the proposed project is consistent with the General Plan designation and Zoning classification for this site per Finding A above.

- b. The proposed project complies with all applicable provisions of the zoning ordinance and Municipal Code.*

With approval of the conditions found within this resolution, the proposal would comply with all applicable provisions of the Zoning Ordinance and Municipal Code.

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

With approval of the conditions found within this resolution, the pylon design and layout described under Finding D and shown at Attachments B and C of Planning Commission Staff Report #23-034 would not interfere with the enjoyment of existing and future neighboring properties and structures.

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

The proposal meets City standards with approval of this permit and the conditions found within this resolution. The proposed project would not be materially detrimental to the public health, safety, or welfare, or be injurious to the property or improvements in the vicinity of the proposed project.

Environmental Clearance

- H) Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (Attachment G of Planning Commission Staff Report #23-034).

CITY OF MERCED
Planning Commission

Resolution #4104

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

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through O (Exhibit B) of Staff Report #23-035; and,

WHEREAS, the Merced City Planning Commission concurs with the Findings for Conditional Use Permits in Merced Municipal Code Section 20.68.020 (E) and Site Plan Review Permits in Merced Municipal Code Section 20.68.050 (F), and other Considerations as outlined in Exhibit B; and,

NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #22-45, and approve Conditional Use Permit #1268, and Site Plan Review #506, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by reference.

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

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

NOES: None

ABSENT: None (1 vacancy)

ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4104

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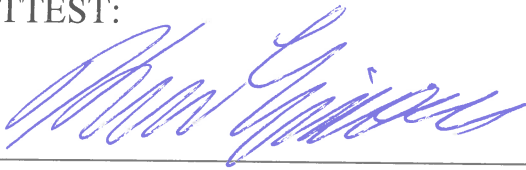
January 18, 2023

Adopted this 18th day of January 2023



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachments:

Exhibit A - Conditions of Approval

Exhibit B - Findings

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

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan), Exhibit 2 (floor plan), Exhibit 3 (elevations), and Exhibit 4 (landscape plan) -- Attachments C, D, E , and F of Staff Report #23-035 except as modified by the conditions.
2. All conditions contained in Resolution #1249-Amended (“Standard Conditional Use Permit Conditions”—except for Condition #16 which has been superseded by Code) shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply, including the Post Construction Standards for Storm Water that became effective July 1, 2015.
5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, suits, or proceeding. Developer/applicant shall be responsible to immediately prefund the litigation cost of the City including, but not limited to, City’s attorney’s fees and costs. If any claim, action, suits, or proceeding is filed challenging this approval, the

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

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

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

22. A temporary banner permit shall be obtained prior to installing any temporary signs. Free-standing temporary signs (i.e., sandwich boards, A-frame signs, etc.) are prohibited.
23. Full public improvements shall be installed/repared if the permit value of the project exceeds \$100,000.00. Public improvements may include, but not be limited to, installing traffic calming measures, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they comply with ADA standards and other relevant City of Merced/State/Federal standards and regulations.
24. The parking lot layout shall comply with all applicable City Standards. Parking lot trees shall be provided at a ratio of one tree for every six parking spaces. These trees shall be installed per the City's Parking Lot Landscape Standards, shall be a minimum of 15-gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list).
25. No beer or wine shall be displayed or stored outside of the cooler areas.
26. The proprietor and/or successors in interest and management shall be prohibited from advertising or promoting beer & wine and/or distilled spirits on the motor fuel islands and no self-illuminated advertising for beer or wine shall be located on the building or in the windows.
27. No sale of alcoholic beverages shall be made from a drive-in window.
28. No display or sale of beer or wine shall be made from an ice tub.
29. Employees on duty between the hours of 10 p.m. and 2 a.m. shall be at least 21 years of age to sell beer and wine.
30. The proprietor and/or successors in interest and management shall comply with all Municipal Codes relating to loitering, open container laws and other nuisance-related issues.
31. The area within the convenience market dedicated to the display and sale of alcoholic beverages (beer and wine) shall not be more 115 square feet as shown in the floor plan at Attachment D of Staff Report #22-035.
32. A grease interceptor may be required. This will be determined at the building permit stage based on the type of food prepared and served and waste generated.
33. The City reserves the right to periodically review the area for potential problems. If problems (on-site or within the immediate area) arise as

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

34. No single-serving containers shall be sold separately unless authorized by the City of Merced Police Department. All single-serving beer and wine containers shall be sold as part of a pack or carton, except for wine bottles at or over 750 ml.
35. Prior to obtaining a license from the Alcoholic Beverage Control to sell alcohol, the business (for the convenience market) shall obtain approval for a Finding of Public Convenience or Necessity from the Merced City Council.
36. This approval is subject to the business owner being in good standing with all laws of the State of California, including the Alcohol Beverage Control (ABC), City of Merced, and other regulatory agencies.
37. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks, and open space. CFD procedures shall be initiated before issuance of the first certificate of occupancy or filing of a parcel map. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.
38. The applicant shall work with a traffic engineer to determine the options for vehicle turning movements from the existing driveway from Loughborough Drive. The developer shall be responsible for re-stripping and improvements, as required by the City of Engineer during the building permit stage.
39. Tobacco products shall be stored away from the general public, behind the employee counter that is inaccessible to customers.

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

Findings and Considerations
Planning Commission Resolution #4104
Conditional Use Permit #1268 and Site Plan Review Permit #506

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

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

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

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

Alcohol Sales

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

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

Criteria #1

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

Finding #1

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

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

Criteria #2

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

Finding #2:

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

Criteria #3

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

Finding #3:

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

Incidents and Cases Reported (December 2021 - December 2022)

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

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

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

Neighborhood Impact

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

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

Building Elevations

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

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

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

Floor Plan

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

Signage

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

Traffic/Circulation

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

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

Parking

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

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

Public Improvements/City Services

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

Site Design

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

Landscaping

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

Conditional Use Permit Findings

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

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

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

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

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

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

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

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

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

Zoning Ordinance Compliance – Mandatory Site Plan Review Findings

- M) A Site Plan Review Permit is required for this project for two reasons: to develop a project within a Planned Development Zone, and also because a gas station is listed as a use that requires site plan review under the Land Use Table 20.10-1 – Permitted Land Uses in the Commercial Zoning Districts. This section applies to Planned Development Zones with General Plan designations of Regional Community Commercial. Therefore, in order for the Planning Commission to approve or deny a site plan review permit, they must consider the following criteria and make findings to support or deny each criteria. The Findings required by MMC Section 20.68.050 (F) “Findings for Approval for Site Plan Review Permits” are provided below along with recommended reasons to support each finding.

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

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

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

Approval of the proposed Site Plan Review Permit and implementation of the conditions of approval for CUP #1268 and Site Plan Review #506 would bring the project into compliance with the applicable provisions of the Zoning Ordinance and Municipal Code.

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

As shown under Finding C -Neighborhood Impact, Finding D – Building Elevations, and Finding J – Site Design, staff believes that the location, size, design, and operating characteristics of the proposal would be compatible existing and future land uses in the vicinity. Therefore, with the implementation of the conditions of approval, the proposed project would not interfere with the enjoyment of the existing and future land uses in the vicinity.

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

As shown under Finding D – Building Elevations, the applicant is proposing a contemporary design with a mixture of materials, colors, and textures. The building exterior would consist of a stucco finish with stone veneers. All structures onsite would generally consist of a uniform design and aesthetic. Staff believes that the proposed architectural design makes use of appropriate materials, texture, and color, and will remain aesthetically appealing and appropriately maintained.

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

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

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

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

The proposed project does not include any uses that would be detrimental to the public health, safety, and welfare of the City with implementation of the conditions of approval for the Conditional Use Permit and Site Plan Review Permit. Implementation of the conditions of approval and adherence to all Building and Fire Codes, and City Standards would prevent the project from having any detrimental effect on the health safety, and welfare of the City.

Tobacco Sales

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

Environmental Clearance

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

CITY OF MERCED
Planning Commission

Resolution #4097

WHEREAS, the Merced City Planning Commission at its regular meeting of January 18, 2023, held a public hearing and considered **General Plan Amendment #22-03**, initiated by Eric Pluim on behalf of Gateway Park Development Partners, LLC, property owners. This application involves a request to change the General Plan roadway classification from Divided Arterial to Collector for a portion of Mission Avenue from Coffee Street to the east side of Pluim Drive (extended); and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through G of Staff Report #22-543 (Exhibit B); and,

NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council approval of the Addendum to the *Merced Vision 2030 General Plan* Environmental Impact Report (Environmental Review #22-25) and General Plan Amendment #22-03, subject to the Conditions set forth in Exhibit A, and the Findings set forth in Exhibit B, attached hereto and incorporated herein by this reference.

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

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

NOES: None

ABSENT: None (1 vacancy)

ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4097

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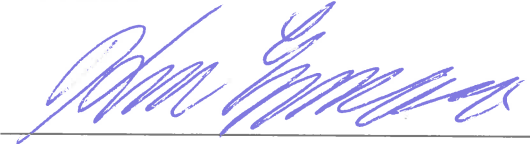
January 18, 2023

Adopted this 18th day of January 2023



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Exhibits:

Exhibit A – Conditions of Approval

Exhibit B – Findings/Considerations

Conditions of Approval
Planning Commission Resolution #4097
General Plan Amendment #22-03

1. The General Plan roadway classification for the portion of Mission Avenue between Coffee Street and the east side of Pluim Drive (extended) shall be changed from “Divided Arterial” to “Collector” as shown on the map at Attachment B of Planning Commission Staff Report #22-543.
2. The Circulation Plan of the *Merced Vision 2030 General Plan* (Figure 4.1) shall be updated to reflect this change.
3. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
4. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, suits, or proceeding. Developer/applicant shall be responsible to immediately prefund the litigation cost of the City including, but not limited to, City’s attorney’s fees and costs. If any claim, action, suits, or proceeding is filed challenging this approval, the developer/applicant shall be required to execute a separate and formal defense, indemnification, and deposit agreement that meets the approval of the City Attorney and to provide all required deposits to fully fund the City’s defense immediately but in no event later than five (5) days from that date of a demand to do so from City. In addition, the developer/applicant shall be required to satisfy any monetary obligations imposed on City by any order or judgment.

5. The developer of the Merced Gateway Marketplace Shopping Center shall construct the development's portion of Mission Avenue, which is equal to one-half of a collector equivalent, north of the center line on Mission Avenue. Construction shall include, but is not limited to, pavement, sidewalk, curb, gutter, street trees, streetlights, and landscaping in the park strip.
6. The developer of the Merced Gateway Marketplace Shopping Center shall initiate vacation proceedings to request the City vacate excess right-of-way on Mission Avenue. This request shall be initiated at the developer's expense and shall be made prior to a Notice of Completion being issued for the work on Mission Avenue.
7. The area subject to vacation as required by Condition #6 shall be fully landscaped to match the rest of the shopping center.

**Findings and Considerations
Planning Commission Resolution #4097
General Plan Amendment #22-03**

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed change to the road classification would comply with the General Plan if the proposed amendment is approved by the City Council.

Zoning Code Compliance

- B) The Zoning Ordinance does not address changes to the General Plan Circulation Element and Circulation Plan.

Traffic/Circulation

- C) The proposal to change the segment of Mission Avenue from Coffee Street to the east side of Pluim Drive (extended) was supported by a traffic analysis prepared by KD Anderson & Associates, Inc. (Attachment E of Planning Commission Staff Report #22-543). The analysis provided long-term daily traffic volumes and resulting traffic conditions under the current General Plan circulation plan. A transportation model obtained from the Merced County Association of Governments (MCAG) was utilized to determine the estimated traffic volume in the area. The applicable roadway classification for this segment of Mission Avenue was then determined based on the daily traffic volume and the General Plan's applicable Level of Service (LOS) thresholds.

A new 24-hour count collected on May 28, 2021, revealed that Mission Avenue from Coffee Street to Arboleda Drive currently operates at LOS C. The section of Mission Avenue from Coffee Street to Tower Road had 375 average daily trips (ADT's), of which 28 (7%) were trucks. Mission Avenue from Tower Road to Arboleda had 109 ADT's with 14 trucks (13%).

The results of the analysis show that if the segment of Mission Avenue between Coffee Street and the east side of Pluim Drive (extended) is reduced to a 2-lane Collector, it would continue to operate at the same level of service (LOS C) as it was expected to operate as a Divided Arterial. The *Merced Vision 2030 General Plan* identifies LOS D as an acceptable level of service. Therefore, even if the classification for this segment is changed, it would still operate at a better level than is acceptable per the General Plan.

The Merced Gateway Marketplace Shopping Center is expected to have two driveway entrances from this segment of Mission Avenue. Local traffic from the immediate area could continue to use Mission Avenue, but with the extension of Pluim Drive, would also have access to Campus Parkway and Gerard Avenue without using this segment of Mission Avenue. A traffic signal would be installed at the intersection of Campus Parkway and Pluim Drive with a future phase of development within the shopping center. This will allow any traffic traveling north on Pluim Drive from Mission Avenue to have full turning movements. Currently, a four-way stop exists at the intersection of Coffee Street and Campus Parkway that allows left and right-hand turns. Campus Parkway runs parallel to this segment of Mission Avenue, therefore, the majority of traffic in this area would use Campus Parkway rather than Mission Avenue.

Public Improvements/City Services

D) If the requested change is approved, Mission Avenue would be constructed as a Collector with a 74-foot right-of-way (Attachment F). This would include the following:

- Two 12-foot-wide travel lanes (one in each direction)
- A 7-foot-wide parking area
- A 5-foot-wide bicycle lane
- A 7.5-foot-wide park strip
- A 5-foot-wide sidewalk
- A 6-inch gap between the sidewalk and the property line

The parking area, bicycle lane, park strip, and sidewalk would ultimately be required on both the north and south side of Mission Avenue. The Merced Gateway Marketplace project is required to install all improvements on the north side of the center line in Mission Avenue (Condition #5). The improvements south of the center line of Mission Avenue would be installed when the property to the south develops.

Vacation of Right-of-Way

E) Currently, the City has acquired enough Mission Avenue right-of-way from the Merced Gateway Marketplace property to accommodate the width of a Divided Arterial (118-foot-wide). If the classification is reduced to a collector, the City will have excess right-of-way. Therefore, Condition #6 requires that the developer of the Merced Gateway Marketplace initiate a vacation application to request that the City vacate the excess right-of-way

and return it to the Merced Gateway Marketplace property. The area vacated would be required to be landscaped to match the rest of the shopping center landscaping (Condition #7).

Neighborhood Impact/Interface

- F) As shown on the location map at Attachment B of Planning Commission Staff Report #22-543, the segment of Mission Avenue under consideration is adjacent to vacant farmland to the south and the Merced Gateway Marketplace to the north. Once extended, the traffic in the area would be able to use Pluim Drive to access Campus Parkway and Gerard Avenue without using this segment of Mission Avenue. As described above, a traffic signal would be installed at the intersection of Pluim Drive and Campus Parkway providing full turning movements at the intersection. Given the amount of traffic expected on this segment of Mission Avenue, it is not expected that the reduction of Mission from a Divided Arterial to a Collector would impact the immediate area.

The developer has been working with the property owner to the east, Merced Gateway, LLC, regarding potential impacts to their property. The parties have reached an agreement regarding the proposed change to the classification of Mission Avenue.

Environmental Clearance

- G) Pursuant to the California Environmental Quality Act (CEQA), the project was reviewed and an Addendum to the Environmental Impact Report for the *Merced Vision 2030 General Plan* SCH#2008071069 (Attachment G of Planning Commission Staff Report #22-543) was prepared.