

**REGULAR MEETING AGENDA
CITY OF MADERA
PLANNING COMMISSION**

**COUNCIL CHAMBERS - CITY HALL
TUESDAY
FEBRUARY 12, 2019
6:00 pm**

CALL TO ORDER

ROLL CALL

Commissioner Robert Gran, Jr. (Chairperson)
Commissioner Israel Cortes (Vice Chairperson)
Commissioner Ramon Lopez-Maciel
Commissioner Alex Salazar
Commissioner Pamela Tyler
Commissioner Richard Broadhead
Commissioner Ryan Cerioni

INTRODUCTION OF STAFF

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

The first fifteen minutes of the meeting are reserved for members of the public to address the Commission on items which are within the subject matter jurisdiction of the Commission. Speakers shall be limited to three minutes. Speakers will be asked to identify themselves and state the subject of their comment. If the subject is an item on the Agenda, the Chairperson has the option of asking the speaker to hold the comment until that item is called. Comments on items listed as a Public Hearing on the Agenda should be held until the hearing is opened. The Commission is prohibited by law from taking any action on matters discussed that are not on the Agenda and no adverse conclusions should be drawn if the Commission does not respond to public comment at this time.

MINUTES: None

NON-PUBLIC HEARING ITEMS

NP-1. Election of Chairperson and Vice-Chairperson for 2019

CONSENT ITEMS:

PUBLIC HEARING ITEMS:

1. TSM 2018-05 & PPL 2019-01 – Joseph Crown Subdivision

A noticed public hearing to consider a tentative subdivision map that will subdivide two properties into 87 lots located in the PD-6000 (Planned Development) zone district with a LD (Low Density) general plan land use designation. A precise plan will accompany the subdivision map for the development of single-family homes on the proposed 87 lots

(APN: 034-070-011). A Negative Declaration for the project was certified by the Planning Commission of the City of Madera on October 9, 2018.

2. REZ 2018-08 & TSM 2018-07 – Ellis and D Street Pre-zone and Subdivision

A noticed public hearing to consider an application for the pre-zoning of two properties into the PD-6000 (Planned Development) zone district and subdivision of the two properties into 61 lots located at the southwest corner of the intersection of Ellis Street and North D Street with a LD (Low Density) general plan land use designation (APNs: 038-070-012, 038-082-001). A Negative Declaration will also be considered by the Planning Commission

3. CUP 2018-22, 23 & SPR 2018-37 – Starbucks Drive-Thru and Outdoor Patio

A noticed public hearing to consider a conditional use permit and site plan review to allow for the construction of a multi-tenant commercial building with a Starbucks drive-thru and outdoor patio located in the Bethard Square shopping center located on the northwest of the intersection of South I Street and West Olive Avenue in the C1 (Light Commercial) Zone District with a C (Commercial) general plan land use designation (APN: 010-202-018). The project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA) guidelines, Section 15332 (In-Fill Development Projects).

4. CUP 2019-01 & SPR 2019-02 – Roley's Detailing

A noticed public hearing to consider a conditional use permit and site plan review to allow for the establishment of an auto detail and repair shop located at the southwest corner of the intersection of North Gateway Drive and Roberts Avenue in the C2 (Heavy Commercial) zone district with a C (Commercial) general plan land use designation (APN: 006-053-001). The project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA) guidelines, Section 15301 (Existing Facilities).

5. CUP 2019-03 & SPR 2019-05 – FTS Enterprises Inc.

A noticed public hearing to consider a conditional use permit to allow for an automotive parts manufacturing, assembly and installation use with outdoor display activities, and a site plan review to allow for the construction of a 101,000 square foot manufacturing and warehousing building and a 10,000 square foot accessory building to be located southeast of the intersection of Condor Drive and Aviation Drive in the C2 (Heavy Commercial) Zone District with a C (Commercial) general plan land use designation (APN: 013-050-006). A Negative Declaration will also be considered by the Planning Commission

6. Development Agreement Annual Review – Madera Town Center

An annual review of the development agreement approved in conjunction with the Madera Town Center project (Ordinance 821) for the period running through August 1, 2018. This annual review has been scheduled pursuant to Section 10-3.1715 of the Madera Municipal Code, which required that the Planning Commission determine whether the principal party to the agreement, Zelman Retail Partners, has complied in good faith with the terms of the development agreement (APN: 013-240-001).

7. Development Agreement Annual Review – Madera Travel Center

An annual development agreement approved in conjunction with the Madera Travel Center project (Ordinance 938) for the period running through December 21, 2018. This annual review has been scheduled pursuant to Section 10-3.1715 of the Madera Municipal Code, which required that the Planning Commission determine whether the

principal party to the agreement, Love's Travel Center, has complied in good faith with the terms of the development agreement (APNs: 013-240-004, 005, 006 & 007).

ADMINISTRATIVE REPORTS:

COMMISSIONER REPORTS:

ADJOURNMENT:

The next regular meeting will be held on March 12, 2019.

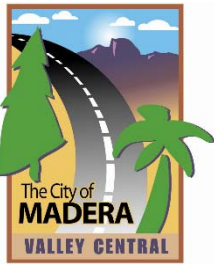
In compliance with the Americans with Disabilities Act, the meeting room is accessible to the physically disabled and the services of a translator can be made available. Requests for additional accommodations for the disabled, signers, assistive listening devices or translators needed to assist participation in the public meeting should be made at least seventy-two (72) hours before the meeting. If you need special assistance to participate in a City meeting or other services offered by this City, please contact the Planning Department office at (559) 661-5430. Those who are hearing impaired, may call 711 or 1-800-735-2929 for TTY Relay Services. Any and all persons interested in this matter may provide comments.

Any writing related to an agenda item for the open session of this meeting distributed to the Planning Commission less than 72 hours before this meeting is available for inspection at the City of Madera – Planning Department, 205 W. 4th Street, Madera, CA 93637 during normal business hours.

Pursuant to Section 65009 of the Government Code of the State of California, notice is hereby given that if any of the foregoing projects or matters is challenged in Court, such challenge may be limited to only those issues raised at the public hearing, or in written correspondence delivered to the Planning Commission at or prior to the public hearing.

All Planning Commission actions may be appealed to the City Council. The time in which an applicant may appeal a Planning Commission action varies from 10 to 30 days depending on the type of project. The appeal period begins the day after the Planning Commission public hearing. There is NO EXTENSION for an appeal period.

If you have any questions or comments regarding this hearing notice, you may call the Planning Department at (559) 661-5430. Si usted tiene preguntas, comentarios o necesita ayuda con interpretación, favor de llamar el Departamento de Planeamiento por lo menos 72 horas antes de esta junta (559) 661-5430.



CITY OF MADERA PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

Staff Report: Joseph Crown Subdivision TSM 2018-05, PPL 2019-01 & Environmental Determination Item # 1– February 12, 2019

PROPOSAL: The project proposal is for a tentative subdivision map that will subdivide one parcel into an 87-lot single-family residential neighborhood.

APPLICANT:	Joseph Crown	OWNER:	Fred Gleason
ADDRESS:	Vacant parcel	APN:	034-070-011
APPLICATION:	TSM 2018-05	CEQA:	Negative Declaration

LOCATION: The project site is located at the southwest corner of the intersection of Almond Avenue and Stadium Road.

STREET ACCESS: The project will provide direct access to Almond Avenue and Stadium Road.

PARCEL SIZE: The project parcel encompasses an approximate total of 19.95 acres.

GENERAL PLAN DESIGNATION: LD (Low Density)

ZONING DISTRICT: PD-6000 (Planned Development)

SITE CHARACTERISTICS: North of the project site are two rural residential homes and vacant lands. South of the project site is Alpha Elementary School. West of the project site is the Oldcastle industrial campus. East of the project site are single-family residential neighborhoods.

ENVIRONMENTAL REVIEW: A negative declaration was certified by the Planning Commission (Commission) for the Joseph Crown pre-zone on October 9, 2018. The tentative subdivision map is consistent with the development anticipated within the certified negative declaration.

SUMMARY: The tentative subdivision map proposes the creation of 87 lots from one existing lot. The proposed density of the subdivision complies with the density requirements of the Zoning Ordinance and General Plan. A 1.03-acre park feature is included within the subdivision and is consistent with the requirements of the City's parkland acquisition ordinance. A remainder is included as a component of the tentative map, which requires direct access from an interior street and removal of access from the collector street (Stadium Road). The remainder is not included as a parcel of the subdivision map. A precise plan is required to address any subsequent development in the subdivision. Staff recommends approval of the subdivision map.

APPLICABLE CODES AND PROCEDURES

MMC §10-2.401 Subdivision Maps (five or more parcels)
California Public Resources Code §21000, California Environmental Quality Act "CEQA".
Government Code §66410-66424.6, Subdivision Map Act

PRIOR ACTION

Rezone 2018-05 was considered at the October 9, 2018 Commission hearing, resulting in a recommendation that the project property be pre-zoned to the PD-6000 Zone District. The City Council approved the ordinance pre-zoning the subject property on December 19, 2018. The property received approval of annexation into the City by the Local Agency Formation Commission (LAFCO) at the January 23, 2019 LAFCO meeting.

ANALYSIS

The following analysis includes a background of the tentative subdivision map proposal, the density requirements applicable to the project, public infrastructure requirements, the proposed street names in the subdivision, parkland dedication requirements, applicability of a remainder within the subdivision, and future requirements of a precise plan.

Tentative Subdivision Map

The tentative subdivision map will create 87 single-family residential lots ranging in size from 5,247 to 10,982 square feet. The average lot size is 6,093 square feet, consistent with the requirements of the PD-6000 Zone District and LD General Plan land use designation.

Density Requirements

The LD General Plan land use designation has a density range requirement of between 2.1 and 7 units per acre. Because the parcel is over 10 acres in site area, the project is required to meet the target density of 5.25 units per acre (Policies LU-7 and LU-19). The PD-6000 Zone District has a maximum density requirement of one unit per each 6,000 square feet of site area.

Per the General Plan, the residential density calculation consists of the gross acreage of the project parcel(s) less any acreage required for the following:

- Collector and arterial street rights-of-way;
- Public parks;
- Public facilities;
- Floodways or floodplains;
- Protected biological habitats;
- Other unique constraints applicable to the property, as determined by the City.

Based on these factors, the residential density calculation for the project area equates to a total of 16.50 acres, resulting in allowable density within a range of 87 and 115 units. The aforementioned target density equates to a total of 87 units. The proposal of 87 single-family

residential lots provides consistency with the target density and overall density requirements of the General Plan and Zoning Ordinance.

Public Infrastructure

Public infrastructure and utilities required by the Madera Municipal Code (MMC) and the General Plan will be constructed in support of the tentative subdivision map. Required infrastructure includes sewer, water and storm drainage infrastructure consistent with the City's master plans. Street improvements include the completion of West Almond Avenue and Stadium Road to the City's half-street cross section for a collector street and interior streets within the subdivision.

The proposed lots will be included in the City's Community Facilities District 2005-01 to collect assessments for increased demand on fire, police and storm water drainage.

Street Names

The process for naming streets calls for the applicant to propose names on the face of the tentative map, which are reviewed and approved as part of the overall project. With the exception to the existing perimeter streets, the proposed street names are largely exclusive to the proposed subdivision. The internal streets in the subdivision are as follows:

- Bent Oak Trail
- Bolinas Way
- Coloma Place
- Crown Terrace
- Diamante Lane
- Ivy Glen Drive
- Orchard Hills Drive
- Rubicon Avenue

Parkland Acquisition

The City's recently approved parkland acquisition ordinance establishes procedures for requiring the dedication of parkland, the payment of fees in-lieu thereof or a combination of both. In this case, the dedication of parkland is required. The amount of parkland area required for this project is 1.01 acres. The applicant has provided 1.03 acres of parkland that would serve as a public park to the subdivision, providing conformance with the parkland acquisition ordinance and consistency with the goals and policies of the General Plan.

Remainder

The sub-divider is electing to designate a remainder within the subdivision. The remainder encompasses approximately 0.64 acres located at the southeast corner of the subdivision. The remainder parcel is currently developed with a single-family home, garage and storage barn. Per the Subdivision Map Act, remainders cannot be counted as a parcel of the subdivision map.

The Subdivision Map Act specifies that construction requirements for improvements shall not be required until a permit or other grant of approval for development is issued by the City for remainders. This contradicts Section 66473.5 of the Subdivision Map Act, which states that a local agency cannot approve a tentative map unless the map provides consistency with the General Plan. Policy CI-18 of the General Plan states, "Direct access from a residential lot onto an arterial, collector, or local/branch collector is allowed only where there is no feasible alternative." The remainder parcel has two unimproved driveways that front onto Stadium Road,

which is a collector street. The proposed tentative map provides access onto an interior street within the subdivision, which is a feasible alternative to providing access onto a collector street. Staff recommends one driveway be constructed to City standards on the interior street within the subdivision (Bent Oak Trail). Staff also recommends a six-foot tall decorative masonry block wall with capstone be constructed along the perimeter of the subdivision (Stadium Road and West Almond Avenue).

Precise Plan

The properties being subdivided are located within a PD Zone District, which requires approval of a precise plan by the Commission when development is proposed. Precise plans, when applicable, typically accompany subdivision maps as a component of the project. Staff recommends the approval of a precise plan by the Commission after specific design details for the project are proposed by the home builder.

Other Department and Agency Comments

The project was reviewed by various City Departments and outside agencies. The responses and recommendations have been incorporated into the recommended conditions of approval included in this report.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

The first of the four core vision statements in the Vision Plan is “A Well-Planned City.” The Commission, considering how the neighborhood and infrastructure can be maintained, is actively implementing this key concept of the Vision Plan. Moreover, approval of the project will help provide consistency with Strategy 131, which states, “Create well-planned neighborhoods throughout Madera that promote connectivity and inclusiveness with a mix of densities and commercial components.”

RECOMMENDATION

The information presented in this report supports a recommendation of approval for the tentative subdivision map, subject to the recommended conditions of approval. It is recommended that the Commission consider this information, together with testimony provided at the public hearing, and approve Tentative Subdivision Map (TSM) 2018-05.

PLANNING COMMISSION ACTION

The Commission will be acting on TSM 2018-05.

Motion 1a: Move to approve TSM 2018-05, subject to the findings and conditions of approval as listed:

Findings

- A negative declaration was certified by the Commission for the Joseph Crown prezone on October 9, 2018. The tentative subdivision map is consistent with the development anticipated within the certified negative declaration.

- TSM 2018-05 is consistent with the purpose and intent of the LD (Low Density) General Plan land use designation and the PD-6000 (Planned Development) Zone District.
- The proposed 87-lot tentative subdivision map does not conflict with City standards or other provisions of the MMC.
- City services and utilities are available or can be extended to serve the area.

CONDITIONS OF APPROVAL

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by receipt in the Planning Department of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within 30 days of the date of approval.
2. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specified in the conditions of approval listed herein or mandated by statutes.

Engineering Department

General

3. Prior to recordation of the final map, the applicant shall, at their sole expense, annex the subdivision properties into Community Facilities District (CFD) 2005-01 and pay all applicable fees. All properties included within the subdivision shall be made a part of CFD 2005-01 and subject to its taxes.
4. A final subdivision map shall be required per Section 10-2.502 of the MMC. If the project is phased, the phasing pattern is subject to approval by the City Engineer to ensure that the applicable conditions of approval are satisfied.
5. All lots are to be numbered in sequence throughout the entire subdivision, including all phases, with the last lot in each phase circled for identification. As an alternative, subject to the approval of the City Engineer, lots may be numbered in sequence within blocks that are also separately identified. A consecutive subdivision name and a consecutive phase number shall identify multiple final maps filed in accordance with an approved tentative map.
6. A benchmark shall be established per City standards prior to acceptance of the subdivision improvements. The City Engineer shall designate the location.
7. All construction vehicles shall access the site by a route approved by the City Engineer, which will minimize potential damage to other streets and disruption to the

neighborhood. A construction route and traffic control plan to reduce impact on the traveling public shall be approved prior to any site construction or initiation of work within a public right-of-way.

8. Nuisance onsite lighting shall be redirected, as requested by the City Engineer, within 48 hours of notification.
9. Development impact fees shall be paid at time of building permit issuance.
10. Improvement plans sealed by an engineer shall be submitted to the Engineering Department according to the engineering plan review submittal sheet and civil plan submittal checklist.
11. The developer shall pay all required fees for processing a subdivision map and completion of the project. Fees due include, but shall not be limited to, the following: subdivision map review and processing fee, plan review, easement acceptance, map recordation and improvement inspection fees.
12. Improvements within the City's right-of-way require an encroachment permit from the Engineering Department.
13. The improvement plans for the project shall include the most recent version of the City's General Notes.

Sewer

14. Sewer lines installed to serve this subdivision shall be sized accordingly and shall be a minimum of eight inches in diameter. Sewer main connections to any existing City main six inches or larger in diameter shall require the installation of a manhole. All sewer mains shall be air-tested, mandrelled and videotaped after the trench compaction has been approved and prior to paving. DVD's shall be submitted to the City Engineer and be approved prior to paving with all costs to be borne by the sub-divider.
15. Sewer services shall be located at the approximate centerline of each lot or as required for construction of residential buildings with a cleanout installed per City standards and identified on the curb face. Termination of service shall be ten feet past the property line. Where contiguous sidewalks are installed, the four-inch sewer cleanout shall be located eighteen inches back of the sidewalk in a dedicated public utility easement. Sewer cleanouts shall not be located within the sidewalk or approach areas unless approved by the City Engineer. Sewer services shall be installed ten feet beyond the property lines as a part of the sewer system installation for testing purposes.
16. Existing septic tanks, if found, shall be removed, permitted and inspected by the City of Madera Building Department.
17. The developer shall reimburse its fair share cost to the City for the previously constructed sewer main along the Stadium Road project frontage.

Storm Drain

18. Storm runoff from this project site is planned to go to the Stadium basin located north of the project site. The developer shall, as may be necessary, construct sufficient facilities in accordance with criteria in the Storm Drainage Master Plan to convey storm runoff to the existing basin and excavate the basin to an amount equivalent to this project's impact on the basin. A detailed drainage study shall be provided to support the chosen path of conveyance and design of any necessary conveyance facilities. Construction of pipe conveyance facilities are eligible for reimbursement through the City's Impact Fee Program, subject to the availability of funds.
19. This project shall comply with the design criteria as listed on the National Pollutant Elimination Systems (NPDES) General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer System (MS4's), as mandated by Water Quality Order No. 2013-0001-DWQ, NPDES General Permit No. CAS0000004.

Streets

20. The developer shall be a proponent of annexing into Landscape Maintenance District (LMD) Zone 29 (See Attachment 3). If the annexation into LMD Zone 29 is not attainable, the developer shall at their sole expense, form a new Landscape Maintenance District zone. The sub-divider shall sign and submit a landscape district formation and inclusion form, an engineer's report and map prior to recordation of any final map.
21. Prior to the approval of any final maps, the developer shall submit a cash deposit in an amount sufficient to maintain lighting and landscaping within the required LMD Zone 29 or new LMD zone for a period of one year. The specific amount of the deposit shall be determined by the City Engineer and be established based on landscape plans approved by the Parks and Community Services Department and the engineer's report for the required improvements. The deposit will be used to maintain landscaping improvements, existing and new improvements required to be constructed by the developer and included within the Citywide LMD, after the improvements for the subdivision have been approved, but before any revenues are generated by the assessment district to pay for the maintenance of the landscape. Any funds deposited by the developer and not required by the Parks and Community Services Department for maintenance of eligible landscaping shall be refunded to the developer.
22. Stadium Road shall be developed to an 80-foot street with a ten-foot sidewalk pattern. The fronting half of the streets shall include, but not be limited to, curb and gutter, sidewalk, street lights and fire hydrants. All improvements shall be constructed per current City standards. Adequate transition with the existing improvements relative to grade and alignment shall be provided.
23. The south half of West Almond Avenue shall be developed to an 80-foot collector standard street with a ten-foot sidewalk pattern. The south half of the street shall include, but not be limited to, sidewalk, street lights, fire hydrants, curb and gutter, and a 28-foot asphalt section. The north half of the street shall include, but not be limited

to, a twelve-foot pavement section and swale grading for drainage storage as required (total pavement section is 40 feet to accommodate for a twelve-foot eastbound lane, twelve-foot turn lane, twelve-foot westbound lane and four-foot shoulder for the westbound lane). All improvements shall be constructed per current City standards and may be modified by the City Engineer to account for unforeseen conditions. The center two lanes of this street construction (24 feet) are eligible for reimbursement through the City's Impact Fee Program, subject to the availability of funds. Adequate transition with the existing improvements relative to grade and alignment shall be provided. Any provision that complies with Fire Marshal requirements shall be constructed. The developer shall obtain easements, when necessary. Grading transitions from road surface to the existing land to the north of the roadway section shall occur within the existing northern 30 feet of right-of-way.

24. Interior streets shall be constructed in accordance with City standards for a residential street including a five-foot sidewalk, curb and gutter, street lights, fire hydrants and all other components necessary to complete construction per City standards.
25. All existing driveways fronting Stadium Road shall be abandoned and access shall be provided via internal subdivision streets.
26. The proposed access point along Stadium Road shall be located at a minimum of 200 feet from the southern intersection curb line of West Almond Avenue and Stadium Road.
27. An Offer of Dedication shall be made to dedicate sufficient right-of-way along the entire project parcel frontages of Stadium Road and West Almond Avenue to provide a half-street width of 40 feet, west and south of the respective center lines, to accommodate for a collector standard roadway.
28. A public utility easement ten-feet wide shall be dedicated along the entire project parcel frontages of all internal streets.
29. Traffic calming features, as approved by the City Engineer, shall be implemented throughout the interior subdivision streets. Maximum distance between calming devices shall be 300 feet. Increases in separation shall be approved by the City Engineer.
30. Landscaping and irrigation systems shall be installed in accordance with the approved landscaping and irrigation plans before the final building inspection of any adjacent residential units.
31. Access ramps shall be installed at all curb returns per City standards.
32. Driveway approaches shall be constructed per current City standards.

33. "No Parking" signs shall be installed along Stadium Road and West Almond Avenue frontages per City standards.
34. The developer shall be required to install metered street lights along the Stadium Road and West Almond Avenue frontages and interior subdivision streets in accordance with current City spacing standards. Street lights shall be LED using Beta Lighting standards or equal in accordance with City of Madera standards.
35. Except for streets not having direct residential access, installation of sidewalks and approaches may be deferred and constructed at the builder's expense with residential development after the acceptance of the subdivision improvements. Each dwelling shall, at occupancy, have full, uninterrupted ADA access from the front door to the nearest collector street, arterial street or other street that provides ADA access provisions. Provisions for construction in conjunction with building permits shall be established as part of the improvement plan approval and subdivision agreement, and bonding for uncompleted work in conjunction with the subdivision's public improvements will not be required.
36. If developed in phases, each phase shall have two points of vehicular access within a recorded easement for fire and other emergency equipment and for routes of escape which will safely handle evacuations as required by emergency services personnel. An all-weather access road shall be two inches of type "B" asphalt over six inches of 90 percent native soil or four inches of Class II aggregate base capable of withstanding 40,000 pounds of loading. A maintenance covenant and easement along with associated fees shall be recorded prior to recordation of the final map for any phased development.
37. Improvement plans prepared in accordance with City standards by a registered civil engineer shall be submitted to the City Engineer for review and approval on 24-inch by 36-inch tracing paper with the City of Madera logo on the bottom-right corner. The cover sheet shall indicate the total lineal feet of all streets, fire hydrant and street water main lineal feet, and sewer line lineal feet, a list of items and quantities of all improvements installed and constructed for each phase respectively, as well as containing an index schedule. This subdivision is subject to the City standards. The plans shall include the City of Madera title block and the following:
 - a. Detailed site plan with general notes, including the location of any existing wells and septic tanks.
 - b. Street plans and profiles
 - c. Drainage ditches, culverts and other structures (drainage calculations to be submitted with the improvement plans).
 - d. Streetlights.
 - e. Traffic signals.
 - f. Construction details including traffic signage and striping plan.
 - g. Water and sewer plans (sewage flow and water demand calculations to be submitted with the improvement plans);

- h. Grading plan indicating flood insurance rate map community panel number and effective date;
- i. Landscape and irrigation plan for off-site landscaping improvements shall be prepared by a licensed landscape architect or engineer;
- j. Storm water pollution control plan and permit;
- k. Itemized quantities of the off-site improvements to be dedicated to the City.

38. Submittals to the Engineering Department shall include the following:

- a. Engineering Plan Review Submittal Sheet;
- b. Civil Plan Submittal Checklist – all required items shall be included on the drawings;
- c. Four copies of the final map;
- d. Two sets of traverse calculations;
- e. Two preliminary title reports;
- f. Two signed copies of conditions;
- g. Six sets of complete improvement plans;
- h. Three sets of landscaping plans;
- i. Two sets of drainage calculations;
- j. Two copies of the engineer's estimate.

Partial submittals will not be accepted by the Engineering Department.

- 39. All utilities (water, sewer, electrical, phone, cablevision, etc.) shall be installed prior to curb and gutter installation. Trench compaction shall be as required for curb and gutter installation. If curb and gutter is installed prior to utility installation, then all trenches shall be back-filled with a three-sack sand slurry mix extending one-foot past the curb and gutter in each direction.
- 40. The applicant shall coordinate with the pertinent utility companies as required regarding establishment of appropriate easements and undergrounding of service lines. A ten-foot public utility easement shall be required along all interior lot frontages.
- 41. All public utilities shall be undergrounded, except transformers, which may be mounted on pads. Public utility easements shall be dedicated outside and adjacent to all street rights-of-way.
- 42. A preliminary title report and plan check fees along with the engineer's estimated cost of installing the subdivision improvements shall be submitted with the initial improvement plan submittal. Inspection fees shall be paid prior to initiating construction.
- 43. A final soils report including "R" values in future streets prepared by a registered civil engineer in accordance with the California Health and Safety Code shall be submitted

for review prior to the approval of the improvement plans and the filing of the final map, if required by the City Engineer. The date and name of the civil engineer who prepares the report shall be noted on the final map.

44. The sub-divider shall enter into a subdivision agreement in accordance with the MMC prior to recordation of the final map. The subdivision agreement shall include for deposit with the City, a performance bond, labor bond, material bond, cash bond or other bonds as required by the City Engineer, prior to acceptance of the final map.
45. The sub-divider may commence off-site construction prior to approval of the final map in accordance with Section 7-2.02 of the MMC, provided that an encroachment permit has been issued and improvement plans have been submitted and approved. As a component of the encroachment permit, the applicant shall submit a 100 percent performance bond, additional bond (50 percent labor and material), Storm Water Pollution Prevention Plan and insurance certificate prior to initiating any construction work within any street or right-of-way which is dedicated or proposed to be dedicated by the subdivision. The encroachment permit fee shall be per City of Madera Development Application Fees as approved by the City Council and shall be paid at the time of permit.
46. The developer's engineer, upon completion of subdivision-related improvements, shall certify to the City Engineer that the improvements are made in accordance with City requirements and the approved plans. As-built plans showing final existing conditions and actual grades of all improvements and facilities shall also be submitted prior to acceptance of the subdivision improvements by the City.

Water

47. The water system shall be designed to meet the required fire flow for this type of development and shall be approved by the Fire Department and shall be operational prior to any framing construction on-site. Fire flows shall be determined by Uniform Fire Code Appendix III-A.
48. Unless the City Engineer or fire flow analysis specifies larger water lines, a minimum of eight inches in diameter shall be installed in all interior streets. Water main installation shall be per City of Madera installation procedures and guidelines. Any new water main or fire hydrant line installations of eighteen feet or more shall be sterilized in accordance with the water main connection procedures, including the temporary use of a reduced pressure assembly. Water service connections are required to be hot tap type connection to the existing City main. If the subdivision is constructed in phases, blow-offs shall be required at each termination point.
49. Prior to beginning any framing construction, approved fire hydrants shall be installed in accordance with spacing requirements for residential development (400 feet). A copy of the preliminary water and fire hydrant location plan shall be provided to the City Engineer and the Fire Protection Planning Officer for review and approval. Fire hydrants shall be constructed in accordance with City Standard W-26. Fire hydrant

pavement markers shall be installed as soon as the permanent pavement has been installed.

50. Water services shall be placed three feet from either property line, opposite of street light and fire hydrant installations, installed and tested at the time the water main is installed and identified on the curb face. Water meters shall not be located within driveway approaches or sidewalk areas. Water services shall not be located at fire hydrant or street light locations.
51. All water sources used for construction activities shall have an approved back-flow device installed. All water trucks/storage tanks will be inspected for proper air gaps or back-flow prevention devices.
52. Water service connections shall be constructed per current City standards including water meters located within the City's right-of-way.
53. Water connections not serving a residence shall be constructed per current City standards including water meters located within the City's right-of-way and backflow prevention device in private property.
54. Existing wells, if any, shall be abandoned as directed and permitted by the City of Madera for compliance with State standards.
55. A minimum of one water quality sampling station shall be installed within the subdivision and approved by the Public Works Department.
56. Prior to issuance of a building permit, a twelve-inch water main shall be constructed along the West Almond Avenue alignment along the entirety of the project parcel frontage from the intersection of Stadium Road and West Almond Avenue to the westernmost project property line.
57. The developer shall reimburse its fair share cost to the City for the previously constructed water main along the Stadium Road project frontage.

Subdivision Improvement Inspections

58. Engineering Department plan check and inspection fees, along with the engineer's estimated cost of installing off-site improvements shall be submitted along with the improvement plans. Inspection fees shall be due when all other fees are due per the subdivision agreement.
59. Prior to the installation of any improvements or utilities, the general contractor shall notify the Engineering Department 48 hours prior to construction. The inspector shall verify, prior to inspection, that the contractor requesting inspection uses plans signed by the City Engineer.

60. No grading or other construction activities, including preliminary grading on site, shall occur until the City Engineer approves the improvement plans or grading plans. The inspector shall verify, prior to inspection, that the contractor requesting inspection is using plans signed by the City Engineer.
61. No occupancy of any buildings within the subdivision shall be granted until subdivision improvements are completed to the satisfaction of the City Engineer. After request for final improvement inspection, the generation of a written punch list shall require a minimum of five working days.

Special Engineering Conditions

62. Project grading shall not interfere with the natural flow or adjacent lot drainage and shall not adversely impact downstream properties. Grading plans shall indicate the amount of cut and fill required for the project, including the necessity for any retaining walls. Retaining walls, if required, shall be approved as to design and calculation prior to issuance of a grading permit.
63. Lot fill in excess of twelve inches shall require a compaction report prior to issuance of any building permits. Soil shall not slope onto any adjacent property. Lot grade elevation differences with any adjacent properties of twelve inches or more shall require construction of a retaining wall.
64. Retaining walls, if required, shall be constructed of concrete blocks. Design calculations, elevations and location shall be shown on the grading plan. Retaining wall approval is required in conjunction with the grading plan approval.
65. Prior to the issuance of any building permits or any construction on the subdivision, a storm water pollution plan shall be prepared, and a storm water permit be obtained as required by the State Regional Water Quality Control Board for developments of over one acre in size.
66. Any construction work on Madera Irrigation District (MID) facilities shall not interfere with irrigation or storm water flows, or MID operations. Prior to any encroachment, modification, or removal of MID facilities, the sub-divider shall submit two sets of preliminary plans for MID approval. Permits shall be obtained from MID for the encroachment, modification or removal of MID facilities. Upon project completion, as-built plans shall be provided to MID. The abandonment of agricultural activities shall require removal of MID facilities at the owners' expense. Turnouts and gates shall be salvaged and returned to the MID yard.
67. Prior to recordation of the subdivision map, any current and/or delinquent MID assessments and estimated assessments for the upcoming assessment (calendar) year, as well as any outstanding crop water charges, standby charges or waiver fees shall be paid in full. Assessments are due and payable in full November 1 of the year preceding the assessment year.

68. The applicant shall coordinate with the United States post office relative to the proposed location of the postal boxes for the project. Regarding this item, all adjacent sidewalks shall retain a minimum clear walkway width of five feet.

Fire Department

69. The subdivision shall provide a minimum of two means of fire access with compliant fire roads in accordance with the California Fire Code (CFC).
70. Fire hydrants shall be placed in accordance with the CFC and City of Madera regulations.

Planning Department

General

71. Conformance with the goals and policies of the General Plan shall be facilitated through the precise plan process. Prior to recordation of the tentative subdivision map, the applicant shall submit an application for a precise plan with submittals sufficient to make findings of General Plan conformance. The applicant shall submit proposed model floor plans and elevations as a component of the application.
72. Vandalism and graffiti on walls, fences and/or homes shall be corrected pursuant to the MMC.

Street Names

73. Final street names shall be approved by the Building Official prior to recordation of the map for each phase of the development or approval of the improvement plans. Road names matching existing County roads shall maintain the current suffix. All streets shall have street names on the final map. Entry streets, cul-de-sacs and courts shall utilize the name of the nearest subdivision street. The internal street names of the subdivision shall be as follows:

- | | |
|------------------|-----------------------|
| • Bent Oak Trail | • Diamante Lane |
| • Bolinas Way | • Ivy Glen Drive |
| • Coloma Place | • Orchard Hills Drive |
| • Crown Terrace | • Rubicon Avenue |

Tentative Subdivision Map

74. There shall be no direct access provided on all properties along the perimeter (Stadium Road and West Almond Avenue property frontages) of the subdivision. This includes lots 32-49 and the remainder.
75. The following lots will only provide direct access to the following interior streets:
- Bent Oak Trail: Lots 48, 49 and the remainder

- Bolinas Way: Lots 7, 12, 13 and 18
- Coloma Place: Lots 19, 24 and 25
- Diamante Lane: Lots 1 and 6
- Rubicon Avenue: Lots 78, 79 and 80

Fences and Walls

76. A six-foot tall decorative split-faced masonry block wall with capstone shall be constructed along all property lines that abut Stadium Road and West Almond Avenue, to be approved by the Planning Manager.
77. For lots 48 and 49, the wall shall be constructed to extend from the rear property line along the exterior side property line. Within the first fifteen feet of this extension, starting at the front property line, the wall shall be three feet in height. The remaining section of the wall shall be six feet in height.
78. For lots 78 and 79, the construction of the first fifteen feet of the wall, starting at the front property line, shall be three feet in height. The remaining section of the wall shall be six feet in height.

Madera Irrigation District (MID)

79. The existing MID pipeline running north-south at the east end of the project site (Stadium Road) is an old 30-inch cast-in-place pipeline not designed for urban development. The applicant shall abandon the 30-inch cast-in-place and install a brick and mortar plug at the northeast corner sufficient to MID guidelines.

Motion 1b: Move to continue the public hearing on Precise Plan (PPL) 2019-01 to the March 12, 2019 Planning Commission hearing.

(OR)

Motion 2: Move to continue the public hearing on TSM 2018-05 and PPL 2019-01 to the March 12, 2019 Planning Commission hearing, for the following reasons: (specify)

(OR)

Motion 3: Move to deny the application for TSM 2018-05 and PPL 2019-01, based on the following findings: (specify)

ATTACHMENTS

Attachment 1: Aerial Map

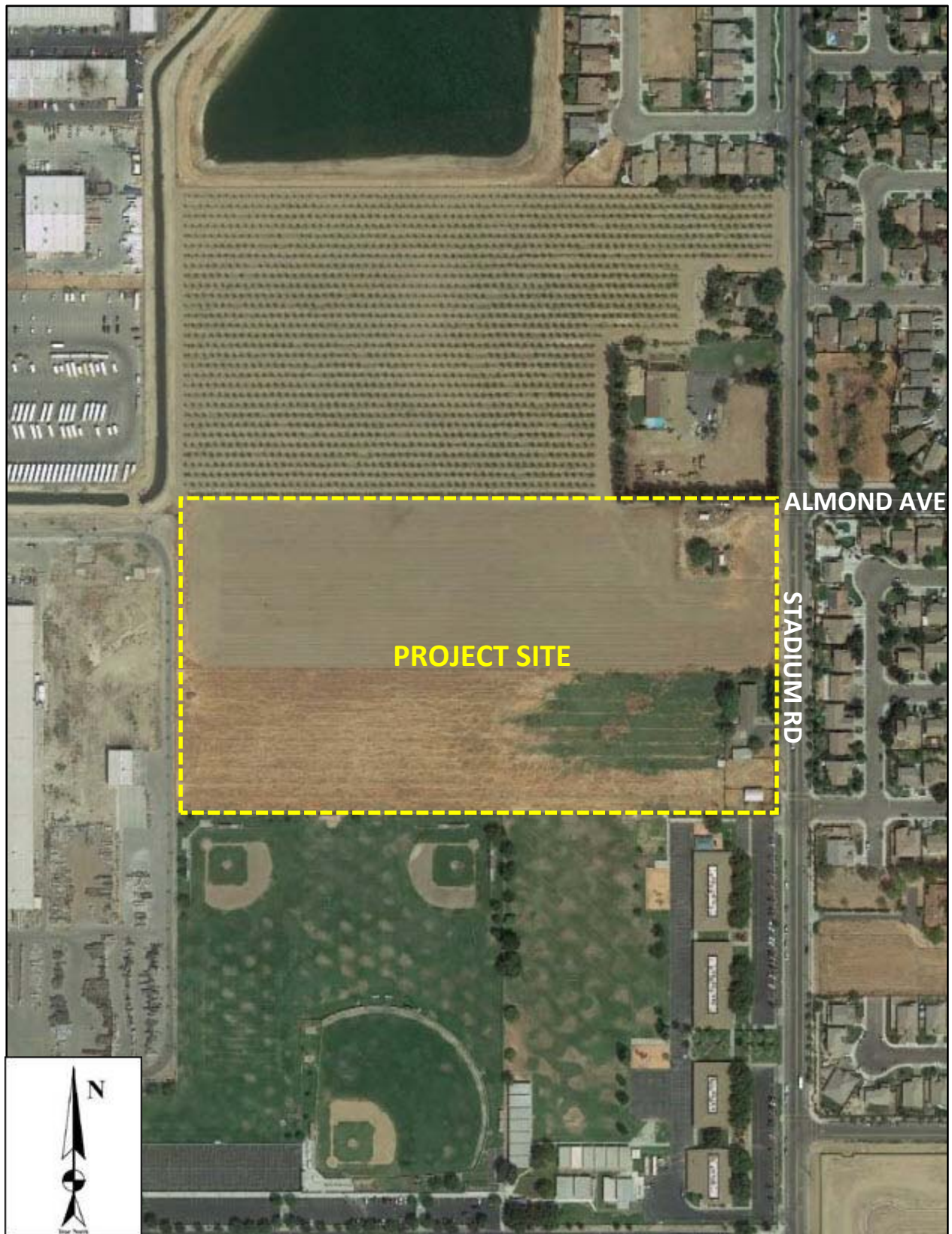
Attachment 2: Tentative Subdivision Map

Attachment 3: LMD Zone 29

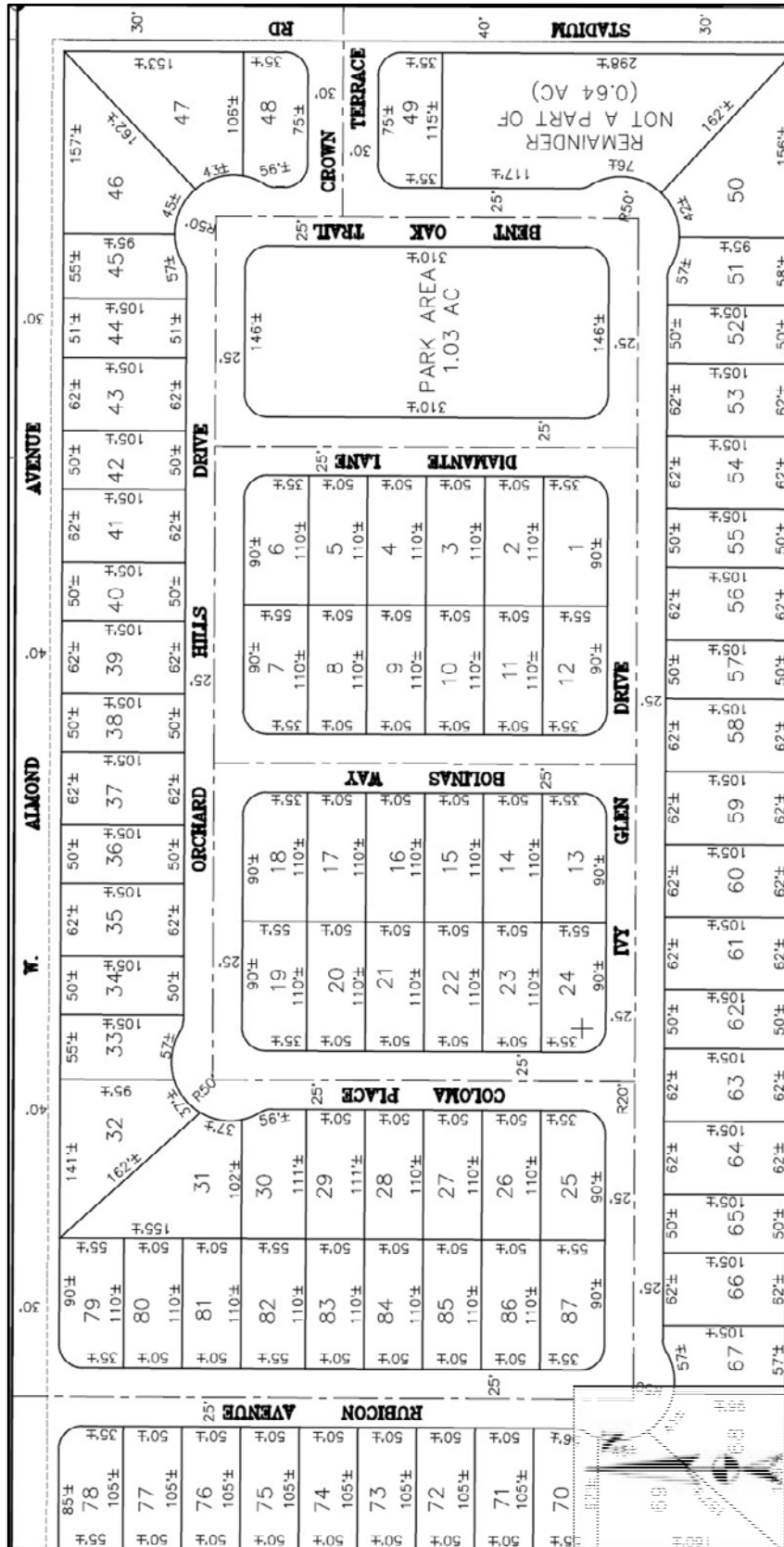
Attachment 4: San Joaquin Valley Air Pollution Control District Letter

Attachment 5: Madera Unified School District Letter

Attachment 1: Aerial Map



Attachment 2: Tentative Subdivision Map



Attachment 3: LMD Zone 29



Attachment 4: San Joaquin Valley Air Pollution Control District Letter



September 12, 2018

Jesus Orozco
County of Madera
2037 W. Cleveland Avenue
Madera, CA 93637

Project: Joseph Crown Rezone & Subdivision REZ 2018-05

District CEQA Reference No: 223-20180001

Dear Mr. Orozco:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the project referenced above consisting of single family with a total of 87 dwelling units (Project), located at SWC of Almond Avenue & Stadium Road in Madera, CA. The District offers the following comments:

1. Significance Impact for Annual Criteria Pollutants Emissions - The Project specific annual emissions of criteria pollutants are not expected to exceed any of the following District significance thresholds: 100 tons per year of carbon monoxide (CO), 10 tons per year of oxides of nitrogen (NOx), 10 tons per year of reactive organic gases (ROG), 27 tons per year of oxides of sulfur (SOx), 15 tons per year of particulate matter of 10 microns or less in size (PM10), or 15 tons per year of particulate matter of 2.5 microns or less in size (PM2.5). Therefore, the District concludes that the Project would have a less than significant impact on air quality when compared to the above-listed annual criteria pollutant emissions significance thresholds.
2. District Rule 9510 (Indirect Source Review) - District Rule 9510 is intended to mitigate a project's impact on air quality through project design elements or by payment of applicable off-site fees. The Project may be subject to District Rule 9510 if it equals or exceeds 250 residential dwelling units and has or will receive a project-level approval from a public agency. For assistance with determining if the Project is subject to Rule 9510, please call the District at (559) 230-6000 or email ISR@valleyair.org.

Sayed Sadredin
Executive Director/Air Pollution Control Officer

Northern Region
4800 Enterprise Way
Modesto, CA 95358-8718
Tel: (209) 557-6400 FAX: (209) 557-5475

Central Region (Main Office)
1990 E. Gettysburg Avenue
Fresno, CA 93726-0244
Tel: (559) 230-6000 FAX: (559) 230-6061

Southern Region
34946 Flyover Court
Bakersfield, CA 93308-9725
Tel: 661-392-5500 FAX: 661-392-5585

www.valleyair.org www.healthyliving.com

In the case the Project is subject to Rule 9510 an AIA application is required and the District recommends that demonstration of compliance with District Rule 9510, before issuance of the first building permit, be made a condition of Project approval. Information about how to comply with District Rule 9510 can be found online at: <http://www.valleyair.org/ISR/ISRHome.htm>. The AIA application form can be found online at: <http://www.valleyair.org/ISR/ISRFormsAndApplications.htm>.

3. District Rule 4002 (National Emissions Standards for Hazardous Air Pollutants) - The Project will be subject to District Rule 4002 since the Project will require an existing building to be renovated, partially demolished or removed. This rule requires a thorough inspection for asbestos to be conducted before any regulated facility is demolished or renovated. Information on how to comply with District Rule 4002 can be found online at: <http://www.valleyair.org/busind/comply/asbestosbuln.htm>.
4. Nuisance Odors - The Project should be evaluated to determine the likelihood that the Project would result in nuisance odors. Nuisance odors are subjective, thus the District has not established thresholds of significance for nuisance odors. Nuisance odors may be assessed qualitatively taking into consideration of project design elements and proximity to off-site receptors that potentially would be exposed objectionable odors.
5. Regulation VIII (Fugitive PM10 Prohibitions) - The Project will be subject to Regulation VIII. The project proponent is required to submit a Construction Notification Form or submit and receive approval of a Dust Control Plan, if applicable prior to commencing any earthmoving activities as described in District Rule 8021 - Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities. Information on how to comply with Regulation VIII can be found online at: http://www.valleyair.org/busind/comply/PM10/compliance_PM10.htm
6. Other District Rules and Regulations - The above list of rules is neither exhaustive nor exclusive. For example, the Project may be subject to the following District rules, including: Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations). To identify other District rules or regulations that apply to this Project or to obtain information on the District's permit requirements, such as an Authority to Construct (ATC), the project proponent is strongly encouraged to contact the District's Small Business Assistance Office at (559) 230-5888 or e-mail SBA@valleyair.org. Current District rules can be found online at the District's website at: www.valleyair.org/rules/1ruleslist.htm.
7. Potential Air Quality Improvement Measures - The District encourages the following air quality improvement measures to further reduce Project related emissions from construction and operation. A complete list of potential air quality improvement measures can be found online at: <http://www.valleyair.org/ceqaconnected/eqimeasures.aspx>.
 - a. Cleaner Off-Road Construction Equipment - This measure is to utilize off-road construction fleets that can achieve fleet average emissions equal to or cleaner than the Tier III emission standards. This can be achieved through any combination of uncontrolled engines and engines complying with Tier III and

above engine standards.

- b. Improve Walkability Design - This measure is to improved design elements to enhance walkability and connectivity. Improved street network characteristics within a neighborhood include street accessibility, usually measured in terms of average block size, proportion of four-way intersections, or number of intersections per square mile. Design is also measured in terms of sidewalk coverage, building setbacks, street widths, pedestrian crossings, presence of street trees, and a host of other physical variables that differentiate pedestrian-oriented environments from auto-oriented environments.
- c. Improve Destination Accessibility - This measure is to locate the project in an area with high accessibility to destinations. Destination accessibility is measured in terms of the number of jobs or other attractions reachable within a given travel time, which tends to be highest at central locations and lowest at peripheral ones. The location of the project also increases the potential for pedestrians to walk and bike to these destinations and therefore reduces the VMT.
- d. Increase Transit Accessibility - This measure is to locate the project with high density near transit which will facilitate the use of transit by people traveling to or from the Project site. The use of transit results in a mode shift and therefore reduced VMT. A project with a residential/commercial center designed around a rail or bus station, is called a transit-oriented development (TOD). The project description should include, at a minimum, the following design features:
 - A transit station/stop with high-quality, high-frequency bus service located within a 5-10 minute walk (or roughly ¼ mile from stop to edge of development), and/or
 - A rail station located within a 20 minute walk (or roughly ½ mile from station to edge of development)
 - Fast, frequent, and reliable transit service connecting to a high percentage of regional destinations
 - Neighborhood designed for walking and cycling

The District recommends that a copy of the District's comment letter be provided to the project proponent.

District staff is available to meet with you and/or the applicant to further discuss the regulatory requirements that are associated with this project. If you have any questions or require further information, please call the District's Technical Services staff at (559) 230-6000 or e-mail ceqa@valleyair.org. When calling or emailing the District, please reference District CEQA number 223-20180001 .

Sincerely,

Arnaud Marjollet
Director of Permit Services

A handwritten signature in cursive script that reads "Brian Clements".

Brian Clements
Program Manager

Attachment 5: Madera Unified School District Letter

MADERA UNIFIED SCHOOL DISTRICT
1902 Howard Road, Madera, California 93637

(559)675-4500
FAX: (559) 675-1186
www.madera.k12.ca.us



Board of Trustees:

Ed McIntyre, President
Ray Seibert, Clerk

Trustees:

Ricardo Arredondo; Brent Fernandes,
Philip Huerta; Ruben Mendoza

Superintendent:

Todd Lile

September 21, 2018

Christopher Boyle
Planning Manager
City of Madera
205 W 4th St.
Madera, CA 93637

SUBJECT: REZ 2018-05 – Joseph Crown Rezone and Subdivision

Dear Mr. Boyle:

The purpose of this letter is to provide school district information relative to the above-referenced applications and to comply with Business and Professions Code section 11010, subdivision (b)(11)(A) regarding the provision of school-related information to the subdivider/owner and the State Department of Real Estate.

Residential development resulting from the project will affect the District by generating students that will need to be housed in District schools. Using the approximate dwelling units and the District's student generation rates, we have estimated the number of students potentially generated by the proposed plan. Assuming the project is an 87-lot single family residential subdivision, located at the southwest corner of Almond Ave. and Stadium Rd., the following comments can be made at this time:

1. The number of students generated by the project is estimated as follows:

Grade Group	Rate	Units	Students
TK-6	0.353	87	30.71
7-8	0.092	87	8.00
9-12	0.169	87	14.70
	0.614		53.41

2. Elementary School Information:

- a. The subject land is presently within the attendance area of the elementary school (grades TK-6) listed below:

School Name: Alpha Elementary School
Address: 900 Stadium Rd, Madera, CA 93637
Telephone: (559) 661-4101
Capacity: 736
Enrollment: 715
School Schedule: Traditional

- b. It is possible that (1) adjustment of school attendance areas could occur in the future such that students residing in the project area may be required to attend an elementary school other than the above school, and (2) students residing in the project area may attend more than one elementary school within the District during their TK-6 school years.

MADERA UNIFIED SCHOOL DISTRICT
1902 Howard Road, Madera, California 93637

(559)675-4500
FAX: (559) 675-1186
www.madera.k12.ca.us



Board of Trustees:
Ed McIntyre, President
Ray Seibert, Clerk
Trustees:
Ricardo Arredondo; Brent Fernandes,
Philip Huerta; Ruben Mendoza
Superintendent:
Todd Lile

3. Intermediate School Information:

- a. The project area is currently served by the following middle school (grades 7-8):
- | | |
|------------------|----------------------------------|
| School Name: | Martin Luther King Middle School |
| Address: | 601 Lilly St., Madera, CA 93638 |
| Telephone: | (559) 674-4681 |
| Capacity: | 1,000 |
| Enrollment: | 985 |
| School Schedule: | Traditional |
- b. It is possible that (1) adjustment of school attendance areas could occur in the future such that students residing in the project area may be required to attend a middle school other than the above school, and (2) students residing in the project area may attend more than one middle school within the District during their 7-8 school years.

4. High School Information:

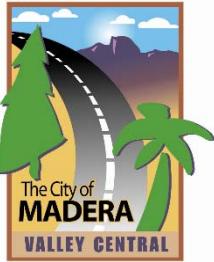
- a. The project area is currently served by the following high school (grades 9-12):
- | | |
|------------------|-------------------------------------|
| School Name: | Madera South High School |
| Address: | 705 W. Pecan Ave., Madera, CA 93637 |
| Telephone: | (559) 675-4450 |
| Capacity: | 3,230 |
| Enrollment: | 3304 |
| School Schedule: | Traditional |
- b. It is possible that (1) adjustment of school attendance areas could occur in the future such that students residing in the project area may be required to attend more than one high school within the District during their 9-12 school years.
5. The Madera Unified School District currently levies a fee of \$4.10 per square foot for residential development. Any new development on the subject property will be subject to the development fee in place at the time fee certificates are obtained.

The District hereby requests that the information in this letter be provided by the owner/subdivider to all prospective purchasers of property within the project.

Thank you for the opportunity to comment on the project. Please contact my office if you have any questions regarding this letter.

Sincerely,

Rosalind Cox
Director of Facilities Planning and
Construction Management



CITY OF MADERA PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

Staff Report: Ellis & D Street Prezone and Subdivision REZ 2018-08, TSM 2018-07 & Environmental Determination Item # – February 12, 2019

PROPOSAL: Consideration of a prezone of seven parcels into the PD-6000 (Planned Development) Zone District, conditional approval of a subdivision of two parcels into a 61-lot residential neighborhood and negative declaration consistent with California Environmental Quality Act (CEQA) guidelines.

APPLICANT:	Christian Gonzales (Precision Eng.)	OWNER:	Shizao Zheng
ADDRESS:	Vacant parcels	APN:	038-070-012, 038-082-001
APPLICATION:	REZ 2018-08 & TSM 2018-07	CEQA:	Negative Declaration

LOCATION: The project parcels are located at the southwest corner of the intersection of North D Street and Ellis Street.

STREET ACCESS: The project provides direct access to North D Street and Ellis Street.

PARCEL SIZE: The project parcels encompass approximately 10 acres.

GENERAL PLAN DESIGNATION: LD (Low Density)

ZONING DISTRICT: Current – County AR-5 (Agricultural Rural – 5 acres)
Proposed – PD-6000 (Planned Development)

SITE CHARACTERISTICS: The project parcels are generally surrounded by rural residential development. Adjacent to the south is a senior housing community and church.

ENVIRONMENTAL REVIEW: An initial study and negative declaration have been prepared for consideration by the Planning Commission (Commission) in conformity with CEQA guidelines.

SUMMARY: The proposed prezone into the PD-6000 (Planned Development) Zone District provides consistency with the LD (Low Density) general plan land use designation. The tentative subdivision map proposes the creation of 61 lots from two parcels. Annexation will not be completed prior to the approval of this tentative map, but the Subdivision Map Act allows for approval of a tentative map contingent upon the approval of annexation within a specified time frame. A precise plan is required to address any subsequent development in the subdivision. The prezone and subdivision map are consistent with the Zoning Ordinance and General Plan. Staff recommends approval of the prezone, tentative subdivision map and negative declaration.

APPLICABLE CODES AND PROCEDURES

MMC §10-3.1501 Amendments

PRIOR ACTION

There has been no prior action taken on the project parcels.

ANALYSIS

The following analysis includes a discussion of the proposed prezone designation and annexation process, the tentative subdivision map proposal, the nuances of a street alignment incorporated within a proposal for a tentative subdivision map, the density requirements of the subdivision, public infrastructure requirements, street names in the subdivision, required fees in-lieu of dedicated parkland, and future requirements of a precise plan for development of homes within the subdivision.

Prezone and Annexation

The project site is currently located outside of City limits. Current zoning on the project site is the County's AR-5 (Agricultural Rural – 5 acres) Zone District. The applicant proposes to prezone the two project parcels into the PD-6000 (Planned Development) Zone District in advance of an application for annexation into the City.

The Madera Local Agency Formation Commission (LAFCO) is the lead agency for annexations of properties into the City. As a component of the annexation process per Madera LAFCO's determination, other properties may be required to be annexed into the City that were not originally intended in the application submittal. This typically occurs when annexation proposals include properties that do not abut to the City limits boundary or do not result in a clean logical boundary. For this project, LAFCO has determined that five additional parcels are required to be annexed in addition to the two project parcels. These five parcels connect the project parcels to the southern City limit boundary at the intersection of Adell Street and North D Street. As a result, the City is required to prezone these five additional parcels along with the two project parcels. Staff did not receive opposition from any of the property owners proposed to be annexed into the City.

Section 66454 of the Subdivision Map Act allows for the approval of a tentative subdivision map on property not currently annexed in the City conditioned upon the approval of annexation by a specified date. Staff recommends annexation of the project properties be completed by February 12, 2020.

Tentative Subdivision Map

The tentative subdivision map will create 61 single-family residential lots ranging in size from between 5,000 and 6,926 square feet. The average lot size is 5,473 square feet, consistent with the requirements of the PD-6000 Zone District and LD (Low Density) general plan land use designation.

Sonora Street

As a component of the tentative map submittal, the existing Sonora Street alignment, which abuts the project parcels to the west, is proposed to be incorporated as a component of the map. The street section is proposed to be developed not only as right-of-way, but as portions of individual lots. These lands, currently held in fee title, will need to be vacated prior to recordation of the final map.

Density Requirements

The LD general plan land use designation has a density range requirement of between 2.1 and 7 units per acre. The PD-6000 Zone District has a maximum density requirement of one unit per each 6,000 square feet of site area.

Per the General Plan, the residential density calculation consists of the gross acreage of the project parcel(s) less any acreage for the following:

- Collector and arterial street rights-of-way;
- Public parks;
- Public facilities;
- Floodways or floodplains;
- Protected biological habitats;
- Other unique constraints applicable to the property, as determined by the City.

Based on these factors, the residential density calculation for the project area equates to a total of 9.57 acres, resulting in allowable density within a range of 21 and 69 units. The proposal of 61 single-family residential lots provides consistency with the density requirements of the General Plan and Zoning Ordinance.

Public Infrastructure

Public infrastructure and utilities required by the Madera Municipal Code (MMC) and the General Plan will be constructed in support of the tentative subdivision map. Required infrastructure includes sewer, water and storm drainage infrastructure consistent with the City's master plans. Street improvements include the completion of Ellis Street to the City's half-street cross section for a collector street, completion of North D Street to the City's half-street cross section for an arterial street, and interior streets within the subdivision.

The Sonora Street alignment west of the project site is proposed to be incorporated as a component of the map, which includes an interior street and portions of lots. Although the applicant is proposing the abandonment of this easement, it is unclear whether the easement has specific restrictions to only be used for rights-of-way for roads or utilities. Staff recommends the clarification of this easement be resolved prior to final map submittal and a potential map amendment if the easement has specific restrictions that do not allow for private development.

The proposed lots will be included in the City's Community Facilities District 2005-01 to collect assessments for increased demand on fire, police and storm water drainage.

Street Names

The process for naming streets calls for the applicant to propose names on the face of the tentative map, which are reviewed and approved as part of the overall project. With the exception to the existing perimeter streets, the proposed street names are exclusive to the proposed subdivision. The internal streets in the subdivision are as follows:

- Sonora Street
- Pineridge Court
- Birchcrest Drive
- Foxridge Court
- Rosebriar Street

Parkland Acquisition

The City recently approved a parkland acquisition ordinance which establishes procedures for requiring the dedication of parkland, the payment of fees in-lieu thereof or a combination of both. In this case, the payment of fees in-lieu of dedicated parkland is required. The amount of the fee is based upon the fair market value determined by the City Council. On March 21, 2018, the City Council adopted a resolution determining that the fair market value for a buildable acre is \$50,000. Based on the formula for determining the amount of fees in lieu of land dedication, the total fee required to be paid to the City is \$35,227.50 and deposited into the subdivision park trust fund. The monies within this fund are expended solely for the acquisition, development or rehabilitation of park land or improvements.

Precise Plan

The properties being subdivided are located within a PD Zone District, which requires approval of a precise plan by the Commission when development is proposed. Precise plans, when applicable, typically accompany subdivision maps as a component of the project. Staff recommends the approval of a precise plan by the Commission after specific design details for the project are proposed by the home builder.

Other Department and Agency Comments

The project was reviewed by various City Departments and outside agencies. The responses and recommendations have been incorporated into the recommended conditions of approval included in this report.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

The first of the four core vision statements in the Vision Plan is “A Well-Planned City.” The Commission, considering how the neighborhood and infrastructure can be maintained, is actively implementing this key concept of the Vision Plan. Moreover, approval of the project will help provide consistency with Strategy 131, which states, “Create well-planned neighborhoods throughout Madera that promote connectivity and inclusiveness with a mix of densities and commercial components.”

RECOMMENDATION

The information presented in this report supports adoption of the negative declaration, adoption of a Resolution recommending to the City Council the adoption of an ordinance to prezone the properties, subject to the findings, and continuance of the tentative subdivision map.

PLANNING COMMISSION ACTION

The Commission will be acting on the negative declaration, Rezone (REZ) 2018-08 and Tentative Subdivision Map (TSM) 2018-07.

Motion 1a: Move to adopt a negative declaration, consistent with Section 15070(a) of the CEQA, subject to the findings as listed:

Findings

- An initial study and negative declaration have been prepared pursuant to CEQA that determines that there is no substantial evidence the project will have a significant effect on the environment, and that the document reflects the independent judgement of the Commission of the City of Madera after considering all the information in the record before it and is hereby adopted in accordance with CEQA.

Motion 1b: Move to adopt a resolution recommending to the City Council the adoption of an Ordinance rezoning the subject properties to the PD-6000 (Planned Development) Zone District, consistent with the findings as listed:

Findings

- An initial study and negative declaration have been prepared pursuant to CEQA that determines that there is no substantial evidence that the project will have a significant effect on the environment, and that the document reflects the independent judgement of the Commission of the City of Madera after considering all the information in the record before it and is hereby adopted in accordance with CEQA.
- The proposed prezone will provide the required consistency between the General Plan and Zoning Ordinance.
- The prezone is not expected to be detrimental to the health, safety, peace, comfort or general welfare of the neighborhood or the City.
- City services and utilities are available or can be extended to serve the area.

Motion 1c: Move to approve TSM 2018-07, subject to the findings and conditions of approval, as listed:

Findings

- An initial study and negative declaration have been prepared pursuant to CEQA that determines that there is no substantial evidence that the project will have a significant effect on the environment, and that the document reflects the independent judgement of the Commission of the City of Madera after considering all the information in the record before it and is hereby adopted in accordance with CEQA.
- TSM 2018-07 is consistent with the development standards of the PD-6000 (Planned Development) Zone District.
- The proposed 61-lot subdivision does not conflict with City standards or other provisions of the MMC.
- City services and utilities are available or can be extended to serve the area.

CONDITIONS OF APPROVAL

General Conditions

1. The approval of TSM 2018-07 shall be contingent upon completion of the annexation of seven properties (APNs: 038-070-012, 038-082-001, 038-090-002, 038-090-003, 038-090-004, 038-090-005, 038-090-006). The annexation shall be completed by no later than February 12, 2020. If the annexation is not completed by the allotted date or by an extension thereof, the approval of TSM 2018-07 shall be null and void.
2. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by receipt in the Planning Department of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within 30 days of the date of approval.
3. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specified in the conditions of approval listed herein or mandated by statutes.

Engineering Department

General

4. Prior to recordation of the final map, the applicant shall, at their sole expense, annex the subdivision property into Community Facilities District (CFD) 2005-01 and pay all applicable fees. All properties included within the subdivision shall be made a part of CFD 2005-01 and subject to its taxes.
5. A final subdivision map shall be required per Section 10-2.502 of the MMC. If the project is phased, the phasing pattern is subject to approval by the City Engineer to ensure that the applicable conditions of approval are satisfied.

6. All lots are to be numbered in sequence throughout the entire subdivision, including all phases, with the last lot in each phase circled for identification. As an alternative, subject to the approval of the City Engineer, lots may be numbered in sequence within blocks that are also separately identified. A consecutive subdivision name and a consecutive phase number shall identify multiple final maps filed in accordance with an approved tentative map.
7. A benchmark shall be established per City standards and related data shall be submitted to the Engineering Department prior to acceptance of the subdivision improvements. The location of the benchmark shall be approved by the City Engineer.
8. All construction vehicles shall access the site by a route approved by the City Engineer that minimizes potential damage to other streets and disruption to the neighborhood. A construction route and traffic control plan to reduce impact on the traveling public shall be approved prior to any site construction or initiation of work within a public right-of-way.
9. Nuisance onsite lighting shall be redirected as requested by the City Engineer within 48 hours of notification.
10. Impact fees shall be paid at time of building permit issuance.
11. Improvement plans sealed by an engineer shall be submitted to the Engineering Department according to the engineering plan review submittal sheet and civil plan submittal checklist.
12. The developer shall pay all required fees for processing the subdivision map and completion of the project. Fees due include, but shall not be limited to, the following: subdivision map review and processing fee, plan review, map recordation and improvement inspection fees.
13. Improvements within the City's right-of-way require an encroachment permit from the Engineering Department.
14. The improvement plans for the project shall include the most recent version of the City's General Notes.

Sewer

15. The developer shall construct a 21-inch sewer main along Ellis Street, starting from North D Street and extending to the westerly property line of the project site. The sewer main shall be designed and constructed in accordance with the City standard location within the street and preliminary design elevation on file at the City. Inability to construct sewer improvements to City standards within the subdivision that adequately direct flow to North D Street may require construction of a 21-inch sewer main on Ellis Street, starting from North D Street and extending to Country Club Drive.

16. The oversize component (difference in cost between the 21-inch and 8-inch pipe) of the construction of this line is considered reimbursable, subject to the availability of funds in the City's Development Impact Fee program. Half of the 8-inch component is reimbursable from adjacent properties as they develop and connect. Any reimbursement agreement requires approval of the City Council.
17. Sewer lines installed to serve this subdivision shall be sized accordingly and shall be a minimum of eight inches in diameter. Sewer main connections to any existing City main that is six inches or larger in diameter shall require the installation of a manhole. All sewer mains shall be air-tested, mandrelled and videotaped after the trench compaction has been approved and prior to paving. DVD's shall be submitted to the City Engineer and be approved prior to paving with all costs to be borne by the subdivider.
18. Sewer services shall be located at the approximate centerline of each lot with a clean-out installed per City standards and identified on the curb face. Termination of service shall be ten feet past the property line. Where contiguous sidewalks are installed, the four-inch sewer cleanout shall be located eighteen inches back of sidewalk in a dedicated public utility easement. Sewer cleanouts shall not be located within sidewalk or approach areas unless approved by the City Engineer. Sewer services shall be installed ten feet beyond the property lines as part of the sewer system installation for testing purposes.
19. Existing septic tanks, if found, shall be removed pursuant to issuance of a permit and inspection by the City of Madera Building Department.
20. The developer shall reimburse its fair share cost to the City for the previously constructed sewer main along the project property frontage on North D Street prior to issuance of the encroachment permit for all off-site improvements.

Storm Drain

21. Storm runoff from this project site is planned to go to the Ellis Basin located northwest of the project site. Through the preparation of a hydrology study or appropriate runoff volume calculations, the developer shall illustrate how runoff from the site will be accommodated in the roadway section or storm conveyance facilities in conformance with the Storm Drainage Master Plan. The developer shall also excavate the Ellis Basin to an amount equivalent to this project's impact on the basin. The developer shall construct the following master-planned improvements:
 - a. 42-inch storm sewer main along Ellis Street, starting from North D Street and extending to approximately 540 feet west of North D Street;
 - b. 48-inch storm sewer main along Ellis Street, starting from approximately 540 feet west of North D Street to the Ellis Basin;
 - c. A pipe of size to be determined as part of the drainage study along project frontage on North D Street.

The construction of these storm drain lines is considered 100 percent reimbursable, subject to the availability of funds in the City's Development Impact Fee program. Any reimbursement agreement requires approval of the City Council.

22. This project shall comply with the design criteria as listed on the National Pollutant Elimination Systems (NPDES) General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer System (MS4's), as mandated by Water Quality Order No. 2013-0001-DWQ, NPDES General Permit No. CAS0000004.

Streets

23. The developer shall not oppose annexation into Landscape Maintenance District (LMD) Zone 51 (See Attachment 3) to include the median island and landscape improvements to be constructed on Ellis Street and North D Street. If the annexation into LMD Zone 51 is not attainable, the developer shall, at their sole expense, form a new LMD zone for park strip landscaping adjacent to the subdivision. The subdivider shall sign and submit a landscape district formation and inclusion form, an engineer's report and map prior to recordation of any final map.
24. Prior to the approval of any final map, the developer shall submit a cash deposit in an amount sufficient to maintain lighting and landscaping within the required LMD Zone 51 or new LMD zone for a period of one year. The specific amount of the deposit shall be determined by the City Engineer and be established based on landscape plans approved by the Parks and Community Services Department and the engineer's report for the required improvements. The deposit will be used to maintain landscaping improvements, existing and new improvements required to be constructed by the developer and included within the Citywide LMD, after the improvements for the subdivision have been approved, but before any revenues are generated by the assessment district to pay for the maintenance of the landscape. Any funds deposited by the developer and not required by the Parks and Community Services Department for maintenance of eligible landscaping shall be refunded to the developer.
25. Ellis Street shall be developed to a 100-foot street with a ten-foot sidewalk pattern and a sixteen-foot landscape median across the frontage of the subdivision. The southern half shall include, but not be limited to, fire hydrants, streetlights, curb and gutter, park strip and sidewalk. The northern half shall include one permanently paved twelve-foot lane and four-foot shoulder and asphalt dike as depicted on the tentative map. Adequate transition with the existing improvements relative to grade and alignment shall be provided. All improvements shall be constructed per current City standards. The center three lanes (40-feet total), which include the median island, are eligible for reimbursement through the City's Impact Fee program, subject to the availability of funds.
26. North D Street shall be developed to an 80-foot street with a ten-foot sidewalk pattern. The western half shall include, but not be limited to, fire hydrants, streetlights, curb and gutter, park strip and sidewalk. The eastern half shall include one permanently

paved twelve-foot lane and four-foot shoulder and asphalt dike as depicted on the tentative map. Adequate transition with the existing improvements relative to grade and alignment shall be provided. All improvements shall be constructed per current City standards. The center three lanes (36 feet total) are eligible for reimbursement through the City's Impact Fee program, subject to the availability of funds.

27. Interior streets shall be constructed in accordance with City standards for a 50-foot residential street, including a five-foot sidewalk, curb and gutter, streetlights, fire hydrants and all other components necessary to complete construction per City standards.
28. Access to the subdivision shall be limited to three access points: one on North D Street and two on Ellis Street. Access points shall be a minimum of 150 feet from the curb line of the intersection of Ellis Street and North D Street.
29. The eastern-most access point on Ellis Street shall be only limited to right-in, right-out turn movements.
30. The developer shall construct concrete sidewalk along the entire project parcel frontages along Ellis Street and North D Street per City standards.
31. "No Parking" signs shall be installed along Ellis Street and North D Street project parcel frontages per City standards.
32. The developer shall install metered streetlights along Ellis Street, North D Street and all interior subdivision streets in accordance with current City spacing standards. Streetlights shall be LED using Beta Lighting standards or equal in accordance with City of Madera standards.
33. An Offer of Dedication shall be made to dedicate sufficient right-of-way along the entirety of the parcel's frontage on Ellis Street to provide a half-street width of 50 feet, south of the center line, to accommodate for an arterial standard roadway.
34. An Offer of Dedication shall be made to dedicate sufficient right-of-way along the entirety of the parcel's frontage on North D Street to provide a half-street width of 40 feet, west of the center line, to accommodate for a collector standard roadway.
35. The developer shall dedicate a ten-foot wide Public Utility Easement (PUE) along the entire project parcel frontages on all internal subdivision streets.
36. Access ramps shall be installed at all curb returns per City standards.
37. Traffic calming features, as approved by the City Engineer, shall be implemented throughout the interior subdivision streets. The maximum distance between calming devices shall be 300 feet.

38. Except for streets not having direct residential access, installation of sidewalks and approaches may be deferred and constructed at the builder's expense with residential development after the acceptance of the subdivision improvements. Each dwelling shall, at occupancy, have full, uninterrupted ADA access from the front door to the nearest collector street, arterial street or other street that provides ADA access provisions. Provisions for construction in conjunction with building permits shall be established as part of the improvement plan approval and subdivision agreement, and bonding for uncompleted work in conjunction with the subdivision's public improvements will not be required.
39. If developed in phases, each phase shall have two points of vehicular access within a recorded easement for fire and other emergency services personnel. An all-weather access road shall be two inches of type "A" asphalt over six inches of 90 percent compacted native soil or four inches of Class II aggregate base capable of withstanding 40,000 pounds of loading. A maintenance covenant and easement along with associated fees shall be recorded prior to recordation of the final map for any phased development.
40. Improvement plans prepared in accordance with City standards by a registered civil engineer shall be submitted to the City Engineer for review and approval on 24-inch by 36-inch tracing paper with the City of Madera logo on the bottom right corner. The cover sheet shall indicate the total lineal feet of all streets, street water main lineal feet, sewer line lineal feet, fire hydrant(s) and quantities of all improvements installed and constructed for each phase respectively, as well as containing an index schedule. This subdivision is subject to the City standards. The plans shall include the City of Madera title block and the following:
 - a. Detailed site plan with general notes, including the location of any existing wells and septic tanks;
 - b. Street plans and profiles, including drainage ditches, culverts and other structures (drainage calculations to be submitted with the improvement plans), streetlights, traffic signals and construction details to include traffic signage and a striping plan;
 - c. Water and sewer plans (sewage flow and water demand calculations to be submitted with the improvement plans);
 - d. Grading plan indicating flood insurance rate map community panel number and effective date;
 - e. Landscape and irrigation plans for the Ellis Street median, Ellis Street and North D Street frontages, prepared by a landscape architect;
 - f. Storm water pollution control plan and permit;
 - g. Itemized quantities of the off-site improvements to be dedicated to the City.
41. Submittals shall include:
 - a. Engineering plan review submittal sheet;
 - b. Civil plan submittal checklist;

- c. Four copies of the final map;
- d. Two sets of traverse calculations;
- e. Two preliminary title reports;
- f. Two signed copies of conditions;
- g. Six sets of complete improvement plans;
- h. Three sets of landscaping plans;
- i. Two sets of drainage calculations;
- j. Two copies of the engineer's estimate;

Partial submittals will not be accepted by the Engineering Department.

- 42. All utilities (water, sewer, electrical, phone, cablevision, etc.) shall be installed prior to curb and gutter installation. Trench compaction shall be as required for curb and gutter installation. If curb and gutter is installed prior to utility installation, all trenches shall be back-filled with a three-sack sand slurry mix extending one foot past the curb and gutter in each direction.
- 43. The applicant shall coordinate with the pertinent utility companies as required regarding establishment of appropriate easements and undergrounding of service lines. A ten-foot public utility easement shall be required along all interior lot frontages.
- 44. All public utilities shall be undergrounded, except transformers, which may be mounted on pads. Public utility easements shall be dedicated outside and adjacent to all street rights-of-way. All public utilities within the subdivision and along peripheral streets shall be placed underground except those facilities exempted by the Public Utilities Commission regulations or operating at 70,000 volts or greater.
- 45. A preliminary title report and plan check fees along with the engineer's estimated cost of installing the subdivision improvements shall be submitted with the initial improvement plan submittal. Inspection fees shall be paid prior to initiating construction.
- 46. A final soils report including "R" values in future streets prepared by a registered civil engineer in accordance with the California Health and Safety Code shall be submitted for review prior to the approval of the improvement plans and the filing of the final map, if required by the City Engineer. The date and name of the person preparing the report shall be noted on the final map.
- 47. The subdivider shall enter into a subdivision agreement in accordance with the MMC prior to recordation of the final map. The subdivision agreement shall include for deposit with the City a performance bond, labor bond, material bond, cash bond or other bonds as required by the City Engineer, prior to acceptance of the final map.
- 48. The subdivider may commence off-site construction prior to approval of the final map in accordance with Section 7-2.02 of the MMC, an encroachment permit, provided

improvement plans are approved and submitting a 100 percent performance bond, additional bond (50 percent labor and material) and insurance certificate, shall be submitted prior to initiating any construction work within any street or right-of-way which is dedicated or proposed to be dedicated by the subdivision. The encroachment permit fee is determined by the City of Madera Development Application Fees as approved by the City Council and paid at the time of permit issuance.

49. The developer's engineer, upon completion of subdivision-related improvements, shall certify to the City Engineer that the improvements are completed in accordance with City requirements and the approved plans. As-built plans detailing final existing conditions and actual grades of all improvements and facilities shall also be submitted prior to acceptance of the subdivision improvements by the City.

Water

50. The water system shall be designed to meet the required fire flow for this type of development, shall be approved by the Fire Department and shall be operational prior to any framing construction on-site. Fire flows shall be determined by Uniform Fire Code Appendix III-A.
51. Unless the City Engineer or fire flow analysis specifies larger lines, water lines, a minimum of eight inches in diameter shall be installed in all streets. Water main installation shall be per City of Madera installation procedures and guidelines. Any new water main or fire hydrant line installation of eighteen feet or more shall be sterilized in accordance with the water main connection procedures, including the temporary use of a reduced pressure assembly. Water service connections shall be required to be hot-tap type connection to the existing City main. If the subdivision is constructed in phases, blow-offs shall be required at each termination point.
52. The developer shall construct a 24-inch water main along Ellis Street, starting from North D Street and extending to the westerly property line of the project parcels. The water main shall be constructed to current City standards, including butterfly valves. The oversize component (difference in cost between 24-inch and 8-inch pipe) of the construction of this line is considered reimbursable, subject to the availability of funds in the City's Development Impact Fee program. Half of the eight-inch component is reimbursable from adjacent properties as they develop and connect.
53. Prior to beginning any framing construction, approved fire hydrants shall be installed in accordance with spacing requirements for residential development (400 feet). A copy of the preliminary water and hydrant location plan shall be provided to the City Engineer and the Fire Protection Planning Officer for review and approval. Fire hydrants shall be constructed in accordance with City Standard W-26. Fire hydrant pavement markers shall be installed as soon as the permanent pavement has been installed.
54. Water services shall be placed three feet from either property line, opposite of street light and fire hydrant installations, installed and tested at the time the water main is

installed and identified on the curb face. Water meters shall not be located within driveway approaches or sidewalk areas. Water services shall not be located at fire hydrant or streetlight locations.

55. One water quality sampling station shall be installed within the subdivision and approved by the Public Works Department.
56. All water sources used for construction activities shall have an approved back-flow device installed. All water trucks/storage tanks shall be inspected for proper air gaps or back-flow prevention devices.
57. Water service connections shall be constructed per current City standards including water meters located within the City's right-of-way.
58. Existing wells, if any, shall be abandoned as directed and permitted by the City of Madera for compliance with State standards.
59. Water connections not serving a residence shall be constructed per current City standards, including water meters located within the City's right-of-way and backflow prevention device in private property.
60. The developer shall reimburse its fair share cost to the City for the previously constructed water main along the project frontage along North D Street prior to issuance of the encroachment permit for all off-site improvements.

Subdivision Improvement Inspections

61. The Engineering Department plan check and inspection fees along with the engineer's estimated cost of installing off-site improvements shall be submitted along with the improvement plans. Inspection fees shall be due at time that all other fees are due per the subdivision agreement.
62. Prior to the installation of any improvements or utilities, the general contractor shall notify the Engineering Department 48 hours prior to construction. The inspector will verify prior to inspection that the contractor requesting inspection is using plans signed by the City Engineer.
63. No grading or other construction activities, including preliminary grading on-site, shall occur until the City Engineer approves the improvement plans or grading plans. The inspector shall verify, prior to inspection, that the contractor requesting inspection is using plans signed by the City Engineer.
64. No occupancy of any buildings within the subdivision shall be granted until subdivision improvements are completed to the satisfaction of the City Engineer. After request for a final improvement inspection, the generation of a written punch list will require a minimum five working days.

Special Engineering Conditions

65. Project grading shall not interfere with the natural flow or adjacent lot drainage and shall not adversely impact downstream properties. Grading plans shall indicate the amount of cut and fill required for the project, including the necessity for any retaining walls. Retaining walls, if required, shall be approved as to design and calculations prior to issuance of a grading permit.
66. Lot fill more than twelve inches shall require a compaction report prior to issuance of any building permits. Soil shall not slope onto any adjacent property. Lot grade elevation differences with any adjacent properties of twelve inches or more will require construction of a retaining wall.
67. Retaining walls, if required, shall be constructed of concrete blocks. Design calculations, elevations and locations shall be shown on the grading plan. Retaining wall approval is required in conjunction with grading plan approval.
68. Prior to the issuance of any building permits or any construction on the subdivision, a storm water pollution plan shall be prepared, and a storm water permit obtained as required by the State Regional Water Quality Control Board for developments of over one acre in size.
69. Any construction work on Madera Irrigation District (MID) facilities shall not interfere with either irrigation or storm water flows or MID operations. Prior to any encroachment upon, removal or modification of MID facilities, the subdivider shall submit two sets of preliminary plans for MID approval. Permits shall be obtained from MID for said encroachments, removal or modification. Upon project completion, as-built plans shall be provided to MID. Abandonment of agricultural activities shall require removal of MID facilities at the owner's expense. Turnouts and gates shall be salvaged and returned to the MID yard.
70. Prior to recordation of the subdivision map, any current and/or delinquent MID assessments, plus estimated assessments for the upcoming assessment (calendar) year, as well as any outstanding crop water charges, standby charges or waiver fees shall be paid in full. Assessments are due and payable in full November first of the year preceding the assessment year.
71. The applicant shall coordinate with the United States post office relative to the proposed location of the postal boxes for the project. In regard to this project, all adjacent sidewalks shall retain a minimum clear walkway of five feet.

Fire Department

72. The subdivision shall provide a minimum of two means of fire access with compliant fire roads in accordance with the California Fire Code (CFC).

73. Fire hydrants shall be placed in accordance with the CFC and City of Madera regulations.

Planning Department

General

74. Conformance with the goals and policies of the General Plan shall be facilitated through the precise plan process. Prior to recordation of the tentative subdivision map, the applicant shall submit an application for a precise plan with submittals sufficient to make findings of General Plan conformance. The applicant shall submit proposed model floor plans and elevations as a component of the application.
75. Vandalism and graffiti on walls and/or fences shall be corrected pursuant to the MMC.

Street Names

76. The internal street names of the subdivision shall be as follows:

- Sonora Street
- Pineridge Court
- Birchcrest Drive
- Foxridge Court
- Rosebriar Street

Tentative Subdivision Map

77. There shall be no direct access provided on all properties along the perimeter (Ellis Street and North D Street) of the subdivision. This includes lots 19, 20-26, 37-38, 49-50 and 61.
78. The following lots will only take direct access to the following streets within the subdivision:
- Sonora Street: Lots 58-61
 - Pineridge Court: Lots 44-53
 - Birchcrest Drive: Lots 32-43
 - Foxridge Court: Lots 20-31
 - Rosebriar Street: Lots 1-19 and 54-57
79. Prior to final map submittal, the applicant shall make application to and complete the process for the vacation, or other legal conveyance as appropriate, of those areas of Sonora Street right-of-way identified on the tentative subdivision map as "right-of-way to be vacated."

Fences and Walls

80. A six-foot tall decorative split-faced masonry block wall with capstone shall be constructed along all property lines that abut Ellis Street and North D Street.

81. For lots 19, 37-38 and 61, the construction of the first fifteen feet of the wall, starting at the front property line, shall be three feet in height. The remaining section of the wall shall be six feet in height.
82. For lot 20, the wall shall be constructed to extend from the rear property line along the exterior side property line. Within the first fifteen feet of this extension, starting at the front property line, the wall shall be three feet in height. The remaining section of the wall shall be six feet in height.

(OR)

Motion 2: Move to continue the public hearing on REZ 2018-08 and TSM 2018-07 to the March 12, 2019 Planning Commission hearing, for the following reasons: (specify)

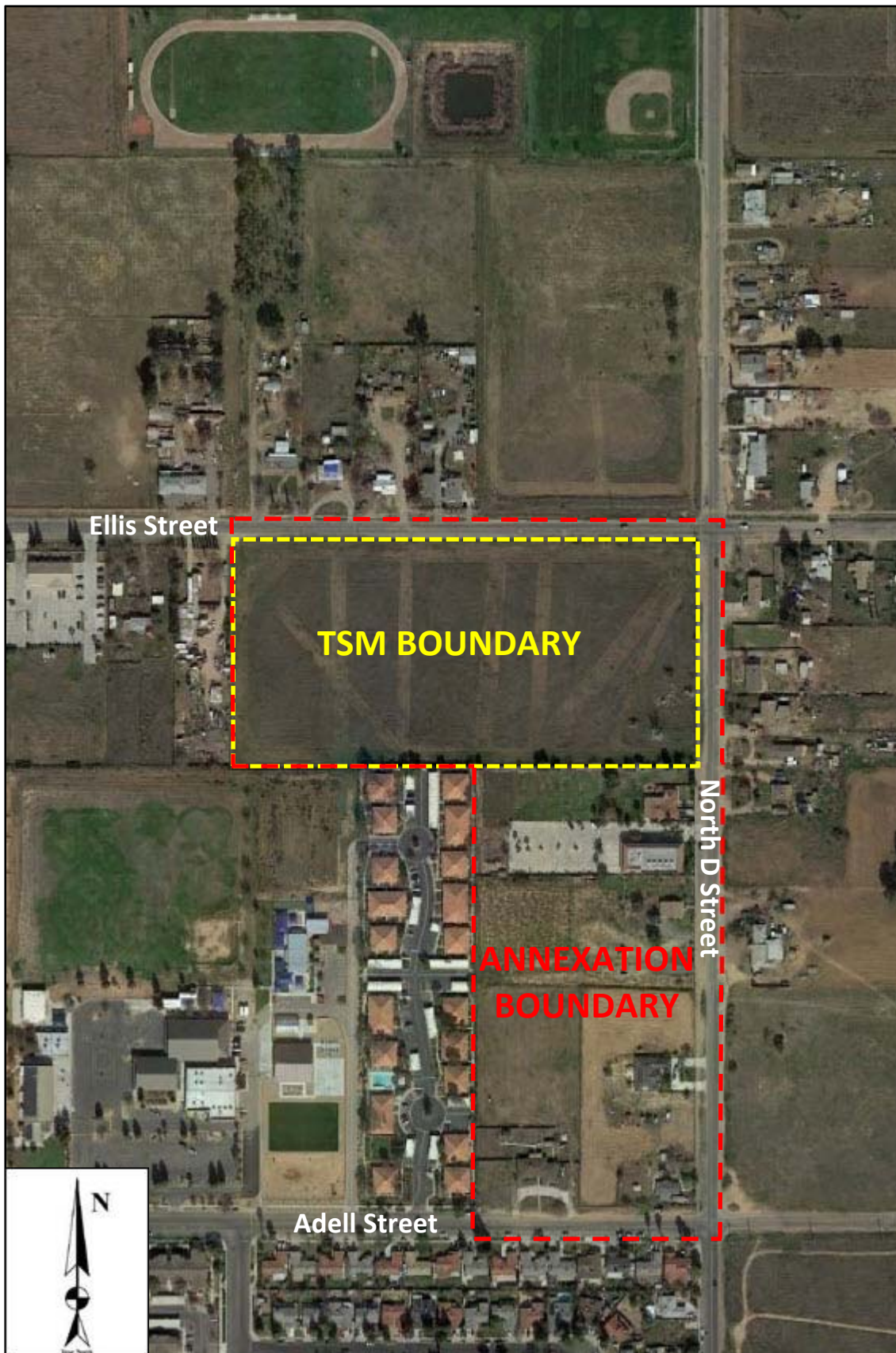
(OR)

Motion 3: Move to deny the application for REZ 2018-08 and TSM 2018-07, based on the following findings: (specify)

ATTACHMENTS

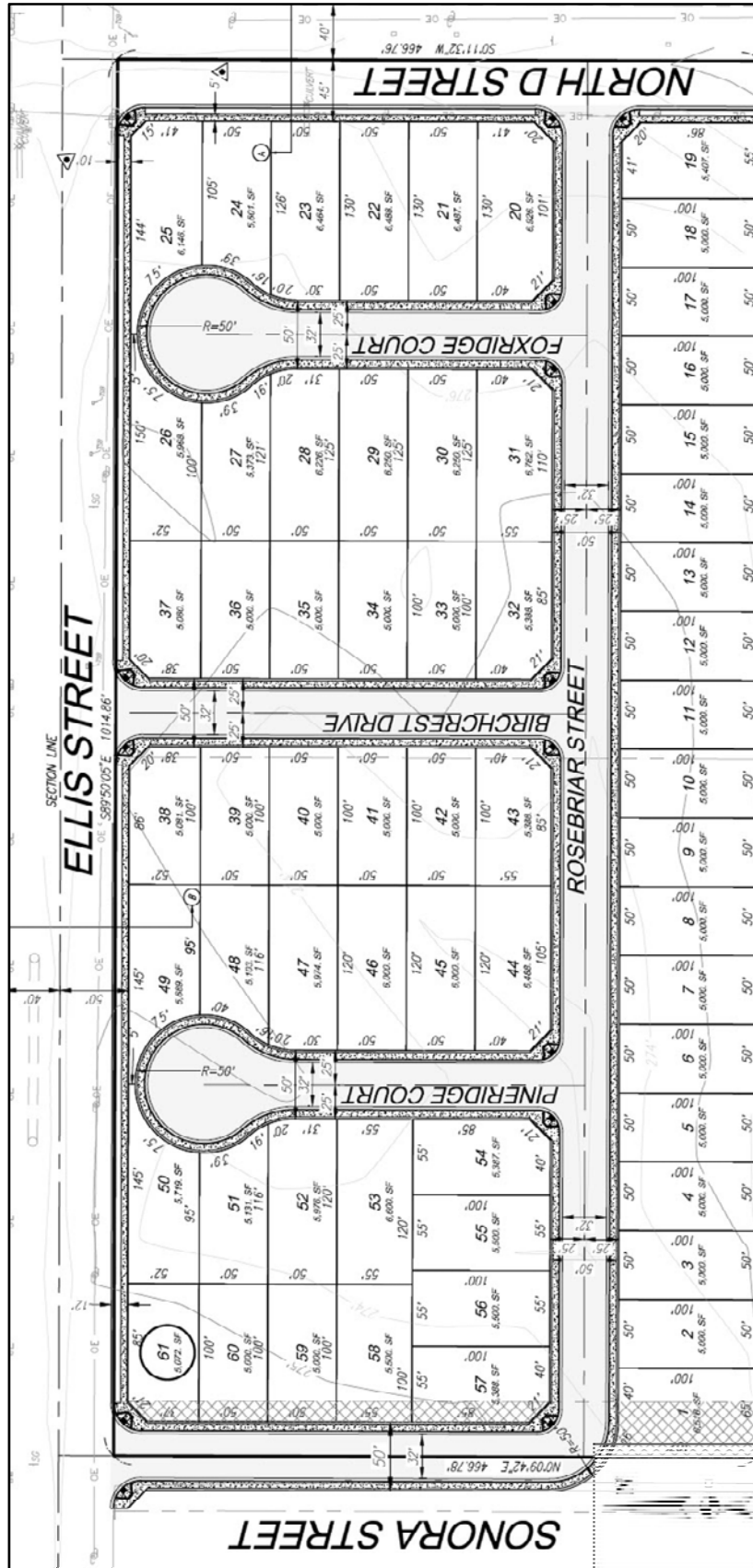
Attachment 1: Aerial Map
Attachment 2: Zoning Map
Attachment 3: Subdivision Map
Attachment 4: LMD Zone 51
Attachment 5: San Joaquin Valley Air Pollution Control District Letter
Attachment 6: Madera Unified School District Letter
Attachment 7: Initial Study and Negative Declaration
Attachment 8: Resolution of Recommendation to the City Council
Attachment 9: Draft Ordinance

Attachment 1: Aerial Map



[illegible]

Attachment 3: Tentative Subdivision Map



Attachment 4: LMD Zone 51



Attachment 5: San Joaquin Valley Air Pollution Control District Letter



January 18, 2019

Robert Holt
City of Madera
205 W. Fourth Street
Madera, CA 93637

Project: TSM 2018-07

District CEQA Reference No: 193-20190012

Dear Mr. Holt:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the project referenced above consisting of single family with a total of 61 dwelling units (Project), located at 038-070-012, 038-082-001 in , CA. The District offers the following comments:

1. Significance Impact for Annual Criteria Pollutants Emissions - The Project specific annual emissions of criteria pollutants are not expected to exceed any of the following District significance thresholds: 100 tons per year of carbon monoxide (CO), 10 tons per year of oxides of nitrogen (NOx), 10 tons per year of reactive organic gases (ROG), 27 tons per year of oxides of sulfur (SOx), 15 tons per year of particulate matter of 10 microns or less in size (PM10), or 15 tons per year of particulate matter of 2.5 microns or less in size (PM2.5). Therefore, the District concludes that the Project would have a less than significant impact on air quality when compared to the above-listed annual criteria pollutant emissions significance thresholds.
2. District Rule 9510 (Indirect Source Review) - District Rule 9510 is intended to mitigate a project's impact on air quality through project design elements or by payment of applicable off-site fees. The Project is subject to District Rule 9510 if it equals or exceeds 50 residential dwelling units and has or will receive a project-level discretionary approval from a public agency. If subject to the rule, an Air Impact Assessment (AIA) application is required prior to applying for project level approval from a public agency. In this case, if not already done, please immediately submit an AIA application to the District to comply with District Rule 9510.

Seyed Sadredin
Executive Director/Air Pollution Control Officer

Northern Region
4800 Enterprise Way
Modesto, CA 95356-8718
Tel: (209) 557-6400 FAX: (209) 557-6475

Central Region (Main Office)
1990 E. Gettysburg Avenue
Fresno, CA 93726-0244
Tel: (559) 230-6000 FAX: (559) 230-6061
www.valleyair.org www.healthyairliving.com

Southern Region
34946 Flyover Court
Bakersfield, CA 93308-9725
Tel: 661-392-5500 FAX: 661-392-5585

In the case the Project is subject to Rule 9510 an AIA application is required and the District recommends that demonstration of compliance with District Rule 9510, before issuance of the first building permit, be made a condition of Project approval. Information about how to comply with District Rule 9510 can be found online at: <http://www.valleyair.org/ISR/ISRHome.htm>. The AIA application form can be found online at: <http://www.valleyair.org/ISR/ISRFormsAndApplications.htm>.

3. Regulation VIII (Fugitive PM10 Prohibitions) - The Project will be subject to Regulation VIII. The project proponent is required to submit a Construction Notification Form or submit and receive approval of a Dust Control Plan, if applicable prior to commencing any earthmoving activities as described in District Rule 8021 - Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities. Information on how to comply with Regulation VIII can be found online at: http://www.valleyair.org/busind/comply/PM10/compliance_PM10.htm
4. Other District Rules and Regulations - The above list of rules is neither exhaustive nor exclusive. For example, the Project may be subject to the following District rules, including: Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations). To identify other District rules or regulations that apply to this Project or to obtain information on the District's permit requirements, such as an Authority to Construct (ATC), the project proponent is strongly encouraged to contact the District's Small Business Assistance Office at (559) 230-5888 or e-mail SBA@valleyair.org. Current District rules can be found online at the District's website at: www.valleyair.org/rules/1ruleslist.htm.
5. Potential Air Quality Improvement Measures - The District encourages the following air quality improvement measures to further reduce Project related emissions from construction and operation. A complete list of potential air quality improvement measures can be found online at: <http://www.valleyair.org/ceqaconnected/aqimeasures.aspx>.
 - a. Cleaner Off-Road Construction Equipment - This measure is to utilize off-road construction fleets that can achieve fleet average emissions equal to or cleaner than the Tier III emission standards. This can be achieved through any combination of uncontrolled engines and engines complying with Tier III and above engine standards.
 - b. Improve Walkability Design - This measure is to improved design elements to enhance walkability and connectivity. Improved street network characteristics within a neighborhood include street accessibility, usually measured in terms of average block size, proportion of four-way intersections, or number of intersections per square mile. Design is also measured in terms of sidewalk coverage, building setbacks, street widths, pedestrian crossings, presence of street trees, and a host of other physical variables that differentiate pedestrian-oriented environments from auto-oriented environments.
 - c. Improve Destination Accessibility - This measure is to locate the project in an area with high accessibility to destinations. Destination accessibility is measured in terms of the number of jobs or other attractions reachable within

measured in terms of the number of jobs or other attractions reachable within a given travel time, which tends to be highest at central locations and lowest at peripheral ones. The location of the project also increases the potential for pedestrians to walk and bike to these destinations and therefore reduces the VMT.

- d. Increase Transit Accessibility - This measure is to locate the project with high density near transit which will facilitate the use of transit by people traveling to or from the Project site. The use of transit results in a mode shift and therefore reduced VMT. A project with a residential/commercial center designed around a rail or bus station, is called a transit-oriented development (TOD). The project description should include, at a minimum, the following design features:
- A transit station/stop with high-quality, high-frequency bus service located within a 5-10 minute walk (or roughly $\frac{1}{4}$ mile from stop to edge of development), and/or
 - A rail station located within a 20 minute walk (or roughly $\frac{1}{2}$ mile from station to edge of development)
 - Fast, frequent, and reliable transit service connecting to a high percentage of regional destinations
 - Neighborhood designed for walking and cycling

The District recommends that a copy of the District's comment letter be provided to the project proponent.

District staff is available to meet with you and/or the applicant to further discuss the regulatory requirements that are associated with this project. If you have any questions or require further information, please call the District's Technical Services staff at (559) 230-6000 or e-mail ceqa@valleyair.org. When calling or emailing the District, please reference District CEQA number 193-20190012.

Sincerely,

Amaud Marjollet
Director of Permit Services



Brian Clements
Program Manager

Attachment 6: Madera Unified School District Letter

MADERA UNIFIED SCHOOL DISTRICT
1902 Howard Road, Madera, California 93637
(559) 675-4500
FAX: (559) 675-1186
www.madera.k12.ca.us



Board of Trustees:
Ray G. Seibert, President
Ruben Mendoza, Clerk
Trustees:
Ricardo Arredondo; Brent Fernandes,
Joetta Fleak; Ed McIntyre

Superintendent:
Todd Lile

January 23, 2019

Robert Holt
Assistant Planner
City of Madera
205 W 4th St
Madera, CA 93637

SUBJECT: REZ 2018-08 & TSM 2018-07

Dear Mr. Holt:

The purpose of this letter is to provide school district information relative to the above-referenced applications and to comply with Business and Professions Code section 11010, subdivision (b)(11)(A) regarding the provision of school-related information to the subdivider/owner and the State Department of Real Estate.

Residential development resulting from the project will affect the District by generating students that will need to be housed in District schools. Using the approximate dwelling units and the District's student generation rates, we have estimated the number of students potentially generated by the proposed plan. Assuming the project is a 61 lot planned development, and the project is located near the intersection of North D Street and Ellis Street, the following comments can be made at this time:

1. The number of students generated by the project is estimated as follows:

Grade Group	Rate	Units	Students
K-6	0.353	61	21.53
7-8	0.092	61	5.61
9-12	0.169	61	10.31
	0.614		37.45

2. Elementary School Information:

- a. The subject land is presently within the attendance area of the elementary school (grades K-6) listed below:

School Name: Nishimoto Elementary School
Address: 26490 Martin Street, Madera CA, 93638
Telephone: (559) 664-8110
Capacity: 800
Enrollment: 743
School Schedule: Traditional

- b. It is possible that (1) adjustment of school attendance areas could occur in the future such that students residing in the project area may be required to attend an elementary school other than the above school, and (2) students residing in the project area may attend more than one elementary school within the District during their K-6 school years.

MADERA UNIFIED SCHOOL DISTRICT
1902 Howard Road, Madera, California 93637
(559) 675-4500
FAX: (559) 675-1186
www.madera.k12.ca.us



Board of Trustees:
Ray G. Seibert, President
Ruben Mendoza, Clerk
Trustees:
Ricardo Arredondo; Brent Fernandes,
Joetta Fleak; Ed McIntyre

Superintendent:
Todd Lile

3. Intermediate School Information:

- a. The project area is currently served by the following middle school (grades 7-8):

School Name: Jack Desmond Middle School
Address: 26490 Martin Street, Madera, CA 93638
Telephone: (559) 664-1775
Capacity: 1,000
Enrollment: 897
School Schedule: Traditional

- b. It is possible that (1) adjustment of school attendance areas could occur in the future such that students residing in the project area may be required to attend a middle school other than the above school, and (2) students residing in the project area may attend more than one middle school within the District during their 7-8 school years.

4. High School Information:

- a. The project area is currently served by the following high school (grades 9-12):

School Name: Madera South High School
Address: 705 W. Pecan Ave. Madera CA 93637
Telephone: (559) 675-4450
Capacity: 3,230
Enrollment: 3,202
School Schedule: Traditional

- b. It is possible that (1) adjustment of school attendance areas could occur in the future such that students residing in the project area may be required to attend a high school other than the above school, and (2) students residing in the project area may attend more than one high school within the District during their 9-12 school years.

5. The Madera Unified School District currently levies a fee of \$4.10 per square foot for residential development. Any new development on the subject property will be subject to the development fee in place at the time fee certificates are obtained.

The District hereby requests that the information in this letter be provided by the owner/subdivider to all prospective purchasers of property within the project.

Thank you for the opportunity to comment on the project. Please contact my office if you have any questions regarding this letter.

Sincerely,

Rosalind Cox
Director of Facilities Planning and
Construction Management

Attachment 7: Initial Study and Negative Declaration

Attachment 8: Resolution of Recommendation to the City Council

Attachment 9: Draft Ordinance

INITIAL STUDY AND ENVIRONMENTAL ASSESSMENT

Ellis & D Street Prezone & Subdivision Rezone (REZ) 2018-08 Tentative Subdivision Map (TSM) 2018-07

Project: REZ 2018-08 and TSM 2018-07

Applicant: Christian Gonzales
1234 O Street
Fresno, CA 93724

Owner: Shizao Zheng
1378 West Zhongshan Road
Ningbo, China 315016

Location: The project site is comprised of two parcels located at the southwest corner of the intersection of North D Street and Ellis Street within the LD (Low Density) general plan land use designation.

Proposal:

REZ 2018-08: A prezone to change the zoning for seven parcels anticipated for annexation into the City of Madera from the County's AR-5 (Agricultural Rural – 5 acres) Zone District to the PD-6000 (Planned Development) Zone District, to provide consistency with the LD (High Density) General Plan land use designation. This application is in advance of an application for annexation currently being processed by the Madera Local Agency Formation Commission (LAFCo).

TSM 2018-07: A tentative subdivision map to subdivide the two project parcels into a 61-lot single-family residential subdivision. Anticipated development of single-family homes will occur at some time in the future.

Zoning:	Current: AR-5 (Agricultural Rural – 5 acres)
	Proposed: PD-6000 (Planned Development)

General Plan Land Use Designation: LD (Low Density)

Surrounding Land Uses and Zoning:

South – Church/senior housing complex
North – Rural residential/middle school
West – Rural residential/vacant land
East – Rural residential/vacant land

Responsible or Interested Agencies:

San Joaquin Valley Air Pollution Control District
Madera Irrigation District
Madera Unified School District

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project. None of these factors represents a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- | | | |
|-----------------------------------------------------------------|--------------------------------------------------------------|----------------------------------------------------------------|
| <input checked="" type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture Resources | <input checked="" type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology / Soils |
| <input type="checkbox"/> Hazards & Hazardous Mat. | <input type="checkbox"/> Hydrology / Water Quality | <input type="checkbox"/> Land Use / Planning |
| <input type="checkbox"/> Mineral Resources | <input checked="" type="checkbox"/> Noise | <input type="checkbox"/> Population / Housing |
| <input checked="" type="checkbox"/> Public Services | <input type="checkbox"/> Recreation | <input checked="" type="checkbox"/> Transportation/Traffic |
| <input checked="" type="checkbox"/> Utilities / Service Systems | <input checked="" type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Mandatory Findings
of Significance |

DETERMINATION:

On the basis of this initial evaluation:

- ☒ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- ☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- ☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- ☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- ☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature _____
Printed Name: Robert Holt
Assistant Planner

Date: _____

Explanation of Environmental Checklist

I. AESTHETICS. Would the project:

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Discussion: The proposal will not affect a scenic vista or have an overall adverse visual impact on the immediate area. The project will not affect a scenic highway and will not have an overall adverse visual impact on any scenic resources. The project would not result in the creation of light, but the anticipated residential development will add additional sources of light.

The proposed project will conform with and incorporate General Plan policies and requirements. No additional analysis is required.

a) **No Impacts.** The project will not result in the obstruction of federal, state or locally classified scenic areas, historic properties, community landmarks, or formally classified scenic resources, such as a scenic highway, national or state scenic area, or scenic vista.

b) **No Impacts.** The project will not damage scenic resources, including, but not limited to, rock outcroppings and historic buildings within a state scenic highway.

c) **No Impacts.** The project would not degrade the existing visual character or quality of the site and surroundings under examination. The proposed project would not alter the landforms, view sheds, and overall character of the area.

d) **Less Than Significant Impacts.** There will be an increase in light and glare and other aesthetic impacts associated with urban development as an ultimate result of the project when the anticipated construction of homes occur within the subdivision, although it will be a less than significant impact when City standards are implemented. The overall impact of additional light and glare will be minimal.

AGRICULTURE RESOURCES. In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepare pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion: The project area is located on land identified as Vacant or Disturbed Land within the 2016 California Farmland Mapping and Monitoring Program.

a.) **No Impacts.** The project would not convert prime farmland, unique farmland, or farmland of statewide importance (as shown on the maps prepared pursuant to the farmland mapping and monitoring program of the California resources agency) to non-agricultural use. The project site is identified as Vacant or Disturbed Land on the 2016 California Farmland Mapping and Monitoring Program map. The project site has been identified for residential uses within the City of Madera General Plan, and the land is not currently being utilized for agricultural purposes.

b.) **No Impacts.** The project would not conflict with existing zoning for agricultural use and there are no Williamson Act contracts affecting the subject property.

c.) **No Impacts.** Surrounding properties are urbanized and currently in residential use. The proposed development for the project site won't contribute towards the desire of nearby property owners to convert to non-agricultural uses.

III. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion: The project area is located within the San Joaquin Valley Air Basin (SJVAB). Air quality conditions in the SJVAB are regulated by San Joaquin Valley Unified Air Pollution Control District (SJVAPCD). The region is classified as a State and Federal non-attainment area for PM10 (airborne particulate matter with an aerodynamic diameter of less than 10 microns), and ozone (O3).

Air quality is determined primarily by the type and amount of contaminants emitted into the atmosphere, the size and topography of the Basin, and its meteorological conditions. National and state air quality standards specify the upper limits of concentrations and duration in the ambient air for O3, CO, nitrogen dioxide (NO2), PM10, sulfur dioxide (SO2) and lead (Pb). These are "criteria pollutants." The SJVUAPCD also conducts monitoring for two other state standards: sulfate and visibility.

The State of California has designated the project area as being a severe non-attainment area for 1-hour O3, a non-attainment area for PM10, and an attainment area for CO. The EPA has designated the project area as being an extreme non-attainment area for 1-hour O3, a serious non-attainment area for 8-hour O3, a serious non-attainment area for PM10, and a moderate maintenance for CO.

The current project would not conflict with or obstruct the implementation of applicable Regional Air Quality Control Plans.

Similarly, future projects will be evaluated to determine required compliance with District Rule 9510, which is intended to mitigate a project's impact on air quality through project design elements or by payment of applicable off-site mitigation fees. Any applicant subject to District Rule 9510 is required to submit an Air Impact Assessment (AIA) application to the District no later than applying for final discretionary approval, and to pay any applicable off-site mitigation fees before issuance of the first building permit. Demonstration of compliance with District Rule 9510, including payment of all applicable fees before issuance of the first building permit, would be made a condition of project approval.

Short-term construction impacts on air quality, principally from dust generation, will be mitigated through watering. The project would not create substantial air emissions or deterioration of ambient air quality, and the development will be subject to Air Pollution Control District review. Construction equipment will produce a small amount of air emissions from internal combustion engines and dust. The project will not violate any air quality standard or substantially contribute to an existing or projected air quality violation. The project will not result in a considerable net increase in non-attainment pollutants in this area. The project will not expose sensitive receptors to any significant amount of pollutants. The project will not create any objectionable odors.

The proposed rezoning and tentative subdivision map for the project site, and the anticipated development of the subject properties, will not create impacts beyond those analyzed and addressed through the General Plan Update and the accompanying environmental impact report. All phases of site development will conform with and incorporate General Plan policies and requirements. All phases of development will similarly conform with and implement regional air quality requirements. No additional analysis is required. Any unique features or project impacts which are identified as specific projects are proposed within the project area will be evaluated and addressed on a project-by-project basis.

- a) **Less Than Significant Impacts.** The project would not conflict with or obstruct implementation of the applicable air quality plan.
- b) **Less Than Significant Impacts.** The project would not violate any air quality standard or contribute substantially to an existing or projected air quality violation.
- c) **Less Than Significant Impacts.** The project will not result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard, including releasing emissions which exceed quantitative thresholds for ozone precursors.
- d) **No Impacts.** The project would not expose sensitive receptors to substantial pollutant concentrations.
- e) **No Impacts.** The project would not create any new/permanent objectionable odors affecting a substantial number of people.

IV. BIOLOGICAL RESOURCES. Would the project:

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion: With the preparation of the City of Madera General Plan, no threatened or endangered species were identified in the project area. There is no record of special-status species in this project area. Development of the project area is consistent with the urbanization of the Madera area, as evaluated in the General Plan and its EIR; therefore impacts in this category are not anticipated to exceed the impacts addressed in those documents.

The approximately 10-acre project site is void of any natural features, such as seasonal drainages, riparian or wetland habitat, rock outcroppings, or other native habitat or associated species. Development of the site will not conflict with any local policies or ordinances protecting biological resources, or conflict with the provisions of an adopted Habitat Conservation Plan,

Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

a) **No Impacts.** The project would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

b) **No Impacts.** The project would not have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or US Fish and Wildlife Service.

c) **No Impacts.** The project would not have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act, including, but not limited to, marsh, vernal pool, coastal, etc., through direct removal, filling, hydrological interruption or other means.

d) **No Impacts.** The project would not interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

e) **No Impacts.** The project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

f) **No Impacts.** The project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional or state habitat conservation plan.

V. CULTURAL RESOURCES. Would the project:

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion: The project does not have the potential to cause a physical change that would affect unique historic, ethnic, or cultural values. The project will not disturb archaeological resources. The project will not disturb any unique paleontological or geologic resources. The project will not disturb any human remains. In the event any archeological resources are discovered with project construction, all activities shall cease and the Community Development Department shall be notified so that the procedures required by State Law may be applied.

a) **No Impacts.** The project would not cause a substantial adverse change in the significance of a historical resource as defined in §15064.5 of the CEQA Guidelines. There are no known historical resources located in the affected territory.

b) **No Impacts.** The project would not cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5 of the CEQA Guidelines. There are no known archaeological resources located in the project area.

c) **No Impacts.** The project would not directly or indirectly destroy any unique paleontological resources or sites or unique geologic features. There are no known paleontological resources, sites or unique geologic features located in the affected territory.

d) **No Impacts.** The project would not likely disturb any human remains, including those interred outside of formal cemeteries. If development occurs in the future and any remains are discovered, the requirements of CEQA that regulate archaeological and historical resources (Public Resources Code Section 21083.2 and 21084.1), and all local, state and federal regulations that regulate archaeological and historical resources would be complied with.

VI. GEOLOGY AND SOILS. Would the project:

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Have soils incapable of adequately supporting the use of septic tanks or alternative waste disposal systems where sewers are not available for the disposal of wastewater?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion: There are no known faults on the project site or in the immediate area. The project site is subject to relatively low seismic hazards compared to many other parts of California. Potential ground shaking produced by earthquakes generated on regional faults lying outside the immediate vicinity in the project area may occur. Due to the distance of the known faults in the region, no significant ground shaking is anticipated on this site. Seismic hazards on the built environment are addressed in *The Uniform Building Code* that is utilized by the Madera Building Division to monitor safe construction in the City.

ai.) **No Impacts.** No known faults with evidence of historic activity cut through the valley soils in the project vicinity. The major active faults and fault zones occur at some distance to the east, west, and south of the project site. Due to the geology of the project area and its distance from active faults, the potential for loss of life, property damage, ground settlement, or liquefaction to occur in the project vicinity is considered minimal.

aii) **No Impacts.** Ground shaking generally decreases with distance and increases with the depth of unconsolidated alluvial deposits. The most likely source of potential ground shaking is attributed to the San Andreas, Owens Valley, and the White Wolf faults. Based on this premise and taking into account the distance to the causative faults, the potential for ground motion in the vicinity of the project site is such that a minimal risk can be assigned.

aiii) **No Impacts.** Liquefaction describes a phenomenon in which a saturated soil loses strength during an earthquake as a result of induced shearing strains. Lateral and vertical movement of the soil mass, combined with loss of bearing usually results. Loose sand, high groundwater conditions (where the water table is less than 30 feet below the surface), higher intensity earthquakes, and particularly long duration of ground shaking are the requisite conditions for liquefaction. There is no evidence of the presence of these requisite conditions.

aiv) **No Impacts.** The project will not result in or expose people to potential impacts from landslides or mudflows.

b) **No Impacts.** Construction of urban uses would create changes in absorption rates, drainage patterns, and the rate and amount of surface runoff on the selected project site. Standard construction practices that comply with City of Madera ordinances and regulations, the California Building Code, and professional engineering designs approved by the Madera Engineering Division will mitigate any potential impacts from future urban development, if any.

c) **No Impacts.** The project site would not be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in off-site landslide, lateral spreading, subsidence, liquefaction or collapse.

d) **No Impacts.** The project will not result in or expose people to potential impacts from expansive soils.

e) **No Impacts.** Should urban uses be approved in the project area, the City of Madera would provide necessary sewer and water systems.

VII. GREENHOUSE GAS EMISSIONS. Would the project:

	Potentially Significant Impact	Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Discussion: San Joaquin Valley Unified Air Pollution Control District staff has concluded that existing science is inadequate to support quantification of impacts that project specific GHG emissions have on global climatic change. This is readily understood when one considers that global climatic change is the result of the sum total of GHG emissions, both man-made and natural that occurred in the past; that is occurring now; and will occur in the future. The Air District has advanced a methodology of reducing the (assumed) significance of impacts around performance measures applied to projects, or alternatively, by comparing project-level impacts to an identified GHG emissions threshold.

The Air District’s recommended methodology is difficult, if not impossible, to apply to the project currently proposed, which does specify the nature or intensity of uses which may be developed in the future. In the absence of further regulatory or scientific information related to GHG emissions and CEQA significance, it is currently too speculative to make a significance determination regarding this project’s direct and indirect impact with respect to climate change. The City General Plan includes policies in support of GHG emissions reduction and climate change. The City supports local, regional, and statewide efforts to reduce the emission of greenhouse gases linked to climate change.

VIII. HAZARDS AND HAZARDOUS MATERIALS. Would the project:

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion: The subdivision of the property will not create hazards or expose people or property to hazardous conditions. The anticipated development will be consistent with the General Plan and will be delineated with the accompanying Precise Plan.

- a) **No Impacts.** The project would not create any hazards to the public or the environment through the routine transport, use, or disposal of hazardous materials.
- b) **No Impacts.** The project would not create any hazards to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.
- c) **No Impacts.** The project site is located within one-quarter mile of an existing school, but the development of the property would not emit hazardous emissions or require the handling of hazardous or acutely hazardous materials, substances, or waste.
- d) **No Impacts.** The land within the project site is not included on a list of hazardous materials sites. The Department of Toxic Substances Control's Hazardous Waste and Substances Site List (Cortese List) does not list any hazard waste and substances sites within the City of Madera (www.dtsc.ca.gov/database/Calsites/Cortese_List.cfm).
- e) **No Impacts.** The project site is not located within an airport land use plan or, within two miles of a public airport or public use airport. The proposed project would not bring about a safety hazard related to an airport or aviation activities for people residing or working in the project area.
- f) **No Impacts.** The project site is not located within the vicinity of a private airstrip, and would not result in a safety hazard for people residing or working in the project vicinity related to an airstrip or aviation activities.
- g) **No Impacts.** The proposed project would not impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan.
- h) **No Impacts.** The proposed project would not expose people or structures to a significant risk of loss, injury or death involving wildland fires.

IX. HYDROLOGY AND WATER QUALITY. Would the project:

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h. Place within a 100-year flood hazard area structures that would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i. Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j. Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion: The proposed project would not violate any water quality standards or waste discharge requirements. There will not be a significant reduction in the amount of groundwater otherwise available for public water supplies as a result of this project. Services will be provided in accordance with the City's Master Plans. The project will not change any drainage patterns or stream courses, or the source or direction of any water movement. During construction, the project site may be exposed to increased soil erosion from wind and water. Dust control will be used during construction. With completion, the project will not bring about erosion, significant changes in topography or unstable soil conditions.

The project will not expose people or property to water related hazards. Standard construction practices and compliance with City ordinances and regulations, *The Uniform Building Code*, and adherence to professional engineering design approved by the Madera Engineering Department will mitigate any potential impacts from this project. This development will be required to comply with all City ordinances and standard practices which will assure that storm water will be adequately drained into the approved storm water system. The project will not create any impacts on water quality.

Based on a review of the City's FEMA maps, the site is within Zone X and the project will not place housing or other land uses in a 100-year flood hazard area. These are areas outside of the 500-year flood area. The project will not expose people or structures to a significant risk because of dam or levee failure. The project will not expose people or structures to a significant risk because of a seiche, mudflow, or tsunami.

a) **No Impacts.** Development of the project site will be required to comply with all City of Madera ordinances and standard practices which assure proper grading and storm water drainage into the approved storm water systems. Any development will also be required to comply with all local, state, and federal regulations to prevent any violation of water quality standards or waste discharge requirements.

b) **No Impacts.** The project will not substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there will be a net deficit in aquifer volume or a lowering of the local groundwater table level.

c) **No Impacts.** The project will not alter the existing drainage pattern of the site or area through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on or off-site.

d) **No Impacts.** The project will not alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on or off-site.

e) **No Impacts.** The project will not create or contribute runoff water that would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff.

f) **No Impacts.** The project will not degrade water quality.

g) **No Impacts.** The project will not place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map.

h) **No Impacts.** The project will not place structures within a 100-year flood hazard area that would impede or redirect flood flows.

i) **No Impacts.** The project will not expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.

j) **No Impacts.** The project will not have any potential to be inundated by a seiche, tsunami, or mudflow.

IX. LAND USE AND PLANNING. Would the project:

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion: Development of the project area is consistent with the urbanization of the project area, as evaluated in the General Plan and its EIR; therefore impacts in this category are avoided.

a) **No Impacts.** The project would not physically divide an established community. Rather, it logically allows development to occur in an orderly manner, adjacent to urban development.

b) **No Impacts.** The project would not conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating an environmental effect.

c) **No Impacts.** The project would not conflict with any applicable habitat conservation plan or natural community conservation plan.

X. MINERAL RESOURCES. Would the project:

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

a) **No Impacts.** The project would not result in the loss or availability of mineral resources.

b) **No Impacts.** The project would not result in the loss of availability of any locally important mineral resource recovery sites.

XI. NOISE. Would the project result in:

Impact	Potentially Significant Impact	Less Than Significant With Mitigation	Less Than Significant Incorporation	Impact
a. Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Exposure of persons to or generation of excessive ground borne vibration or ground borne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion: These potential impacts were addressed in the General Plan EIR, and goals and mitigation measures were adopted to reduce potential impacts to a less than significant level. Development of the project area is consistent with the urbanization of the Madera area, as evaluated in the General Plan, and its EIR; therefore impacts in this category are not anticipated to exceed the impacts addressed in those documents.

- a) **No Impacts.** The project would not result in exposure of persons to or generation of noise.
- b) **No Impacts.** The project would not result in exposure of persons to or generation of excessive ground-borne vibration or ground-borne noise levels.
- c) **Less than significant impact.** The project would result in a permanent increase in ambient noise levels in the project vicinity above levels existing without the project. These noise levels were anticipated as part of the development of the project site, consistent with the Madera General Plan.

- d) **Less than significant impact.** The project may result in some temporary increase in ambient noise levels in the project vicinity during anticipated construction within the subdivision.
- e) **No Impacts.** The project site is not located within an airport land use plan or within two miles of a public airport or public use airport.
- f) **No Impacts.** The project is not located within the vicinity of a private airstrip.

XII. POPULATION AND HOUSING. Would the project:

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion: The project will not induce additional substantial growth in this area. The property would not displace any housing. Likewise, the project will not displace substantial numbers of people, necessitating the construction of replacement housing elsewhere.

- a) **No Impacts.** Although new residential development may occur, the project will not substantially induce a growth in population by individuals and/or families, directly or indirectly.
- b) **No Impacts.** The project would not displace any existing housing, thereby necessitating the construction of replacement housing elsewhere, since the site is vacant.
- c) **No Impacts.** The project would not displace any people.

XIII. PUBLIC SERVICES.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Would the project 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 public services:				
Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Discussion: The development of the existing residential property will not result in substantial adverse physical impacts from new or altered public facilities. As development occurs, there will be a resultant increase in job opportunities, and a greater demand placed upon services, such as fire and police protection, and additional park and school facilities. This additional demand is consistent with the demand anticipated in the General Plan and evaluated in the General Plan EIR.

The project will not bring about the need for new wastewater treatment facilities. The project will not significantly increase the demand on water supplies beyond the levels anticipated in the General Plan and the Water Master Plan. There will not be a significant reduction in the amount of groundwater otherwise available for public water supplies as a result of this project. The project will not increase the need for additional storm water drainage facilities beyond the existing and master planned drainage basin facilities that are planned to serve the project area. Initially, the project will rely upon temporary on-site storm drain retention strategies. The project area will be required to provide additional facilities within the development, and comply with the City's Master Plan, Ordinances, and standard practices. The project will not bring about a significant increase in the demand for solid waste disposal services and facilities.

- i) Fire protection. **Less than significant impact.** The project will not result in substantial adverse physical impacts to fire protection services.
- ii) Police protection. **Less than significant impact.** The project will not result in substantial adverse physical impacts associated with the provision of police protection.
- iii) Schools. **Less than significant impact.** The Madera Unified School District levies a school facilities fee to help defray the impact of residential development. The project will not generate a significant impact to the schools in Madera.

iv) Parks. **Less than significant impact.** The project will not generate a significant impact to the park facilities in Madera.

v) Other public facilities. **Less than significant impact.** The project will not have any impacts on other public facilities.

XIV. RECREATION

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Does the project include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion: Residential development is consistent with the City of Madera General Plan and Zoning Ordinance. Impacts in this category are not anticipated to exceed the impacts addressed in those documents.

- a) **No Impacts.** The project would not increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated.
- b) **No Impacts.** The project does not include recreational facilities or facilities which might have an adverse physical effect on the environment.

XV. TRANSPORTATION/TRAFFIC. Would the project:

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Result in a change in traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Result in inadequate parking capacity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion: The project site was included in the General Plan and its accompanying EIR and the potential traffic generated from the eventual development of this land is considered. The goals and policies of the General Plan serve to mitigate traffic impacts that occur as a result of new development.

a) **Less-Than-Significant Impacts.** The project would not cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system that would result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections.

b) **Less-Than-Significant Impacts.** The project would not exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways.

c) **Less-Than-Significant Impacts.** The project would result in a change in traffic patterns, including either an increase in traffic levels or a change in location, but would not result in substantial safety risks.

- d) **Less-Than-Significant Impacts.** The project would not increase hazards to transportation systems due to design features such as sharp curves, dangerous intersections, or incompatible uses.
- e) **No Impacts.** The project would not result in inadequate emergency access.
- f) **No Impacts.** The project would not result in inadequate parking capacity. Any development of the project site will include parking sufficient to serve the proposed project.
- g) **No Impacts.** The project will not conflict with adopted policies, plans, or programs supporting alternative transportation.

XVI. UTILITIES AND SERVICE SYSTEMS. Would the project:

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Result in a determination by the wastewater treatment provider that serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion: The City's community sewage disposal system will continue to comply with Discharge Permit requirements. The project will not bring about the need for new wastewater treatment facilities. The project will not significantly increase the demand on water supplies, adequate domestic water and fire flows should be available to the property. There will not be a significant reduction in the amount of groundwater otherwise available for public water supplies as a result of this project. The project will not increase the need for additional storm water drainage facilities beyond the existing and master planned drainage basin facilities that are planned to serve the project. The project area will be required to comply with the City's Master Plan, Ordinances, and standard practices. The project will not bring about a significant increase in the demand for solid waste disposal services and facilities.

a) **No Impacts.** The project will not exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board.

- b) **No Impacts.** The project would not require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.
- c) **No Impacts.** The project would not require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.
- d) **Less-Than-Significant Impacts.** There will be sufficient water supplies available to serve the project.
- e) **No Impacts.** The project would not require a determination by a wastewater treatment provider.
- f) **No Impacts.** The project would be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs.
- g) **No Impacts.** The project will be required to comply with federal, state, and local statutes as well as regulations related to solid waste by the City of Madera.

XVII. MANDATORY FINDINGS OF SIGNIFICANCE.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Determination:

Based upon staff analysis and comments from experts, it has been determined that the proposed project could generate some limited adverse impacts in the areas of Aesthetics, Air Quality, Noise, Public Services, Utilities, and Transportation and Traffic.

The potential impacts identified in this Initial Study are considered to be less than significant since they will cease upon completion of construction or do not exceed a threshold of significance. Therefore, a Negative Declaration is the appropriate level of documentation for this project.

RESOLUTION NO. ____

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
MADERA RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF
MADERA ADOPTION OF AN ORDINANCE PREZONING
APPROXIMATELY 20 ACRES OF PROPERTIES (APN: 038-070-012,
038-082-001, 038-090-002, 038-090-003, 038-090-004, 038-090-005,
038-090-006), LOCATED ON THE WEST SIDE OF NORTH D STREET,
SOUTH OF ITS INTERSECTION WITH ELLIS STREET AND NORTH OF
ITS INTERSECTION WITH ADELL STREET, TO THE PD 6000
(PLANNED DEVELOPMENT) ZONE DISTRICT.

WHEREAS, State Law requires that local agencies adopt General Plans containing specific mandatory elements; and

WHEREAS, The City of Madera has adopted a Comprehensive General Plan Update and Environmental Impact Report, and the City of Madera is currently in compliance with State mandates relative to Elements of the General Plan; and

WHEREAS, State law also provides for periodic review, updates, and amendments of its various Plans; and

WHEREAS, a proposal has been made to prezone approximately 20 acres of property (APN: 038-070-012, 038-082-001, 038-090-002, 038-090-003, 038-090-004, 038-090-005, 038-090-006), located on the west side of North D Street, south of its intersection with Ellis Street and north of its intersection Adell Street, to the PD 6000 (Planned Development) Zone District, as shown in the attached Exhibit A; and

WHEREAS, the proposed prezone will provide the required consistency between the General Plan and Zoning Ordinance; and

WHEREAS, the prezone is compatible with the neighborhood and is not expected to be detrimental to the health, safety, peace, comfort or general welfare of the neighborhood or the City; and

WHEREAS, the City of Madera, acting as the Lead Agency, prepared an initial study and negative declaration for the project in compliance with the California Environmental Quality Act; and

WHEREAS, the negative declaration and rezoning were distributed for public review and comment to various local agencies and groups; and

WHEREAS, public notice of this public hearing was given by mail and published notice in accordance with the applicable State and Municipal Codes and standard practices; and

WHEREAS, the Planning Commission has completed its review of the staff report and documents submitted for the proposed project, evaluated the information and considered testimony received as a part of the public hearing process.

NOW THEREFORE BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MADERA AS FOLLOWS:

1. The above recitals are true and correct.
2. The Planning Commission hereby finds that proposed rezoning, as shown in Exhibit A, is consistent with the General Plan and is compatible with adjacent zoning and uses.
3. The Planning Commission hereby recommends the City Council adopt an ordinance rezoning property as indicated on the attached Exhibit A.
4. This resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 12th day of February 2019, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Robert Gran, Jr.
Planning Commission Chairperson

Attest:

Christopher F. Boyle
Planning Manager

EXHIBIT 'A'



DRAFT ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA AMENDING THE OFFICIAL CITY OF MADERA ZONING MAP TO PREZONE APPROXIMATELY 20 ACRES OF PROPERTY (APN: 038-070-012, 038-082-001, 038-090-002, 038-090-003, 038-090-004, 038-090-005, 038-090-006), LOCATED ON THE WEST SIDE OF NORTH D STREET, SOUTH OF ITS INTERSECTION WITH ELLIS STREET AND NORTH OF ITS INTERSECTION WITH ADELL STREET, TO THE PD 6000 (PLANNED DEVELOPMENT) ZONE DISTRICT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MADERA AS FOLLOWS:

SECTION 1. The Planning Commission of the City of Madera and this Council have held public hearings upon the rezoning of these properties and have determined that the proposed rezoning is consistent with the General Plan as amended and subsequent development will be in conformance with all standards and regulations of the Municipal Code.

SECTION 2. The City of Madera Zoning Map as provided for in Chapter 3 of Title 10 of the Madera Municipal Code is hereby amended as illustrated in the hereto attached Exhibit "A" which indicates the segment of the City of Madera Zoning Map to be amended. Unless the adoption of this amendment to the Zoning Map is lawfully stayed, thirty-one (31) days after adoption of this amendment, the Planning Director and City Clerk shall cause these revisions to be made to the City of Madera Zoning Map which shall also indicate the date of adoption of this revision and be signed by the Planning Director and City Clerk.

SECTION 3. Based upon the testimony and information presented at the hearing, the adoption of the proposed rezoning is in the best interest of the City of Madera, and the Council hereby approves the rezoning based on the following findings:

FINDINGS:

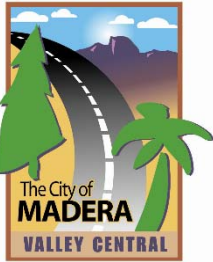
1. THE PROPOSED PREZONE WILL PROVIDE THE REQUIRED CONSISTENCY BETWEEN THE GENERAL PLAN AMENDMENT AND ZONING.
2. THE PREZONE IS NOT EXPECTED TO BE DETRIMENTAL TO THE HEALTH, SAFETY, PEACE, COMFORT OR GENERAL WELFARE OF THE NEIGHBORHOOD OR THE CITY.
3. CITY SERVICES AND UTILITIES ARE AVAILABLE OR CAN BE EXTENDED TO SERVE THE AREA.

SECTION 4. This Ordinance shall be effective and of full force and effect at 12:01 a.m. on the thirty-first day after its passage.

* * * * *

EXHIBIT A





CITY OF MADERA PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

Staff Report: Starbucks Drive-Thru and Outdoor Seating CUP 2018-22 & 23, SPR 2018-37 & Environmental Determination Item # 3 – February 12, 2019

PROPOSAL: Consideration of two conditional use permits and a site plan review to allow the construction of an approximately 5,400 square foot commercial building with three tenant suites in conjunction with a 24-hour drive-thru, a digital preview menu board and an outdoor seating area.

APPLICANT:	West Coast Investments Inc.	OWNER:	West Coast Investments Inc.
ADDRESS:	317 West Olive Avenue	APN:	010-202-018
APPLICATION:	CUP 2018-22 & 23, SPR 2018-37	CEQA:	Categorical Exemption

LOCATION: The property is located at the northwest corner of the intersection of South I Street and West Olive Avenue.

STREET ACCESS: The site has access to West Olive Avenue and South I Street

PARCEL SIZE: Approximately 0.45 acres

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: C1 (Light Commercial)

SITE CHARACTERISTICS: The 0.45-acre property currently serves as part of the parking field for the Bethard Square shopping center. The project site is surrounded by commercial development to the north, east and south, with residential development to the west.

ENVIRONMENTAL REVIEW: This project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA) guidelines, Section 15332 (In-Fill Development Projects).

SUMMARY: The applicant is proposing the construction of an approximately 5,400 square foot commercial building with three tenant suites in conjunction with a 24-hour drive-thru, a digital preview menu board and an outdoor seating area. Approval of a use permit is required for the allowance of the 24-hour drive-thru, digital preview menu board and the outdoor seating area uses. The new construction proposal is consistent with the City's General Plan, Design and Development Guidelines and the Zoning Ordinance.

APPLICABLE CODES AND PROCEDURES

MMC § 10 3.4.0102 Site Plan Review Applicability

MMC § 10 3.802 Light Commercial Zone

MMC § 10 3.1201 Parking General Requirements

MMC § 10 3.1202 Parking Spaces Required

MMC § 10 3.1301 Use Permits

MMC § 10-6.13 Special Use Signs

The City's Zoning Ordinance allows for the granting of a use permit by the Planning Commission (Commission), subject to the Commission being able to make findings that the establishment, maintenance or operation of the use or building will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of the use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city.

If the Commission cannot make the appropriate findings, the use should be denied. Conditions may be attached to the approval of the use permit to ensure compatibility. Project design may be altered and on or off-site improvements required in order to make the project compatible with nearby uses. In addition, the application may be subject to further review, modification or revocation by the Commission as necessary. The completion of a site plan review is mandated by ordinance as a component of the conditional use permit application.

PRIOR ACTION

The Bethard Square Shopping Center was developed in 1968 and refreshed in 2016 as part of Site Plan Review (SPR) 2015-41. The project parcel was created with Lot Line Adjustment LLA 2017-01, approved on March 1, 2017, which adjusted the Bethard Square Shopping Center in order to provide for potential new construction. The associated reciprocal easement agreement provided for the interim use of the project parcel as shared parking for the shopping center. There are no other land use entitlements associated with the project parcel.

ANALYSIS

The following analysis for two conditional use permits and a site plan review includes a background of the proposal and applicability of the use permits for the operations of a drive-thru use and outdoor seating area, to determine consistency with the City's General Plan, Design and Development Guidelines and the Zoning Ordinance, that will cumulative add to the existing Bethard Square Shopping Center.

Project Proposal

The project site is currently being utilized as parking for the Bethard Square shopping center. The applicant is proposing to develop an approximately 5,400 square foot commercial building composed of three tenant suites, a 24-hour drive-thru lane with a digital preview menu board and an outdoor seating area. Two of the suites are proposed to be occupied by a Starbucks

Coffee and an AT&T store. The remaining suite does not have a tenant in place at this time. The drive-thru and outdoor seating uses will be utilized by Starbucks.

A drive-thru use and the outdoor seating use require the approval of a conditional use permit by the Commission. The site plan review facilitates the construction of the commercial development through conditions of approval that ensure compliance with the General Plan, Design and Development Guidelines (DDG) and the Zoning Ordinance development standards.

General Plan Conformance

The proposed commercial development provides compliance with the General Plan and the C1 (Light Commercial) Zone District development standards by implementing the goals and policies of the General Plan as follows:

Goals: **CD-1** High quality urban design throughout Madera.

CD-4 Attractive streetscapes in all areas of Madera.

CD-5 Walkable Community.

CD-11 Design commercial development to enhance the pedestrian environment.

CD-12 Aesthetically pleasing commercial development.

The following supporting policies provide implementation of the goals with attention to the following Community Design directives for commercial development that cumulatively provide conformance with the General Plan.

- *Site Design*

The proposed building has been designed to provide a presence along the West Olive Avenue frontage to enhance the pedestrian scale and reduce the visual impact of the parking lot as required by Policies CD-15 & CD-57. The site design also includes an outdoor seating area, which is an encouraged feature within shopping centers and plazas as indicated by Policy CD-54. The drive-thru window location is incorporated into the design of the building in such a way that does not substantially detract from the overall value of the building and is consistent with the City's DDG.

- *Architecture*

The building's four-sided elevations provide an attractive, contemporary commercial architecture consistent with Policy CD-53. The otherwise unarticulated, boxy structure provides varied use of window sizes, awnings, canopies, thin brick veneers, horizontal trim and score lines and varying surfaces to create a horizontal emphasis that cumulatively provide architectural value to the structure.

Because the structure will be visible in all directions, it is recommended that all exterior utilities be located within the interior of the building or that they be significantly screened by landscaping. Staff also recommends that roof access be located within the interior of the structure.

- *Landscaping*

Landscaping is proposed to enhance and embellish the appearance of the project site. Landscaping is proposed between the public right-of-way and the drive-thru lane. The proposal includes a redesigned parking field that incorporates landscaping peninsulas around the perimeter, screening the parking lot into a smaller, separate unit from the existing shopping center, consistent with Policy CD-58. The plant species and placement of the landscaping peninsulas are intended “to create an attractive pedestrian environment and reduce the impact of heat islands”. (Policy CD-50)

Parking

The City’s parking standards for uses with on-site dining requires one space for every three seats, plus one space for every 50 square feet of net floor area available for non-fixed seating. Retail uses require one space for every three hundred square feet of gross floor area. The applicant has confirmed two of the tenants expected to occupy the site. Because the third tenant is unknown, the parking matrix will calculate the unknown tenant use with a one to three hundred square feet parking ratio. It should be noted that the proposed development will eliminate 40 existing parking stalls and replace them with nineteen. Below is the parking matrix for the entire shopping center, including existing and proposed parking stalls and uses.

	Required Parking	Available Parking	Future Required Parking	Future Available Parking
Existing Uses	400	462	-	-
Proposed Uses Only	-	-	30	440
Tenant A	-	-	8	-
AT&T	-	-	5	-
Starbucks	-	-	17	-
All Future Uses		Total	430	440

As shown in the parking matrix above, there is ample parking to serve the existing and proposed uses concurrently.

Drive-thru Use Permit

As proposed, the drive-thru lane is utilized on-site and does not directly affect the public right-of-way. The DDG recommends a no less than ten-vehicle queuing depth for restaurant drive-thru stacking lanes. The throat of the drive-thru lane provides room to adequately queue eleven vehicles. Staff recommends the placement of a three-foot decorative masonry wall along the exterior of the drive-thru lane to effectively screen issues of headlight glare into the public right-of-way as required by the DDG. Landscaping will be incorporated into the site design as an additional means of retaining light glare on the site. The applicant is requesting the allowance for the drive-thru component of the business to be permitted to operate 24-hours a day, seven days a week.

In addition to the allowance for the drive-thru hours, the applicant is proposing to incorporate a digital order screen as part of the Starbucks drive-thru preview and menu boards system. The digital ordering screen would allow for interaction between the customer and Starbucks employees, similar to a “FaceTime” interface where there is “real time” video communication.

The City’s Sign Ordinance does not make specific provisions for a digital order screen within the Special Use Signs (MMC § 10-6.13) section of the ordinance. The Planning Commission may grant an allowance for the requested signage as a component of the conditional use permit which allows for the drive-thru use in association with the operation of the Starbucks Coffee house. It should be noted that the exact same ordering screen was approved for the Starbucks located on Kennedy Street in 2015 through a conditional use permit process.

Considering the overall drive-thru design and capacity, Staff is in support of an approval for the requested digital menu board in conjunction with the request for a drive-thru lane. Placement location and size of the digital menu board will be required to adhere to the City’s sign ordinance. The drive-thru does not abut any residential development, thus allowing staff to conclude that operation of a drive-thru on a 24-hour schedule will not adversely affect any of the surrounding uses.

Outdoor Seating Use Permit

The applicant is also proposing an outdoor seating area as a component of the Starbucks Coffee business model. The proposal includes approximately eighteen seats located on the east side of the anticipated Starbucks tenant suite. The outdoor seating area has been designed to comply with the requirements of the Americans with Disabilities Act. It is recommended that a wrought iron fence be constructed around the outdoor seating area, to provide for a barrier between the outdoor seating area and the drive-thru lane. The allowable number of seats in the outdoor seating area will ultimately be determined by California Fire Code regulations upon submittal of an official site and floorplan, in conjunction with submittals for a building permit plan check. In any case, the total allowable number of outdoor seats will not be permitted to exceed eighteen seats as shown on the site plan.

Other Department and Agency Comments

The project was reviewed by various City Departments and outside agencies. The responses and recommendations have been incorporated into the recommended conditions of approval included in this report.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Though approval of a commercial building, a drive-thru use with a digital preview menu board and the establishment of an outdoor seating area are not specifically addressed in the vision or action plans, the overall project does indirectly support Action 115.2 – “As a component of the General Plan Update, increase retail outlets and promote Shop Madera ...”

RECOMMENDATION

The information presented in this report supports a recommendation of approval for the site plan and conditional use permit applications. It is recommended that the Planning Commission consider this information together with public testimony during the public hearing, and approve Conditional Use Permits 2018-22 and 23, and Site Plan Review 2018-37, subject to the findings and the recommended conditions of approval.

PLANNING COMMISSION ACTION

The Planning Commission will be acting on the request for Conditional Use Permit 2018-22, Conditional Use Permit 2018-23 and Site Plan Review 2018-37, determining to either:

- approve the applications with or without conditions
- continue the hearing, or
- deny the applications

Any action by the Commission approving or denying the application is subject to an appeal to the City Council within 15 calendar days of the Commission's action.

Motion 1: Move to approve Conditional Use Permit 2018-22 and 23, and Site Plan Review 2018-37, based on and subject to the findings and conditions of approval as listed:

Findings

- This project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA) guidelines, Section 15332 (In-Fill Development Projects).
- A drive-thru use with a digital preview menu board and an outdoor seating area in conjunction with an on-site dining establishment is consistent with the purpose and intent of the C (Commercial) General Plan land use designation and the C1 (Light Commercial) Zone District which provide for the uses, subject to the issuance of a conditional use permit.
- As conditioned, the development will be compatible with surrounding properties which cumulatively form the Bethard Square Shopping Center.
- As conditioned, the establishment, maintenance and/or operation of the uses will not be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed uses or be detrimental or injurious to the property and improvements in the neighbor or general welfare of the City.

CONDITIONS OF APPROVAL

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by receipt in the Planning Department of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within 30 days of the date of approval.
2. The applicant's failure to utilize any of the use permits within one year following the approval date shall render the conditional use permit null and void unless a written request for an extension has been submitted to the Planning Commission.
3. Conditional Use Permits 2018-22 and 23 may be made null and void without any additional public hearing at any time upon both benefactors of the use permits and owners of the property voluntarily submit to the City a written request to permanently extinguish the conditional use permit(s).
4. Conditional Use Permits 2018-22 and 23, and Site Plan Review 2018-37 shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If at any time, the use is determined by Staff to be in violation of the conditions, staff may schedule a public hearing before the Planning Commission within 45 days of the violation to revoke the permits or modify the conditions of approval.
5. Site Plan Review 2018-37 shall expire one year from date of issuance unless positive action is taken on the project as provided in the Municipal Code and a request to extend the approval is received before the expiration date (Municipal Code Section 10-3.4.0114, Lapse of Site Plan Approval).
6. Any proposed future modifications to the site, including but not limited to, the building exteriors, parking/loading areas, fences/walls, new buildings or landscaping shall require an amendment to Site Plan Review 2018-37.
7. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specified in the conditions of approval listed herein or mandated by statutes.
8. It shall be the responsibility of the property owner to ensure that any required permits, inspections and approvals from any regulatory agency shall be obtained from the concerned agency prior to any building permit final issuance.
9. The project shall be developed in accordance with the conditions of approval listed herein and elevation drawings, as reviewed and approved with the site and floor plans. Minor modifications to the site plan to meet regulatory or engineering constraints may

be made with the approval of the Planning Manager. All on- and off-site improvements shall be completed in advance of any request for building permit final inspection.

Building Department

10. A building permit is required for all improvements. The tenant spaces, drive-thru lane, and outdoor seating area shall meet the requirements of the California Building Code, California Fire Code, and Americans with Disabilities Act prior to occupancy.
11. Current State of California and Federal handicap requirements shall apply to the entire project site and all structures and parking herein. Compliance shall be checked at the permit stage and confirmed at final inspection.

Engineering Department

General

12. Nuisance on-site lighting shall be redirected as requested by the City Engineer within 48 hours of notification.
13. Impact fees shall be paid at the time of a building permit issuance.
14. The developer shall pay the required fees for completion of the project. Fees due may include, but shall not be limited to the following: plan review, encroachment permit processing and improvement inspection fees.
15. Improvement plans signed and sealed by an engineer shall be submitted to the Engineering Department in accordance with the submittal process.
16. In the event archeological resources are unearthed or discovered during any construction activities on-site, construction activities shall cease and the Community Development Director or City Engineer shall be notified so that procedures required by state law can be implemented.
17. Improvements within the City right-of-way shall require an encroachment permit from the Engineering Department.
18. A public utility easement of ten feet wide shall be dedicated along the project parcel frontage on Olive Avenue.

Sewer

19. Sewer service connection(s) shall be constructed to current City standards
20. Sewer main connections six inches and larger in diameter shall require a manhole installation.

Streets

21. Substandard and damaged sidewalk, curb and gutter along the project parcel frontage shall be removed and replaced per City standards. Limits of repairs shall be established by the City Engineering Inspector.
22. Throat lengths for driveways shall be sufficient in length as to eliminate the possibility of vehicles queuing into the City right-of-way.
23. The developer shall annex into the and execute such required documents that may be required to participate in Landscape Maintenance District Zone 51 for the purpose of participating in the cost of maintaining landscape improvements within the zone.

Storm Drain

24. Storm runoff from this project will surface drain into existing facilities and eventually into the Madera Irrigation District canal (MID). Water runoff from the site must be cleaned before entering the existing stormwater system to the satisfaction of the MID through the use of an on-site oil/water separator or drop inlet inserts at drain inlets that receive runoff from the site.
25. This project shall comply with the design criteria as listed on the National Pollutant Elimination Systems (NPDES) General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer System (MS4's) as mandated by Water Quality Order No. 2013-0001-DWQ, NPDES General Permit NO. CAS0000004.

Water

26. Water Service connection(s) shall be constructed to current City standards including a water meter installed within City right-of-way and backflow prevention device installed within private property.
27. A separate water meter and backflow prevention device shall be required for landscape areas.

Fire Department

28. Building Permits must be obtained before any construction on the site can commence.
29. The proposed structure shall be built consistent with the currently adopted California Codes at the time of permit application.
30. A key box is required for rapid entry by fire service personnel.
31. A fire sprinkler system may be required based upon the ultimate tenant occupancies. The proposed strip mall/shell building allows for significant flexibility, but some uses such as assembly occupancies may trigger the fire sprinkler requirement.

32. Fire access lanes shall be clearly posted where the existing dividing pattern will be altered.

Planning Department

General

33. On-site vandalism and graffiti shall be corrected per the Madera Municipal Code.
34. The property owner, operator and/or manager shall operate in a manner that does not generate noise, odor, blight or vibration that adversely affects any adjacent properties.
35. The property owner, operator and/or manager shall keep the property clear of all trash, rubbish and debris at all times; and dumping of refuse shall be restricted to the dumpster and refuse containers assigned to the property.
36. The applicant shall comply with all federal, state and local laws. Material violations of any of those laws concerning the use will be cause for revocation of these permits.

Drive-Thru Use Permit

37. Conditional Use Permit 2018-22 allows for the establishment of a 24-hour drive-thru use in conjunction with the utilization of digital signage as part of the drive-thru component of the Starbucks Coffee business model.
38. The drive-thru stacking lane shall be developed consistent with the approved site plan, designed to queue no less than eleven vehicles.
39. A three-foot decorative masonry block wall shall be constructed along the drive-thru lane perimeter sufficient to screen headlight glare into the public right-of-way. The decorative masonry block wall shall be reviewed and approved by the Planning Manager prior to issuance of a building permit.
40. The drive-thru shall be allowed one preview board, one menu board and one digital ordering screen. No additional freestanding signage shall be allowed as a component of the Starbucks coffee house.
41. All Starbucks signage shall require the approval of a sign review application and building permit in advance of installation.

Outdoor Seating Use Permit

42. Conditional Use Permit 2018-23 allows for the establishment of an outdoor seating area consistent with the approved site plan. Outdoor seating shall only be allowed in the approved outdoor seating area.
43. The total allowable number of seats (indoor and outdoor combined) for Starbucks Coffee shall not exceed 50 seats. The total maximum allowable number of outdoor seats shall be

determined by the Fire Marshall upon submittal of a required floor plan and site plan at the time of tenant improvement plan check.

44. A three-foot wrought iron fence shall be constructed around the outdoor seating area as to provide for separation between the drive-thru lane and the outdoor seating. The fence shall not impede any ADA paths of travel.
45. The outdoor seating activities shall be permitted to occur during the shopping center's regular business hours.

Site Plan Review

46. Site Plan Review 2018-37 allows for the construction of the commercial building encompassing approximately 5,400 square feet, approved consistent with the colors and materials board and representative color section rendering of the proposed building as reviewed and approved by the Planning Commission. Any alterations to the site plan or building shall require Planning Commission approval.
47. No additional outdoor storage of goods, materials and/or activates shall not be allowed without first securing a use permit from the approval of the Planning Commission.

Fences and Walls

48. A new double-bin trash enclosure shall be constructed consistent with City standards. The trash enclosure shall be constructed to match the primary structure's colors and materials, as reviewed and approved by the Planning Manager. The location of the trash enclosure shall be consistent with the approved site plan.

Building Colors, Materials and Lighting

49. The construction of the building approved as part of Site Plan Review 2018-37 shall be consistent with the colors and materials board to be reviewed and approved by the Planning Manager.

Parking Site Data

50. All parking and loading areas shall be marked, striped and permanently maintained at all times in conformance with City standards. With the new development on the site, available parking for the shopping center is as follows:

	Stalls Required	Ratio	Provided
• Existing Use	400 stalls	Varies	440
• Tenant A	8 stalls	1 – 300 sq.ft.	-
• AT&T Store	5 stalls	1 – 300 sq.ft.	-
• Starbucks Coffee	17 stalls	1- 3 seats	-
• All Uses	430 stalls	Varies	440

Further expansion of uses or additional or accessory uses may require the provision of additional parking spaces in compliance with City standards prior to the establishment of a new use.

51. Revised site plans submitted for a plan check permit shall incorporate bicycle parking facilities to be provided for patrons and employees to be approved by the Planning Manager, as to number and location.

HVAC & PG&E Utility Placement Considerations/Screening Requirements

52. Prior to the issuance of building permits, the applicant shall identify the following information on the site plan for Planning Department review and approval:
 - The location of all natural gas and electrical utility meter locations.
 - The location of all HVAC (heating, ventilation or air conditioning) equipment.
 - The location of all compressor equipment, and mechanical and electrical equipment.
53. All electrical and HVAC equipment shall be screened to the specifications of the Planning Department.
54. Electrical/mechanical equipment shall be located in the interior of the proposed new structure within an electrical/mechanical service room(s).
55. All HVAC equipment shall be roof-mounted and completely screened from view and architecturally integrated into the roof using roof wells or continuous building perimeter fascia screening.
56. Natural gas meter placement shall be screened from public view per Planning Department approval.
57. Roof access ladders, if proposed, shall be located within the interior of the building.
58. Future placement of roof-mounted equipment, which is not part of this site plan approval, may require an amendment to this Site Plan Review.
59. All ducts and vents penetrating roofs shall be directed away from the front of public entrance side(s) of the building using methods to minimize their appearance and visibility from the street. Placements are preferred at rear sides of roof ridges. All roof-mounted ducts and vents are to be painted matte black or with a color better suited to minimize their appearance.
60. Fire sprinkler risers shall be located within the interior of the building or located out of public view. Locations shall be approved by the Planning Department prior to the issuance of building permits.

Landscaping

61. A detailed landscaping and irrigation plan shall be prepared by a licensed landscape architect consistent the California Model Water Efficient Landscape Ordinance, stamped and submitted as part of the submittals for a building permit plan check. Landscaping and irrigation plans shall be approved by the Planning Department prior to issuance of building permit.

62. The property owner and/or manager shall maintain all landscaping in a healthy and well-manicured appearance. This includes, but not limited to; ensuring irrigation equipment is properly operating at all times, trimming and pruning trees and shrubs and replacing dead or unhealthy vegetation with drought-tolerant plantings.

Signage

63. No permanent or temporary signage shall be placed within the outdoor seating area or affixed onto any outdoor seating area furniture, fencing and/or protective barriers.
64. All proposed and future signage shall be in compliance with the Madera Municipal Code MMC §10-6.

Air Quality Measurement Requirements

65. The applicant shall comply with all rules and regulations set forth by the San Joaquin Valley Air Pollution Control District as indicated by the attached document. To identify the District's rules and regulations that apply to the project or obtain information about the District's permits requirements, the applicant is strongly encouraged to contact the District's Small Business Assistance Office at (559) 230-5888.

(OR)

Motion 2: Move to continue the applications for Conditional Use Permits 2018-22 and 23, and Site Plan Review 2018-37 to the March 12, 2019, Planning Commission hearing, based on and subject to the following (specify):

(OR)

Motion 3: Move to deny the application for Conditional Use Permit 2018-22 and 23, and Site Plan Review 2018-37 based on the following findings: (specify)

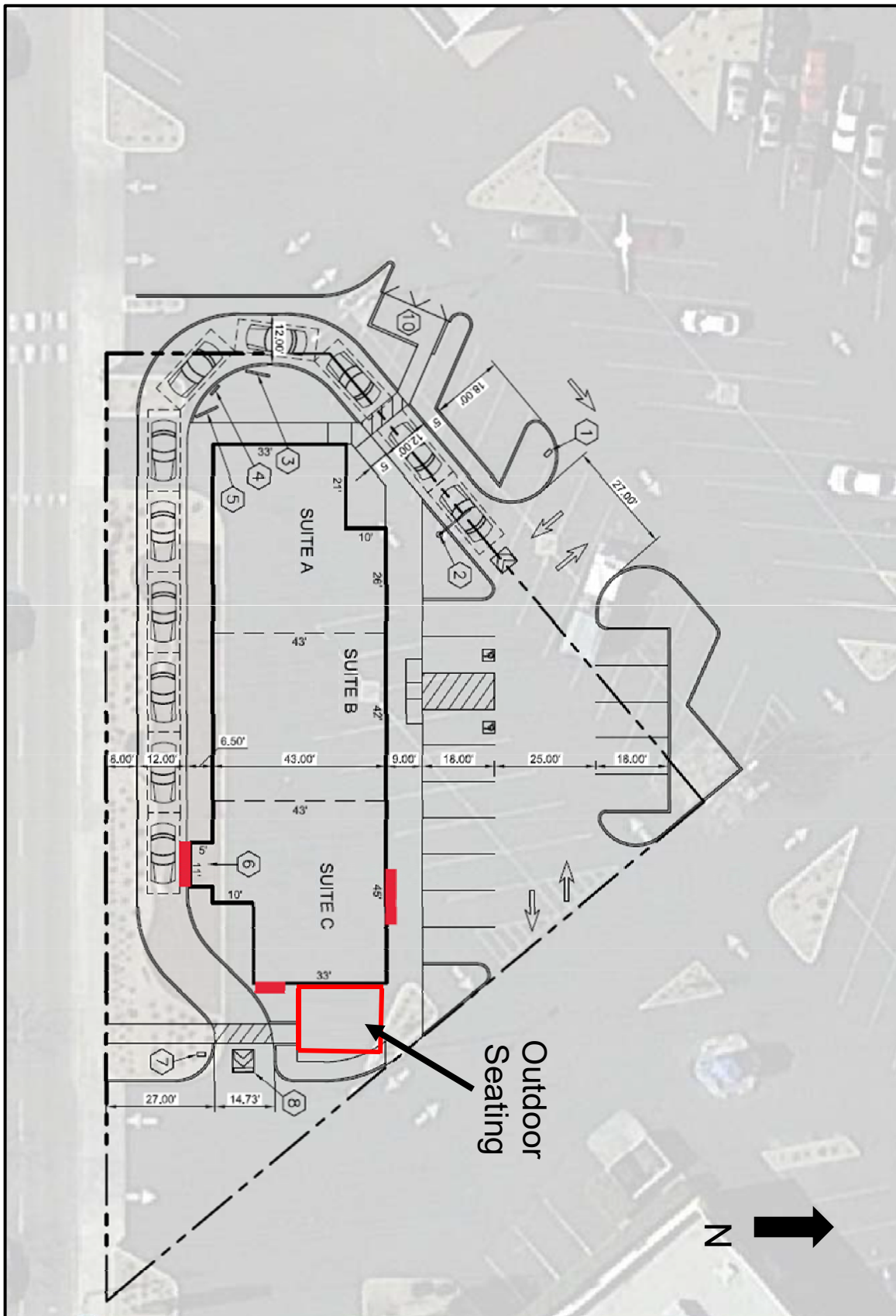
ATTACHMENTS

Attachment 1: Aerial Map
Attachment 2: Site Plan
Attachment 3: San Joaquin Valley Air Comment Letter
Attachment 4: Starbucks Floor Plan
Attachment 5: Building Elevations
Attachment 6: Tenant Floor Plan

Attachment 1: Aerial Map



Attachment 2: Site Plan



Attachment 3: San Joaquin Valley Air Comment Letter



February 6, 2019

Jesus R. Orozco
City of Madera
Planning Department
205 West 4th Street
Madera, CA 93637

**Project: Conditional Use Permit (CUP) 2018-22 & 23 and Site Plan Review (SPR)
2018-37, Starbucks at Bethard Square**

District CEQA Reference No: 20190173

Dear Mr. Orozco:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the project referenced above consisting of the development of three (3) tenant suites to include a Starbucks with a 24-hour drive-thru and an outdoor dining patio, an AT&T store, and a sit-down restaurant totaling approximately 5,400 square feet on a 19,900 square foot parcel (Project), located at 317 West Olive Avenue in Madera, CA (APN 010-202-018). The District offers the following comments:

1. Based on information provided to the District, Project specific annual emissions of criteria pollutants are not expected to exceed any of the following District significance thresholds: 100 tons per year of carbon monoxide (CO), 10 tons per year of oxides of nitrogen (NOx), 10 tons per year of reactive organic gases (ROG), 27 tons per year of oxides of sulfur (SOx), 15 tons per year of particulate matter of 10 microns or less in size (PM10), or 15 tons per year of particulate matter of 2.5 microns or less in size (PM2.5). Therefore, the District concludes that the Project would have a less than significant impact on air quality when compared to the above-listed annual criteria pollutant emissions significance thresholds.
2. District Rule 9510 (Indirect Source Review) is intended to mitigate a project's impact on air quality through project design elements or by payment of applicable off-site fees. The proposed Project is subject to District Rule 9510 (Indirect Source Review) if (1) it has or will receive a project-level discretionary approval from a public agency and will equal or exceed 2,000 square feet of commercial space, or (2) if it has or will receive a project-level approval from a public agency and will equal or exceed 10,000 square feet of commercial space. If subject to the rule, an Air Impact Assessment (AIA) application is required prior to applying for project-level approval from a public agency.

Samir Sheikh

Executive Director/Air Pollution Control Officer

Northern Region

4800 Enterprise Way
Modesto, CA 95358-8718
Tel: (209) 557-6400 FAX: (209) 557-6475

Central Region (Main Office)

1990 E. Gottsburg Avenue
Fresno, CA 93726-0244
Tel: (559) 230-6000 FAX: (559) 230-6061

Southern Region

34946 Flyover Court
Bakersfield, CA 93308-9725
Tel: 661-392-5500 FAX: 661-392-5585

www.valleyair.org

www.healthyairliving.com

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In this case, if not already done, please immediately submit an AIA application to the District to comply with District Rule 9510.

In the case the Project is subject to District Rule 9510 an AIA application is required and the District recommends that demonstration of compliance with District Rule 9510, before issuance of the first building permit, be made a condition of Project approval. Information about how to comply with District Rule 9510 can be found online at: <http://www.valleyair.org/ISR/ISRHome.htm>. The AIA application form can be found online at: <http://www.valleyair.org/ISR/ISRFormsAndApplications.htm>.

3. Particulate Matter 2.5 microns or less in size (PM2.5) from under-fired charbroilers pose immediate health risk. Since the cooking of meat can release carcinogenic PM2.5 species like polycyclic aromatic hydrocarbons, controlling emissions from under-fired charbroilers will have a substantial positive impact on public health.

Charbroiling emissions occur in populated areas, near schools and residential neighborhoods, resulting in high exposure levels for sensitive Valley residents. The air quality impacts on neighborhoods near restaurants with under-fired charbroilers can be significant on days when meteorological conditions are stable, when dispersion is limited and emissions are trapped near the surface within the surrounding neighborhoods. This potential for neighborhood-level concentration of emissions during evening or multi-day stagnation events raises environmental concerns.

Furthermore, the latest photochemical modeling indicates that reducing commercial charbroiling emissions is critical to achieving attainment of multiple federal PM2.5 standards and associated health benefits in the Valley.

Therefore, the District strongly recommends new restaurants that will operate under-fired charbroilers install emission control systems during the construction phase since installing charbroiler emissions control systems during construction of new facilities is likely to result in substantial economic benefit compared to costly retrofitting. To ease the financial burden for Valley businesses that wish to install control equipment before it is required by District Rule 4692 (Commercial Charbroiling), the District is currently offering substantial incentive funding that covers the full cost of purchasing, installing, and maintaining the system for up to two years. Please contact the District at (559) 230-5800 or technology@valleyair.org for more information.

4. The proposed Project may be subject to District Rules and Regulations, including: Regulation VIII (Fugitive PM10 Prohibitions), Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations). In the event an existing building will be renovated, partially demolished or removed, the Project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants). The above list of rules is neither exhaustive nor exclusive. To identify other District rules or regulations that apply to this Project or to obtain information about District permit requirements, the applicant is strongly encouraged to contact the District's Small Business Assistance Office at (559) 230-5888. Current District rules can be found online at: www.valleyair.org/rules/1ruleslist.htm.

5. The District recommends that a copy of the District's comments be provided to the Project proponent.

If you have any questions or require further information, please call Stephanie Pellegrini, at (559) 230-5820.

Sincerely,

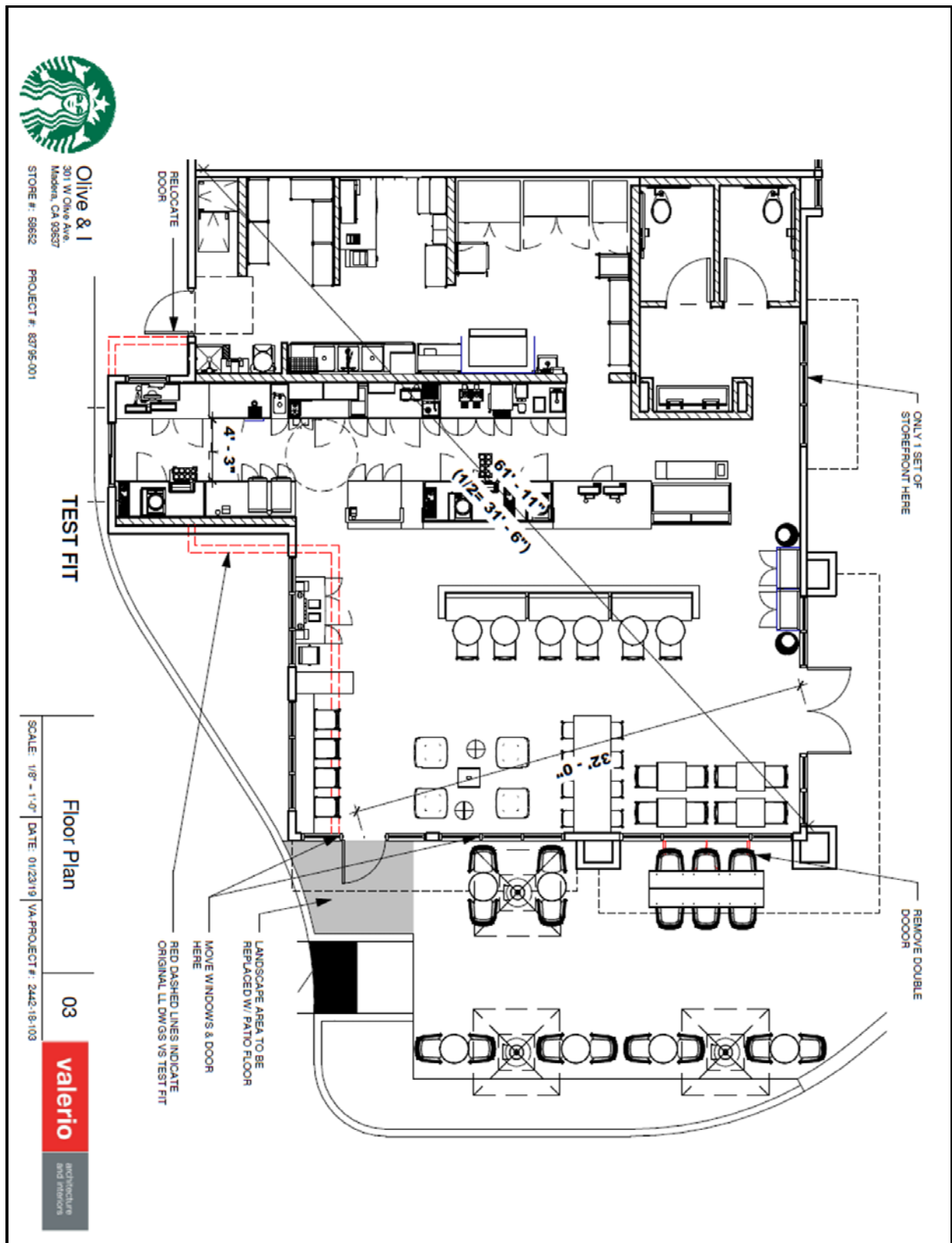
Arnaud Marjollet
Director of Permit Services



Brian Clements
Program Manager

AM: sp

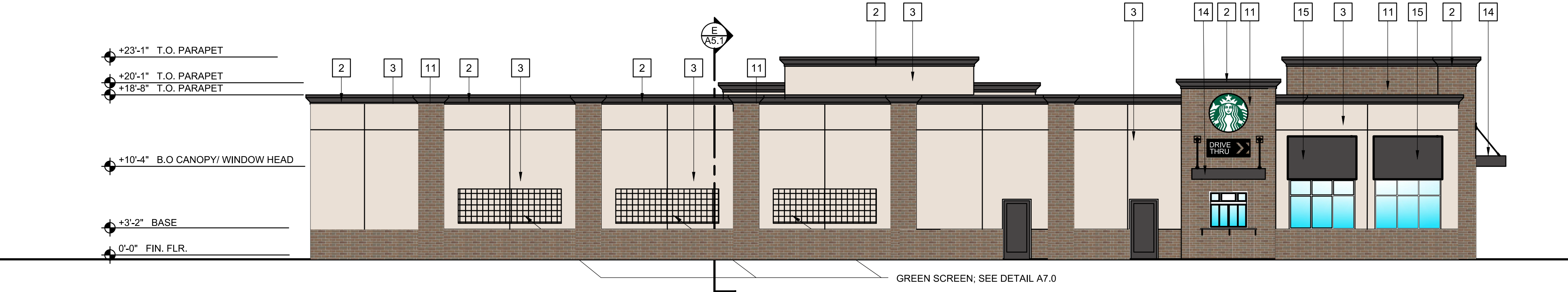
Attachment 4: Starbucks Floor Plan





FRONT ELEVATION (NORTH ELEVATION)

1/8" = 1'-0" 1



REAR ELEVATION (SOUTH ELEVATION)

1/8" = 1'-0" 2

EXTERIOR FINISH SCHEDULE

MATERIAL	COLOR		
	PAINT COLOR NAME	MATERIAL COLOR MFR.	NO.
1	NOT USED		
2	CORNICE, TRIMS, CEMENT PLASTER	BLACK FOX SHERWIN WILLIAMS	SW7020
3	CEMENT PLASTER	CASA BLANCA SHERWIN WILLIAMS	7571
4	NOT USED		
5	CEMENT PLASTER		
6	CEMENT PLASTER, CORNICE	BLACK FOX SHERWIN WILLIAMS	SW7020
7	CEMENT PLASTER		
8	CEMENT PLASTER		
9	NOT USED		
10	STOREFRONT FRAMES	BRONZE ANODIZED ALUM.	
11	THIN BRICK	THIN BRICK GLEN GERY	CEDAR LAKE
12	NOT USED		
13	ENTRY DOOR / FRAMES	BRONZE ANODIZED ALUM.	
14	SUSP. METAL CANOPY	BRONZE BY SIGN VENDOR	
15	AWNING	BRONZE BY SIGN VENDOR	

GENERAL NOTES:

- CAULK ALL WALL AND ROOF PENETRATIONS.
- APPLY ONE COAT OF WATERPROOFING TO ALL HORIZ. STUCCO SURFACES.
- CAULK ALL WINDOWS AND DOOR FRAMES AT HEAD, SILL AND JAMB (EXTERIOR & INTERIOR).
- STUCCO FINISH TO BE "LIGHT LACE" AS SPECIFIED BY THE STUCCO MANUFACTURERS ASSOCIATION. ALTERNATE - "MEDIUM DASHED", MACHINE APPLIED.
- PROVIDE BUILDING ADDRESS NUMBER ON FRONT WALL AS DIRECTED BY LOCAL AUTHORITY.
- PROVIDE A KNOX KEY BOX AT THE ENTRANCE TO FIRE ROOM. COORDINATE EXACT LOCATION WITH MANTECA FIRE DEPARTMENT PRIOR TO INSTALLATION.
- APPROVED NUMBERS OF ADDRESSES SHALL BE PLACED ON ALL NEW AND EXISTING BUILDINGS IN SUCH A POSITION AS TO BE EASILY READ FROM THE STREET OR ROAD FRONTING THE PROPERTY. THE NUMBERS SHALL BE INTERNALLY ILLUMINATED WITH A MINIMUM OF 5' CANDLE POWER ON THE FACE OR ADDRESSES SHALL BE MOUNTED IMMEDIATELY ADJACENT TO A LIGHT SOURCE THAT PROVIDES THE SAME ILLUMINATION. IN ADDITION THE ADDRESS NUMBERS SHALL CONTRAST TO THEIR BACKGROUND. PROVIDE INDIVIDUAL SUITE NUMBERS FOR MULTIPLE TENANT BUILDINGS. WHERE MULTIPLE TENANT BUILDING ARE SERVICED BY REAR ACCESS THE INDIVIDUAL SUITE NUMBERS SHALL ALSO BE PLACED ON THE REAR DOORS. THE INDIVIDUAL SUITE NUMBERS SHALL BE MIN. 4" HIGH.
NOTE: ADDRESS NUMBERS SHALL BE A MINIMUM OF 8" IN HEIGHT.

M

Milestone Associates

Imagineering
a California Corporation

1000 LINCOLN ROAD, SUITE H202
YUBA CITY, CALIFORNIA 95991

TEL: 530-755-4700
FAX: 530-755-4567

JULIO J. TINAJERO
LEAD DESIGNER

CHRISTOPHER L. DAY, P.E.
PROJECT ENGINEER



SUBMITTAL DATE

PLANNING DEPT: 11-05-18
BUILDING DEPT: 12-21-18
PUBLIC WORKS: .
SURVEY: .

REVISIONS		
No.	Description	Date

EXTERIOR ELEVATIONS

PROPOSED RETAIL BUILDING
BETHARD SQUARE - PAD "C"
317 W. OLIVE AVENUE
MADERA, CA 93637
A.P.N. 010-204-001

DATE: 2-01-19

SCALE: AS NOTED

DRAFTER: STAFF

JOB NUMBER: 18-001

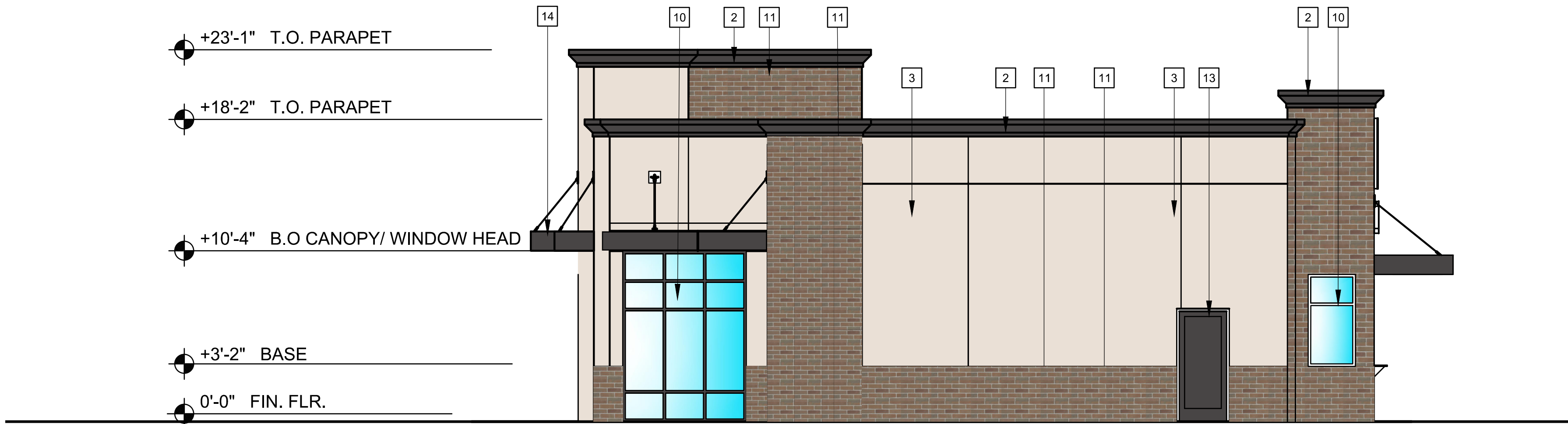
SHEET:

A3

18-007-A31-001 ELEVATIONS JT 11-20-18

RIGHT ELEVATION (WEST ELEVATION)

3/16" = 1'-0" 2



LEFT ELEVATION (EAST ELEVATION)

3/16" = 1'-0" 1



EXTERIOR FINISH SCHEDULE

MATERIAL	COLOR		
	PAINT COLOR	MATERIAL COLOR	
	NAME	MFR.	NO.
1	NOT USED		
2	CORNICE, TRIMS, CEMENT PLASTER	BLACK FOX	SHERWIN WILLIAMS SW7020
3	CEMENT PLASTER	CASA BLANCA	SHERWIN WILLIAMS 7571
4	NOT USED		
5	CEMENT PLASTER		
6	CEMENT PLASTER, CORNICE	BLACK FOX	SHERWIN WILLIAMS SW7020
7	CEMENT PLASTER		
8	CEMENT PLASTER		
9	NOT USED		
10	STOREFRONT FRAMES	BRONZE ANODIZED ALUM.	
11	THIN BRICK	THIN BRICK	GLEN GERY CEDAR LAKE
12	NOT USED		
13	ENTRY DOOR / FRAMES	BRONZE ANODIZED ALUM.	
14	SUSP. METAL CANOPY	BRONZE	BY SIGN VENDOR
15	AWNING	BRONZE	BY SIGN VENDOR

GENERAL NOTES:

- CAULK ALL WALL AND ROOF PENETRATIONS.
- APPLY ONE COAT OF WATERPROOFING TO ALL HORIZ. STUCCO SURFACES.
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LEAD DESIGNER
CHRISTOPHER L. DAY, P.E.
PROJECT ENGINEER

STAMP:



SUBMITTAL DATE

PLANNING DEPT: 11-05-18
BUILDING DEPT: 12-21-18
PUBLIC WORKS:
SURVEY:

REVISIONS

No.	Description	Date

EXTERIOR ELIVATIONS

PROPOSED RETAIL BUILDING
BETHARD SQUARE - PAD "C"
317 W. OLIVE AVENUE
MADERA, CA 93637
A.P.N. 010-204-001

DATE: 2-01-19

SCALE: 3/16" = 1'-0"

DRAFTER: STAFF

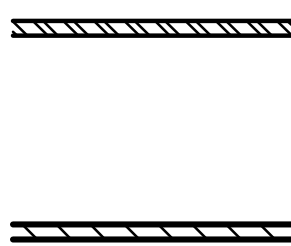
JOB NUMBER: 18-001

SHEET:

A3.1

WALL TYPES

EXTERIOR STUD WALL: 2X6 @ 16" O.C.
EXTERIOR- ½" OSB WITH ⅝" NOMINAL 3 COAT CEMENT PLASTER FINISH
INTERIOR- ⅝" GYP BD. TO UNDERSIDE OF ROOF SHTG. W/ R-19 BATT INSULATION.
SEE STRUCTURAL DRAWINGS FOR SHEARWALL NAILING AS OCCURS.



INTERIOR WALL 2X4 @ 16" O.C. W/ ⅝" GYP. BD. EACH SIDE, U.O.N., W/ R-11 BATT INSULATION. ⅝" WATER RESISTANT GYP. BD. ON "WET" SIDE, WHERE APPLICABLE. SOUND INSULATION FULL HT. AT ALL RESTROOM WALLS

BALLON FRAMED WALL- 2X6" @ 16" O.C.
EXTERIOR- 1/2" OSB WITH NOMINAL 7/8" 3 COAT CEMENT PLASTER FINISH

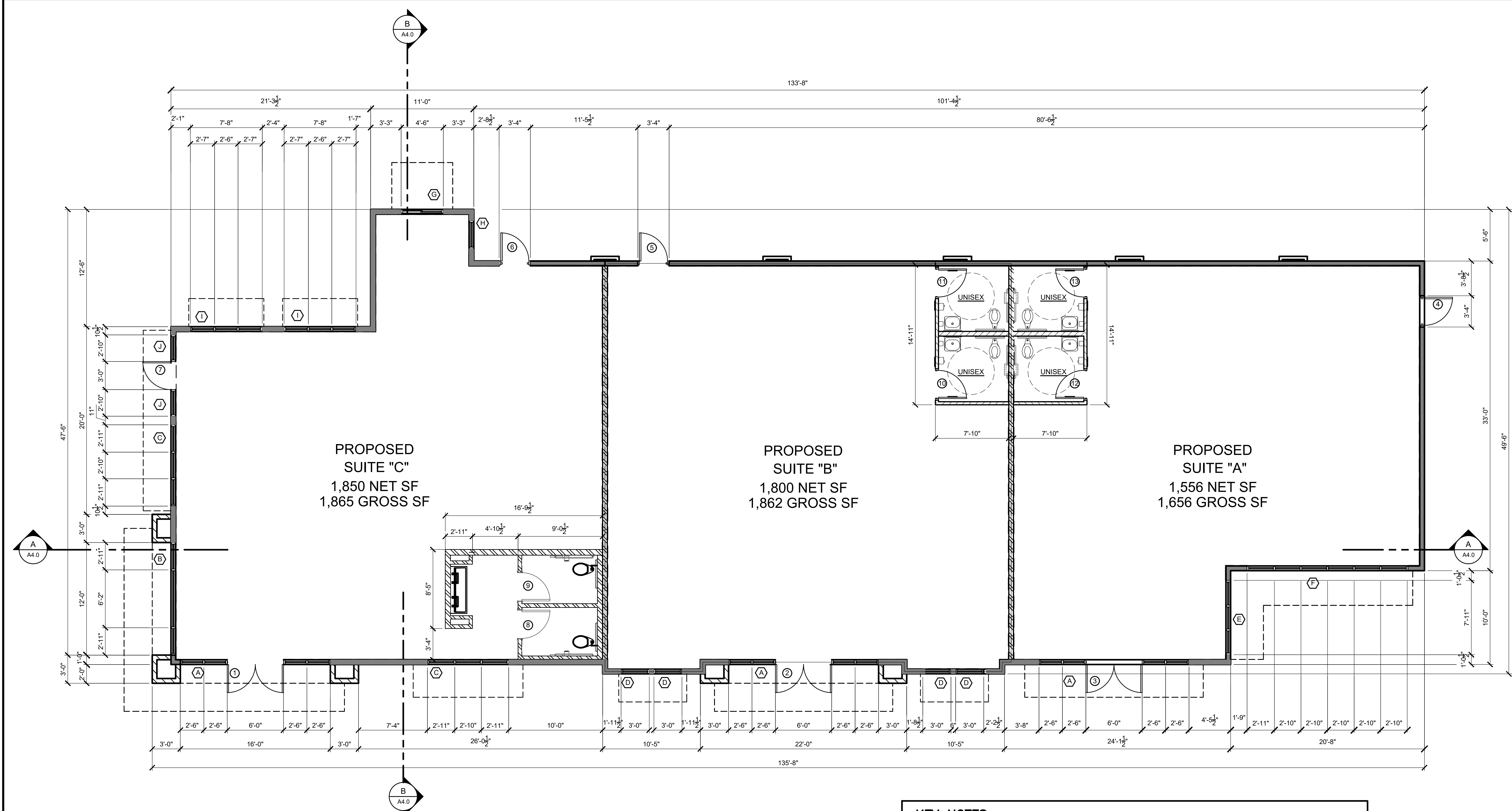
WALL SUBSTRATES:
-SALES AREA:
½" GYPSUM WALLBOARD FROM FLOOR TO SLAB TO 6" ABOVE CEILING HEIGHT

-RESTROOM WALLS
5/8" CEMENT WALLBOARD FROM T.O. SLAB TO 48" A.F. WITH ⅝" HI-IMPACT BRAND XP WALLBOARD, TYP X CORE FROM T.O. CEMENT BOARD TO 6" ABOVE CEILING HEIGHT

ALL OTHER FRAMED WALL CONDITIONS:
1/2" CEMENT WALLBOARD FROM T.O. SLAB TO 48" A.F. WITH 1/2" GYPSUM WALLBOARD FROM T.O. CEMENT BOARD TO 6" ABOVE CEILING HEIGHT

GENERAL NOTES

- ALL DIMENSIONS ARE TO FACE OF STUD, U.O.N.
- MOUNT DOOR CLOSER'S ON INTERIOR SIDE ONLY. ACCESSIBLE DOORS WITH CLOSER TO HAVE A 3 SECOND SWEEP FROM AN OPEN 70 DEGREES TO A POINT OF 3 INCHES FROM THE LATCH. (PER CBC 1133.2.5.2).
- SAFETY GLAZING SHALL HAVE PERMANENT LABELS/IDENTIFICATION.
- MAIN ENTRANCE DOOR IS TO HAVE A STICKER ABOVE DOOR STATING "DOOR MUST REMAIN UNLOCKED DURING BUSINESS HOURS." (PER C.B.C. 1003.3.1.8, EXCEPTION 1.)
- FOR TYPICAL WALL FRAMING SEE DETAILS SHEET S6.1
- PENETRATIONS THROUGH 1-HOUR WALL TO BE PROTECTED WITH METACAULK FIRE RATED MORTAR.



KEY NOTES

- (X) DENOTES WINDOW TYPE. SEE WINDOW SCHEDULE SHEET A1.1
- (X) DENOTES DOOR TYPE, SEE DOOR SCHEDULE SHEET A1.1
- (1) WALL MOUNTED ROOF ACCESS LADDER. SEE DETAIL 5/A6.2
- (2) ALARM CONTROL PANEL LOCATION (BY OTHERS)
- (3) FIRE SPRINKLER RISER. THE FIRE SPRINKLER RISER SHALL BE LOCATED ON THE OUTSIDE WALL BETWEEN 12" AND 18" FROM THAT OUTSIDE WALL AND AT LEAST 12" FROM ANY OTHER WALL.
- (4) FIRE SYSTEM CONTROL VALVE
- (5) KNOX BOX. A KEY SHALL BE LOCATED WITHIN AN APPROVED HIGH LEVEL FIRE DEPARTMENT KNOX COMPANY KEY BOX LOCATED ADJACENT TO THE ACCESS DOOR ON THE EXTERIOR OF THE BUILDING AT 6' ABOVE FINISHED FLOOR.

FLOOR PLAN

3/16" = 1'-0"

1

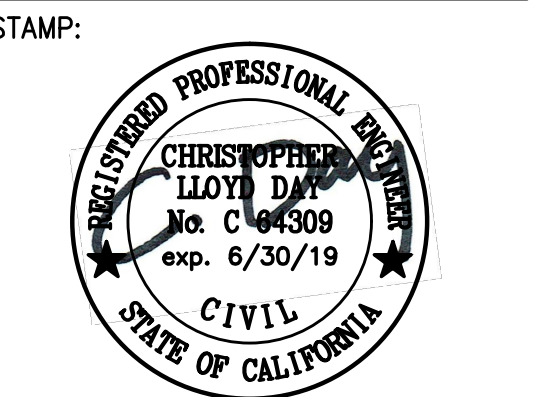
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JULIO J. TINAJERO
LEAD DESIGNER

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PROJECT ENGINEER



SUBMITTAL DATE

PLANNING DEPT: 11-05-18
BUILDING DEPT: 12-21-18
PUBLIC WORKS: .
SURVEY: .

REVISIONS		
No.	Description	Date

FLOOR PLAN

PROPOSED RETAIL BUILDING
BETHARD SQUARE - PAD "C"
317 W. OLIVE AVENUE
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A.P.N. 010-204-001

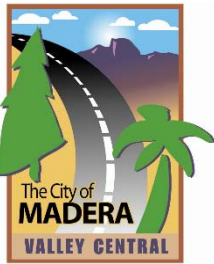
DATE: 2-01-19

SCALE: 3/16" = 1'-0"

DRAFTER: STAFF

JOB NUMBER: 18-001

SHEET: A1



CITY OF MADERA PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

Staff Report: Roley's Detailing CUP 2019-01, SPR 2019-02 & Categorical Exemption Item #4 – February 12, 2019

PROPOSAL: Consideration of a request for a conditional use permit and site plan review to allow for the establishment of an auto detailing and repair business, and the memorialization of an existing legal non-conforming automotive repair business.

APPLICANT:	Rolando Torres	OWNER:	Hanspal Kulwinder
ADDRESS:	624 North Gateway Drive	APN:	006-053-001
APPLICATION:	CUP 2019-01 & SPR 2019-02	CEQA:	Categorical Exemption

LOCATION: The project site is located at the southwest corner of the intersection of North Gateway Drive and Roberts Avenue.

STREET ACCESS: The project site has access to Roberts Avenue and North Gateway Drive.

PARCEL SIZE: Approximately 7,500 sq. ft.

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: C2 (Heavy Commercial)

SITE CHARACTERISTICS: The property is a fully improved commercial site. Multifamily apartment complexes are located to the north and west. A recycling center and the Union Pacific Railroad are located to the east. Liu's Kitchen restaurant and Schoettler Tire are located to the south.

ENVIRONMENTAL REVIEW: The project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA) guidelines, Section 15301 (Existing Facilities).

SUMMARY: The applicant is proposing to establish an automotive detailing and repair business within an existing bay of an automotive repair shop. The automotive bay has an existing well that diverts waste water into the City's sewer system and an automotive lift for the assistance of repair work, such as brakes, tire and oil changes. The existing legal non-conforming repair shop will also be memorialized as a component of the use permit. The repair shop includes additional work, such as diagnostics, engine and transmission repair, and various general automotive maintenance. The City's parking regulations do not apply to this use as there is no intensification (new construction or change of use) proposed on the site that would impact parking.

APPLICABLE CODES AND PROCEDURES

MMC §10-3.406 Non-Conforming Buildings & Uses
MMC §10-3.902 Heavy Commercial – Uses Permitted
MMC §10-3.4.0101 Site Plan Review
MMC §10-3.1202 Parking Regulations
MMC §10-3.1301 Use Permits

The legal non-conforming use of a building may be extinguished and allowed for provided in each case a use permit is first approved by the Commission. The City's Zoning Ordinance allows for the granting of a use permit by the Planning Commission (Commission) subject to the Commission being able to make findings that the establishment, maintenance or operation of the use or building will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of the use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

If the Commission cannot make the appropriate findings, the use should be denied. Conditions may be attached to the approval of the use permit to ensure compatibility. Project design may be altered, and site improvements required to make the project compatible with nearby uses. In addition, the application may be subject to further review, modification or revocation by the Commission, as necessary.

PRIOR ACTION

The site was originally developed as a radiator and muffler business as part of Site Plan Review (SPR) 1976-26. Over time, the shop converted into an automotive repair business. Currently, AT's Auto Service is operating in the majority of the structure. The applicant proposes to utilize an existing vacant automotive bay.

ANALYSIS

The following analysis for the conditional use permit includes a background of the site and applicability of the use permit, the operations of the automotive uses on the site, the parking impacts of the uses and site improvement requirements.

Background

An automotive repair use has utilized the structure as an existing legal non-conforming use for an extended period of time. The legal non-conforming status is extinguished when the use ceases for a continuous period of six or more months. The existing automotive repair use has not ceased for more than a continuous period of six or more months. However, an automotive detailing use has not been a component of operations over time, therefore requiring approval of a conditional use permit by the Commission. Because the existing automotive repair business is a legal non-conforming use, this use permit will also memorialize its legal non-conforming status and be applicable to all automotive repair activities on the site. It should be noted that service stations

and light repair uses, such as oil changes, do not require approval of a use permit, whereas heavy automotive repair uses, such as engine and tire repair, require approval of a use permit.

Operations

Roley's Detailing proposes to operate an automotive detailing and repair business within an existing bay of the repair shop. The detailing will include hand-washing and the utilization of a pressure washer. The repair work will include the utilization of an automotive lift to assist in repair work involving brakes, tires and oil changes. Hours of operation will occur from as early as 8:00 a.m. until as late as 6:00 p.m., seven days per week. The applicant anticipates detailing and repairing a maximum of twenty vehicles per day, with as many as three employees.

The existing legal non-conforming repair business includes automotive diagnostics, brakes, oil change, mufflers, and engine and transmission repair. The business will be adding a smog test component, which will not include additional tenant improvements. The hours of operation for the business occur from as early as 8:00 a.m. until as late as 6:00 p.m., seven days per week. The owner currently repairs a maximum of thirteen vehicles per day, with as many as two employees.

Parking

Typically, parking requirements apply to a project when there is an intensification of use on the site, including the addition of a building or expansion of use. The existing building easily accommodates the incorporation of automotive detailing, allowing existing parking requirements to remain unchanged.

Although the number of parking stalls do not change, staff recommends the existing asphalt parking field be slurry sealed and restriped consistent with City standards.

Site Improvements

Whereas establishing an automatic car wash would require the installation of a water recovery and reuse system, auto detailers are typically only required to incorporate water saving, high pressure, automatic shut-off nozzles as components of their operations. Water is required to drain only to the City's sewer system. Surface flow to storm drain facilities is prohibited. The existing bay to be used includes a car washing well within the interior of the bay. Water is retained within the well and is directed into the City's sewer.

Other Department and Agency Comments

The project was reviewed by various City Departments and outside agencies. The responses and recommendations have been incorporated into the recommended conditions of approval included in this report.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Though approval of an automotive detailing and repair use is not specifically addressed in the vision or action plans, the overall project does indirectly support Action 115.2, which states, "As a component of the General Plan Update, increase retail outlets and promote Shop Madera..."

RECOMMENDATION

The information presented in this report provides support for the conditional approval of the conditional use permit and site plan review request. It is recommended that the Commission consider the information in this report, as well as testimony in the public hearing, and approve Conditional Use Permit (CUP) 2019-01 and Site Plan Review (SPR) 2019-02, subject to the findings and conditions of approval.

PLANNING COMMISSION ACTION

The Commission will be acting on CUP 2019-01 and SPR 2019-02.

Motion 1: Move to approve CUP 2019-01 and SPR 2019-02, subject to the findings and conditions of approval as listed:

Findings

- This project is categorically exempt under Section 15301 (Existing Facilities) of the CEQA guidelines.
- Automotive detailing and repair uses are consistent with the purposes of the C (Commercial) general plan land use designation and the C2 (Heavy Commercial) Zone District which provide for the use, subject to the issuance of a conditional use permit.
- The use is consistent with prior uses utilizing the bay and no intensification is proposed as a component of the project, allowing for the existing parking standards to be utilized.
- As conditioned, the automotive detailing and repair use will be compatible with the surrounding properties.
- As conditioned, the establishment, maintenance or operation of the use will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare or persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or general welfare of the City.

CONDITIONS OF APPROVAL

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by receipt in the Planning Department of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within 30 days of the date of approval.

2. The applicant's failure to utilize CUP 2019-01 within one year following the date of this approval shall render CUP 2019-01 null and void unless a written request for extension has been submitted to and approved by the Planning Commission.
3. CUP 2019-01 may be made null and void without any additional public notice or hearing at any time upon both the benefactors of CUP 2019-01 and owners of the property voluntarily submitting to the City a written request to permanently extinguish CUP 2019-01.
4. SPR 2019-02 will expire one year from date of issuance, unless positive action is taken on the project as provided in the Madera Municipal Code (MMC) or required action is taken to extend the approval prior to the expiration date (MMC Section 10-3.4.0114, Lapse of Site Plan Approval).
5. CUP 2019-01 and SPR 2019-02 shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If, at any time, the use is determined by staff to be in violation of the conditions of approval, staff may schedule an item before the Commission so that it may determine whether to consider setting a hearing regarding revocation of the permit.
6. The project shall be developed in accordance with the conditions of approval listed herein, as reviewed and approved with CUP 2019-01 and SPR 2019-02. Minor modifications to the conditions necessary to meet regulatory or engineering constraints may be made with approval of the Planning Manager. All site improvements shall be completed in advance of any request for building permit final inspection and/or issuance of a business license.
7. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specified in the conditions of approval listed herein or mandated by statutes.
8. It shall be the responsibility of the property owner to ensure that any required permits, inspections and approvals from any regulatory agency shall be obtained from the concerned agency prior to any building permit final issuance.

Building Department

9. A building permit is required for all on-site improvements. The bay shall meet the requirements of the California Building Code (CBC), California Fire Code (CFC) and Americans with Disabilities Act (ADA) prior to occupancy.
10. The current State of California and federal handicap requirements shall apply to the entire site and all structures and parking thereon. Compliance shall be checked at the permit stage and confirmed at final inspection.

Engineering Department

General

11. Nuisance onsite lighting shall be redirected, as requested by the City Engineer, within 48 hours of notification.
12. The developer shall pay all required fees for the completion of the project. Fees due may include, but shall not be limited to, the following: encroachment permit processing and improvement inspection fees.
13. Improvement plans shall be submitted to the Engineering Department in accordance with the submittal process.
14. Improvements within the City's right-of-way require an encroachment permit be secured from the Engineering Department.

Sewer

15. The existing sewer service connection shall be upgraded to include a cleanout per City standards, if not currently in place.

Streets

16. The existing handicap access ramp located at the southwest corner of North Gateway Drive and Roberts Avenue shall be reconstructed/upgraded to current ADA standards.
17. The vehicular access driveway fronting the project site on Roberts Avenue shall be reconstructed to the extent necessary to provide ADA accessibility along the frontage.
18. If the applicant believes that a hardship waiver is applicable based on the cost of off-site ADA improvements in relation to the overall project costs, a request for waiver may be submitted for consideration and an ultimate determination by the City.
19. Substandard and damaged sidewalk, curb and gutter fronting the project parcel shall be removed and replaced per City standards. The limit of repairs shall be established by the City Engineering Inspector.
20. An Irrevocable Offer of Dedication shall be made to dedicated ten feet of right-of-way along the entire project parcel frontage on North Gateway Drive to provide a half-street width of fifty feet, west of the center line.

Fire Department

21. Provide one 2A10BC-rated fire extinguisher, required within 75 feet of all areas. The fire extinguisher shall be mounted in a visible and accessible location.
22. Any oily rags shall be placed in non-combustible container(s) with a tight-fitting lid.

23. All hazardous materials, if any, on-site shall remain within the exempt quantities established by Chapter 50 of the California Fire Code.
24. No welding or open flame devices are permitted as a component of any repair work.

Planning Department

General

25. The applicant shall operate in a manner that does not generate noise, odor, blight or vibration that adversely affects any adjacent properties.
26. Vandalism and graffiti shall be corrected per the MMC.
27. The property owner, operator and manager shall keep the property clear of all trash, rubbish and debris at all times; and the dumping of refuse shall be restricted to the dumpster and refuse containers owned by the property owner. The outdoor storage of goods and materials shall not be allowed.

Operations

28. CUP 2019-01 allows for the following automotive services on the site:
 - Hand wash and auto detailing;
 - Repair work to include:
 - Brake service;
 - Transmission service;
 - Tire and wheel service;
 - Engine repair and swap;
 - Oil changes;
 - Air conditioning and diagnostics;
 - Smog testing (no dino allowed);
 - General repair and maintenance.
29. The hours of operation for all uses on-site shall be from as early as 8:00 a.m. until as late as 6:00 p.m., seven days per week.
30. No other automotive services, repairs and/or installations shall be allowed as a component of the operations without the approval of an amendment to CUP 2019-01.
31. The overnight parking of vehicles shall only occur within the interior of the structure.
32. The business shall incorporate water conservation measures as part of the washing of all vehicles. At a minimum, hoses shall be fitted with water-saving automatic shut-off nozzles and/or high-pressure wands.
33. All waste water from the business shall drain into floor drains that flow into the City's sewer system. No waste water shall be allowed to have access to storm drain facilities.

34. No oil or other toxic fluids from vehicles shall be drained into the City's sewer system or within the existing well.
35. All business activities shall occur on-site. No business activities shall occur within the public right-of-way. All automotive services shall occur inside of the structure.

Fences and Walls

36. A new single-bin trash enclosure shall be constructed consistent with City standards. The color of the trash enclosure shall be painted to match the existing structure. The location of the trash enclosure shall be shown on a site plan submittal for building permit plan check and shall be approved by the Public Works Director.

Landscaping

37. The property owner shall maintain all landscaping in a healthy and well-manicured appearance. This includes, but shall not be limited to, the following: ensuring irrigation equipment is always properly operating, the trimming and pruning of trees and shrubs and replacing dead or unhealthy vegetation with drought-tolerant plantings.

Parking

38. The parking field shall be slurry sealed and restriped to current City standards by no later than May 1, 2019.
39. All stalls shall be striped to City standards: Perpendicular parking spaces shall measure a minimum of nine feet wide by nineteen feet deep. No compact stalls shall be incorporated into the parking field. Wheel/curb stops shall be incorporated at the front of the parking stall to provide separation between the parking field and the structure.

Signage

40. All signage shall have an approved sign permit issued by the Planning Department per MMC Chapter 10-6.

(OR)

Motion 2: Move to continue the public hearing on CUP 2019-01 and SPR 2019-02 to the March 12, 2019 Commission hearing, for the following reasons: (specify)

(OR)

Motion 3: Move to deny the application for CUP 2019-01 and SPR 2019-02, based on the following findings: (specify)

ATTACHMENTS

Attachment 1: Aerial Map
Attachment 2: Site Photos

Attachment 1: Aerial Map



Attachment 2: Site Photos



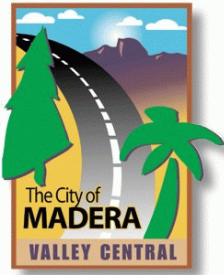
Inside of the bay



Missing Trash Enclosure

**CUP 2019-03 & SPR 2019-05
FULL THROTTLE SUSPENSION**

**STAFF REQUESTS THIS ITEM TO BE CONTINUED TO THE
MARCH 12, 2019 PLANNING COMMISSION HEARING**



CITY OF MADERA PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

Staff Report: Madera Town Center Development Agreement Annual Review Item #6 – February 12, 2019

PROPOSAL: A public hearing for the annual review of the development agreement approved in conjunction with the Madera Town Center Shopping Center (Ordinance 821 C.S.).

APPLICANT:	Zelman Madera LLC	OWNER:	Zelman Madera LLC
ADDRESS:	Avenue 17/SR 99	APN:	013-240-001
APPLICATION:	Development Agreement Annual Review	CEQA:	None Required for the Annual Review

LOCATION: The project site is located at the northeast corner of Avenue 17 and Freeway 99.

STREET ACCESS: Avenue 17

PARCEL SIZE: 101 Acres (Approximately)

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: C2 (Heavy Commercial)

SITE CHARACTERISTICS: The parcel was formerly utilized as a dairy and is now vacant. The property fronts onto Avenue 17, which forms the southern boundary, and is adjacent to Freeway 99, which forms the western boundary. Schmidt Creek lies along the northern boundary. Rural residential subdivisions are located to the north and east of the project site.

ENVIRONMENTAL REVIEW: An environmental impact report (EIR) was prepared and certified for the shopping center project. An addendum was prepared and accepted by the City in 2007. No additional environmental review is required in conjunction with the annual review.

SUMMARY: The Madera Town Center Development Agreement was considered by the Planning Commission (Commission) in July 2007 and approved by the City Council (Council) in August 2007. The primary purpose of the agreement was to lock in the project approvals and development requirements for the shopping center and define reimbursements and fee credits that would be received by the developer. An annual review of the development agreement is required pursuant to the California Government Code and the Madera Municipal Code to verify that the developer has complied in good faith with the terms of the agreement. A review of the agreement indicates that the obligations of the developer are triggered when the shopping center is developed, which has not yet occurred. As such, it is recommended that the Commission find that the developer has complied in good faith with the terms of the development agreement.

APPLICABLE CODES AND PROCEDURES

California Government Code Sections 65864-65869.5 authorize cities to enter into binding development agreements. Madera Municipal Code Sections 10-3-1701 thru 1718 establish the procedures and regulations applicable to the consideration and adoption of development agreements in Madera. Both the Government Code and the Madera Municipal Code specify that all development agreements be reviewed by the City on an annual basis to determine whether the applicant has complied in good faith with the terms of the agreement. The Commission is not reviewing the merits of the project design or the conditions of approval that provide for the development of the project.

PRIOR ACTION

In 2006, the Council approved general plan amendment and rezoning applications in order to facilitate the annexation of the 100+ acre subject property at Avenue 17 and State Route 99 into the City and to allow the development of a shopping center on the site. The Local Agency Formation Commission subsequently approved the annexation. In 2007, Zelman Retail Partners proposed a development agreement for the shopping center project which was approved by the Council in August 2007.

The various approvals necessary for the project were sought by Zelman Retail Partners before they actually purchased the subject property outright. Prior to formal acquisition, Zelman Retail Partners formed “Zelman Madera LLC” for the purpose of taking title to the property and developing the shopping center. In accordance with the terms of the Development Agreement, Zelman Madera LLC is a successor in interest and is bound by the Development Agreement as the current owner of the property.

ANALYSIS

In 2006, the City of Madera approved a general plan amendment and a rezoning in order to facilitate the annexation of the subject property into the City and to allow the development of the Madera Town Center shopping center on the site. A few months later, a development agreement was proposed by the developer and approved by the City as authorized by the California Government Code and City regulations. Development agreements are used for vesting land use entitlements and may also establish financing and construction responsibilities, as well as timelines for the installation of on and off-site improvements. Development agreements are generally used for larger, more complex projects that often take a long time to fully develop. Without a development agreement in place, it is possible that the development requirements could change over time, fees could increase, etc.

The development agreement approved in conjunction with the Madera Town Center project includes the following principle features:

- The agreement would have a term of 20 years, during which the cumulative development requirements applied to the project would not change.

- Development exactions would be locked in during the term of the agreement and would not increase.
- The Project would develop infrastructure and utilities consisting of a water well, water pipelines, sewer lines, five traffic signals, Avenue 17 street frontage improvements and Freeway 99 ramp improvements.
- The project would dedicate, to the City, property for a storm drain and flood management basin, pump site, water well site, and property along Avenue 17 for street right-of-way.
- The City will credit the applicable categories of project's capital facility "impact" fees towards the cost of the off-site improvements (i.e. sewer impact fees credited towards off-site sewer line construction).
- The City will reimburse the developer for off-site construction costs, up to a total of \$7,386,371.00 during the term of the agreement. The source of the reimbursement will be the City's share of sales tax revenue generated by the project. Annual reimbursement payments shall be in an amount not to exceed 50% of the first \$1,300,000 of project-generated sales tax revenue which is received by the City.
- In no event shall the aggregate of the fee credit and the reimbursement amount exceed the developer's reasonable and actual costs and expense of constructing and installing the Infrastructure Improvements.

A table highlighting the basic terms of the agreement that trigger compliance by the applicant, and summarizing the status of each item, is provided (Table 1).

Table 1
Development Agreement Terms Triggering Compliance by Applicant

	Description	Timing of Compliance
1.	Provide water well site	If project constructed – at first occupancy
2.	Construct water well	If project constructed – at first occupancy
3.	Construct water line to well	Developer has completed this improvement
4.	Construct water line along project frontage	If project constructed – at first occupancy
5.	Construct sewer line to property	If project constructed – at first occupancy
6.	Construct sewer lift station	If project constructed – at first occupancy
7.	Construct 5 traffic signals	If project constructed – at first occupancy
8.	Construct Avenue 17 improvements	If project constructed – at first occupancy

9.	Re-stripe SR 99 NB Ramp	If project constructed – at first occupancy
10.	Construct basin and floodway (Schmidt Creek) improvements	If project constructed – at first occupancy
11.	Dedicate basin and floodway improvements to the City	After completion of improvements, and acceptance by City Engineer
12.	Construct SR 99/Avenue 17 Interchange Improvements	If project constructed – at first occupancy
13.	Pay Phase 1 Interchange Impact Fee	If project constructed – at first occupancy
14.	Dedicate 20' wildlife corridor	Unspecified. (Assumed to occur with dedication of floodway improvements)
15.	Dedicate Infrastructure Improvements	After completion, and acceptance by City Engineer
16.	Provide evidence of actual and reasonable costs for reimbursable expenses	After City has accepted infrastructure

As shown in Table 1, the development agreement outlines a series of obligations that the project developer, Zelman Madera LLC, will need to comply with. The majority of these obligations relate to the construction and dedication of public improvements. The agreement specifies that the completion of these improvements is only triggered when and if the shopping center is constructed, and then allows until the first occupancy at the shopping center to complete the improvements. The project developer has completed the installation of the water line from the west side of the freeway to the well site on the east side of freeway (Item 3 in Table 1). It should also be noted that some of the improvements referenced in the Madera Town Center Development agreement are also required in conjunction with the Madera Travel Center (Love's). If Love's constructs these improvements first, it will relieve Zelman from the requirement to do so and Zelman would not be reimbursed for those improvements.

The development agreement does not include a schedule for the construction of the shopping center. Instead, the agreement acknowledges that the developer cannot predict when or the rate at which phases of the project will be developed. Such decisions depend upon numerous factors which are not within the control of the developer, such as market orientation and demand, interest rates, absorption, competition and other similar factors.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Though the annual review of development agreements are not specifically addressed in the vision or action plans, the overall project does indirectly support **Action 115.2** – *As a component of the General Plan Update, increase retail outlets and promote Shop Madera ...*;

RECOMMENDATION

The information presented in this report supports a determination that Zelman Madera LLC has complied in good faith with the terms of the development agreement.

PLANNING COMMISSION ACTION

The Commission will be making a determination as to whether the applicant has complied in good faith with the terms of the development agreement.

Motion 1: Move to approve a resolution declaring a statement of compliance under periodic review for the development agreement approved in conjunction with the Madera Town Center Project (Ord 821), for the period through August 1, 2018.

Findings

- As summarized in Table 1 of this staff report, Zelman Madera LLC has complied with the terms of the development agreement which trigger compliance on the part of the applicant. There are no developer obligations which required compliance during the period through August 1, 2018.

(OR)

Motion 2: Move to find that Zelman Madera LLC has not complied in good faith with the terms of the development agreement approved in conjunction with the Madera Town Center Project (Ord 821), for the period through August 1, 2018.

Findings

- The Commission will identify the terms of the development agreement where compliance has not occurred, and the substantial evidence relied on in making that determination.

(OR)

Motion 3: Move to continue the public hearing, to a date specified, for the following reasons or in order for the following information to be provided: (please specify)

ATTACHMENTS

Planning Commission Resolution Declaring a Statement of Compliance
Municipal Code Section 10-3.1715 – Periodic Review of Development Agreements
Development Agreement between City of Madera and Zelman Retail Partners, Inc.

RESOLUTION NO. 1840

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA
DECLARING A STATEMENT OF COMPLIANCE UNDER PERIODIC REVIEW FOR
THE DEVELOPMENT AGREEMENT APPROVED IN CONJUNCTION WITH THE
MADERA TOWN CENTER PROJECT (ORD 821 C.S.), FOR THE PERIOD
THROUGH AUGUST 1, 2017**

WHEREAS, in 2007, the City of Madera and Zelman Retail Partners entered into a development agreement in conjunction with the Madera Town Center shopping center project; and

WHEREAS, the development agreement was entered into before Zelman Retail Partners purchased the subject property outright; and

WHEREAS, prior to its formal acquisition of the subject property, Zelman Retail Partners formed "Zelman Madera LLC" for the purpose of taking title to the subject property and developing the shopping center; and

WHEREAS, in accordance with the terms of the Development Agreement, Zelman Madera LLC is a successor in interest and is bound by the Development Agreement as the current owner of the property; and

WHEREAS, the City of Madera Community Development Director ("the Community Development Director") initiated a Periodic Review for the Development Agreement approved in conjunction with the Madera Town Center project (Ordinance 821 C.S.), as required under Zoning Ordinance Section 10-3.1715; and

WHEREAS, the Planning Commission held a public hearing on this matter on February 12, 2019 and considered the information provided in a written staff report; and

WHEREAS, the Planning Commission has made the following finding:

1. Zelman Madera LLC, Inc. has complied with the terms and conditions of the Development Agreement (ORD 821 C.S.), through August 1, 2018 as summarized in Exhibit A, attached hereto and incorporated by reference, and, Zelman Madera LLC has demonstrated a continuing good faith effort to implement the terms and conditions as set forth in the Development Agreement.

NOW THEREFORE BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MADERA AS FOLLOWS:

1. The above recitals are true and correct.
2. The Planning Commission of the City of Madera hereby declares that the Zelman Madera LLC, Inc. is in compliance with the terms and conditions of the Development Agreement approved in conjunction with the Madera Town Center project (Ord 821 C.S.), through August 1, 2018.
3. This resolution is effective immediately upon adoption.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 12th day of
February, 2019, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Chairperson
City of Madera Planning Commission

Attest:

Christopher Boyle
Planning Manager

Exhibit A

Madera Town Center Development Agreement Status of Terms Triggering Performance or Compliance by Applicant

	Description	Timing of Compliance
1.	Provide water well site	If project constructed – at first occupancy
2.	Construct water well	If project constructed – at first occupancy
3.	Construct water line to well	Developer has completed this improvement
4.	Construct water line along project frontage	If project constructed – at first occupancy
5.	Construct sewer line to property	If project constructed – at first occupancy
6.	Construct sewer lift station	If project constructed – at first occupancy
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11.	Dedicate basin and floodway improvements to the City	After completion of improvements, and acceptance by City Engineer
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13.	Pay Phase 1 Interchange Impact Fee	If project constructed – at first occupancy
14.	Dedicate 20' wildlife corridor	Unspecified. (Assumed to occur with dedication of floodway improvements)
15.	Dedicate Infrastructure Improvements	After completion, and acceptance by City Engineer
16.	Provide evidence of actual and reasonable costs for reimbursable expenses	After City has accepted infrastructure

**MADERA MUNICIPAL CODE EXCERPT
DEVELOPMENT AGREEMENTS PERIODIC REVIEW**

10-3.1715 PERIODIC REVIEW

(A) The city shall review each development agreement every 12 months from the date the agreement is entered into. The time for review may be modified to be more frequent either by agreement between the parties or by initiation in one or more of the following ways:

- (1) Affirmative vote of at least four members of the Planning Commission; or,
- (2) Affirmative vote of at least three members of the City Council.

(B) The Community Development Director shall begin the review proceeding by giving notice that the city intends to undertake a periodic review of the development agreement to the property owner. Notice shall be provided at least ten days in advance of the time at which the matter will be considered by the Planning Commission.

(C) Annual review of development agreements shall be conducted by the Planning Commission at a public hearing at which the property owner shall demonstrate good faith compliance with the terms of development agreement. The burden of proof on this issue is upon the property owner.

(D) The Planning Commission shall determine upon the basis of substantial evidence whether or not the property owner has, for the period under review, complied in good faith with the terms and conditions of the development agreement.

(E) If the Planning Commission finds and determines on the basis of substantial evidence that the property owner has complied in good faith with the terms and conditions of the agreement during the period under review, the Commission shall by resolution adopt a statement of compliance certifying such compliance in a form suitable for recording in the County Recorder's Office. Upon recording of a statement of compliance, the review for that period is concluded. A resolution adopting a statement of compliance shall be final ten days after the Planning Commission decision, unless a notice of appeal has been filed pursuant to the provisions of the municipal code.

(F) If the Planning Commission finds and determines on the basis of substantial evidence that the property owner has not complied in good faith with the terms and conditions of the agreement during the period under review, the Planning Commission may recommend to the City Council that the development agreement be modified or terminated.

(G) The procedure for modifying or terminating a development agreement shall be the same as the procedure for entering into a development agreement, except that the owner shall be given at least 30 days notice of the hearing by the City Council to consider such modification or termination.

(Ord. 817 C.S., passed 6-20-07)

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8/08/2007 3:30 PM
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compared with the original.
MADERA COUNTY CLERK-RECORDER

RECORDING REQUESTED

BY:

City Clerk
City Hall
205 West Fourth Street
Madera, California 93637

WHEN RECORDED MAIL TO:

Zelman Retail Partners, Inc
Allen Matkins Leck Gamble Mallory
& Natisis LLP
515 South Figueroa Street, Suite 700
Los Angeles, California 90071
Attention: Michael J. Kiely, Esq.

(Above for Recorder's Use Only)

DEVELOPMENT AGREEMENT

PLANNING APPLICATION
Final Environmental Impact Report for Madera Town Center dated October, 2006

General Plan Amendment
(Resolution No. 06-34)

Pre-annexation zoning
(Ordinance No. 805 C.S.)

Site Plan Review Dated May 4, 2007

Tentative Parcel Map No. TPM 2007-03

"ZELMAN RETAIL PARTNERS, INC."

Date: August 1, 2007

DEVELOPMENT AGREEMENT

BETWEEN

THE

CITY OF MADERA

AND

ZELMAN RETAIL PARTNERS, INC.

THIS DEVELOPMENT AGREEMENT ("Development Agreement") is entered into to be effective on the date it is recorded with the Madera County Clerk/County Recorder (the "Effective Date"), between THE CITY OF MADERA, a California general law city ("City") and ZELMAN RETAIL PARTNERS, INC., a California corporation ("Developer").

R E C I T A L S :

A. The Legislature of the State of California has adopted California Government Code Sections 65864-65869.5 ("Development Agreement Act") which authorizes a city to enter into a binding development agreement with persons having legal or equitable interests in real property located within a city's municipal boundaries or in unincorporated territory within a city's sphere of influence for the development of such property in order to, among other things, encourage and provide for the development of public facilities; to support development projects; provide certainty in approval of development projects in order to avoid a waste of resources and escalation in project costs and encourage an investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public land; provide assurance to the applicants for development projects that they may proceed with their projects in accordance with existing policies, rules, and regulations and subject to the conditions of approval of such projects as provided in such annexation and/or development agreements.

B. Developer owns an equitable interest in an approximately 100-acre parcel of real property (the "Property") recently annexed into City. The Local Agency Formation Commission approved the Property's annexation by City on February 13, 2007. The Property is located at the northeast corner of the intersection of Avenue 17 and State Route 99 ("SR 99"). City Council of City adopted Resolution No. 06-342 on November 15, 2006, which established a General Plan designation of HC or Highway Commercial for the Property. City approved pre-annexation zoning for the Property by the adoption on December 6, 2006 of Ordinance No. 805 C.S., which zoned the Property C2 or Heavy Commercial. The C2 zone allows, among other things, retail uses on Property. On May 4, 2007, the City's Community Development Director approved ("Site Plan Approval") a site plan review application ("Site Plan") for the Project (as defined below). On May 22, 2007, the City's Development Review Committee approved a tentative parcel map for the Project.

C. Developer intends to develop a retail shopping center containing up to 791,630 square feet of retail and related uses, with approximately 4,050 on-site parking spaces (the "Project") on the Property, which area the City and Developer have agreed shall be the maximum square footage notwithstanding the reference in the Site Plan Approval of up to 800,000 square feet of improvements. Developer intends to develop the Project in multiple phases. The first phase of the Project ("Phase One") will include up to 567,000 square feet of retail space and related improvement and up to 3,000 on-site parking spaces. The balance of the Project may be developed in multiple phases thereafter.

D. If the Property is developed, Developer will be required to construct certain off-site public infrastructure improvements, which was a condition of regulatory approval of the Project, including the development approvals described in the Recitals. Such improvements will include sewer and water lines, storm drainage improvements, street improvements and traffic control measures that will provide benefits to City and other property owners near the Developer's property who may wish to develop their properties in the future. City has agreed to reimburse Developer for a portion of the costs of constructing such off-site infrastructure improvements, and to credit Developer for a portion of the otherwise applicable development impact fees. The City Council finds and determines, based on its consultants review, that the aggregate amount of such reimbursement and credit will be less than the cost of such improvements and has further found that the City will not maintain any proprietary interest in the Project.

E. Pursuant and subject to the Development Agreement Act, City Resolution No. 07-93, adopted on April 4, 2007, and the City's police powers, City is authorized to enter into binding agreements with persons having legal or equitable interest in real property located within the City's municipal boundaries thereby establishing the conditions under which such property may be developed in the City.

F. By electing to enter into this Development Agreement, City shall bind future Members of the City Council of City by the obligations specified herein and further limit the future exercise of certain governmental and proprietary powers of Members of the City Council.

G. The terms and conditions of this Development Agreement have undergone extensive review by the staff of the City, the City's Planning Commission, and the City Council of City and have been found to be fair, just, and reasonable.

H. City's City Council finds and determines that it will be in the best interests of their respective citizens and the public health, safety, and welfare will be served by entering into this Development Agreement.

I. All of the procedures of the California Environmental Quality Act have been met with respect to the Project and this Development Agreement by the approval of City Council Resolution No. 06-342 adopted on November 15, 2006, which certified final Environmental Impact Report for the Madera Town Center dated October 2006 (the "EIR"), and the subsequent preparation, review and approval of an addendum to the EIR (the "EIR Addendum") pursuant to City Council Resolution No. 07-238, adopted on August 1, 2007.

J. City Council of City has approved this Development Agreement by Ordinance No. 821 C.S., adopted on and effective on August 1, 2007.

NOW THEREFORE, IN CONSIDERATION OF THE ABOVE RECITALS AND OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

1. Definitions. In this Development Agreement, unless the context otherwise requires, the following words and phrases shall have the meaning set forth below:

A. "Basin and Floodway" means the relocated Schmidt Creek floodway and adjacent water retention basin as described in the EIR and Exhibit "G" attached hereto to be constructed by Developer pursuant to Section 8.E.4 of this Agreement.

B. "City" is the City of Madera.

C. "County" is the County of Madera.

D. "Development Exaction" means any requirement of City in connection with or pursuant to any Land Use Regulation or Existing Development Approval for the payment of fees, including impact fees, linkage fees, Traffic Impact Fees, fair share charges, in-lieu payments, or other monetary payments or exactions, imposed by City in order to lessen, offset, mitigate, or compensate for the impacts of new development on the environment or other public interests, whether such exactions constitute impositions made under other Development Approvals, or the City's General Regulations. The applicable Development Exactions in effect under the Existing Land Use Regulations are set forth as Exhibit "I" attached hereto.

E. "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by City in connection with the development of the Property, including, but not limited to:

- (1) Specific plans and specific plan amendments;
- (2) Tentative and final parcel and/or subdivision maps;
- (3) Conditional use or special use permits, variance or other modifications to the City's development regulations

(4) Zoning changes

(5) Grading and building permits

F. "Development Plan" means the Existing Development Approvals defined in paragraph G below and vested in Section 11 below, which are applicable to development of the Project.

G. "Effective Date" means the date upon which this Development Agreement is recorded with the County Clerk/County Recorder of the County.

H. "Existing Development Approval(s)" means this Agreement and those certain development approvals in effect as of the Effective Date with respect to the Property, which are listed in Recital B, the EIR and the EIR Addendum which were adopted, certified and issued by City, and all other Development Approvals which are a matter of public record on the Effective Date.

I. "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date.

J. "Fee Credit" means that portion of Development Exactions fees applicable to the Phase I Project which shall be credited by the City to Developer as specified on Exhibit "I" and as set forth in Section 9, below.

K. "Future General Regulations" means those "General Regulations" adopted by the City after the effective date of this Development Agreement.

L. "General Regulations" means those ordinances, rules, regulations, initiatives, policies, requirements, guidelines, constraints, or other similar actions of the City, other than site-specific Project approvals, which affect, govern, or apply to the Property or the implementation of the Development Plan. General Regulations are applicable to more than one property within the City.

M. "Infrastructure Improvements" means that portion of public improvements to be dedicated to or owned by City whether built on-site or off-site to be constructed by Developer pursuant to the terms of Section 8.D of this Development Agreement, which will be installed at the locations identified on Exhibits "D", "G" attached hereto and which shall include the following:

- (1) Water Work described in Section 8.D(1) below and Exhibit "E" attached hereto;
- (2) Sewer Work described in Section 8.D(2) below and Exhibit "D" attached hereto;
- (3) Traffic Mitigation Work described in Section 8.D(3) below and Exhibit "F" attached hereto; and
- (4) Creek Work described in Section 8.D(4) below and Exhibit "G" attached hereto.

N. "Interchange Impact Fee" means the fees collected by City to fund improvements related to the SR 99/Avenue 17 interchange improvements. The Interchange Impact Fee for Phase I (the "Phase I Interchange Impact Fee") is Two Dollars and Eleven and One-Half Cents (\$2.115) per square foot of improvements in Phase I. The Interchange Impact

Fee for Phase II (the "Phase II Interchange Impact Fee") has not been established as of the Effective Date.

O. "Interchange Work" means the work to be performed by Developer to improve the SR 99/Avenue 17 interchange as described in Section 8.D(5) below.

P. "Land Use Regulations" means all ordinances, resolutions, codes, rules regulations, and official policies of City governing the development and use of land, including, without limitation, the permitted use of land; the density or intensity of use; subdivision requirements; the maximum height and size of proposed buildings; the provisions for reservation or dedication of land for public purposes; and the design, improvement, and construction standards and specifications applicable to the development of the Property that are a matter of public record on the Effective Date of this Development Agreement. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation, of official policy, governing:

- (1) The conduct of businesses, professions, and occupations;
- (2) Taxes and assessments;
- (3) The control and abatement of nuisances;
- (4) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; and,
- (5) The exercise of the power of eminent domain.

Q. "Owner" means the person having a legal or equitable interest in the Property and Project and all successors, transferees, or assigns thereof.

R. "Phase I" means the initial phases of construction of the Project, comprising retail improvements containing 567,000 square feet.

S. "Phase I Interchange Impact Fee" is defined in Section 1.M, the definition of Interchange Impact Fee.

T. "Phase II" means all subsequent phases of the Project, comprising retail improvements constructed after completion of Phase I.

U. "Phase II Interchange Impact Fee" is defined in Section 1.M, the definition of Interchange Impact Fee.

V. "Project" is defined in Recital C, and includes the development of the Property in accordance with the Development Plan.

W. "Property" is defined in Recital B, and is further described in Exhibit "A" attached hereto.

X. "Reimbursement Amount" shall mean the amount set forth in Section 9 below, which shall be payable by City to Developer to reimburse Developer for City's fair share of the cost and expense of designing and installing the Infrastructure Improvements. The Reimbursement Amount shall be due and payable as set forth in Sections 9A and 9B below. In no event shall the Reimbursement Amount combined with any impact fee credits received by Developer exceed the actual and reasonable costs of the public improvements plus interest as described in Sections 9A and 9B below.

Y. "State" shall mean the State of California.

Z. "Subsequent Development Approvals" means all development approvals required subsequent to the Effective Date in connection with development of the Property.

AA. "Subsequent Land Use Regulation" means any Land Use Regulation adopted and effective after the Effective Date.

BB. "Traffic Impact Fees" means Development Exactions imposed by the City pursuant to the Land Use Regulations to mitigate the traffic impacts of the development and use of Land.

2. Interest of Developer. Developer represents that it has an equitable interest in the Property sufficient to be bound by this Development Agreement.

3. Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement. Notwithstanding the foregoing, this Agreement shall not bind the Property or any portion thereof until such time as a deed of conveyance to such portion is recorded with the County Recorder vesting fee title to such portion in the Developer hereunder or any to any assignee of Developer's interest hereunder, which assignment is referenced in such deed, and upon such time shall be deemed to be effective as to such portion as of the Effective Date.

4. Exhibits. The following documents are referred to in this Development Agreement attached hereto, incorporated herein, and made a part hereof by this reference:

<u>Exhibit Designation</u>	<u>Description</u>
<u>Exhibit "A"</u>	Legal Description
<u>Exhibit "B"</u>	Request for Notice of Default
	Under Development Agreement
<u>Exhibit "C"</u>	Maximum Reimbursement Schedule
<u>Exhibit "D"</u>	Water Work and Well Site Location

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Exhibit "E"

Exhibit "F"

Exhibit "G"

Exhibit "H"

Exhibit "I"

Exhibit "J"

5. Term.

A. The term of this Development Agreement shall commence on the Effective Date and shall extend for a period of twenty (20) years thereafter, unless this Development Agreement is terminated, modified, or extended by circumstances set forth in this Development Agreement or by mutual consent of the parties hereto.

B. This Development Agreement shall terminate and be of no force and effect upon the occurrence of the entry of a final judgment or issuance of a final order after exhaustion of any appeals directed against the City as a result of any lawsuit filed against the City to set aside, withdraw, or abrogate the approval by the City Council of City of this Development Agreement.

C. Termination of this Development Agreement shall not constitute termination of any other land use entitlement(s) approved for the Property prior to the Effective Date of this Development Agreement. Upon termination of this Development Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Development Agreement which has accrued prior to such termination.

6. State Enabling Statute. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. California Gov't Code § 65864 expressly provides as follows:

"The Legislature finds and declares that:

"(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which

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Sewer Work

Traffic Mitigation Work

Floodway and Basin Work

Intentionally Omitted

Development Exactions

20-Foot Wildlife Corridor Easement

would make maximum efficient utilization of resources at the least economic cost to the public.

"(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development."

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City: (1) accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the parties; and (2) to offset such restraints, seeks public benefits which go beyond those obtained by traditional City controls and conditions imposed on development project applications.

7. Purpose of this Agreement.

A. Developer Objectives. In accordance with the legislative findings set forth in the Development Agreement Act, and with full recognition of City's policy of judicious restraints on its police powers, Developer wishes to obtain reasonable assurances that the Project may be developed in accordance with Existing Land Use Regulations subject to the terms of this Agreement and City's Subsequent Land Use Regulations. In the absence of this Development Agreement, Developer would have no assurance that it can complete the Project for the uses and to the density and intensity of development set forth in this Development Agreement. This Development Agreement, therefore, is necessary to assure Developer that the Project will not be (i) reduced in density, intensity or use, or (ii) subjected to new rules, regulations, ordinances or official policies or delays which are not permitted by this Development Agreement or the Reservations of Authority.

B. Mutual Objectives. Development of the Project in accordance with this Development Agreement will provide for the orderly development of the Project in accordance with the objectives set forth in the General Plan. Moreover, a development agreement for the Project will eliminate uncertainty in planning for and securing orderly development of the Project, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted. The parties believe that such orderly development of the Project will provide many public benefits to City through the imposition of development standards and requirements under the provisions and conditions of this Development Agreement, including without limitation: increased tax revenues, installation of off-site infrastructure improvements, and job creation. Additionally, although development of the Project in accordance with this Development Agreement will restrain City's land use or other relevant police powers, this Development Agreement provides City with sufficient Reservations of Authority during the term hereof to remain responsible and

accountable to its residents. In exchange for these and other benefits to City, Developer will receive assurance that the Project may be developed during the term of this Development Agreement in accordance with the Existing Land Use Regulations and Reservations of Authority.

8. Mutual Benefits. The specific mutual benefits to be provided and to be obtained by the parties as a result of this Development Agreement are as follows:

A. Determination. By this Development Agreement, City and Developer desire to set forth the terms under which Developer will receive certain reimbursements for commercial development and economic performance on the Property. The City has determined to offer Developer reimbursements and credits in an amount for a portion of the costs for Developer's installation of the Infrastructure Improvements because the Infrastructure Improvements will provide significant benefits to City by increasing the capacity of and expanding City's water and sewer service systems to properties surrounding the Property, and the installation of traffic signals and street widening will promote the orderly flow of traffic and increase City's street network capacity. The aggregate amount of such reimbursement and all credits provided to Developer hereunder will not exceed the actual and reasonable cost incurred by Developer in connection with construction and installation of the Infrastructure Improvements as determined pursuant to Section 9.D below. The Project will also promote the economic well being of City by attracting businesses that will provide City with a significant, long-term revenue stream and a source of employment for residents of the community.

B. Developer Determination. Developer has determined in return, if the Project is constructed, to provide additional benefits to the City in the nature of the Infrastructure Improvements, a portion of the costs and expenses of which shall be eligible for reimbursement under Section 9 below.

C. Joint Acknowledgement. City and Developer acknowledge and agree that the consideration that is to be exchanged pursuant to this Development Agreement is fair, just, and reasonable.

D. Developer's Installation of Infrastructure Improvements.

(1) Developer's Provision of a Water Well Site. City, including the Project, is in need of an additional water well site (the "Well Site"). If the Project or any portion thereof is constructed, within the time and in the manner required by Section 8.D(7) below, Developer agrees to provide the Well Site on an approximately 15,000 square foot portion of the Property, as shown on Exhibit "D". Notwithstanding the Well Site's location on Exhibit "D", the final location of the Well Site may be relocated on the Property in the vicinity of the area depicted on Exhibit "D", which final Well Site location shall be acceptable to the City Engineer. Subject to, within the time and in the manner required by Section 8.D(7) below, Developer shall construct and install (a) a well on the Well Site; (b) a water pipeline connecting the well on the Well Site to the existing City water system at a point west of SR 99 as shown on Exhibit "D" (which work shall include any necessary boring under SR 99 and existing railroad tracks); and (c) a second pipeline from the well on the Well Site to a location on the Property's

boundary line as shown on Exhibit "D", for the purpose of creating a connection stub for future development adjacent to the Property to City water systems (such improvements, together with all necessary and related improvements, and public utility easements are referred to herein collectively as the "Water Work"). The Well Site shall be dedicated to City in the manner proscribed by the Existing Land Use Regulations after completion of the Water Work and acceptance thereof by the City Engineer. The City's reasonable and fair share of the cost and expense associated with designing, constructing and installing the Water Work (based on the relative value of the Water Work to the City and neighboring land owners as compared to the value to Developer and the Project) shall be included in the Reimbursement Amount set forth in Section 9 below.

(2) Developer's Provision of a Sewer Lift Station and Sewer Line. If the Project or any portion thereof is constructed, within the time and in the manner required by Section 8.D(7) below, Developer will construct and install (a) a portion of an 8 inch sewer line ("Sewer Line") located to the east of SR 99 in the area identified on Exhibit "E", to connect the Property to City's existing sewer system at a point located east of SR 99 as identified on Exhibit "E", and (b) a sewer lift station at the location identified in Exhibit "E" (the "Lift Station") (the Sewer Line, the Lift Station and all related improvements, and necessary public utility easements are referred to herein collectively as the "Sewer Work"). The City's reasonable and fair share of the cost and expense associated with designing, constructing and installing the Sewer Work (based on the relative value of the Sewer Work to the City and neighboring land owners as compared to the value to Developer and the Project), shall be included in the Reimbursement Amount set forth in Section 9 below.

(3) Developer's Traffic Mitigation. If the Project or any portion thereof is constructed, within the time and in the manner required by Section 8.D(7) below, Developer will construct and install (a) five traffic signals at the locations identified in the EIR and on Exhibit "F", attached hereto (the "Traffic Signals"); (b) all paving, curbs, gutters and sidewalks to widen Avenue 17 at the locations identified in the EIR and on Exhibit "F" attached hereto (the "Avenue 17 Street Widening"); and (c) the restriping of SR 99's northbound ramp as set forth in the EIR and on Exhibit "F" attached hereto (the "SR 99 Restriping") (the Traffic Signals, the Avenue 17 Street Widening, the SR 99 Restriping and all related improvements are referred to herein collectively as the "Traffic Mitigation Work"). The City's reasonable and fair share of the cost and expense associated with designing, constructing and installing the Traffic Mitigation Work (based on the relative value of the Traffic Mitigation Work to the City and neighboring land owners as compared to the value to Developer and the Project), shall be included in the Reimbursement Amount set forth in Section 9 below. The Traffic Mitigation Work shall be in addition to the Traffic Impact Fees payable by Developer pursuant to the Existing Development Approvals, as set forth on Exhibit "I".

(4) Developer's Obligation Regarding Schmidt Creek. If the Project or any portion thereof is constructed, within the time and in the manner required by Section 8.D(7) below, Developer shall cause the relocation of the floodway know as Schmidt Creek, and design, grading and construction of the Basin and Floodway as described in the EIR and Exhibit "G" attached hereto (the design, permitting and

construction of the Basin and Floodway and all related improvements are referred to herein collectively as the "Floodway Relocation Work"). Developer agrees to dedicate the relocated floodway and Basin and Floodway to the City after completion of the Basin and Floodway, and acceptance thereof by the City Engineer without cost to City.

(5) Developer's Interchange Work. If the Project or any portion thereof is constructed, within the time and in the manner required by Section 8.D(7) below Developer shall construct and install, at Developer's cost and expense, the that portion of the Interchange Work required by the California Department of Transportation ("CalTrans") to improve the SR 99/Avenue 17 interchange Phase I, as further described in the EIR. Developer shall also pay to City the Phase I Interchange Impact Fee. The aggregate amount of Developer's hard and soft costs (including, by way of example, engineering fees, fees associated with the preparation of a CalTrans study report, whether paid to the City or to the owners of adjacent development projects who provide funds for the cost of such report, permit fees, plan check costs and fees, and all of Developer's overhead costs and fees) for the Interchange Work shall be reimbursed by City to Developer as part of the Reimbursement Amount as set forth in Section 9 below. Nothing in this agreement shall limit the Developer's obligation to provide additional Interchange Work for Phase II, in connection with the construction of Phase II, or to pay the applicable Phase II Interchange Impact Fee.

(6) Developer's Obligation Regarding Wildlife Corridor. Developer, without cost to City, shall cause the dedication to City of a twenty foot (20') wide strip of land located adjacent to the railroad tracks (east of SR 99) as shown in Exhibit "J" to be used as a wildlife corridor (the "Wildlife Corridor").

(7) Obligation to Install and Timing. Developer shall construct and install the required Infrastructure Improvements and the required Interchange Work concurrently with and as a condition to the issuance of a certificate of occupancy for any improvement in Phase I, or Phase II, as applicable. All Infrastructure Improvements and Interchange Work shall be designed, constructed and installed in accordance with standard engineering and construction industry practices and the Existing Land Use Regulations and, to the extent not addressed by the Existing Land Use Regulations, other applicable codes, rules, City standards, regulations and laws, in a good and workmanlike condition, at Developer's sole cost and expense (except as provided herein).

(8) Dedication of Infrastructure Improvements. After completion and acceptance thereof by the City Engineer, Developer shall dedicate the Infrastructure Improvements to City in the manner prescribed by applicable City codes, ordinances, and regulations.

E. City Obligations to Assist with the Infrastructure Improvements. In addition to City's obligation to pay the Reimbursement Amount to Developer and to provide the Developer with the credits set forth in Section 9, below, in connection with Developer's installation of any of the Infrastructure Improvements, City agrees to the following:

(1) Acceptance and Maintenance of Well Site. Upon completion thereof and approval by the City Engineer, City shall accept Developer's dedication of the Well Site subject to Developer's compliance with the Existing Land Use Regulations. To the extent necessary, Developer shall grant City a non-exclusive access easement over that portion of the Property necessary for City to access the Well Site.

(2) Acceptance of Wildlife Corridor. Subject to Developer's compliance with the Existing Land Use Regulations, City shall accept Developer's dedication of the Wildlife Corridor. To the extent necessary, Developer shall grant City a non-exclusive easement over that portion of the property necessary for the City to access the Wildlife Corridor.

(3) Installation of Sewer Lines and Boring. The City shall install, at its sole cost and expense, a sewer line west of SR 99 extending from the existing City sewer connection point, to the east side of SR 99, to meet the sewer line proposed to be constructed by Developer as shown on Exhibit "E". City shall also bore, at its sole cost and expense, under SR 99 to provide sewer line connections to the east side of SR 99. City shall coordinate such activities with Developer's construction of the Infrastructure Improvements pursuant to this Development Agreement.

(4) Assistance in Obtaining Easements. City and Developer anticipate that a portion of the Infrastructure Improvements will be required to be installed under County-owned or third party-owned land. City shall assist Developer in obtaining any necessary easements to install the Infrastructure Improvements over, on or under County-owned land. Any easements over private land will be the responsibility of the Developer; provided that if Developer is unable to obtain such easements, Developer and City shall cooperate to identify an alternative location for such Infrastructure Improvements.

(5) City Maintenance of Infrastructure Improvements. Upon acceptance thereof, City shall be responsible at its sole cost and expense for maintaining the Infrastructure Improvements in a good and working manner, after such Infrastructure Improvement have been dedicated to City. Notwithstanding this provision, Developer will be responsible for a one year warranty period for any defects in or to such Infrastructure Improvements.

(6) City Deferment of Fee Collection. City shall not impose an obligation on Developer to pay the Phase I Interchange Impact Fee, the Traffic Impact Fee, or those portions of the Development Exaction's for which Developer may receive the Fee Credit as set forth on Exhibit I until the issuance of a temporary certificate of occupancy for Phase I.

9. Fee Credit: City Obligation to repay Reimbursement Amount to Developer. Provided Developer constructs and installs the Infrastructure Improvements as required by this Agreement, and in consideration of Developer's construction and installation of the Infrastructure Improvements, City shall credit to Developer and Developer shall not be obligated to pay to City a portion of the Development Exaction fees applicable to the Project in an amount up to One Million Eight Hundred Sixty Eight Thousand Eight Hundred Thirty Two Dollars (\$1,868,832),

as set forth on Exhibit "J" (the "Fee Credit"). The Fee Credit shall not exceed the aggregate hard and soft costs (less any applicable Reimbursement Amount) paid by Developer for a particular improvement for which the Development Exaction Fee would otherwise apply. Developer shall provide to City evidence of such cost and expense as set forth in Section 9.D below. In addition, the City shall reimburse Developer for the City's fair and reasonable share of Developer's reasonable and actual cost and expense incurred in connection with the construction and installation of the Infrastructure Improvements and the Interchange Work (which cost, together with the cost of all other infrastructure improvements contemplated to be constructed in connection with the Project is estimated to be in excess of \$13,000,000), up to a maximum reimbursement amount of Seven Million Three Hundred Eighty Six Thousand Three Hundred Ninety Eight Dollars (\$7,386,398) (the "Reimbursement Amount"), which Reimbursement Amount was established based on the maximum reimbursement schedule set forth on Exhibit "C" attached hereto. Up to the full Reimbursement Amount shall be available to Developer provided that Developer's actual and reasonable costs for all of the Infrastructure Improvements listed on Exhibit "C" is equal to or greater than the maximum Reimbursement Amount, notwithstanding that Developer's actual cost incurred in connection with the development and construction of any particular Infrastructure Improvement listed on Exhibit "C" is less than the line item amount shown for such Infrastructure Improvement on Exhibit "C". Developer shall provide to City evidence of such costs and expense as set forth in Section 9.D below. The Reimbursement Amount shall be paid annually (each an "Annual Payment") on the date set forth in Subsection 9.A below. The Annual Payment shall be in an amount (the "Targeted Annual Amount") sufficient to fully amortize the actual Reimbursement Amount, with 6% interest compounded annually over a period of 20 years from completion of the Project, but in no event shall the Annual Payment exceed Six Hundred Fifty Thousand Dollars (\$650,000.00) except as provided below with respect to Annual Shortfalls (defined below). Each Annual Payment shall be an amount equal to 50% of the City's share (net of required payments to the County of Madera pursuant to agreements in effect on the Effective Date and/or extensions or amendments thereto or new agreements entered after the Effective Date that provide for City's share to be no less than the minimum City's share under such existing agreements) of the sales tax revenue attributable to the Project up to the Targeted Annual Amount. If in any given year, City's share of Project-generated sales tax revenue is not sufficient to make that year's Annual Payment in the Targeted Annual Amount (the "Annual Shortfall"), such Annual Shortfall (but no interest thereon) shall be added to the Targeted Annual Amount for the immediately succeeding years until paid in full (subject to Section 9.A below).

A. Annual Payment. Each Annual Payment shall be due and payable on the March 31 of each year, which date that is the one hundred twentieth (120th) day after City's anticipated date of receipt of its final sales tax revenue payment from the State for the preceding calendar year, or if March 31st is not a business day, the first business day thereafter. The first Annual Payment shall be made for the calendar year following the date of issuance of a temporary certificate of occupancy (or its legal equivalent) for Phase I. Notwithstanding anything to contrary herein, Annual Payments (including any unpaid Annual Shortfall amounts) shall cease being due and City will have no further obligation for payment thereof regardless of whether or not paid in full after its twentieth Annual Payment has been made.

B. Developer Right of Inspection. Upon ten (10) days' notice Developer shall have the right to inspect all City documents related to City's receipt of sales tax revenue

from the State. Unless required by law to maintain records for longer periods of time, City shall maintain sales tax records for a period of five (5) years after the receipt of any given years sales tax revenue.

C. Waiver of Reimbursement. Except for the Reimbursement Amount, as set forth in this Development Agreement, Zelman hereby waives all rights to any other reimbursements.

D. Developer's Cost Documentation. After City has accepted the Infrastructure Improvements and at least ninety (90) days prior to the first Annual Payment, Developer shall provide City with evidence of actual and reasonable costs and expenses for the Infrastructure Improvements for which reimbursements are to be made in order to determine the final Reimbursement Amount. Such evidence shall include executed contracts, invoices, cancelled checks, and other documents reasonably required by City Engineer to determine the reasonable and actual costs of the Infrastructure Improvements, together with a written certification signed by an officer of Developer setting forth hard and soft costs paid by Developer for the Infrastructure Improvements and the Interchange Work (the "Developer's Cost Documentation"). The actual Reimbursement Amount and the Fee Credit shall be determined in the reasonable discretion of City Engineer based on the Developer's Cost Documentation.

10. Reservation of Authority.

A. Limitations, Reservations, and Exceptions. Notwithstanding any other provision of this Development Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Property:

- (1) Processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals provided such fees are consistent with fees and charges imposed generally by City and all new development.
- (2) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure.
- (3) Regulations governing construction standards and specifications, including, without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, and Fire Code.
- (4) Regulations which are in conflict with the Development Plan provided Developer has given written consent to the application of such regulations to development of the Property.
- (5) Regulations required to be adopted by changes in State or Federal law.

B. Subsequent Development Approvals. This Development Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying the

Subsequent Land Use Regulations which do not conflict with the Development Plan, nor shall this Development Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing or Subsequent Land Use Regulations not in conflict with the Development Plan.

C. Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations enacted after the Effective Date of this Development Agreement prevent or preclude compliance with one or more of the provisions of this Development Agreement, such provisions of this Development Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Development Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

D. Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Development Agreement does not limit the authority of such other public agencies.

11. Development of the Property, Vesting, and Changes/Amendments.

A. Rights to Develop. Subject to the terms of this Development Agreement, Developer shall have a vested right to develop the Property in accordance with and to the extent of the Development Plan. The Project shall be subject to all Subsequent Development Approval(s) if any, required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Development Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan. In addition, City agrees that (i) the City shall not require any additional land dedications, additional construction of infrastructure improvements or any additional impact mitigation measures in connection beyond those required by the Existing Land Use Approvals, including this Agreement, in connection with, and as a condition to, the development and construction of any portion of the Project, and the Project shall not be subject to any such additional requirements imposed pursuant to Future General Regulations or Land Use Regulations adopted after the Effective Date; and (ii) the Development Exactions imposed in connection with, and as a condition to, the development and construction of any portion of the Project shall be limited to the Development Exactions as set forth on Exhibit "I" attached hereto, and the Project shall not be subject to any additional Development Exactions imposed pursuant to Future General Regulations or Land Use Regulations adopted after the Effective Date; provided, however, that as a condition to the construction of improvements in the Project over 567,000 square feet of retail space, Developer shall be subject to and shall pay the Development Exactions required under Subsequent Land Use Regulations in effect as of the commencement of such construction. In exchange for the vested right to develop pursuant to this Development Agreement and the certainty regarding the Development Exactions as provided in this Section 11.A, Developer expressly waives for itself, and for any successor thereto, the right to challenge or contest the validity of any condition of approval attached to any entitlement which is a part of the Development Plan.

B. Timing of Development. The parties acknowledge that Developer cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held, in *Pardee Construction v. City of Camarillo* (1984) 37. Cal. 3d 465, that the failure of the parties in that case to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of Developer's subjective business judgment, subject only to any timing or phasing requirements set forth in the Existing Development Approvals and the Development Plan. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Property shall be deemed to conflict with the Existing Development Approvals and therefore shall not be applicable to the development of the Property.

C. Effect of Development Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Development Agreement, the rules, regulations, and official policies governing permitted uses of the Property, the density and intensity of use of the property, the maximum height and size of proposed buildings, and the design, improvement, and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. City shall exercise its lawful reasonable discretion in connection with Subsequent Development Approvals in accordance with the Development Plan, and as provided by this Development Agreement. City shall accept for processing, review, and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters. City may, at the request of Developer, contract for planning and engineering consultant services to expedite the review and processing of Subsequent Development Approvals, the cost of which shall be borne by Developer.

D. Changes and Amendments. The parties acknowledge that refinement and further development of the Project may require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event the Developer finds that a change in the Existing Development Approvals is necessary or appropriate, the Developer shall apply for a Subsequent Development Approval to effectuate such change. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to this Development Agreement and may be further changed from time to time as provided in this Section. Developer, shall, within thirty (30) days of written demand by City, reimburse City for any and all reasonable costs associated with any amendment or change to this Development Agreement that is initiated by Developer or Developer's successor without regard to the outcome of the request for amendment or change to this Development Agreement. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Development Agreement provided such change does not:

- (1) Alter the permitted uses of the Property as a whole, except as provided in Section 34 hereof;

- (2) Increase the density or intensity of use of the Property as a whole;
- (3) Increase the maximum height and size of permitted buildings;
- (4) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

- (5) Constitute a project requiring a subsequent or a supplemental Environmental Impact Report pursuant to Section 21166 of the Public Resources Code.

12. Periodic Review of Compliance with Development Agreement.

A. City shall review this Development Agreement at least once during every twelve (12) month period from the Effective Date of this Development Agreement.

B. During each periodic review by City, the Developer is required to demonstrate good faith compliance with the terms of this Development Agreement.

13. Amendment or Cancellation of Development Agreement. This Development Agreement may be amended or canceled in whole or in part only by mutual consent of the parties and in the manner provided for in Government Code Sections 65868, 65867, and 65867.5. The provisions of this Section do not impact the right of the City to terminate this Development Agreement because of Developer's breach or failure to comply in good faith with the requirements of this Development Agreement beyond applicable notice and cure periods.

14. Enforcement of this Development Agreement. Developer and City agree that the Superior Court in Madera County shall have jurisdiction over the implementation and enforcement of this Development Agreement, and shall have the power and authority to make such further or supplemental orders, directions, and other relief as may be necessary or appropriate for the interpretation, enforcement, or carrying out of this Development Agreement.

A. Developer and City agree that should Developer breach, or fail to perform any of the material obligations of any provision of this Development Agreement and not cure such breach or failure within ninety (90) days after written notice thereof, or such longer period as may be reasonably necessary and agreed by City provided Developer is diligently prosecuting such cure, City shall have the right to terminate this Development Agreement as provided in Section 15A, subject to Section 18 because the remedies provided by law, including, but not limited to, damages, are deemed by City to be inadequate to fully remedy such breach or failure to perform herein and due to the extreme difficulty of assessing with certainty damages for such breach or failure to perform.

B. No breach of any provision of this Development Agreement can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

15. Enforced Delay, Default, Remedies, and Termination.

A. Default by Developer. If City alleges a default by Developer that is not cured within ninety (90) days after written notice, or any agreed extension thereof the "Cure Period", City shall conduct a hearing utilizing the periodic review procedures of Section 12 and the cure provisions of this Section 15 before City may terminate this Development Agreement.

B. Default by City. If Developer alleges a default by City and alleges that City has not cured the Default, after written notice, during the Cure Period, Developer may pursue any legal or equitable remedy available to it under this Development Agreement.

C. Waiver. Failure or delay in giving Notice of Default shall not waive a party's right to give future Notice of the same or any other default.

D. Judicial Review. In the event City elects to terminate this Development Agreement either pursuant to the provisions of Section 14 or this Section 15, the Developer may challenge such termination by instituting legal proceedings, in which event the court shall exercise its review, based on substantial evidence, as to the existence of cause for termination.

16. Events of Default. Developer is in default under this Development Agreement upon the happening of one or more of the following events or conditions:

A. If a warranty, representation, or statement made or furnished by Developer to City is false or proves to have been false in any material respect when it was made.

B. A finding and determination by City that upon the basis of substantial evidence the Developer has not complied in good faith with one or more of the terms or conditions of this Development Agreement for ninety (90) days after written notice thereof, or such longer period as agreed to by City.

17. Mortgagee Protection. Neither entering into this Development Agreement nor committing a default under this Development Agreement shall defeat, render invalid, diminish, or impair the lien of mortgages having a mortgage on any portion of the Property made in good faith and for value, unless otherwise required by law. No mortgagee shall have an obligation or duty under this Development Agreement to perform Developer's obligations, or to guarantee such performance prior to any foreclosure or deed in lieu of foreclosure, but upon acquiring the right to possession pursuant to a mortgage on the Property or any portion thereof, the mortgagee shall be subject to the terms and conditions of this Development Agreement. The term of this Development Agreement shall not be extended based on the fact that a mortgagee held title to the Property for all or any part of the term of this Development Agreement.

18. Notice of Default to Mortgagee: Right to Cure.

A. If the City Clerk timely receives notice, on the form set forth on Exhibit "B" attached hereto and incorporated herein by this reference, from a mortgagee requesting a copy of any Notice of Default given to Developer under the terms of the Development Agreement, City shall endeavor to provide a copy of that notice to the mortgagee within ten (10) days of sending the Notice of Default to Owner. City shall have no liability for

damages or otherwise to Developer or Developer's successor, or to any mortgagee or successor therefore for failure to provide such notice.

B. The mortgagee shall have the right, but not the obligation, for a period up to ninety (90) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy, the default unless a further extension of time to cure is necessary for mortgagee to pursue its remedy of foreclosure, is diligently being pursued by the mortgagee, and is granted in writing by City. However, a mortgagee, to avail itself of the rights provided by this Section 18, must notify City in writing of its intent to attempt to remedy or cure within thirty (30) days of the date of the Notice of Default from City to mortgagee. A failure by a mortgagee to provide such timely notice to City shall extinguish the rights and protections provided by this Section 18 with respect to such notice of default. By providing the notice to City, mortgagee is agreeing and consenting to the provisions of this Section 18 and is further waiving the right to claim a prior lien on the Property. If the default is of a nature which can only be remedied or cured by such mortgagee upon obtaining possession, such mortgagee shall seek to obtain possession with diligence and continually through foreclosure, a receiver, or otherwise, and shall upon obtaining possession remedy or cure the default within thirty (30) days after obtaining possession. If the default cannot, with diligence, be remedied or cured within this thirty (30) day period, then the mortgagee shall have such additional time as City's City Council determines is reasonably necessary to remedy or cure the default (including trustee's sale or foreclosure under its security instrument), if the mortgagee commences cure during the thirty (30) day period and thereafter diligently pursues and completes the cure.

C. Such diligence by the mortgagee on effectuating such cure shall be reviewed by City's City Council every thirty (30) days thereafter until any and all defaults are cured. If at any such review, City's City Council determines that the mortgagee is not making good faith efforts to cure any and all Defaults, City's City Council shall have the authority to terminate this Development Agreement.

D. In return for City granting to Developer, Developer's successors and transferees, and the mortgagees of each of them, an extended time to remedy or cure a default, Developer and Developer's successors and transferees, and the mortgagees of each of them, agree that once a default is declared by City's City Council, the City may take the actions set forth below and burden the Property for the costs thereof -- irrespective of any lien priority, construction loan, deed of trust, or other encumbrance. Such actions include the following:

- (1) Abating public nuisances following the procedures outlined in the City-adopted public nuisance ordinance;
- (2) Remedy any health or safety threat posed by the Property, construction, or other activities occurring on the Property;
- (3) Screen any unsightly appearance on the Property for aesthetic purposes;
- (4) Abate weeds; and,

(5) Control noise, dust, water run-off, or other offensive conditions on the Property that constitute a legal nuisance, violate Land Use Regulations in existence on the date this Development Agreement is approved, or violate Existing Development Approvals, State law, or Federal law.

E. In the event any obligation of Developer is for the payment of money or fees, other than standard permit or processing fees, and a default is declared by City based upon such failure to pay, a mortgagee may be granted an extended time to remedy or cure until such time as mortgagee obtains possession of the Property, provided mortgagee agrees that any money due City which remains unpaid shall bear the legal rate of interest as the measure of inflation.

19. Mortgagee Rights. The parties hereto agree that this Development Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Development Agreement interpretations and modifications and agrees upon request, from time to time, to meet with the Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Development Agreement.

20. Mortgagee Rights and Privileges. Any mortgages of the Property shall be entitled to the parties' agreement that neither entering into this Development Agreement nor a breach of this Development Agreement by Developer or City shall defeat, render invalid, diminish, or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law or specified herein.

21. Uniform Codes. This Development Agreement does not prevent the City from adopting and amending in compliance with State law certain Uniform Codes which are based on recommendations of a multi-state professional organization and which become applicable throughout the City -- including the Project and Property subject to this Development Agreement. Such Uniform Codes include, but are not limited to, the *Uniform Building Code*, *Uniform Mechanical Code*, *National Electrical Code*, and *Uniform Fire Code*.

22. Prevailing Wage Compliance. Developer shall comply with all state and federal labor laws, including without limitation, those requiring the payment of prevailing wage. All fee credits and the Reimbursement Amount are intended to compensate Developer for no more than the cost associated with the construction and installation of Infrastructure Improvements required as a condition of regulatory approval. In accordance with California Labor Code Section 1720(c)(2) such compliance shall require Developer to pay prevailing wages in connection with the construction of and installation of all Infrastructure Improvements for which Developer is receiving a portion of the Reimbursement Amount or fee or fee credits, but not in connection with the construction of any other portion of the Project.

23. Community Facilities Maintenance District. City and Developer agree to reasonably cooperate in the creation of a community facilities maintenance district (the

"Maintenance District") pursuant to Government Code Section 53311, et seq, the territory of which shall include only the Property, for purposes of the payment of operation, maintenance and insurance reserve costs associated with the Basin and Floodway, the Property's storm drain improvements and the Wildlife Corridor. Developer agrees to reasonably cooperate with the City's proceedings for the creation of the Maintenance District by not opposing the formation of the Maintenance District casting a vote in favor of the Maintenance District's creation, and not proposing its extinguishment once enacted (other than pursuant to provisions of all remaining special tax obligations thereunder); provided that the highest aggregate annual special tax levy to be assessed on the Property by the Maintenance District shall not exceed One Hundred Twenty Five Thousand Dollars (\$125,000.00).

24. Public Health and Safety Concerns: Application to Project of Future Regulations.

A. This Development Agreement does not prevent the City from adopting Future General Regulations and applying such Future General Regulations to the Project and the Property, provided that City's City Council adopts findings that a failure to apply such Future General Regulations would create a fire, life, or safety hazard. These findings shall be based upon substantial evidence in the record from a hearing conducted by City's City Council at which the Developer was provided at least ten (10) days advance written notice.

B. Notwithstanding Subsection A above, the City shall not apply to the Project or the Property any Future General Regulations which prevent, preclude, or unreasonably delay or alter or in any way affect the implementation of all or any portion of the Development Plan, unless City's City Council, in accordance with Subsection A above, also makes a finding that such Future General Regulations are reasonably necessary to correct or avoid such injurious or detrimental condition. Any Future General Regulations applied to the Project or the Property pursuant to this Subsection B shall only apply for the duration necessary to correct and avoid such injurious or detrimental condition.

25. Interpretation of this Development Agreement.

A. Developer and City expressly intend that this Development Agreement shall not be construed against any party, as this Development Agreement was negotiated at arms length between City and Developer, both of whom were represented by legal counsel, and all of who contributed to the drafting of this Development Agreement.

B. Any reference within this Development Agreement to a Section shall be construed to reference all Subsections of that referenced Section.

26. Entire Agreement. This Development Agreement is a fully integrated agreement that contains the entire agreement and understanding of Developer and City. This Development Agreement supersedes and replaces all negotiations and all proposed agreements, whether oral or written, between Developer and City regarding, arising out of, or relating to the subject matter hereof. Each party acknowledges that it has read this Development Agreement and has signed it freely and voluntarily without reliance on any representations or promises made by any of the

other, or their attorneys or its representatives, other than as expressly set forth within this Development Agreement.

27. Scope of the Development Agreement. This Development Agreement is and shall be binding upon and shall inure to the benefit of the predecessors, affiliates, subsidiaries, successor corporations, related corporations, former corporations successors, assigns, agents, officers, past, present and current employees, and/or administrators of each of Developer and City hereto.

28. Cooperation. City agrees that it shall accept for processing and promptly take action on all applications, provided they are in a proper form and acceptable for required processing for discretionary permits, tract or parcel maps, or other land use entitlement for development of the Project in accordance with the provisions of this Development Agreement. City shall cooperate with Developer in providing expeditious review of any such applications, permits, or land use entitlement and, upon request and payment of any costs and/or extra fees associated therewith by Developer, City shall assign to the Project planner(s), building inspector(s), and/or other staff personnel as required to ensure the timely processing and completion of the Project.

29. Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Development Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

30. Amendments In Writing. This Development Agreement may be amended or modified only by a written agreement executed by or on behalf of Developer and City hereto and approved and adopted as required by law.

31. Assignment.

A. Right to Assign. Developer shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.) to any person, partnership, joint venture, firm, or corporation at any time during the term of this Development Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights (including the right to receive all or any portion of the Reimbursement Amount), duties, and obligations arising under or from this Development Agreement to the extent reasonably applicable to the transferred portion of the Property and be made in strict compliance with the following conditions precedent:

(1) No sale, transfer, or assignment of any right or interest under this Development Agreement shall be made unless made together with the sale, transfer, or assignment of all or a part of the Property. Developer agrees to provide specific notice of this Development Agreement, including the record or document number, where a true

and correct copy of this Development Agreement may be obtained from the County Clerk/County Recorder of the County of Madera, in any grant deed or other document purporting to transfer the title or an interest in the Property during the term of this Development Agreement or any extension thereof.

(2) Concurrent with any such sale, transfer, or assignment, or within fifteen (15) business days thereafter, Developer shall notify City, in writing, of such sale, transfer, or assignment and shall provide City with an executed agreement, in a form reasonably acceptable to City's attorney, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of the Owner/Developer under this Development Agreement to the extent allocable to the portion of the Property transferred, other than duties that are expressly reserved and retained by the transferor in such agreement, where the transferor still owns a portion of the Property. Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall constitute a default by Developer under this Development Agreement. Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required by this Section 31.A(2), the burdens of this Development Agreement shall be binding upon such purchaser, transferee, or assignee, to the extent allocable to the portion of the Property transferred, but the benefits of this Development Agreement shall not inure to such purchaser, transferee, or assignee until and unless such assumption agreement is executed.

(3) The City specifically acknowledges and agrees that Developer may desire to assign and allocate the rights to receive portions of the Annual Payments to the acquirers of one or more "anchor" parcels within the Property, which assignments may include different allocations in different years being paid to Developer and such assignees. Provided that Developer and such assignees have complied with this Section 31 with respect to such assignments, and provided that the City receives written notice executed by Developer not less than sixty (60) days prior to the applicable annual payment date, the City shall comply with the allocations and payment directions set forth in such notice. Developer shall pay all reasonable costs incurred by City in allocating such payments.

32. Release of Transferring Owner. Notwithstanding any sale, transfer, or assignment, Developer or any successor Owner thereto shall continue to be obligated under this Development Agreement unless Developer or such subsequent Owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by Developer or such subsequent Owner of all of the following conditions:

(1) Developer or Owner no longer has a legal interest in all or any part of the Property except as a beneficiary under a deed of trust; or if such requested release relates only to a portion of the Property, Developer or Owner no longer has a legal interest in such portion of the Property except as a beneficiary under a deed of trust.

(2) Developer or Owner is not then in default under this Development Agreement.

(3) Developer or Owner or purchaser has provided City with the notice and executed assumption agreement required under Section 31.A(2) above.

(4) Developer or Owner has reimbursed City for any and all City costs associated with Developer or Owner's transfer of all or a portion of the Property.

33. Subsequent Assignment. Any subsequent sale, transfer, or assignment after an initial sale, transfer, or assignment shall be made only in accordance with and subject to the terms and conditions of Sections 31 and 32.

34. Governing Law. Except as expressly provided in this Development Agreement, all questions with respect to this Development Agreement, and the rights and liabilities of the Developer and the City hereto, shall be governed by the laws of the State.

35. Changes in Project. City may expand the permitted uses for the Property without amending this Development Agreement so long as the rights of Developer hereunder are not diminished.

36. Notice. Unless expressly provided otherwise in this Development Agreement, notices, reports, communications, and payments directed to City shall be sent to:

City Clerk
City of Madera
City Hall
205 West Fourth Street
Madera, California 93637

With a copy to:

City Attorney
City Hall
205 West Fourth Street
Madera, California 93637

Unless expressly provided otherwise in this Development Agreement, notices, reports, communications, and payments directed to Developer shall be sent to:

Zelman Retail Partners, Inc.
515 South Figueroa Street, Suite 1230
Los Angeles, CA 90071 Attention: Brett Foy

And

Allen Matkins Leck Gamble Mallory & Natisis LLP
515 South Figueroa Street, Suite 700
Los Angeles, CA 90071
Attention: Michael J. Kiely, Esq.

37. Counterparts. This Development Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart to the other party hereto, each counterpart shall be deemed an original, and all counterparts taken together will constitute one and the same Development Agreement, which will be binding and effective as to Developer and City. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Development Agreement is in the physical possession of the party seeking enforcement thereof.

IN WITNESS WHEREOF, the City of Madera and Developer hereto have agreed to and executed this Development Agreement.
DATED: August 1, 2007

ATTEST:
Sonia Alvarez, CITY
CLERK

By: Sonia Alvarez
City Clerk
(Seal)

APPROVED AS TO FORM:

Joseph A. Soldani
City Attorney Joseph A. Soldani



By: Steven A. Mindt
MAYOR Steven A. Mindt

DATED: 8/3, 2007

DEVELOPER

ZELMAN RETAIL PARTNERS, INC.

By [Signature]

(Signature)

Brett M. Foy

(Typed Name)

Its: Co-President

(Title)

STATE OF California
COUNTY OF Los Angeles)ss.

On August 3, 2007, before me, ROSEMARY PRECIADO, a notary public, personally appeared BRETT M. FOY, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

[Signature]

Notary Public

(Official Seal)



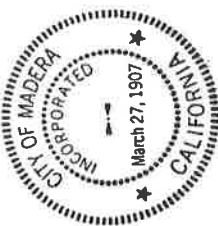


City of Madera
205 West Fourth Street
Madera, CA 93637
(559) 661-5405

STATE OF CALIFORNIA)
COUNTY OF MADERA)

On the 7th day of August 2007, before me, Sonia Alvarez, City Clerk of the City of Madera, personally appeared **STEVEN A. MINDT** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Sonia Alvarez
SONIA ALVAREZ
City Clerk, City of Madera

DESCRIPTION OF ATTACHED DOCUMENT (OPTIONAL)

Title or Type of Document: Development Agreement

Document Date:

Number of Pages:

Signer(s) Other Than Named Above: Brett M. Foy, Joseph A. Soldani, Sonia Alvarez

CAPACITY(IES) CLAIMED BY SIGNER(S)

Signer's Name: Steven A. Mindt

Signer's Name:

Title: Mayor, City of Madera

Title:

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Real property in the unincorporated area of the County of MADERA, State of California, described as follows:

ALL THAT PORTION OF THE SOUTH HALF OF SECTION 3, TOWNSHIP 11 SOUTH, RANGE 17 EAST, M.D.B.M., LYING SOUTH OF SCHMIDT CREEK AND NORTHEAST OF THE NORTHEAST SOUTHERN PACIFIC RAILROAD RIGHT OF WAY LINE.

EXCEPTING THEREFROM THAT PORTION GRANTED TO THE STATE OF CALIFORNIA IN DEED EXECUTED BY FELISBERTO DASILVA, ET, AL, AND RECORDED IN BOOK 1081 PAGE 532 OF OFFICIAL RECORDS, INSTRUMENT NO. 2225.

APN: 038-040-005

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29369-2587-34-07/mg/mg

EXHIBIT "A"
-1-

EXHIBIT "B"

REQUEST FOR NOTICE OF DEFAULT UNDER DEVELOPMENT AGREEMENT

The undersigned, whose address is _____, does hereby certify that it is the holder of a deed of trust lien on a portion of the Property (as such term is defined in that certain Development Agreement dated as of _____, 200__ (the "Development Agreement") by and among the City of Madera and Zelman Retail Partners, Inc.) described on Exhibit A attached hereto. In the event that any notice shall be given of a default of the Party under the Development Agreement, a copy thereof shall be delivered to the undersigned who shall have the right to cure the same, as specified in the Development Agreement. Failure to deliver a copy of such notice shall in no way affect the validity of the notice to the Developer, but no such notice shall be effective as it relates to the rights of the undersigned under the Development Agreement with respect to the deed of trust, including the commencement of any cure periods applicable to the undersigned, until actually received by the undersigned.

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23385-258/7-24-07/mjg

EXHIBIT "B"

-1-

EXHIBIT "C"

MAXIMUM REIMBURSEMENT SCHEDULE

Description of Work	Quantity	Unit	Unit Cost	Total Cost
Storm Drain Main Ave 17 (a)	1867	LF	\$45.00	\$84,015.00
18 inch				
24 inch	63	LF	\$55.00	\$3,465.00
42 inch storm drain, on-site (b)	2750	LF	\$100.00	\$275,000.00
SD Retention Basin	1	LS	\$400,000.00	\$400,000.00
12 inch Sewer Main in 17 (c)	566	LF	\$100.00	\$56,600.00
12" Sewer ext. to Walden then south to Sharon (c)	6450	LF	\$115.00	\$741,750.00
12" Water on Avenue 17-100% reimbursable (d)	1573	LF	\$65.00	\$102,245.00
12" Water Main Freeway and Railroad Crossing (d)	1	LS	\$598,000.00	\$598,000.00
12 inch Water Main in Golden State Drive (d)	976	LF	\$65.00	\$63,440.00
12 inch Water Main on-site (f)	2640	LF	\$65.00	\$171,600.00
Water Well (d)	1	EA	\$1,000,000.00	\$1,000,000.00
Paving Four (4)-12 foot Arterial Lanes	97136	SF	\$8.00	\$777,088.00
Arterial Median Island - Landscape for 30' island	19754	SF	\$8.00	\$158,032.00
Arterial Median Island - Decorative Concrete	4442	SF	\$14.00	\$62,188.00
Traffic Signal @ Center	2	LS	\$500,000.00	\$1,000,000.00
Traffic Signal @ Walden (h)	1	LS	\$500,000.00	\$500,000.00
Traffic Signal @ Freeway (i)	2	LS	\$500,000.00	\$1,000,000.00
Widen N/B Off Ramp @ SR 99	1	LS	\$850,000.00	\$850,000.00
Less Impact Fee Credit				\$7,843,423.00
Contractor Construction's Management Services			6%	\$5,974,591.00
A&E fees			7%	\$418,221.37
Development Overhead/General Conditions/Insurance/Management			15%	\$896,188.65
Maximum Reimbursement for Public Improvements				\$7,647,476.48
Installed by Developer				

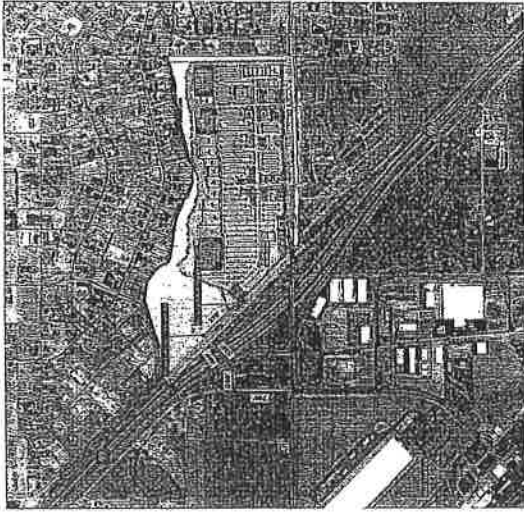
EXHIBIT "C"

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EXHIBIT "D"

WATER WORK AND WELL SITE LOCATION



LEGEND
[Symbol] Proposed Well Site
[Symbol] Existing Well Site
[Symbol] Proposed Water Connection
[Symbol] 10\"/>

MADERA TOWN CENTER
CROSS CONNECTION STUDY - MADERA, CA



EXHIBIT "D"

-1-

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EXHIBIT "C"

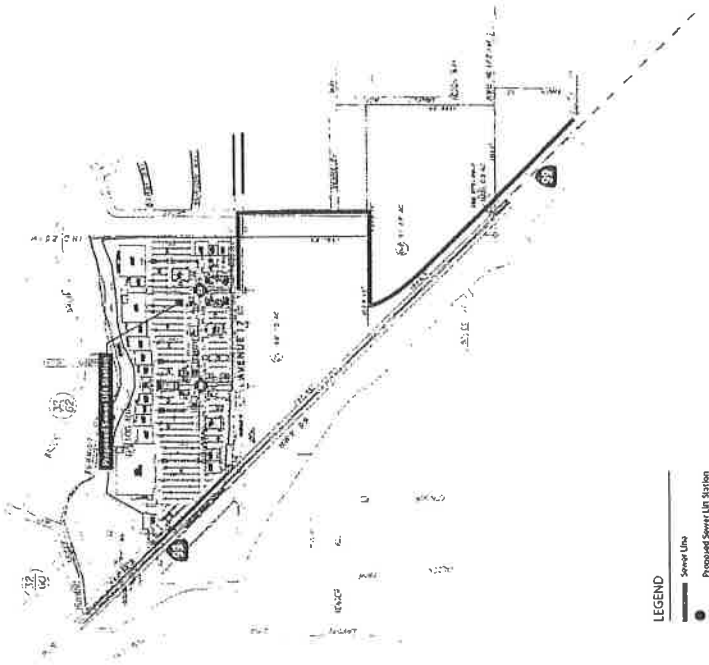
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- Notes:
- (a) These lines pick up city runoff on Av 17
 - (b) Onsite 42 SD to be shared by city & developer
 - (c) This is best guess on size of on-site SD
 - (d) Unit costs reflect trench excavation over 17' deep
 - (e) City to collect fair share connection costs from adjoining property
 - (f) 6450 LF of 12" Sewer ext, best guess w/o plans.
 - (g) 100% reimbursable from impact fees
 - (h) 100% reimbursable from impact fees
 - (i) 100% reimbursable from impact fees
 - (j) 100% reimbursable from impact fees
 - (k) Oversize cost is eligible for reimbursement
 - (l) 100% reimbursable

EXHIBIT "E"

SEWER WORK AND SITE



MADERA TOWN CENTER
SEWER WORK - MADERA, CA



EXHIBIT E

EXHIBIT "E"

749376-200.A
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EXHIBIT "F"

TRAFFIC MITIGATION WORK

Opening day traffic mitigations for Phase I (567,000 sq ft) shall consist of the following items:

1. Widen and restripe Avenue 17 along the project frontage to provide three westbound lanes and two eastbound lanes
2. Provide a stoplight on Avenue 17 at Walden Avenue
3. Provide two stoplights on Avenue 17 at the project entrances
4. All related architectural and engineering expense

Additional opening day Interchange Work are as follows:

1. Provide two stoplights at the freeway: one at the N/B ramp of SR99 and one at the S/B ramp of SR99
2. Widen the N/B ramp of SR99
- All related architectural and engineering expense

EXHIBIT "F"

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29369-2387-24-07/mg/mg

EXHIBIT "G"

FLOODWAY AND BASIN WORK AND SITE

Job No. 05290
July 7, 2007

**EXHIBIT A
LEGAL DESCRIPTION**

All that certain real property situate in and being a portion of the South Half of Section 3, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, County of Madera, State of California, being more particularly described as follows:

COMMENCING at the Southeast corner of said Section 3; thence, along the East line of said Section 3, North 00°31'19" West, a distance of 1038.86 feet to the TRUE POINT OF BEGINNING; thence leaving said East line of said Section 3, the following (16) courses:

- 1) South 89°28'41" West, a distance of 15.41 feet,
- 2) North 04°18'55" West, a distance of 313.32 feet to the beginning of a tangent curve concave Southwesterly, and having a radius of 20.00 feet,
- 3) thence Northwesterly along said curve through a central angle of 107°50'53" an arc distance of 37.65 feet,
- 4) South 67°05'12" West, a distance of 244.43 feet,
- 5) South 83°31'15" West, a distance of 392.91 feet,
- 6) South 88°50'18" West, a distance of 200.12 feet,
- 7) South 75°58'30" West, a distance of 266.12 feet,
- 8) South 66°10'56" West, a distance of 241.15 feet,
- 9) South 68°15'24" West, a distance of 189.02 feet,
- 10) North 70°28'22" West, a distance of 205.25 feet,
- 11) North 49°43'54" West, a distance of 91.37 feet,
- 12) North 68°10'03" West, a distance of 207.17 feet,
- 13) North 80°36'24" West, a distance of 296.75 feet,
- 14) North 82°20'55" West, a distance of 336.89 feet,
- 15) South 29°06'57" West, a distance of 428.81 feet,
- 16) North 89°54'02" West, a distance of 452.85 feet to a point on the Northeastly right-of-way line of the Southern Pacific Railroad, as shown on that certain Subdivision map of "Madera Estates No. 2 Subdivision" filed for record on October 6, 1959 in Volume 8 of Maps at Pages 14 through 24, Madera County Records; thence, along said Northeastly right-of-way line, North 44°33'38" West, a distance of 816.69 feet to the Southerly Boundary line of said Subdivision map of "Madera Estates No. 2 Subdivision"; thence along said Southerly Boundary line the following (14) courses:

- 1) North 84°25'23" East, a distance of 376.46 feet;
- 2) North 71°59'23" East, a distance of 600.27 feet;
- 3) South 78°17'37" East, a distance of 225.00 feet;
- 4) South 53°17'37" East, a distance of 200.00 feet;
- 5) South 26°17'37" East, a distance of 150.00 feet;
- 6) South 81°17'37" East, a distance of 507.00 feet;

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EXHIBIT "G"

- 1 -

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- 7) South 66°52'37" East, a distance of 253.12 feet;
- 8) South 49°17'37" East, a distance of 90.00 feet;
- 9) South 70°17'37" East, a distance of 155.00 feet;
- 10) North 88°36'23" East, a distance of 143.33 feet;
- 11) North 75°52'23" East, a distance of 489.88 feet;
- 12) North 72°47'23" East, a distance of 209.64 feet;
- 13) North 83°41'23" East, a distance of 400.49 feet;
- 14) North 73°46'05" East, a distance of 318.65 feet to a point on the East line of said Section 3, also being the Westerly Boundary Line of that certain Subdivision Map of "Madera Estates Subdivision" filed for record on March 24, 1959 in Volume 7 of Maps at Pages 132 through 138, Madera County Records; thence, along said East line of said Section 3, South 00°31'19" East, a distance of 480.73 feet to the TRUE POINT OF BEGINNING.

Subject to all easements and/or rights-of-way of record.
Containing 24.16 acres, more or less.

Clyde N. Hood
Clyde N. Hood, P.L.S. 7789
License expiration date: 12/31/2007



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EXHIBIT "G"

- 2 -

EXHIBIT "H"

INTENTIONALLY OMITTED

EXHIBIT "H"
-1-

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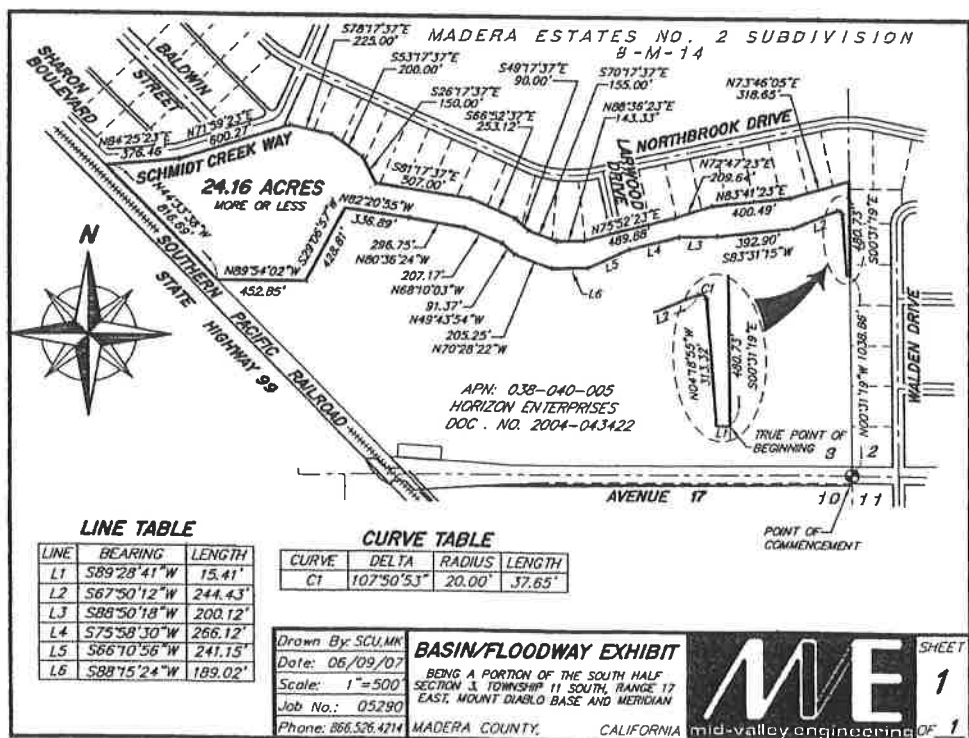


EXHIBIT "C"
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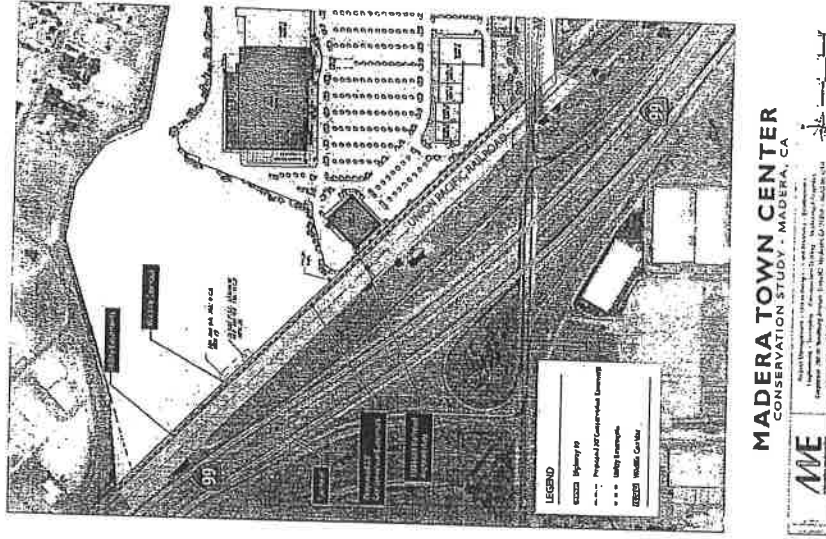
EXHIBIT "I"

DEVELOPMENT EXACTIONS APPLICABLE TO PROJECT
INCLUDING FEE CREDIT AMOUNTS

Impact Fee Category	Phase I Square Feet	Unit Cost	Extension
(I) IMPACT FEES CREDITED			
Sewer Add. Obl. NE	567,000	0.169	\$95,823.00
Sewer Exist. Obl. NE	567,000	0.036	\$20,412.00
Storm Drain NE	567,000	1.210	\$686,070.00
Streets 16 Ft Arterial med.	567,000	0.142	\$80,514.00
Streets 24 Ft collector	567,000	0.251	\$142,317.00
Streets 12 Ft Arterial	567,000	0.251	\$142,317.00
Transportation Facility Fee	567,000	0.254	\$144,018.00
Traffic Signals	567,000	0.087	\$49,329.00
Water Impact Fee - pipes	567,000	0.133	\$75,411.00
Water Impact Fee -wells	567,000	0.763	\$432,821.00
SUBTOTAL, IMPACT FEE CREDITS			\$1,868,832.00
(II) IMPACT FEES PAID			
Administrative Impact Fee	567,000	0.024	\$13,608.00
Fire Dept Impact Fees	567,000	0.036	\$20,412.00
General Government Impact Fees	567,000	0.012	\$6,804.00
Police Dept Impact Fee	567,000	0.072	\$40,824.00
Public Works Impact Fee	567,000	0.133	\$75,411.00
Wastewater Treatment Plant	567,000	0.072	\$40,824.00
School District	567,000	0.420	\$238,140.00
SUBTOTAL, IMPACT FEES PAID			\$436,023.00
TOTAL IMPACT FEES			\$2,304,855.00

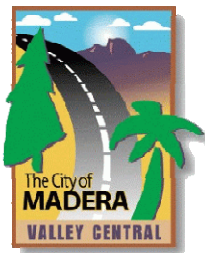
EXHIBIT "J"

20-FOOT WILDLIFE CORRIDOR



MADERA TOWN CENTER
CONSERVATION STUDY - MADERA, CA





CITY OF MADERA PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

Staff Report: Madera Travel Center Development Agreement Annual Review Item #7- February 12, 2019

PROPOSAL: A public hearing for the annual review of the Development Agreement approved in conjunction with the Madera Travel Center (Ordinance 938 C.S.).

APPLICANT:	Love's Travel Stops and Country Stores	OWNER:	Love's Travel Stops and Country Stores
ADDRESS:	Avenue 17/SR 99	APN:	013-240-004, 005, 006 & 007
APPLICATIONS:	Development Agreement Annual Review	CEQA:	Previously Certified Environmental Impact Report

LOCATION: The site is located on the southeast corner of State Route 99 and Avenue 17.

STREET ACCESS: Avenue 17 and the future Sharon Boulevard.

PARCEL SIZE: Four parcels encompassing a total of approximately 24.40 acres.

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: C2 (Heavy Commercial)

SITE CHARACTERISTICS: The project site is located on the south side of Avenue 17, east of the State Route 99 corridor. Vacant, commercially designated land is located to the south and to the north. Rural residential property is located to the east. The Union Pacific Railroad/State Route 99 transportation corridor is immediately west, with the Airport Industrial Park beyond.

ENVIRONMENTAL REVIEW: An environmental impact report (EIR) was prepared for the overall project, including the potential for a development agreement. The EIR was certified by the Planning Commission (Commission) at its August 16, 2016 meeting. No additional environmental review is required in conjunction with the annual review of the Development Agreement.

SUMMARY: The Madera Travel Center Development Agreement was considered by the Commission in November of 2016 and approved by the City Council (Council) on December 21, 2016. The primary purpose of the agreement was to establish certainty with regard to the developer's ability to develop the site in accordance with defined regulations and to establish a program addressing project costs and reimbursements. An annual review of the development agreement is required pursuant to the California Government Code and the Madera Municipal Code to verify that the developer has complied in good faith with the terms of the agreement.

APPLICABLE CODES

California Government Code Sections 65864-65869.5 authorize cities to enter into binding development agreements. Madera Municipal Code Sections 10-3-1701 thru 1718 establish the procedures and regulations applicable to the consideration and adoption of development agreements in Madera. Both the Government Code and the Madera Municipal Code specify that all development agreements be reviewed by the City on an annual basis to determine whether the applicant has complied in good faith with the terms of the agreement. The Commission is not reviewing the merits of the project design or the conditions of approval that provide for the development of the project.

BACKGROUND

The Madera Travel Center project spans four parcels encompassing a total of approximately 24.4 acres. The project includes multiple entitlements that cumulatively provide for the development of the overall site. Primary features of the project include an 11,981 square-foot Travel Stop building, including 7,965 square feet within the store portion and a 4,016 square foot, branded food restaurant with drive-through, served by on-site parking for passenger vehicles and tractor-trailer trucks. Gasoline, diesel fuel, and propane will be sold on site, with nine covered fuel islands for trucks, and nine separate fuel islands for automobiles, as well as truck scales, oil-water separator, RV dump, and both above ground diesel fuel tanks and underground gasoline tanks, as well as an underground diesel exhaust fluid tank.

The project proponent, Love's Travel Stops and Country Stores, requested the approval of a development agreement in conjunction with the Madera Travel Center Project. Local agencies are authorized, but not required by state law, to enter into binding development agreements with property owners addressing the development of real property. Development agreements are used for vesting land use entitlements and may also establish financing and construction responsibilities, as well as timelines for the installation of on-and-off-site improvements. Development agreements provide for a form of vested rights in that they may supersede any change in planning, zoning, subdivision or building regulations adopted after the execution of such an agreement. The Development Agreement was approved by the Commission in November of 2016 and by the Council on December 21, 2016 (Ord. 938 C. S.).

ANALYSIS

The cumulative approvals issued to date require the construction and/or installation of a significant number of public improvements to serve the site at significant cost to the developer. The Development Agreement defines the set of requirements which are applicable to the site, focusing on requirements for the construction of off-site public improvements. The agreement also specifies a reimbursement structure under which the developer would receive reimbursements under a set schedule. Funding typically utilized for capital improvement projects is utilized to reimburse some of the eligible improvements, while a portion of the sales tax and transit occupancy tax generated by the project reimburses the remaining amounts.

A brief, bullet point summary of major focal points of the agreement is included as follows:

- Building Permits for Phase 1 of the Project (everything except the freestanding restaurant and Boat/RV Storage Facility) must be submitted within 3 years and issued within 4 Years of the Effective Date of the Agreement. Occupancy Permits need to be issued within 5 years. If these timelines are met the Agreement will have a full term of 20 Years.
- During the term of the Development Agreement, the cumulative development requirements applied to the project will not change.
- Development exactions will be locked in during the term of the agreement and would not increase.
- The project will develop infrastructure and utilities consisting of a water well, water pipelines, sewer lines, drainage pipelines, two (2) traffic signals, Avenue 17 and Sharon Boulevard street frontage improvements, and Freeway 99 ramp improvements. The improvements will be completed, prior to occupancy.
- The project will develop a “Historic Pedestrian Plaza” as referenced in the approvals granted by the Commission, with construction completed no later than the occupancy of the final building to be constructed in Phase 1 of the Project.
- The City will credit the applicable categories of the project’s capital facility “impact” fees towards the cost of the off-site improvements (i.e. sewer impact fees credited towards off-site sewer line construction).
- The City will reimburse the developer for the full and complete costs of the water well, upon completion and acceptance of the well.
- In addition to the water well reimbursement, the City will reimburse the developer for off-site construction costs at a maximum total of \$6,870,000 during the term of the agreement. These represent costs beyond the typical frontage improvements in which all projects are responsible.
- In no event shall the aggregate of the fee credits and the reimbursement amounts exceed the developer's reasonable and actual costs and expense of constructing and installing the Infrastructure Improvements. The City will pay actual costs up to the maximum total identified above.
- The non-water well reimbursements will be in phases. Approximately \$1,000,000 will be reimbursed in a lump sum upon completion and acceptance of the improvements by the City. After one year of operations, a second lump sum of approximately \$4,200,000 will be reimbursed. The remaining amount will be reimbursed in annual payments starting the second year of operations.

A table highlighting the basic terms of the agreement that trigger compliance by the applicant, and summarizing the status of each item, is provided (Table 1).

Table 1
Development Agreement Terms Triggering Compliance by Applicant

	Description	Timing of Compliance
1.	Building Permits for Phase 1 of the Project	Within three (3) years. <i>In compliance. Permits pulled on all components, except for signage, the truck scale, and historical plaza.</i>
2.	Occupancy Permits issued for Phase 1	Within five (5) years.
3.	If 1 and 2 are satisfied.	Agreement will have a full term of 20 Years.
4.	The project will develop a water well.	Prior to occupancy of Phase I. <i>Under construction.</i>
5.	Construct sewer lines.	Prior to occupancy of Phase I.
6.	Construct water lines.	Prior to occupancy of Phase I.
7.	Construct storm drainage pipelines.	Prior to occupancy of Phase I.
8.	Construct temporary drainage basin.	Prior to occupancy of Phase I.
9.	Construct two (2) traffic signals.	Prior to occupancy of Phase I.
10.	Construct Avenue 17 improvements.	Prior to occupancy of Phase I.
11.	Construct Sharon Blvd. improvements.	Prior to occupancy of Phase I.
12.	Construct miscellaneous street and utility improvements.	Prior to occupancy of Phase I.
13.	Construct SR 99/Avenue 17 NB Freeway Ramp Improvements.	Prior to occupancy of Phase I.
14.	Develop a "Historic Pedestrian Plaza"	Prior to occupancy of last building in Phase I.
15.	Dedicate Infrastructure Improvements	After completion, and acceptance by City Engineer.
16.	Provide evidence of actual and reasonable costs for reimbursable expenses	After City has accepted infrastructure.

As shown in Table 1, the development agreement outlines a series of obligations that the project developer, Love's Travel Stops and Country Stores, will need to comply with. The majority of these obligations relate to the construction and dedication of public improvements and the successful construction of the individual components of the project. The Development Agreement specifies that the completion of these improvements should occur within the first five years of the Development Agreement, with subsequent reimbursements occurring over the lifespan of the agreement. It should also be noted that some of the improvements referenced in the Madera Town Center Development Agreement (Zelman) are also required in conjunction with the Madera Travel Center (Love's). If Love's constructs these improvements first, it will relieve Zelman from the requirement to do so and Zelman would not be reimbursed for those improvements.

The majority of the project components within Phase I already have building permits issued. The remaining components (the signage, truck scale, and historical plaza) are in building permit plan check and very near issuance of building permit. Construction should begin in the very near future, as weather permits. The municipal well is also under construction. The project is currently developing consistent with the requirement of the development agreement.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Though the annual review of development agreements are not specifically addressed in the vision or action plans, the overall project does indirectly support **Action 115.2** – *As a component of the General Plan Update, increase retail outlets and promote Shop Madera ...;*

RECOMMENDATION

The information presented in this report supports a determination that Love's Travel Stops and Country Stores has complied in good faith with the terms of the development agreement.

PLANNING COMMISSION ACTION

The Commission will be making a determination as to whether the applicant has complied in good faith with the terms of the development agreement.

Motion 1: Move to approve a resolution declaring a statement of compliance under periodic review for the development agreement approved in conjunction with the Madera Travel Center Project (Ord 938), for the period through December 21, 2018.

Findings

- As summarized in Table 1 of this staff report, Love's Travel Stops and Country Stores has complied with the terms of the development agreement which trigger compliance on the part of the applicant. There are no developer obligations which required compliance during the period through December 21, 2018.

(OR)

Motion 2: Move to find that Love's Travel Stops and Country Stores has not complied in good faith with the terms of the development agreement approved in conjunction with the Madera Travel Center Project (Ord 938), for the period through December 21, 2018.

Findings

- The Commission will identify the terms of the development agreement where compliance has not occurred and the substantial evidence relied on in making that determination.

(OR)

Motion 3: Move to continue the public hearing, to a date specified, for the following reasons or in order for the following information to be provided: (please specify)

ATTACHMENTS

Planning Commission Resolution Declaring a Statement of Compliance
Municipal Code Section 10-3.1715 – Periodic Review of Development Agreements
Ordinance 938 C.S. Development Agreement between City of Madera and Love's Travel Stops and Country Stores

RESOLUTION NO. 1839

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA
DECLARING A STATEMENT OF COMPLIANCE UNDER PERIODIC REVIEW FOR
THE DEVELOPMENT AGREEMENT APPROVED IN CONJUNCTION WITH THE
MADERA TRAVEL CENTER PROJECT (ORD 938 C.S.), FOR THE PERIOD
THROUGH DECEMBER 21, 2017**

WHEREAS, in 2016, the City of Madera and Love's Travel Stops and Country Stores entered into a development agreement in conjunction with the Madera Travel Center shopping center project; and

WHEREAS, the development agreement was entered into before Love's Travel Stops and Country Stores purchased the subject property outright; and

WHEREAS, in accordance with the terms of the Development Agreement, Love's Travel Stops and Country Stores is a successor in interest and is bound by the Development Agreement as the current owner of the property; and

WHEREAS, the City of Madera Community Development Director ("the Community Development Director") initiated a Periodic Review for the Development Agreement approved in conjunction with the Madera Travel Center project (Ordinance 938 C.S.), as required under Zoning Ordinance Section 10-3.1715; and

WHEREAS, the Planning Commission held a public hearing on this matter on February 12, 2019 and considered the information provided in a written staff report; and

WHEREAS, the Planning Commission has made the following finding:

1. Love's Travel Stops and Country Stores, Inc has complied with the terms and conditions of the Development Agreement (ORD 938 C.S.), through December 21, 2018 as summarized in Exhibit A, attached hereto and incorporated by reference, and, Love's Travel Stops

and Country Stores has demonstrated a continuing good faith effort to implement the terms and conditions as set forth in the Development Agreement.

NOW THEREFORE BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MADERA AS FOLLOWS:

1. The above recitals are true and correct.
2. The Planning Commission of the City of Madera hereby declares that the Love's Travel Stops and Country Stores, Inc. is in compliance with the terms and conditions of the Development Agreement approved in conjunction with the Madera Travel Center project (Ord 938 C.S.), through December 21, 2018.
3. This resolution is effective immediately upon adoption.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 12th day of February 2019, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Chairperson
City of Madera Planning Commission

Attest:

Christopher Boyle
Acting Planning Manager

Exhibit A

Madera Travel Center Development Agreement Status of Terms Triggering Performance or Compliance by Applicant

	Description	Timing of Compliance
1.	Building Permits for Phase 1 of the Project	Within three (3) years
2.	Occupancy Permits issued for Phase 1	Within five (5) years
3.	If 1 and 2 are satisfied.	Agreement will have a full term of 20 Years.
4.	The project will develop a water well.	Prior to occupancy of Phase I
5.	Construct sewer lines.	Prior to occupancy of Phase I
6.	Construct water lines.	Prior to occupancy of Phase I
7.	Construct storm drainage pipelines.	Prior to occupancy of Phase I
8.	Construct temporary drainage basin.	Prior to occupancy of Phase I
9.	Construct two (2) traffic signals.	Prior to occupancy of Phase I
10.	Construct Avenue 17 improvements.	Prior to occupancy of Phase I
11.	Construct Sharon Blvd. improvements.	Prior to occupancy of Phase I
12.	Construct miscellaneous street and utility improvements.	Prior to occupancy of Phase I
13.	Construct SR 99/Avenue 17 NB Freeway Ramp Improvements.	Prior to occupancy of Phase I
14.	Develop a "Historic Pedestrian Plaza"	Prior to occupancy of last building in Phase I
15.	Dedicate Infrastructure Improvements	After completion, and acceptance by City Engineer
16.	Provide evidence of actual and reasonable costs for reimbursable expenses	After City has accepted infrastructure

SEC.10-3.1715 – PERIODIC REVIEW OF DEVELOPMENT AGREEMENTS

§ 10-3.1715 PERIODIC REVIEW.

(A) The city shall review each development agreement every 12 months from the date the agreement is entered into. The time for review may be modified to be more frequent either by agreement between the parties or by initiation in one or more of the following ways:

- (1) Affirmative vote of at least four members of the Planning Commission; or,
- (2) Affirmative vote of at least three members of the City Council.

(B) The Community Development Director shall begin the review proceeding by giving notice that the city intends to undertake a periodic review of the development agreement to the property owner. Notice shall be provided at least ten days in advance of the time at which the matter will be considered by the Planning Commission.

(C) Annual review of development agreements shall be conducted by the Planning Commission at a public hearing at which the property owner shall demonstrate good faith compliance with the terms of development agreement. The burden of proof on this issue is upon the property owner.

(D) The Planning Commission shall determine upon the basis of substantial evidence whether or not the property owner has, for the period under review, complied in good faith with the terms and conditions of the development agreement.

(E) If the Planning Commission finds and determines on the basis of substantial evidence that the property owner has complied in good faith with the terms and conditions of the agreement during the period under review, the Commission shall by resolution adopt a statement of compliance certifying such compliance in a form suitable for recording in the County Recorder's Office. Upon recording of a statement of compliance, the review for that period is concluded. A resolution adopting a statement of compliance shall be final ten days after the Planning Commission decision, unless a notice of appeal has been filed pursuant to the provisions of the municipal code.

(F) If the Planning Commission finds and determines on the basis of substantial evidence that the property owner has not complied in good faith with the terms and conditions of the agreement during the period under review, the Planning Commission may recommend to the City Council that the development agreement be modified or terminated.

(G) The procedure for modifying or terminating a development agreement shall be the same as the procedure for entering into a development agreement, except that the owner shall be given at least 30 days notice of the hearing by the City Council to consider such modification or termination.

(Ord. 817 C. S., passed 6-20-2007)

ORDINANCE NO. 938 C.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF MADERA APPROVING AND ADOPTING THE
DEVELOPMENT AGREEMENT BETWEEN LOVE'S
TRAVEL STOPS AND COUNTRY STORES AND THE
CITY OF MADERA**

WHEREAS, at its August 16, 2016 meeting, the Planning Commission approved various applications in support of the development of the Madera Travel Center project, located on approximately 25 acres of a 48.36 acre parcel at the southeast corner of the intersection of Avenue 17 and Freeway 99; and

WHEREAS, the approved Madera Travel Center Project is comprised of an 11,981 square-foot Travel Stop building, including 7,965 square feet within the store portion and a 4,016 square foot branded food restaurant(s) with drive-through, served by on-site parking for passenger vehicles and trailer trucks. Gasoline and diesel fuel, and propane will be sold on site, with nine covered fuel islands for trucks, and nine separate fuel islands for automobiles, as well as truck scales, oil-water separator, RV dump, and both above ground diesel fuel tanks and underground gasoline tanks, and an underground diesel exhaust fluid tank; and

WHEREAS, an environmental impact report was certified in conjunction with the approval of the Madera Travel Center project on by the Planning Commission on August 16, 2016; and

WHEREAS, Government Code Sections 65864 through 65869.5 provide the statutory authority for development agreements between municipalities and persons owning real property interest in the City; and

WHEREAS, pursuant to Government Code Section 65865 the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements as set forth in § 10-3.1701 et. Seq. of the Madera Municipal Code; and

WHEREAS, the City received an application to consider a development agreement in conjunction with the Madera Travel Center.

WHEREAS, the proposed Development Agreement has been reviewed by City staff and the Planning Commission in conformance with the applicable requirements of Government Code and the Madera Municipal Code.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA DOES ORDAIN
AS FOLLOWS:**

SECTION 1. The provisions of the Development Agreement are consistent with the objectives, policies, general land uses and programs specified by the General Plan and the Zoning Ordinance, as amended.

SECTION 2. The Development Agreement is within the scope of the previously certified environmental impact report.

SECTION 3. The Development Agreement contains all information required by the California Government Code and Section 10-3.1702 of the Madera Municipal Code.

SECTION 4. The City Council finds that the development of a travel center, as contemplated by the Development Agreement, is compatible with the uses authorized in, and the regulations prescribed for, the C (Commercial) General Plan designation and C2 (Heavy Commercial) zone district.

SECTION 5. The Development Agreement is fair, just, and reasonable in light of both the scope of the project and the terms of the agreement, and is prompted by the necessities of the project which require that development of the project be allowed under a defined set of requirements and with a defined cost structure.

SECTION 6. The Development Agreement serves to encourage the achievement of growth management policies and objectives, and is in conformity with public convenience, general welfare and good land use practice. The agreement facilitates the extension of urban infrastructure within the designated Urban Growth Boundary and within the sphere of influence to and through properties which are presently inside the city limits or within the likely path of annexation. The proposal will not adversely affect the orderly development of property or the preservation of property values.

SECTION 7. The City Council hereby approves the Development Agreement substantially in the form attached hereto as Exhibit A, subject to such minor and clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof.

SECTION 8. The Mayor of the City of Madera is hereby authorized and directed to execute the Agreement on behalf of the City of Madera.

SECTION 9. The City Clerk is directed to transmit the Development Agreement to the County Recorder for recordation no later than ten (10) days after the adoption of this ordinance.

SECTION 10. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 11: This Ordinance shall not be codified in the Madera Municipal Code.

The foregoing Ordinance No. 938 C.S. was introduced and given its first reading at a regular meeting of the City Council of the City of Madera held on the 7th day of December, 2016 and adopted after a second reading at a regular meeting of the City Council held on the 21st day of December, 2016 by the following vote:

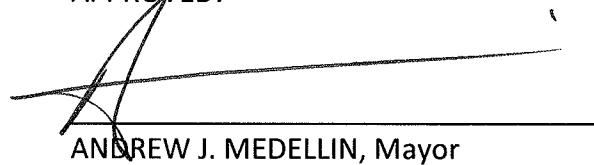
AYES: Mayor Medellin, Council Members Foley Gallegos, Rodriguez, Holley, Robinson, Oliver, Rigby.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

APPROVED:



ANDREW J. MEDELLIN, Mayor

ATTEST:



SONIA ALVAREZ, City Clerk

APPROVED AS TO LEGAL FORM:



BRENT RICHARDSON, City Attorney



Recorded in Official Records, Madera County

REBECCA MARTINEZ

Madera County Recorder

CIT Madera City

12/28/2016

12:07 PM

1

Recording requested by:
City of Madera

After Recording Return to:
City Clerk
City of Madera
205 West Fourth Street
Madera, California 93637-3527

Doc#: 2016032980



Titles: 1 Pages: 50

Fees 0.00

Taxes 0.00

Other 0.00

PAID \$0.00

Fee Waived Per Section 27383 of the Government Code. No Document Tax Due \$ -0-

DEVELOPMENT AGREEMENT

Between the City of Madera, Lisa M. Guzman, Trustee of the Bypass Trust under the Guzman Living Trust Dated May 13, 2013 and Trustee of the Survivor's Trust under the Guzman Living Trust Dated May 13, 2013, and Love's Country Stores of California, Inc.

DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF MADERA, LISA M. GUZMAN, TRUSTEE OF THE BYPASS TRUST UNDER THE GUZMAN LIVING TRUST DATED MAY 13, 2013 AND TRUSTEE OF THE SURVIVOR'S TRUST UNDER THE GUZMAN LIVING TRUST DATED MAY 13, 2013, AND LOVE'S COUNTRY STORES OF CALIFORNIA, INC.

THIS DEVELOPMENT AGREEMENT ("Development Agreement") is entered into to be effective on the date it is recorded with the Madera County Clerk/County Recorder (the "Effective Date"), between **THE CITY OF MADERA**, a California general law city ("City"); **LISA M. GUZMAN, TRUSTEE OF THE BYPASS TRUST UNDER THE GUZMAN LIVING TRUST DATED MAY 13, 2013, AND TRUSTEE OF THE SURVIVOR'S TRUST UNDER THE GUZMAN LIVING TRUST DATED MAY 13, 2013**, (collectively, "Landowner"); and **LOVE'S COUNTRY STORES OF CALIFORNIA, INC.**, a California corporation ("Developer"). Each of the City, Landowner and Developer may be referred to as a "Party" hereunder and collectively as the "Parties."

RECITALS

A. The Legislature of the State of California has adopted California Government Code Sections 65864-65869.5 ("Development Agreement Statute") which authorizes a city to enter into a binding development agreement with persons having legal or equitable interests in real property located within a city's municipal boundaries or in unincorporated territory within a city's sphere of influence for the development of such property in order to, among other things: encourage and provide for the development of public facilities; to support development projects; provide certainty in approval of development projects in order to avoid a waste of resources and escalation in project costs and encourage an investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public land; and provide assurance to the applicants for development projects that they may proceed with their projects in accordance with existing policies, rules, and regulations and subject to the conditions of approval of such projects, as provided in such annexation and/or development agreements.

B. Landowner owns an approximately 50 acre parcel of real property located within the City, near the northern edge of the City limits, at the Avenue 17/State Route 99 ("SR 99") interchange (APN 013-240-003)(the "Property"), as particularly described on Exhibit A.

C. Developer intends to develop approximately 25 acres of the Property, as generally depicted on Exhibit B (the "Project Site"), as a full service travel center, to include an approximately 11,981 square-foot travel stop building, comprised of an approximately 7,965 square foot convenience store and 4,016 square foot branded restaurant with drive-through, served by on-site parking for passenger vehicles and tractor-trailers, nine covered fuel islands for trucks and nine separate covered fuel islands for automobiles, as well as a truck tire care facility and approximately 4,400 square foot branded restaurant (in proposed areas separate from the travel stop building), truck scales, a hotel, a self-storage facility and an RV and boat storage facility, and other related services and amenities for the motoring public, including a historical pedestrian plaza in the southwest corner of Avenue 17 and Sharon Boulevard, which will address a part of Madera history (the "Project"). The remaining undeveloped portion of the Property will be separated from the travel center site through a parcel map.

D. At the time the Project Site is developed, Developer will be required to construct certain off-site public infrastructure improvements, which was a condition of regulatory approval of the Project, including the development approvals described in the Recitals, such improvements will include roadway improvements, freeway ramp improvements, sanitary sewer lines, storm drainage improvements, a water well and water lines and certain other utility and general improvements that will provide benefits to City and other property owners near the Developer's property who may wish to develop their properties in the future. City has agreed to reimburse Developer for a portion of the costs of constructing such off-site infrastructure improvements, and to

credit Developer for a portion of the otherwise applicable development impact fees. The City Council finds and determines that the aggregate amount of such reimbursement and credit will be less than the cost of such improvements and has further found that the City will not maintain any proprietary interest in the Project.

E. Pursuant and subject to the Development Agreement Statute, the City's Municipal Code and the City's police powers, City is authorized to enter into binding agreements with persons having legal or equitable interest in real property located within the City's municipal boundaries thereby establishing the conditions under which such property may be developed in the City.

F. City has granted the Developer a series of Development Approvals (as defined herein below) to implement the Project, which are incorporated and made a part of this Agreement. The Developer desires to receive the assurance that it may proceed with the Project in accordance with the existing land use ordinances, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded the Developer by Government Code §65864.

G. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, provide the certainty necessary for the Developer to make significant investments in public infrastructure and other improvements, assure the timely and progressive installation of necessary improvements, provide public services appropriate to each stage of development, establish phasing for the orderly and measured build-out of the Project consistent with the General Plan and the desires of the City to assure integration of the new development into the existing community.

H. The terms and conditions of this Development Agreement have undergone extensive review by the staff of the City, the City's Planning Commission, and the City Council of City and have been found to be fair, just, and reasonable.

I. City's City Council finds and determines that it will be in the best interests of City's citizens and the public health, safety, and welfare will be served by entering into this Development Agreement.

J. All of the procedures of the California Environmental Quality Act have been met with respect to the Project and this Development Agreement by the approval of Planning Commission Resolution No: 1812 adopted on August 16, 2016, which certified the final Environmental Impact Report for the Madera Travel Center dated July, 2016 (the "EIR").

K. City's City Council has approved this Development Agreement by Ordinance No. 938 C.S. adopted on December 21, 2016 and effective on December 28, 2016.

NOW THEREFORE, IN CONSIDERATION OF THE ABOVE RECITALS AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. **DEFINITIONS.** In this Development Agreement, the following words and phrases shall have the meanings ascribed below:

A. "County" is the County of Madera.

B. "Development Exaction" means any requirement of City in connection with or pursuant to any Land Use Regulation or Existing Development Approvals for the payment of fees, including impact fees and mitigation fees, or other monetary payments or exactions, imposed by City in order to lessen, offset, mitigate, or compensate for the impacts of new development on the environment or other public interests, whether such exactions constitute impositions made under Development Approvals or the City's General Regulations. The applicable Development Exactions in effect under the Existing Land Use Regulations are set forth in Exhibit C.

C. "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by City in connection with the development of the Project Site, including, but not limited to:

- (1) Site Plan Reviews;
- (2) Tentative and final parcel and/or subdivision maps;
- (3) Conditional use or special use permits, variances or other modifications to the City's development regulations;
- (4) Grading and building permits.

D. "Development Plan" means the Existing Development Approvals defined in Section 1(F) below and vested in Section 11 below, which are applicable to development of the Project.

E. "Effective Date" means the date upon which this Development Agreement is recorded with the County Clerk/County Recorder of the County, or the date upon which Ordinance No. 938 C.S. becomes effective, whichever occurs later.

F. "Existing Development Approvals" means this Development Agreement and those certain development approvals granted by the City of Madera Planning Commission at its August 16, 2016 meeting, as follows:

- (a) SPR 2015-18: Approving and establishing requirements for the overall development of the Project Site.
- (b) TPM 2015-01: Approving and establishing requirements for division of the subject property into 4 parcels and a remainder.
- (c) CUP 2015-09: Approving and establishing requirements for a changeable copy (gasoline prices) in association with a freeway sign on the Project Site.
- (d) CUP 2015-10: Approving and establishing requirements for the sale of beer and wine as a component of the operations of the travel stop component of the Project.
- (e) CUP 2015-11: Approving and establishing requirements for a drive-thru restaurant as a component of the travel stop component of the Project.
- (f) CUP 2015-12: Approving and establishing requirements for the truck stop component of the Project.
- (g) CUP 2015-13: Approving and establishing requirements for the automotive repair facility (Tire Care Facility) component of the Project.

- (h) CUP 2015-14: Approving and establishing requirements for the sale of beer and wine in conjunction with the freestanding restaurant component of the Project.
- (i) CUP 2015-15: Approving and establishing requirements for a drive-thru component as part of a freestanding restaurant on the Project Site.
- (j) CUP 2015-16: Approving and establishing requirements for a hotel on the Project Site.
- (k) CUP 2015-17: Approving and establishing requirements for a recreational vehicle and boat self-storage facility on the Project Site.
- (l) VAR 2015-02: Approving the construction of a freeway sign taller than forty feet.
- (m) Final EIR: Environmental Impact Report prepared in conformance with the California Environmental Quality Act and certified by the Planning Commission

G. "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date.

H. "Fee Credit" means that portion of Development Exactions fees which shall be credited by the City to Developer, as specified on Exhibit C-1 and as set forth in Section 8(B) below.

I. "Future General Regulations" means those "General Regulations" adopted by the City after the Effective Date of this Development Agreement.

J. "General Regulations" means those ordinances, rules, regulations, initiatives, policies, requirements, guidelines, constraints, or other similar actions of the City, other than site-specific Project approvals, which affect, govern, or apply to the Project Site or the implementation of the Development Plan. General Regulations are applicable to more than one property within the City.

K. "Infrastructure Improvements" means collectively, that portion of off-site public improvements to be dedicated to or owned by City and constructed by Developer pursuant to the terms of Section 7 of this Development Agreement, which will be installed at the locations identified on Exhibits E – I, inclusive, and which shall include the Roadway Improvements, Ramp Improvements, Sewer Improvements, Storm Drainage Improvements, Water Well Improvements, Water Line Improvements, and Utility and General Improvements, all as more specifically described in Section 7.

L. "Land Use Regulations" means all ordinances, resolutions, codes, rules regulations, and official policies of City governing the development and use of land, including, without limitation, the permitted use of land; the density or intensity of use; subdivision requirements; the maximum height and size of proposed buildings; the provisions for reservation or dedication of land for public purposes; and the design, improvement, and construction standards and specifications applicable to the development of the Project Site that are a matter of public record on the Effective Date of this Development Agreement. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation, or official policy, governing:

- (1) The conduct of businesses, professions, and occupations;
- (2) Taxes and assessments;
- (3) The control and abatement of nuisances;

- (4) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; and
- (5) The exercise of the power of eminent domain.

M. "Owner" means the person having a legal or equitable interest in the Property and Project and all successors, transferees, or assigns thereof.

N. "Phase 1 Project" shall mean the approximately 11,981 square-foot travel stop building, comprised of an approximately 7,965 square foot convenience store and approximately 4,016 square foot branded restaurant(s) with drive-through, served by on-site parking for passenger vehicles and trailer trucks, nine covered fuel islands for trucks and nine separate fuel islands for automobiles, a truck tire care facility, truck scales, and an approximately 81 room hotel.

O. "Reimbursement Amount" shall mean the amount set forth in Section 8 below, which shall be payable by City to Developer to reimburse Developer for a portion of the cost and expense of designing and installing the Infrastructure Improvements. The Reimbursement Amount shall be due and payable as set forth in Section 8 below.

P. "State" shall mean the State of California.

Q. "Subsequent Development Approvals" means all development approvals required subsequent to the Effective Date in connection with development of the Project Site.

R. "Subsequent Land Use Regulation" means any Land Use Regulation adopted and effective after the Effective Date.

S. "Substantially Complete Building Permit Application" shall mean an application or request for a building permit that substantially satisfies the requirements of the General Regulations and the requirements specified in the Existing Development Approvals.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals and all defined terms set forth therein are hereby incorporated into this Agreement as if set forth herein in full. All exhibits attached hereto are incorporated by reference.

3. INTERESTS OF LANDOWNER AND DEVELOPER; BINDING EFFECT OF DEVELOPMENT AGREEMENT. Developer represents that it has an equitable or other interest in the Property sufficient to be bound by this Development Agreement. That portion of the Property which comprises the Project Site, as described in Recital C, is hereby made subject to this Development Agreement. Development of the Project Site is hereby authorized and shall be carried out in accordance with the terms of this Development Agreement. Upon recordation of the Development Agreement, the provisions of this Development Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall bind and inure to all successors in interest to and assigns of the Parties hereto. Developer's right to develop the Project Site in accordance with the Development Approvals and the terms of this Development Agreement including the obligations set forth herein shall not become effective unless and until Developer acquires the Project Site. Upon conveyance of Landowner's fee interest in the Project Site to Developer, Landowner shall have no further rights or privileges, and shall be fully released from any further liability or obligation under this Development Agreement with respect to the Project Site and the remainder of the Property retained by Landowner.

4. PURPOSE OF THIS AGREEMENT.

A. Developer Objectives. In accordance with the legislative findings set forth in the Development Agreement Statute, and with full recognition of City's policy of judicious restraints on its police powers, Developer wishes to obtain reasonable assurances that the Project may be developed in accordance with Existing Land Use Regulations subject to the terms of this Development Agreement and City's Subsequent Land Use Regulations. In the absence of this Development Agreement, Developer would have no assurance that it can complete the Project for the uses and to the density and intensity of development set forth in this Development Agreement. This Development Agreement, therefore, is necessary to assure Developer that the Project will not be (i) reduced in density, intensity or use, or (ii) subjected to new rules, regulations, ordinances or official policies or delays which are not permitted by this Development Agreement or the Reservation of Authority (as defined in Section 10 below).

B. Mutual Objectives. Development of the Project in accordance with this Development Agreement will provide for the orderly development of the Project. Moreover, a development agreement for the Project will eliminate uncertainty in planning for and securing orderly development of the Project, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted. The Parties believe that such orderly development of the Project will provide many public benefits to City through the imposition of development standards and requirements under the provisions and conditions of this Development Agreement, including without limitation, increased tax revenues, installation of off-site infrastructure improvements, and job creation. Additionally, although development of the Project in accordance with this Development Agreement will restrain City's land use or other relevant police powers, this Development Agreement provides City with sufficient Reservation of Authority during the term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to City, Developer will receive assurance that the Project may be developed during the term of this Development Agreement in accordance with the Existing Land Use Regulations and Reservation of Authority.

C. Mutual Benefits; Acknowledgment of Consideration. By this Development Agreement, City and Developer desire to set forth the terms under which Developer will receive certain reimbursements for commercial development and economic performance on the Project Site. The City has determined to offer Developer reimbursements and credits for a portion of the costs incurred by Developer in its installation of the Infrastructure Improvements because the same will provide significant benefits to City by increasing the capacity of and expanding City's water, storm drainage and sewer service systems, by the installation of traffic signals and a new roadway to promote the orderly flow of traffic and increase City's street network capacity, and otherwise. The aggregate amount of such reimbursement and all credits provided to Developer hereunder will not exceed the actual and reasonable cost incurred by Developer in connection with construction and installation of the Infrastructure Improvements as determined pursuant to Section 8 below. The Project will also promote the economic wellbeing of City by attracting businesses that will provide City with a significant, long-term revenue stream and a source of employment for residents of the community. City and Developer acknowledge and agree that the consideration that is to be exchanged pursuant to this Development Agreement is fair, just, and reasonable.

5. **EXHIBITS.** The following exhibits are incorporated into and made a part of this Development Agreement by this reference:

<u>Exhibit A</u>	Legal Description of Property
<u>Exhibit B</u>	Depiction of Project Site
<u>Exhibit C-1</u>	Development Exactions (Fees) and Project Fee Credits
<u>Exhibit C-2</u>	Traffic and Transportation Mitigation Fees
<u>Exhibit D</u>	General Description of Infrastructure Improvements, Costs and Reimbursable Amounts

<u>Exhibit E</u>	Depiction of Roadway Improvements/Roadway Work
<u>Exhibit F</u>	Depiction of Sewer Improvements/Sewer Work
<u>Exhibit G</u>	Depiction of Storm Drainage Improvements/Storm Drainage Work
<u>Exhibit H</u>	Depiction of Water Improvements/Water Work
<u>Exhibit I</u>	Depiction of Utility and General Improvements/Utility and General Improvements Work
<u>Exhibit J</u>	Form of Assignment and Assumption Agreement

6. TERM AND TERMINATION.

A. Term. The term of this Development Agreement shall commence on the Effective Date and shall terminate thirty six (36) months from the Effective Date [subject to Section 22(I)], provided, however, that the Term may be extended pursuant to the following:

1) If Developer submits a properly completed Substantially Complete Building Permit Application for each building in the Phase 1 Project prior to the expiration of the 36-month initial term, then such term shall automatically be extended to a date forty eight (48) months from the Effective Date, without the need for further action by the Parties. Thereupon, the City shall promptly take action on such applications, as contemplated in Section 7(D)(1) below.

2) If the term has been extended as permitted by Section 6(A)(1) of this Agreement and if the Building Permits are issued by the City, as contemplated, then such term shall automatically be extended to a date sixty (60) months from the Effective date, without the need for further action by the Parties.

3) If the term has been extended by Section 6(A)(2) of this Agreement and if Developer completes each building in the Phase 1 Project and receives a temporary or final certificate of occupancy within sixty (60) months of the Effective Date, the term of this Agreement shall automatically be extended to a date twenty (20) years from the Effective Date, without the need for further action by the Parties.

B. Termination in the Event of Order or Judgment. This Development Agreement shall terminate and be of no force and effect upon the occurrence of the entry of a final judgment or issuance of a final order after exhaustion of any appeals directed against the City as a result of any lawsuit filed against the City to set aside, withdraw, or abrogate the approval by the City Council of City of this Development Agreement. In the event that this Agreement or any of the Development Approvals are subjected to legal challenge by a third party, and Developer is unable, or elects not to proceed with the Project due to such legal action, the term of and timing for obligations imposed pursuant to this Agreement shall be automatically tolled during such legal action.

C. Termination of Agreement Does not Terminate Project Approvals. Termination of this Development Agreement shall not constitute termination of any other land use entitlement approved for the Project Site prior to the Effective Date of this Development Agreement, or to any Subsequent Development Approvals issued by the City during the term of the Agreement. Upon termination of this Development Agreement, no party shall have any further right or obligation hereunder except with respect to (1) any obligation to have been performed prior to such termination, (2) any default in the performance of the provisions of this Development Agreement which has accrued prior to such termination, and/or (3) any provision which is noted to survive such termination, or which, by its nature, is intended to survive such termination. Pursuant to California *Government Code* §66452.6(a) the term of any parcel map or tentative subdivision map shall automatically be extended for the term of this Agreement.

7. DEVELOPER'S PROVISIONS OF INFRASTRUCTURE IMPROVEMENTS; TIMING AND CITY ASSISTANCE.

A. Developer's Provision of Infrastructure Improvements. If the Project or any portion thereof is constructed, Developer agrees to construct and install the following Infrastructure Improvements:

(1) Roadway Improvements. Developer will construct and install (a) two traffic signals (the "Traffic Signals"); (b) certain street lights, street signage and striping on or along Avenue 17 and Sharon Boulevard; (c) all paving, curbs, gutters and sidewalks to widen Avenue 17 (the "Avenue 17 Street Widening"); and (d) paving, curbs, gutters and a portion of the parkway landscaping and sidewalk (to the extent not being constructed by a third-party developer) for Sharon Boulevard, all as generally described on Exhibit D and at the locations identified on Exhibit E ("Sharon Boulevard Work") (the Traffic Signals, the Avenue 17 Street Widening, the Sharon Boulevard Work and all related improvements are collectively, the "Roadway Improvements" and the associated work, the "Roadway Work").

(2) Freeway Ramp Improvements. Developer will construct and install a dedicated right turn lane on the north bound exit ramp of the Freeway 99 and Avenue 17 interchange, as generally described on Exhibit D and at locations specified on Exhibit E, (the "Ramp Improvements").

(3) Sewer Improvements. Developer will construct and install a sewer line to connect the Property to City's existing sewer system at a point located within Sharon Boulevard, north of Ellis Street, as generally described on Exhibit D and at the locations identified on Exhibit E, which pipeline will run from such point north of and then within the Sharon Boulevard right of way (the Sewer Line and all related improvements, collectively, the "Sewer Improvements" and the associated work, the "Sewer Work").

(4) Storm Drainage Improvements. Developer will construct and install a storm drain pipeline approximately 18" in diameter within the Avenue 17 right of way and a storm drain pipeline approximately 30" in diameter within the Sharon Boulevard right of way to connect to a privately owned and maintained temporary storm retention basin to be installed by Developer at the southernmost point of the Project site, all as generally described on Exhibit D and to be installed at the locations identified on Exhibit G, and with such temporary storm retention basin to be used until a permanent storm drain connection to the south becomes available (collectively, with all related improvements, the "Storm Drainage Improvements" and the associated work, the "Storm Drainage Work"). Upon completion of the permanent storm retention basin off-site, Developer may remove the temporary retention basin facility and devote that portion of the Project Site to other purposes in conformance with the conditions of approval adopted by the Planning Commission in conjunction its approval of the Existing Development Approvals.

(5) Water Well and Water Line Improvements. Developer agrees to develop a water well site on certain land contiguous to the Property to the south, as shown on Exhibit H (the "Well Site"), with rights to so construct and utilize the Well Site to be secured by City, as depicted on Exhibit H, subject to approval by the City engineer. In addition to the Well Site, Developer shall construct and install a 24" diameter PVC water pipeline connecting the well on the Well Site to the existing City water system at a point north of the Project site, as shown on Exhibit H (collectively, with all related improvements, the "Water Well and Water Line Improvements" and the associated work, the "Water Work"), with any rights in third-party property necessary to complete the Water Work to be secured by City. Any interest of Developer in or to the Well Site (and/or associated infrastructure) shall be dedicated to City in the manner prescribed by the Existing Land Use Regulations after completion of the Water Work and acceptance thereof by the City engineer. Notwithstanding anything to the contrary herein, in the event City is unable to secure third-party rights as contemplated above, City will work with Developer in good faith and with due diligence to provide an alternate location for the Well Site and/or connection point of the subject water pipeline to the City water system, all at City's expense.

(6) Miscellaneous Street and Utility Improvements. Developer will construct and install (a) median and parkway landscaping; and (b) dry utility trenching, conduits and pull boxes, all as generally described on Exhibit D and at locations identified on Exhibit I (collectively, with all related improvements, the "Utility and General Improvements" and all the associated work, the "Utility and General Improvements Work").

B. City's Share of Costs and Expenses. The City's reasonable and fair share of the costs and expenses associated with designing, constructing and installing the Infrastructure Improvements (based on the relative value of the Infrastructure Improvements to the City and neighboring landowners as compared to the value to Developer and the Project), shall be included in the Reimbursement Amount set forth in Section 8 below.

C. Obligation to Install Infrastructure Improvements as Condition to Certificate of Occupancy; Timing. Developer shall construct and install the Infrastructure Improvements concurrently with and as a condition precedent to the issuance of a certificate of occupancy for any improvement in the Project. All Infrastructure Improvements shall be designed, constructed and installed in accordance with standard engineering and construction industry practices and the Existing Land Use Regulations and, to the extent not addressed by the Existing Land Use Regulations, other applicable codes, rules, City standards, regulations and laws, in a good and workmanlike condition, at Developer's sole cost and expense (except as provided herein).

D. City Obligations to Assist with the Infrastructure Improvements. In addition to City's obligation to pay the Reimbursement Amount and Fee Credit to Developer, as set forth in Section 8 below, in connection with Developer's installation of any of the Infrastructure Improvements, the Parties agree as follows:

(1) Cooperation. City shall accept for processing and promptly take action on all applications, provided they are in a proper form and acceptable for required processing, for discretionary permits, tract or parcel maps, building permits, or other land use permits or entitlements for development of the Project, in accordance with the provisions of this Development Agreement and the Development Approvals. City shall cooperate with Developer in providing expeditious review of any such applications, permits, or land use entitlements and, upon request and payment of any costs and/or extra fees associated therewith by Developer, City shall assign to the Project planners, building inspectors, and/or other staff personnel as required to ensure the timely processing and completion of the Project.

(2) Obtaining Easements and Rights of Way. City shall (a) grant to Developer any necessary temporary or permanent easements or rights-of-way to install, operate, repair, maintain, replace and access the Infrastructure Improvements or otherwise develop the Project over, on or under City owned land; (b) assist Developer in obtaining any necessary temporary or permanent easements or rights-of-way to install, operate, repair, maintain, replace and access the Infrastructure Improvements over, on or under County owned land; and (c) secure, in favor of Developer, any necessary temporary or permanent easements or rights-of-way to install, operate, repair, maintain, replace and access the Infrastructure Improvements over, on or under other third-party land, including without limitation, those required in regard to the Well Site and Water Work addressed in Section 7(A)(5) above, and in each case, temporary construction easements for pedestrian and vehicular ingress and egress and vehicular parking and the placing and storing of construction machinery, equipment, supplies, materials, dirt and fill. The Parties agree to cooperate in good faith in regard to the foregoing to facilitate obtaining such easements or rights of way as expeditiously as reasonably possible. In any event, City shall promptly provide to Developer a copy of any such easements obtained by City in favor of Developer. In the event the Developer and/or City is unable, after exercising all reasonable efforts, to acquire the real property interests necessary for the construction of such Infrastructure Improvements, as contemplated herein, by the time any final map is filed with the City, the City shall negotiate the purchase of the necessary real property interests to allow the Developer to construct the Infrastructure Improvements as required by this Agreement and, if

necessary, in accordance with the procedures established by law, use its power of eminent domain to acquire such required real property interests.

(3) Approval by City Engineer; Dedication and Acceptance. Upon substantial completion of the Infrastructure Improvements by Developer in accordance with the terms of this Agreement, the City Engineer shall inspect and approve the same, which approval shall not be unreasonably withheld or delayed. Upon such approval by City Engineer and Developer's dedication of the Infrastructure Improvements to City in the manner prescribed by applicable City codes, ordinances, and regulations, City shall accept the same, subject to Developer's compliance with the Existing Land Use Regulations.

(4) Operation and Maintenance of Infrastructure Improvements; Warranty. Upon acceptance of the Infrastructure Improvements by City, as contemplated above, (a) City shall, at its sole cost and expense, operate and maintain the Infrastructure Improvements in good and working order as part of its public systems; and (b) Developer shall have no further interest in or obligation in regard to the Infrastructure Improvements beyond that inuring to the public in general.

8. FEE CREDIT; CITY OBLIGATION TO REIMBURSE DEVELOPER. Developer, pursuant to this Agreement, will be financing the construction of Infrastructure Improvements that otherwise would be paid for by City or other parties, or would serve other properties beyond the Project Site, or would be financed by City Development Exaction Fees and other public utility and infrastructure funding sources. In consideration of the financing of such improvements by Developer, and in consideration of the substantial public benefits to be achieved by the Project during each year of the term of this Development Agreement, City and Developers agree that Developers shall be entitled to fee credits and reimbursement as provided in this Section 8. Pursuant to this Section 8, City shall offer fee credit and/or reimburse Developer for the City's fair and reasonable share of Developer's reasonable and actual cost and expense incurred in connection with the construction and installation of the Infrastructure Improvements (the "Reimbursement Amount"). Developer shall provide to City satisfactory evidence of such costs and expenses as actually incurred by Developer, as provided by Section 8(J) below.

A. Reimbursement Amount. The total Reimbursement Amount, not including costs associated with the Water Well Improvements or the Ramp Improvements Excess Cost (as defined below), shall not exceed Six Million Eight Hundred Seventy Thousand Dollars (\$6,870,000). This Reimbursement Amount, established based on the maximum reimbursement schedule set forth in Exhibit D, constitutes the City's fair and reasonable share of the Developer's reasonable and actual costs. City and Developer agree that due to the variability of potential costs associated with the Water Well Improvements and the Ramp Improvements, those costs are not fully included in the maximum Reimbursement Amount, but will be reimbursed in accordance with the terms set forth in Section 8(C) and Section 8(D) of this Agreement, respectively. In no event shall the City be required to reimburse an amount above Developer's actual costs and expenses. Developer shall provide to City satisfactory evidence of actual costs and expenses pursuant to Section 8(J) of this Agreement.

B. Fee Credit. To the extent Developer dedicates land, funds or constructs Infrastructure Improvements that exceed the size or capacity required to serve the Project Site for the benefit of other properties, or if such dedication or Infrastructure Improvements benefit other properties, regardless of their size or capacity, City shall provide Developer with credit against the Development Exaction Fees applicable to the Project, as generally set forth in Exhibit C-1. The fee credit shall equal (and shall not exceed) Developer's aggregate hard and soft costs (including land costs, if applicable) actually paid by Developer for the particular Infrastructure Improvement in question. Fee credit shall be given by the City at the time the applicable Development Exaction Fees would otherwise be paid by Developer.

C. Water Well Reimbursement. Upon Developer's completion and City's acceptance of the Water Well Improvements, City shall reimburse to Developer the full and complete actual costs to develop the Water Well, less any fee credits applicable to water well costs that are available to Developer in accordance with Section 8(B), subject to the terms and conditions set forth in this Section 8(C).

(1) Reimbursable costs for the Development of the Water Well shall include all items required by the City Engineer to develop and make operational a water well to City Standards. Design and Engineering Costs, City permit and inspection fees, and Contract Overhead not to exceed 10% shall be eligible for reimbursement. Costs shall be documented in the manner described in Section 8(J) of this Agreement.

(2) Prior to the selection of a contractor and commencement of work, Developer shall submit for approval by the City Engineer an itemized cost proposal for all improvements and associated expenses which will be eligible for reimbursement.

(3) Reimbursement for the Water Well Improvements shall be made within 60 days of the City Engineer's determination of Actual Expenses Costs and Expenses as described in Section 8(J) of this Agreement.

D. Ramp Improvement Excess Cost. As set forth in Exhibit D, the total Reimbursement Amount includes estimated costs for the Ramp Improvements of One Million Ninety Thousand Seventy Six Dollars (\$1,090,076). The Parties recognize and agree that the actual cost of the Ramp Improvements may substantially deviate from the estimated cost shown in Exhibit D due to design changes that may be required by Caltrans after the Effective Date (such increased costs, the "Ramp Improvement Excess Costs"). City shall reimburse to Developer the full and complete actual costs to develop the Ramp Improvements up to a maximum total cost of Two Million Dollars (\$2,000,000), less the amount of One Million Ninety Thousand Seventy Six Dollars (\$1,090,076), if paid to Developer pursuant to Sections 8(E) and 8(F), subject to the terms and conditions set forth in this Section 8(D).

(1) Reimbursable costs for the development of the Ramp Improvements shall include all items required by Caltrans, in consultation with the City. Design and Engineering Costs, City or Caltrans permit and inspection fees, and Contract Overhead not to exceed 10% shall be eligible for reimbursement. Costs shall be documented in the manner described in Section 8(J) of this Agreement.

(2) Prior to the selection of a contractor and commencement of work, Developer shall submit for approval by the City Engineer an itemized cost proposal for all improvements and associated expenses which will be eligible for reimbursement.

(3) Reimbursement for the Ramp Improvement Excess Costs shall be made through Supplemental Payments pursuant to Section 8(G), below.

(4) To the extent that the actual cost of Infrastructure Improvements (not including costs associated with the Water Well Improvements or the Ramp Improvements Excess Cost) are below the total Reimbursement Amount, the difference shall be subtracted from the amount of the Ramp Improvement Excess Cost otherwise payable to Developer under this Section.

E. Partial Lump Sum Reimbursement at Completion and Acceptance of Infrastructure Improvements. In addition to any amount of fee credits or reimbursements made to Developer pursuant to Sections 8(B) through 8(D) of this Agreement, upon Developer's completion and City's acceptance of all Infrastructure Improvements as defined in this Agreement, City shall reimburse to Developer a sum of not less than one million dollars (\$1,000,000).

Any amount the City elects to reimburse to Developer in excess of \$1,000,000 pursuant to this Section may be credited against the amount to be reimbursed to Developer pursuant to Section 8(F) below. Partial Reimbursement of the Infrastructure Improvements pursuant to this Section shall be made within 60 days of the City Engineer's determination of Actual Costs and Expenses as described in Section 8(J) of this Agreement.

F. Partial Lump Sum Reimbursement After One Year of Phase 1 Project Operation. In addition to any amount of fee credits or reimbursements made to Developer pursuant to Sections 8(B), 8(C), 8(D) and 8(E) of this Agreement, upon the one-year anniversary of the issuance of a certificate of occupancy for the final building to be occupied in the Phase 1 Project, City shall reimburse to Developer an amount equal to the lesser of: (1) the actual, total combined costs for all Roadway Improvements and Traffic and Transportation Mitigation Fees, less any amount reimbursed to Developer pursuant to Section 8(E) of this Agreement; or (2) the sum of Five Million Two Hundred Thousand Dollars (\$5,200,000), less any amount reimbursed or scheduled to be reimbursed to Developer pursuant to Section 8(E) of this Agreement.

G. Reimbursement From Future Sales Taxes and Transient Occupancy Taxes - "Supplemental Payments". In addition to fee credits and reimbursements provided pursuant to Sections 8(B) through 8(F) of this Agreement, in order to reimburse Developer for a portion of the Developer's unreimbursed cost of the Infrastructure Improvements, City agrees to make periodic supplemental reimbursement payments ("Supplemental Payments") to Developer in the amounts, at the times, and subject to the terms and conditions set forth in this Section 8(G).

(1) Calculation of Supplemental Payments. The Supplemental Payments required to be made by City hereunder shall be calculated based upon the amount of Sales Taxes and Transient Occupancy Tax generated by the Project Site. "Sales Taxes" shall mean the sales tax revenues from the imposition of the Bradley-Burns Uniform Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code), as the same may be amended from time to time, that the California State Board of Equalization ("SBOE") determines are generated by the Project Site and are paid to the City. Any sales tax revenues generated by the Project Site that the SBOE determines are payable to any jurisdiction other than City shall be excluded in the calculation of Sales Taxes hereunder. "Transient Occupancy Tax" shall mean the special tax levied within the City of Madera pursuant to Chapter 4 of Title VIII of the Madera Municipal Code on the privilege of occupying a room or rooms, or other living space, in a hotel or other transient lodging facility where the occupancy is less than 30 days. In no event shall the Supplemental Payments required to be made hereunder be secured by the City's general fund.

(2) Timing of Supplemental Payments. The Supplemental Payments shall be made by the City semi-annually, in arrears, no later than May 15th (for the preceding July 1st through December 31st period) and November 15th (for the preceding January 1st through June 30th period). The first calendar year for which Supplemental Payments are made shall be the second calendar year during which the Project is open to the public for business and Sales Taxes and Transient Occupancy Taxes are generated. After the supplemental payments commence, City's obligation shall continue until the earlier of (a) the expiration of the term of this Development Agreement, or (b) the date on which the total amount of Supplemental Payments made to Developer pursuant to this Section, plus the fee credits and reimbursements previously received by Developer pursuant to Sections 8(B) through 8(F), equal the total Reimbursement Amount.

(3) Amount of Supplemental Payment. For each calendar year for which Developer is entitled to receive a Supplemental Payment hereunder, the Supplemental Payment for such calendar year shall be not less than one-half of the total combined amount of Sales Tax and Transient Occupancy Tax generated by the Project Site and received by the City.

(4) Calculation of Supplemental Payment. The City, prior to making each semi-annual Supplemental Payment, shall determine the total Sales Taxes and Transient Occupancy Tax generated from the Project Site during the prior semi-annual period and actually paid to the City for such period based on the data provided by the SBOE (Sales Tax) and the operator of the Project Site Hotel (Transient Occupancy Tax) to City, and based upon such determination and the formula described in Section 8(G)(3) above, the amount of the applicable semi-annual Supplemental Payment. Such determination as between City and Developer shall be conclusive and binding on City and Developer, except that either party shall have the right to contest the Sales Tax data provided by SBOE in accordance with the procedures available under applicable law. If any final decision in such contest results in a recalculation of such data, then the Parties shall make such adjustments in the amounts credited pursuant to this Section as are necessary to reflect the final determination. In the event that Developer is entitled to receive a Supplemental Payment for the prior semiannual period in accordance herewith, then City shall, in the ordinary course of business, remit the amount of the Supplemental Payment to Developer.

(5) Developer Cooperation. Developer shall cooperate with City in providing to City such information that Developer may have regarding Sales Taxes and Transient Occupancy Taxes, subject to any nondisclosure or confidentiality provisions in Developer's leases with its tenants, if any. Specifically, Developer shall provide and shall require any of its tenants, licensees, franchisees or transferees to provide to City copies of the quarterly sales tax reports submitted to the SBOE concurrently with submission to the SBOE.

H. Reimbursement from Benefited Properties. The Parties recognize that certain of the Infrastructure Improvements will significantly benefit the future development of other properties (the "Benefited Properties"). To facilitate equitable distribution of costs among benefitted properties, the City shall require that all individual developers of Benefited Properties reimburse the City for their fair share costs of the Infrastructure Improvements paid for by Developer. For each Benefited Property, full reimbursement shall be required as a condition precedent to the issuance of the first building permit for that Benefited Property. The City shall implement this requirement through the imposition of a condition of approval on the use permit or first tentative subdivision map of any nature approved for each Benefited Property and/or as a requirement of any development agreement entered into for a Benefited Property. The City shall not be obligated to pay reimbursements to Developer from funds received from individual developers of Benefited Properties. City shall have the option to utilize any such funds it collects to make the annual Supplemental Payment to the Developer in lieu of using Sales Tax and Transient Occupancy Tax generated by the Project Site as contemplated by Section 8(G) of this Agreement.

I. Waiver of Further Reimbursement. Except for the Reimbursement Amount, as set forth in this Development Agreement, Developer hereby waives all rights to any other reimbursements in relation to the Infrastructure Improvements.

J. Developer's Cost Documentation. Within ninety (90) days of City's acceptance of the Infrastructure Improvements, Developer shall provide City with evidence of actual and reasonable costs and expenses for the Infrastructure Improvements for which reimbursements are to be made, in order to determine the final Reimbursement Amount. Such evidence shall include executed contracts, invoices, cancelled checks, and other documents reasonably required by the City Engineer to determine the reasonable and actual costs of the Infrastructure Improvements, together with a written certification signed by an officer of Developer setting forth hard and soft costs paid by Developer for the Infrastructure Improvements (the "Developer's Cost Documentation"). The actual Reimbursement Amount and the Fee Credit shall be determined in the reasonable discretion of the City Engineer, in good faith, based on the Developer's Cost Documentation.

K. Right to Reimbursement. All rights to reimbursement shall be personal to the Developer and such rights shall not run with the Property. Notwithstanding the foregoing, Developer may transfer or convey its right to fee credit or reimbursement to a third party, upon written notification to the City of said transfer or conveyance.

L. Term for Credits and Reimbursements. City shall not be obligated to pay any funds to Developer toward the Reimbursement Amount following the expiration of the term of this Development Agreement.

M. Installation of Monuments as Condition Precedent to Reimbursements. The installation of monuments required in conjunction with the approval and recordation of the Parcel Map creating the Project Site (TPM 2015-01) shall occur prior to the issuance of any reimbursements specified in Section 8 of this Agreement.

9. CONSTRUCTION OF HISTORIC PEDESTRIAN PLAZA. Notwithstanding any other provision of this Agreement, Developer shall construct and complete the Historic Pedestrian Plaza as identified in Recital C and the Existing Development Approvals, no later than issuance of a certificate of occupancy for the final building to be occupied in the Phase 1 Project.

10. RESERVATION OF AUTHORITY. The following shall be referred to as City's "Reservation of Authority":

A. Limitations, Reservations, and Exceptions. Notwithstanding any other provision of this Development Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Project Site:

- (1) Processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals, provided such fees are consistent with fees and charges imposed generally by City on all new development.
- (2) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure.
- (3) Regulations governing construction standards and specifications, including, without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, and Fire Code.
- (4) Regulations which are in conflict with the Development Plan provided Developer has given written consent to the application of such regulations to development of the Project Site.
- (5) Regulations required to be adopted by changes in State or Federal law.

B. Subsequent Development Approvals. This Development Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying the Subsequent Land Use Regulations which do not conflict with the Development Plan, nor shall this Development Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or Subsequent Land Use Regulations not in conflict with the Development Plan.

C. Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations enacted after the Effective Date of this Development Agreement prevent or preclude compliance with one or more of the provisions of this Development Agreement, such provisions of this Development Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations and the remainder of this Development Agreement shall remain in full force and effect.

D. Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Project Site separately from or jointly with City. This Development Agreement does not limit the authority of such other public agencies.

11. DEVELOPMENT OF THE PROPERTY; TIMING AND CHANGES/AMENDMENTS.

A. Rights to Develop. Subject to the terms of this Development Agreement, Developer shall have a vested right to develop the Project in accordance with and to the extent of the Development Plan. The Project shall be subject to all Subsequent Development Approvals, if any, required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Development Agreement, the permitted uses of the Project Site, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan. The Project shall be subject to all mitigation measures specified in the Final EIR and Mitigation Monitoring Program as certified and adopted by the Planning Commission on August 16, 2016. In addition, City agrees that (i) the City shall not require any additional land dedications, additional construction of infrastructure improvements or any additional impact mitigation measures beyond those required by the Existing Land Use Approvals, including this Development Agreement, in connection with, and as a condition to, the development and construction of any portion of the Project, and the Project shall not be subject to any such additional requirements imposed pursuant to Future General Regulations or Subsequent Land Use Regulations; and (ii) the Development Exactions imposed in connection with, and as a condition to, the development and construction of any portion of the Project shall be limited to the Development Exactions as set forth on Exhibits C-1 and C-2 and the Project shall not be subject to any additional Development Exactions imposed pursuant to Future General Regulations or Subsequent Land Use Regulations.

B. Timing of Development. It is anticipated that the Infrastructure Improvements will be constructed in conjunction with Developer's development of its travel center and related improvements on the Project Site, as referenced in Recital C. The Parties acknowledge that Developer cannot at this time predict when or the rate at which the Project Site will be developed, since the same depends upon numerous factors which are not within the control of Developer, including without limitation, timing of Developer obtaining fee title to the Project Site, delay in obtaining necessary easement or other rights in third-party property, and market and weather conditions. Since the California Supreme Court held in *Pardee Construction v. City of Camarillo*, 37 Cal. 3d 465 (1984) that the failure of the parties in that case to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Project Site in such order and at such rate and at such times as Developer deems appropriate within the exercise of Developer's subjective business judgment, subject only to any timing requirements set forth in the Existing Development Approvals and the Development Plan. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Project Site shall be deemed to conflict with the Existing Development Approvals and therefore shall not be applicable to the development of the Project Site.

C. Effect of Development Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Development Agreement, the rules, regulations, and official policies governing permitted uses of the Project Site, the density and intensity of use of the property, the maximum height and size of proposed buildings, and the design, improvement, and construction standards and specifications applicable to development of the Project Site shall be the Existing Land Use Regulations. City shall exercise its lawful reasonable discretion in connection with Subsequent Development Approvals in accordance with the Development Plan, and as provided by this Development Agreement. City shall accept for processing, review, and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters. City may, at the request of Developer, contract for planning and engineering consultant services to expedite the review and processing of Subsequent Development Approvals, the cost of which shall be borne by Developer.

D. Amendments and Modifications.

(1) Major Amendments. Any amendment to this Development Agreement which affects or relates to (a) the term of this Development Agreement; (b) permitted uses of the Project Site; (c) provisions for the reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Project Site or the maximum height or gross square footage of proposed buildings; or (f) monetary contributions by Developer, shall be deemed a "Major Amendment" and shall require giving of notice and a public hearing before the Planning Commission and City Council. Any amendment which is not a Major Amendment shall be deemed a Minor Modification (as further defined in and subject to Section 11(D)(2) below). The City Manager or his or her designee shall have the authority, in his or her reasonable discretion, to determine if an amendment is a Major Amendment subject to this Section 11(D)(1) or a Minor Modification subject to Section 11(D)(2) below. The City Manager's determination may be appealed to the City Council.

(2) Minor Modifications. The Parties acknowledge that refinement and further implementation of the Project may demonstrate that certain minor changes may be appropriate with respect to the details and performance of the Parties under this Development Agreement. The Parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in the general terms of this Development Agreement. If and when the Parties find that clarifications, minor changes, or minor adjustments are necessary or appropriate and do not constitute a Major Amendment under Section 11(D)(1) (each a "Minor Modification"), they shall effectuate such Minor Modification through a written instrument executed by the Developer and City Manager. Unless otherwise required by law or the Municipal Code, no Minor Modification shall require prior notice or hearing, nor shall it constitute an amendment to this Development Agreement.

12. PERIODIC REVIEW FOR COMPLIANCE WITH DEVELOPMENT AGREEMENT. In accordance with California Government Code Section 65865.1, City shall review this Development Agreement at least once during every twelve (12) month period from the Effective Date of this Development Agreement, at which time Developer shall demonstrate good faith compliance with the terms of this Development Agreement, as reasonably requested by City. Failure by City in any given calendar year to undertake and complete its annual review of the Agreement shall constitute a finding by City that Developer is in compliance with all of the terms and conditions of this Agreement for that calendar year.

13. AMENDMENT OR CANCELLATION OF DEVELOPMENT AGREEMENT. This Development Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties and in the manner provided for in California Government Code Sections 65867, 65867.5, and 65868. The provisions of this Section do not impact the rights or remedies of the Parties (including without limitation, the right to terminate this Development Agreement) in the case of a Developer Default or City Default, as addressed in Section 14 below.

14. EVENTS OF DEFAULT; REMEDIES.

A. Default By Developer; City's Remedies. Developer is in default under this Development Agreement (a "Developer Default") if City makes a finding and determination that upon the basis of substantial evidence (as provided to Developer) the Developer has not complied in good faith with one or more of the material terms or conditions of this Development Agreement for ninety (90) days after receipt of written notice thereof, or such longer cure period as agreed to by City. In the case of a Developer Default, City shall conduct a hearing utilizing the periodic review procedures of Section 12 before City may terminate this Development Agreement. In such case, Developer acknowledges that City shall have such termination right because the remedies provided by law, including, but not limited to, damages, are deemed by City to be inadequate to fully remedy a Developer Default and due to the extreme difficulty of assessing with certainty damages for such Developer Default. The above

notwithstanding, if City elects to terminate this Development Agreement, the Developer may challenge such termination by instituting legal proceedings, in which event the court shall exercise its review, based on substantial evidence, as to the existence of cause for termination.

B. Default By City; Developer's Remedies. City is in default under this Development Agreement (a "City Default") if Developer makes a finding and determination that upon the basis of substantial evidence (as provided to City), City has not complied in good faith with one or more of the material terms or conditions of this Development Agreement for ninety (90) days after receipt of written notice thereof, or such longer cure period as agreed to by Developer. In the case of a City Default, Developer may pursue any legal or equitable remedies available to it under this Development Agreement or otherwise.

C. Waiver and Nature of Remedies. No default under this Development Agreement can be waived unless in writing. Waiver of any one default shall not be deemed to be a waiver of any other default of the same or any other provision hereof. Failure or delay in giving written notice of default shall not waive a party's right to give future notice of the same or any other default. Remedies under this Development Agreement shall be deemed cumulative and not exclusive.

D. Limitation of Liability. Notwithstanding anything in this Development Agreement to the contrary, neither party, under any circumstances, shall be liable to the other party for any punitive or exemplary damages arising out of this Development Agreement. This Section 14(D) shall survive termination of the Development Agreement.

15. UNIFORM CODES. This Development Agreement does not prevent the City from adopting and amending in compliance with State law certain Uniform Codes which are based on recommendations of a multi-state professional organization and which become applicable throughout the City -- including that portion of the Property subject to this Development Agreement. Such Uniform Codes include, but are not limited to, the *Uniform Building Code*, *Uniform Mechanical Code*, *National Electrical Code*, and *Uniform Fire Code*.

16. PREVAILING WAGE COMPLIANCE. Developer shall comply with all state and federal labor laws, including without limitation, those requiring the payment of prevailing wage. All fee credits and the Reimbursement Amount are intended to compensate Developer for no more than the cost associated with the construction and installation of Infrastructure Improvements required as a condition of regulatory approval. In accordance with California Labor Code Section 1720(c)(2), such compliance shall require Developer to pay prevailing wages in connection with the construction of and installation of all Infrastructure Improvements for which Developer is receiving a portion of the Reimbursement Amount or fee or fee credits, but not in connection with the construction of any other portion of the Project.

17. LANDSCAPE AND LIGHTING MAINTENANCE DISTRICT. In regard to Avenue 17 and Sharon Boulevard median landscaping comprising part of the Infrastructure Improvements, City and Developer agree to reasonably cooperate in either (i) the creation of a landscape and lighting maintenance district ("LMD"); or (ii) annexing the relevant landscaping site into existing Zone 51 LMD, pursuant to California Streets and Highways Code Section 22500, et seq., for purposes of the payment of operation, maintenance and other covered costs associated with the such landscaping and lighting improvements. In the event City desires to create a new LMD, Developer agrees to reasonably cooperate in the proceedings for such creation by not opposing the formation of the LMD and, as applicable, casting a vote in favor of the LMD's creation; provided that the initial amount of the maximum assessment shall be in accordance with the Engineer's Report prepared for the LMD, and annual adjustments to the special tax shall not exceed the rate of inflation.

18. PUBLIC HEALTH AND SAFETY CONCERNS; APPLICATION OF FUTURE REGULATIONS.

A. This Development Agreement does not prevent the City from adopting Future General Regulations and applying such Future General Regulations to the Project and the Project Site, provided that City's City Council adopts findings that a failure to apply such Future General Regulations would create a fire, life, or safety hazard. These findings shall be based upon substantial evidence in the record from a hearing conducted by City's City Council as to which the Developer was provided at least ten (10) days advance written notice.

B. Notwithstanding Section 18(A) above, the City shall not apply to the Project or the Project Site any Future General Regulations which prevent, preclude, or unreasonably delay or alter or in any way affect the implementation of all or any portion of the Development Plan, unless City's City Council, in accordance with subsection (A) above, also makes a finding that such Future General Regulations are reasonably necessary to correct or avoid such injurious or detrimental condition. Any Future General Regulations applied to the Project or the Project Site pursuant to this subsection shall only apply for the duration necessary to correct and avoid such injurious or detrimental condition.

19. ASSIGNMENT, TRANSFER OR SALE.

A. Right to Assign. Developer shall have the right to sell, transfer or assign the Project Site in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, *et seq.*) to any person, partnership, joint venture, firm, corporation or other entity at any time during the term of this Development Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights (including the right to receive all or any portion of the Reimbursement Amount), duties, and obligations arising under or from this Development Agreement to the extent reasonably applicable to the transferred portion of the Project Site and be made in strict compliance with the following conditions precedent:

- (1) No sale, transfer, or assignment of any right or interest under this Development Agreement shall be made unless made together with the sale, transfer, or assignment of all or a part of the Project Site. Developer agrees to provide specific notice of this Development Agreement, including the record or document number, where a true and correct copy of this Development Agreement may be obtained from the County Clerk/County Recorder of the County of Madera, in any grant deed or other document purporting to transfer the title or an interest in the Project Site during the term of this Development Agreement or any extension thereof.
- (2) Concurrent with any such sale, transfer, or assignment, or within fifteen (15) business days thereafter, Developer shall notify City, in writing, of such sale, transfer, or assignment and shall provide City with an executed Assignment and Assumption Agreement, substantially in the form specified in Exhibit J, by the purchaser, transferee, or assignee, providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of the Owner/Developer under this Development Agreement to the extent allocable to the portion of the Project Site transferred, other than duties that are expressly reserved and retained by the transferor in such agreement, where the transferor still owns a portion of the Project Site. Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall constitute a default by Developer under this Development Agreement. Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required under this section, the burdens of this Development Agreement shall be binding upon such purchaser, transferee, or assignee, to the extent allocable to the portion of the Project Site transferred, but the benefits of this Development Agreement shall not inure to such purchaser, transferee, or assignee until and unless such assumption agreement is executed.

- (3) Reorganization Not an Assignment. Notwithstanding anything to the contrary set forth above, the following shall not be deemed an assignment under this Development Agreement: (i) any sale, pledge, assignment or other transfer of all or a portion of the Project Site to an entity directly controlled by Developer or its affiliates and (ii) any change in Developer entity form, such as a transfer from a corporation to a limited liability company or partnership, that does not affect or change beneficial ownership of the Project Site; provided, however, in such event, Developer shall provide to City written notice, together with such backup materials or information reasonably requested by City, within thirty (30) days following the date of such reorganization or City's request for backup information, as applicable.

B. Release of Transferring Owner. Notwithstanding any sale, transfer, or assignment, Developer or any successor Owner thereof shall continue to be obligated under this Development Agreement unless Developer or such subsequent Owner is given a release in writing, signed by City, which release shall be provided by City upon the full satisfaction by Developer or such subsequent Owner of all of the following conditions:

- (1) Developer or Owner no longer has a legal interest in all or any part of the Project site except as a beneficiary under a deed of trust; or if such requested release relates only to a portion of the Project site, Developer or Owner no longer has a legal interest in such portion of the Project site except as a beneficiary under a deed of trust.
- (2) Developer or Owner is not then in default under this Development Agreement beyond the applicable cure period.
- (3) Developer or Owner or purchaser has provided City with the notice and executed assumption agreement required under Section 19(A)(2) above.
- (4) Developer or Owner has reimbursed City for any and all reasonable City costs associated with Developer or Owner's transfer of all or a portion of the Project Site.

20. NOTICE. Unless expressly provided otherwise in this Development Agreement, any notices, reports, communications, and payments hereunder must be in writing and given by personal delivery or sent by (i) registered or certified mail return receipt requested, postage prepaid, (ii) nationally recognized overnight courier service, or (iii) facsimile transmission, addressed as follows (unless written notice of change thereof is provided):

To City:

City Clerk
City of Madera City Hall
205 West Fourth Street
Madera, California 93637
Facsimile: (559) 674-2972

With copy to (at same address):

City Attorney
Facsimile: (559) 673-1304

To Landowner:

Lisa M. Guzman
7173 North Blackstone Street
Fresno, CA 93650

To Developer:

Love's Country Stores of California, Inc.
10601 N. Pennsylvania Ave.
Oklahoma City, OK 73120
Attention: Kym VanDyke, Project Manager
Facsimile: (405) 463.3581

With copy to (at same address):

General Counsel and Director of Legal Services
Facsimile: (405) 463.3576

Notice shall be deemed received on the earlier of (a) actual receipt, (b) 3 business days after deposit in the U.S. Mail, (c) the first business day after deposit with an overnight courier, or (d) if by facsimile transmittal, upon receipt of proof of transmission. Any notice or communication not received because of a change of address or facsimile number, without notice to the other party thereof, or refusal to accept delivery, will be deemed received, notwithstanding the same, as set forth above.

21. MORTGAGEE PROTECTION. The Parties hereto agree that this Development Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Project Site or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Project Site, except as limited by the provisions of this section. City acknowledges that the lenders providing such financing may require certain Development Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Development Agreement. Any mortgagee of the Project Site shall be entitled to the following rights and privileges:

A. Neither entering into this Development Agreement nor a breach of this Development Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Project Site made in good faith and for value, unless otherwise required by law.

B. The mortgagee of any mortgage or deed of trust encumbering the Project Site, or any part thereof, which mortgagee has submitted a request in writing to City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Development Agreement.

C. If City receives a timely request from a mortgagee requesting a copy of any notice of default given to Developer under the terms of this Development Agreement, City shall provide a copy of that notice to the mortgagee within ten (10) days of sending the notice of default to Developer. The mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed to Developer under this Development Agreement.

D. Any mortgagee who comes into possession of the Project Site, or any part thereof, by any means, whether pursuant to foreclosure of the mortgage deed of trust, or deed in lieu of such foreclosure or otherwise, shall take the Project Site, or part thereof, subject to the terms of this Development Agreement. Notwithstanding any other provision of this Development Agreement to the contrary, no mortgagee shall have an obligation or duty under this Development Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer or assignment by any mortgagee in possession shall be subject to the provisions of Section 19 of this Agreement.

22. MISCELLANEOUS.

A. Entire Agreement; Binding Effect. This Development Agreement contains the entire agreement and understanding of Developer and City in regard to the Project and supersedes all negotiations and proposed agreements, whether oral or written, between Developer and City in regard to the subject matter hereof. Each party acknowledges that it has read this Development Agreement and has signed it freely and voluntarily without reliance on any representations or promises made by the other, or the other party's attorneys or representatives, except as expressly set forth in this Development Agreement. This Development Agreement is and shall be binding upon and shall inure to the benefit of the affiliates, subsidiaries, successors, assigns, agents, officers, current employees and administrators of each of Developer and City.

B. Interpretation. Developer and City expressly intend that this Development Agreement shall not be construed against either party, as this Development Agreement was negotiated at arms' length between City and Developer, both of whom were represented by legal counsel, and all of whom contributed to the drafting of this Development Agreement. Any reference within this Development Agreement to a Section shall be construed to reference all Subsections of that referenced Section.

C. Enforcement. Developer and City agree that the Superior Court in Madera County shall have jurisdiction over the implementation and enforcement of this Development Agreement, and shall have the power and authority to make such further or supplemental orders, directions, and other relief as may be necessary or appropriate for the interpretation, enforcement, or carrying out of this Development Agreement.

D. Governing Law. Except as expressly provided in this Development Agreement, all questions with respect to this Development Agreement, and the rights and liabilities of the Developer and City, shall be governed by the laws of the State of California.

E. Further Actions. Each party shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Development Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file of record such required instruments and writings and take any actions as may be reasonably necessary, to implement this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

F. Counterpart Execution. This Development Agreement may be executed in counterparts. When each party has signed and delivered its respective counterpart to the other party, each counterpart shall be deemed an original, and when taken together will constitute one and the same Development Agreement, which will be binding and effective as to Developer and City.

G. Attorneys' Fees. To the extent permitted by law, if either party commences legal action against the other to enforce its rights hereunder, the prevailing party in such action shall be entitled to recover from the other, in addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental thereto.

H. Estoppel Certificate. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party (and to the extent true), (i) this Development Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Development Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature of such default. The party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees of Developer.

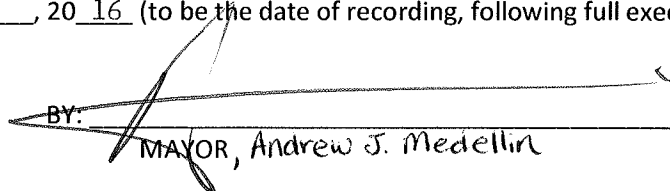
I. Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Development Agreement, all deadlines under this Agreement, including but not limited the deadline for Developer to submit a Substantially Complete Building Permit Application under Section 6(A) shall be extended; and the performance by any Party of its obligations under this Agreement shall not be deemed to be in Default, and the time for performance of such obligation shall be extended where delays or default are due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, acts of terrorism, governmental restrictions or permitting delays imposed or mandated by governmental entities including the City (in the case of another Party relying on the Force Majeure Event), delays in securing or obtaining necessary easements or rights of way, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, seasonal species or habitat surveying or remediation requirements, litigation, or similar bases for excused performance beyond the reasonable control of the party relying thereupon to excuse performance hereunder (each a "Force Majeure Event"). If written notice of such delay is given to City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted by the City Manager in writing for the period of the enforced delay, or longer as may be mutually agreed upon. In any event, the party relying on any such Force Majeure Event to excuse performance hereunder shall act in good faith, and with due diligence, to recommence performance at the earliest possible date.

J. Indemnity. Developer agrees to and shall defend, indemnify and hold harmless the City, its City Council, boards and commissions, officers, agents, employees, volunteers and other representatives (collectively referred to as "City Indemnified Parties") from and against any and all loss, liability, damages, cost, expense, claims, demands, suits, attorney's fees and judgments (collectively referred to as "Damages"), including but not limited to claims for damage for personal injury (including death) and claims for property damage arising directly or indirectly from the following: (1) for any act or omission of Developer or those of its officers, board members, agents, employees, volunteers, contractors, subcontractors or other persons acting on its behalf (collectively referred to as the "Developer Parties") which occurs during the Term and relates to this Agreement; (2) for any act or omission related to the operations of Developer Parties, including but not limited to the maintenance and operation of areas on the Project Site accessible to the public. Developer's obligation to defend, indemnify and hold harmless applies to all actions and omissions of Developer Parties as described above caused or alleged to have been caused in connection with the Project or Agreement, except to the extent any Damages are caused by the active negligence or willful misconduct of any City Indemnified Parties. This Section 22(J) applies to all Damages suffered or alleged to have been suffered by the City Indemnified Parties regardless of whether or not the City prepared, supplied or approved plans or specifications or both for the Project. During the term of the Agreement, Developer shall maintain insurance in a form and amount acceptable to the City Attorney, with a maximum per-occurrence combined single limit of one million dollars (\$1,000,000), to assure Developer's ability to satisfy the indemnification requirements of this Section 22(J). Developer may satisfy the insurance requirements of this Section through self-coverage or through existing insurance coverage maintained by Developer.

K. City's Right to Defense. The City shall have the right to approve legal counsel retained by Developer to defend any claim, action or proceeding which Developer is obligated to defend pursuant to Section 22(J), which approval shall not be unreasonably withheld, conditioned or delayed. If any conflict of interest results during the mutual representation of the City and Developer in defense of any such action, or if the City is reasonably dissatisfied with legal counsel retained by Developer, the City shall have the right (a) at Developer's costs and expense, to have the City Attorney undertake and continue the City's defense, or (b) with Developer's approval, which shall not be reasonably withheld or delayed, to select separate outside legal counsel to undertake and continue the City's defense.

[EXECUTION PAGE(S) TO FOLLOW]

IN WITNESS WHEREOF, City and Developer have agreed to and executed this Development Agreement having an Effective Date of December 28, 2016 (to be the date of recording, following full execution, with Madera County Clerk/County Recorder).

BY: 
MAYOR, Andrew J. Medellin

ATTEST:
 CITY CLERK

By: Sonia Alvarez
City Clerk
(Seal)



APPROVED AS TO FORM:


City Attorney, Brent Richardson

DATE: 12-28-16

City of Madera
205 West Fourth Street
Madera, CA 93637
(559) 661-5405

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

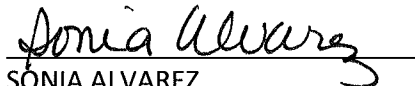
STATE OF CALIFORNIA)

COUNTY OF MADERA)

On 12/28/16 before me, Sonia Alvarez, City Clerk personally appeared **Andrew J. Medellin**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


SONIA ALVAREZ
City Clerk, City of Madera



DESCRIPTION OF ATTACHED DOCUMENT (OPTIONAL)

Title or Type of Document: Development Agreement

Document Date:

Number of Pages:

Signer(s) Other Than Named Above:

CAPACITY(IES) CLAIMED BY SIGNER(S)

Signer's Name: Andrew J. Medellin

Signer's Name:

Title: Mayor, City of Madera

Title:

DEVELOPER:

LOVE'S COUNTRY STORES OF CALIFORNIA, INC.

By:

Douglas J. Stussi

Its: Vice President, CFO and Treasurer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Oklahoma)

County of Oklahoma)

On Dec. 23, 2016 before me, Carla Berry
Date Here Insert Name and Title of Officer

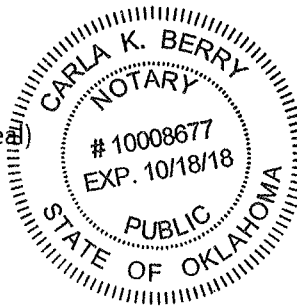
personally appeared Doug Stussi
Name(s) of Signer(s)
Vice President, CFO & Treasurer

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Oklahoma that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Carla K. Berry (Seal)



LANDOWNER:

Lisa M. Guzman

LISA M. GUZMAN, TRUSTEE OF THE BYPASS TRUST UNDER THE GUZMAN LIVING TRUST DATED MAY 13, 2013

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Madera)

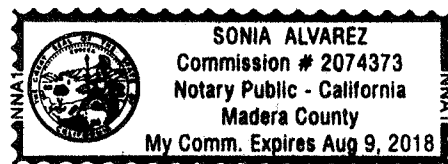
On 12/27/16 before me, Sonia Alvarez, Notary Public
Date Here Insert Name and Title of Officer
personally appeared Lisa M. Guzman
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

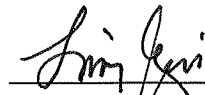
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Sonia Alvarez (Seal)



LANDOWNER:



LISA M. GUZMAN, TRUSTEE OF THE SURVIVOR'S TRUST UNDER THE GUZMAN
LIVING TRUST DATED MAY 13, 2013

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Madera)

On 12/27/16 before me, Sonia Alvarez, Notary Public
Date Here Insert Name and Title of Officer
personally appeared Lisa M. Guzman
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Sonia Alvarez (Seal)

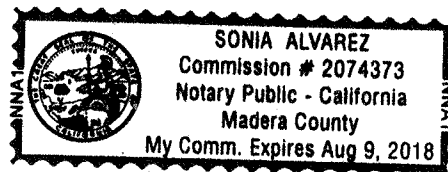


EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 013-240-003

Beginning at the Northeast corner of Section 10, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, County of Madera, State of California; thence along the East line of Section 10, South 0° 10' East 1,331.25 feet to the Southeast corner of the North half of the Northeast quarter of Section 10; thence along the North line of a 51.272 acre tract of land conveyed by Henry Miller to Charles Schmidt, on December 5, 1893, South 89° 55' West 1,029.12 feet along the South line of said North half of the Northeast quarter to a point on the Easterly right of way line of the Southern Pacific Railroad; thence along said Easterly right of way line North 44° 15' West 1,858.76 feet to a point on the North line of Section 10; thence leaving railroad, North 89° 58' East 2,332.30 feet to the point of beginning.

EXCEPTING THEREFROM a road easement over and upon a strip of land 30 feet in width along the North line of and within above described tract of land for use as a right of way easement for a public road, as previously reserved of record.

ALSO EXCEPTING THEREFROM that portion granted to the State of California, in Deed executed by Felisberto da Silva, et al, and recorded February 24, 1971 in Book 1081 Page 532, as Document No. 2225 of Official Records.

AND ALSO EXCEPTING THEREFROM that portion granted to the County of Madera, in Deed executed by Jim Vincenzo Gagliardi, et al, and recorded October 24, 2003 as Document No. 03045789 of Official Records.



LANE ENGINEERS, INC.
CIVIL • STRUCTURAL • SURVEYING
979 N. Blackstone Street
Tulare, California 93274
559.688.5263
www.laneengineers.com

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Lane Project No. 14271

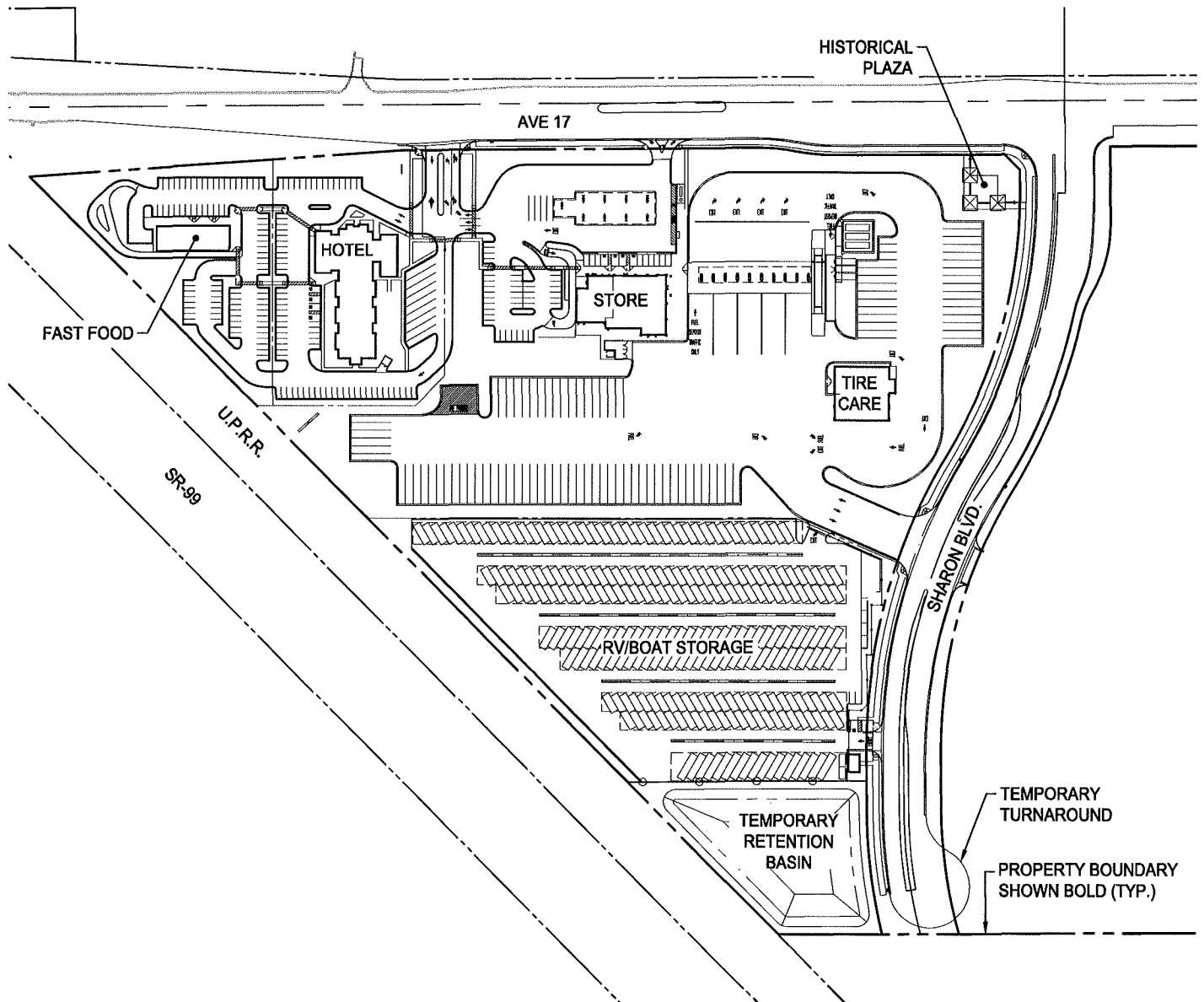


EXHIBIT 'B'
DEPICTION OF PROJECT SITE



Development Exactions - Development Impact Fees and Credit Amounts

<u>DESCRIPTION</u>	<u>Base Calculation</u>			<u>Projected Credit Amount</u>		
	<u>QUANTITY</u>	<u>UNIT COST</u>	<u>COST</u>	<u>QUANTITY</u>	<u>UNIT COST</u>	<u>COST</u>
A. TRAVEL STOP						
Administrative Impact Fee	20,054 SF	\$0.024	\$481	0 SF	\$0.024	\$0
Fire Department Impact Fee	20,054 SF	\$0.036	\$722	0 SF	\$0.036	\$0
General Government Impact Fee	20,054 SF	\$0.012	\$241	0 SF	\$0.012	\$0
Police Department Impact Fee	20,054 SF	\$0.072	\$1,444	0 SF	\$0.072	\$0
Public Works Impact Fee	20,054 SF	\$0.133	\$2,667	0 SF	\$0.133	\$0
Sewer Additional Impact Fee	20,054 SF	\$0.169	\$3,389	20,054 SF	\$0.169	\$3,389
Storm Drain Impact Fee	20,054 SF	\$1.210	\$24,265	20,054 SF	\$1.210	\$24,265
Sewer Exist Obl. Impact Fee	20,054 SF	\$0.036	\$722	20,054 SF	\$0.036	\$722
Streets (16 ft Arterial Median)	20,054 SF	\$0.142	\$2,848	20,054 SF	\$0.142	\$2,848
Streets (24 ft Collector Lane)	20,054 SF	\$0.251	\$5,034	20,054 SF	\$0.251	\$5,034
Streets (12 ft Arterial Lane)	20,054 SF	\$0.251	\$5,034	20,054 SF	\$0.251	\$5,034
Transportation Impact Fee	20,054 SF	\$0.254	\$5,094	20,054 SF	\$0.254	\$5,094
Traffic Signal Impact Fee	20,054 SF	\$0.087	\$1,745	20,054 SF	\$0.087	\$1,745
Water Impact Fee (Pipes)	20,054 SF	\$0.072	\$1,444	20,054 SF	\$0.072	\$1,444
Wastewater Treatment Plant Impact Fee	20,054 SF	\$0.763	\$15,301	20,054 SF	\$0.763	\$15,301
Water Impact Fee (Wells)	20,054 SF	\$0.133	\$2,667	20,054 SF	\$0.133	\$2,667
SUB-TOTAL TRAVEL STOP			\$73,097	\$67,542		

Development Exactions - Development Impact Fees and Credit Amounts

B. HOTEL

Administrative Impact Fee	57,792 SF	\$0.024	\$1,387	0 SF	\$0.024	\$0
Fire Department Impact Fee	57,792 SF	\$0.036	\$2,081	0 SF	\$0.036	\$0
General Government Impact Fee	57,792 SF	\$0.012	\$694	0 SF	\$0.012	\$0
Police Department Impact Fee	57,792 SF	\$0.072	\$4,161	0 SF	\$0.072	\$0
Public Works Impact Fee	57,792 SF	\$0.133	\$7,686	0 SF	\$0.133	\$0
Sewer Additional Impact Fee	57,792 SF	\$0.169	\$9,767	57,792 SF	\$0.169	\$9,767
Storm Drain Impact Fee	57,792 SF	\$1.210	\$69,928	57,792 SF	\$1.210	\$69,928
Sewer Exist Obl. Impact Fee	57,792 SF	\$0.036	\$2,081	57,792 SF	\$0.036	\$2,081
Streets (16 ft Arterial Median)	57,792 SF	\$0.142	\$8,206	57,792 SF	\$0.142	\$8,206
Streets (24 ft Collector Lane)	57,792 SF	\$0.251	\$14,506	57,792 SF	\$0.251	\$14,506
Streets (12 ft Arterial Lane)	57,792 SF	\$0.251	\$14,506	57,792 SF	\$0.251	\$14,506
Transportation Impact Fee	57,792 SF	\$0.254	\$14,679	57,792 SF	\$0.254	\$14,679
Traffic Signal Impact Fee	57,792 SF	\$0.087	\$5,028	57,792 SF	\$0.087	\$5,028
Water Impact Fee (Pipes)	57,792 SF	\$0.072	\$4,161	57,792 SF	\$0.072	\$4,161
Wastewater Treatment Plant Impact Fee	57,792 SF	\$0.763	\$44,095	57,792 SF	\$0.763	\$44,095
Water Impact Fee (Wells)	57,792 SF	\$0.133	\$7,686	57,792 SF	\$0.133	\$7,686
SUB-TOTAL HOTEL			\$210,652			\$194,643

Development Exactions - Development Impact Fees and Credit Amounts

C. RESTAURANT PAD

Administrative Impact Fee	4,400	SF	\$0.024	\$106	0	SF	\$0.024	\$0
Fire Department Impact Fee	4,400	SF	\$0.036	\$158	0	SF	\$0.036	\$0
General Government Impact Fee	4,400	SF	\$0.012	\$53	0	SF	\$0.012	\$0
Police Department Impact Fee	4,400	SF	\$0.072	\$317	0	SF	\$0.072	\$0
Public Works Impact Fee	4,400	SF	\$0.133	\$585	0	SF	\$0.133	\$0
Sewer Additional Impact Fee	4,400	SF	\$0.169	\$744	4,400	SF	\$0.169	\$744
Storm Drain Impact Fee	4,400	SF	\$1.210	\$5,324	4,400	SF	\$1.210	\$5,324
Sewer Exist Obl. Impact Fee	4,400	SF	\$0.036	\$158	4,400	SF	\$0.036	\$158
Streets (16 ft Arterial Median)	4,400	SF	\$0.142	\$625	4,400	SF	\$0.142	\$625
Streets (24 ft Collector Lane)	4,400	SF	\$0.251	\$1,104	4,400	SF	\$0.251	\$1,104
Streets (12 ft Arterial Lane)	4,400	SF	\$0.251	\$1,104	4,400	SF	\$0.251	\$1,104
Transportation Impact Fee	4,400	SF	\$0.254	\$1,118	4,400	SF	\$0.254	\$1,118
Traffic Signal Impact Fee	4,400	SF	\$0.087	\$383	4,400	SF	\$0.087	\$383
Water Impact Fee (Pipes)	4,400	SF	\$0.072	\$317	4,400	SF	\$0.072	\$317
Wastewater Treatment Plant Impact Fee	4,400	SF	\$0.763	\$3,357	4,400	SF	\$0.763	\$3,357
Water Impact Fee (Wells)	4,400	SF	\$0.133	\$585	4,400	SF	\$0.133	\$585
SUB-TOTAL RESTAURANT PAD				\$16,038	\$14,819			

Development Exactions - Development Impact Fees and Credit Amounts

D. RV/BOAT STORAGE

Administrative Impact Fee	600 SF	\$0.024	\$14	0 SF	\$0.024	\$0
Fire Department Impact Fee	600 SF	\$0.036	\$22	0 SF	\$0.036	\$0
General Government Impact Fee	600 SF	\$0.012	\$7	0 SF	\$0.012	\$0
Police Department Impact Fee	600 SF	\$0.072	\$43	0 SF	\$0.072	\$0
Public Works Impact Fee	600 SF	\$0.133	\$80	0 SF	\$0.133	\$0
Sewer Additional Impact Fee	600 SF	\$0.169	\$101	600 SF	\$0.169	\$101
Storm Drain Impact Fee	600 SF	\$1.210	\$726	600 SF	\$1.210	\$726
Sewer Exist Obl. Impact Fee	600 SF	\$0.036	\$22	600 SF	\$0.036	\$22
Streets (16 ft Arterial Median)	600 SF	\$0.142	\$85	600 SF	\$0.142	\$85
Streets (24 ft Collector Lane)	600 SF	\$0.251	\$151	600 SF	\$0.251	\$151
Streets (12 ft Arterial Lane)	600 SF	\$0.251	\$151	600 SF	\$0.251	\$151
Transportation Impact Fee	600 SF	\$0.254	\$152	600 SF	\$0.254	\$152
Traffic Signal Impact Fee	600 SF	\$0.087	\$52	600 SF	\$0.087	\$52
Water Impact Fee (Pipes)	600 SF	\$0.072	\$43	600 SF	\$0.072	\$43
Wastewater Treatment Plant Impact Fee	600 SF	\$0.763	\$458	600 SF	\$0.763	\$458
Water Impact Fee (Wells)	600 SF	\$0.133	\$80	600 SF	\$0.133	\$80
SUB-TOTAL RV/BOAT STORAGE			\$2,187			\$2,021

Project Totals

\$301,974

\$279,025

Development Exactions - Traffic and Transportation Mitigation Fees

<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>COST</u>	<u>AIR SHARE %</u>	<u>COST</u>
I. INTERSECTIONS					
A. Avenue 17 at SR 99 SB Off Ramp (Install New Traffic Signal)					
Traffic Signal	1	EA	\$400,000.00	13.1%	\$52,400
					<u>\$52,400</u>
B. Avenue 17 at SR 99 NB Ramps (Widen N/B Approach to 2 LT and 3 RT, & Install New Traffic Signal)					
Sawcut Existing Pavement	1700	LF	\$2.00	19.5%	\$663
Remove Existing Pavement	3400	SF	\$2.00	19.5%	\$1,326
General Earthwork and Import	17000	CY	\$15.00	19.5%	\$49,725
Hot Mix Asphalt	1750	TN	\$92.00	19.5%	\$31,395
Aggregate Base	3800	TN	\$32.00	19.5%	\$23,712
Traffic Signal	1	EA	\$400,000.00	19.5%	\$78,000
Traffic Signal Coordination	1	LS	\$10,000.00	19.5%	\$1,950
					<u>\$186,771</u>
C. Avenue 17 at Walden Drive (Install New Traffic Signal)					
Traffic Signal	1	EA	\$350,000.00	2.4%	\$8,225
					<u>\$8,225</u>
E. Sharon Boulevard at Driveway #3 (Install New Traffic Signal)					
Traffic Signal	1	EA	\$350,000.00	60.7%	\$212,450
					<u>\$212,450</u>
F. Avenue 17 at Yeager Drive (Install Traffic Signal)					
Traffic Signal	1	EA	\$350,000.00	2.2%	\$7,700
					<u>\$7,700</u>
II. ROADWAY SEGMENTS					
A. Ave 17 Westbound Expansion (Add 1 Travel Lane Between Sharon and Walden)					
Sawcut Pavement	600	LF	\$2.00	2.3%	\$28
Pavement Removal	1200	SF	\$2.00	2.3%	\$55
General Earthwork and Roadway Excavation	150	CY	\$5.00	2.3%	\$17
Hot Mix Asphalt	350	TN	\$92.00	2.3%	\$741
Class 2 Aggregate Base	1000	TN	\$32.00	2.3%	\$736
					<u>\$1,577</u>

Development Exactions - Traffic and Transportation Mitigation Fees

III. SR 99 FREEWAY AND RAMPS

A. SR 99 SB Loop On-Ramp (Widen Ramp to Add 1 Lane)

Sawcut Pavement	850 LF	\$1.50	18.1%	\$230
Pavement Removal	1700 SF	\$2.00	18.1%	\$614
General Earthwork and Import	2000 CY	\$15.00	18.1%	\$5,415
Hot Mix Asphalt	600 TN	\$92.00	18.1%	\$9,964
Class 2 Aggregate Base	1250 TN	\$32.00	18.1%	\$7,220
				\$23,442

B. SR 99 NB Off-Ramp (Widen Ramp to add 1 exit lane, & Auxiliary Lane)

Sawcut Pavement	1300 LF	\$2.00	13.3%	\$345
Pavement Removal	2600 SF	\$2.00	13.3%	\$689
General Earthwork and Roadway Excavation	1700 CY	\$5.00	13.3%	\$1,126
Hot Mix Asphalt	1050 TN	\$92.00	13.3%	\$12,800
Class 2 Aggregate Base	2500 TN	\$32.00	13.3%	\$10,600
				\$25,559

C. SR 99 NB On-Ramp (Widen Ramp to Add 1 Lane)

Sawcut Pavement	1500 LF	\$2.00	41.8%	\$1,254
Pavement Removal	3000 SF	\$2.00	41.8%	\$2,508
General Earthwork and Import	10000 CY	\$15.00	41.8%	\$62,700
Hot Mix Asphalt	1000 TN	\$92.00	41.8%	\$38,456
Class 2 Aggregate Base	2200 TN	\$32.00	41.8%	\$29,427
				\$134,345

D. SR 99 SB Off-Ramp (Widen Ramp to Add 1 Lane)

Sawcut Pavement	850 LF	\$2.00	54.4%	\$925
Pavement Removal	1700 SF	\$2.00	54.4%	\$1,850
General Earthwork and Roadway Excavation	1400 CY	\$5.00	54.4%	\$3,808
Hot Mix Asphalt	850 TN	\$92.00	54.4%	\$42,541
Class 2 Aggregate Base	1850 TN	\$32.00	54.4%	\$32,205
				\$81,328

Development Exactions - Traffic and Transportation Mitigation Fees

INTERCHANGE RELATED SUBTOTAL \$503,846

CITY STREETS/ROADS SUBTOTAL \$229,952

GRAND TOTAL \$733,798**NOTES:**

1. The improvements described herein are based on the Final EIR and associated traffic study, certified by the City of Madera Planning Commission on 8/16/2016.
2. Improvements highlighted in orange, are improvement required within Caltrans R/W.
3. Traffic Signal, Hot Mix Asphalt, and Class 2 Aggregate Base Costs are based on the Avenue 17/SR-99 Project Study Report (PSR).
4. This estimate excludes costs related to mobilization, bonding, traffic control and other off-site related costs not specifically mentioned in this cost estimate.
5. This estimate is intended to provide an order-of-magnitude cost only. It is not based on a set of construction drawings.
6. Costs are based on prevailing wages.
7. Agency fees are included in this estimate to the extent they are listed.
8. Fees or costs associated with work related to dry utilities are not included in this estimate.

General Description of Infrastructure Improvements, Costs, and Reimbursable Amounts

IMPROVEMENT DESCRIPTION	TOTAL INFRASTRUCTURE IMPROVEMENT COST				REIMBURSABLE AMOUNT			
	QUANTITY	UNIT	UNIT COST	COST	QUANTITY		UNIT COST	COST
I. AVENUE 17 ROADWORK								
A.1 Avenue 17 Road Excavation [P]1	6,000	CY	\$10.00	\$60,000	6,000	CY	\$10.00	\$60,000
A.2 Avenue 17 Road Excavation [AO]1	2,000	CY	\$10.00	\$20,000	-	CY	\$10.00	\$0
A.7 Avenue 17 Pavement Removal	25,909	SF	\$2.00	\$51,818	25,909	SF	\$2.00	\$51,818
A.9 West Avenue 17 Pavement (7.0" A.C. / 8.5" A.B.) [P]1	16,379	SF	\$5.75	\$94,179	16,379	SF	\$5.75	\$94,179
A.10 West Avenue 17 Pavement (7.0" A.C. / 8.5" A.B.) [AO]1	6,728	SF	\$5.75	\$38,686	-	SF	\$5.75	\$0
A.11 East Avenue 17 Pavement (7.0" A.C. / 23" A.B.) [P]1	43,031	SF	\$8.00	\$344,248	43,031	SF	\$8.00	\$344,248
A.12 East Avenue 17 Pavement (7.0" A.C. / 23" A.B.) [AO]1	18,332	SF	\$8.00	\$146,656	-	SF	\$8.00	\$0
A.19 Sawcut Pavement (Avenue 17)	2,585	LF	\$2.00	\$5,170	2,585	LF	\$2.00	\$5,170
E.1 Traffic Control	1	LS	\$40,000.00	\$40,000	1	LS	\$40,000.00	\$33,200
Subtotal Direct Costs Avenue 17 Roadwork - Minus Curb & Gutter				\$800,757				\$588,615
Subtotal Ave 17 Soft and Indirect Costs [Note 3]				\$273,432				\$201,049
Total Avenue 17 Costs				\$1,074,189				\$789,664
II. SHARON BOULEVARD ROADWORK								
A.3 Sharon Boulevard Road Excavation [P]1	7,500	CY	\$10.00	\$75,000	7,500	CY	\$10.00	\$75,000
A.4 Sharon Boulevard Road Excavation [AO]1	2,500	CY	\$10.00	\$25,000	-	CY	\$10.00	\$0
A.13 North Sharon Boulevard Pavement (6.5" A.C. / 19.5" A.B.) [P]1	37,654	SF	\$7.00	\$263,578	37,654	SF	\$7.00	\$263,578
A.14 North Sharon Boulevard Pavement (6.5" A.C. / 19.5" A.B.) [AO]1	20,202	SF	\$7.00	\$141,414	-	SF	\$7.00	\$0
A.15 South Sharon Boulevard Pavement (6.5" A.C. / 14.0" A.B.) [P]1	15,743	SF	\$6.25	\$98,394	15,743	SF	\$6.25	\$98,394
A.16 South Sharon Boulevard Pavement (6.5" A.C. / 14.0" A.B.) [AO]1	13,897	SF	\$6.25	\$86,856	-	SF	\$6.25	\$0
A.17 Temporary A.C. Pavement (2.5" A.C. / 6.5" A.B.)	7,521	SF	\$2.75	\$20,683	-	SF	\$2.75	\$0
Subtotal Direct Costs Sharon Boulevard Road Work - Minus Curb & Gutter				\$710,924.75				\$436,972
Subtotal Sharon Boulevard - Soft and Indirect Costs [Note 3]				\$242,757				\$149,253
Total Sharon Boulevard Road Work - Minus Curb & Gutter				\$953,682				\$586,225

Exhibit D

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III. CURB AND GUTTER - ALL STREETS

A.21	Curb & Gutter	2,879	LF	\$14.00	\$40,306	-	LF	\$14.00	\$0
	<i>Subtotal Curb and Gutter - Soft and Indirect Costs [Note 3]</i>				\$13,763				\$0
	Total Curb and Gutter - All Streets - Costs				\$54,069				\$0

IV. SIDEWALKS - ALL STREETS

A.25	Concrete Sidewalk [P]1	5,145	SF	\$4.00	\$20,580	5,145	LF	\$4.00	\$20,580
A.26	Concrete Sidewalk [AO]1	11,463	SF	\$4.00	\$45,852	-	SF	\$4.00	\$0
	Subtotal Direct Costs Sidewalks				\$66,432				\$20,580
	<i>Subtotal Sidewalks Soft and Indirect Costs [Note 3]</i>				\$22,684				\$7,029
	Total Sidewalks - All Streets - Costs				\$89,116				\$27,609

V. MEDIAN ISLAND IMPROVEMENTS - ALL STREETS

A.22	Median Curb	2,286	LF	\$16.00	\$36,576	2,286	LF	\$16.00	\$36,576
A.23	Median Concrete	2,259	SF	\$5.00	\$11,295	2,259	SF	\$5.00	\$11,295
A.24	12" A.C. Dike	780	LF	\$15.00	\$11,700	780	LF	\$15.00	\$11,700
E.5	Sharon Blvd. Median Landscaping/Irrigation	6,562	SF	\$5.00	\$32,810	6,562	SF	\$5	\$32,810
	Subtotal Direct Costs Median Islands				\$92,381				\$92,381
	<i>Subtotal Median Island - Soft and Indirect Costs [Note 3]</i>				\$31,545				\$31,554
	Total Median Island Costs				\$123,926				\$123,935

VI. TRAFFIC SIGNALS

E.2	Traffic Signal (Ave 17 & Driveway #1)	1	LS	\$300,000.00	\$300,000	1	LS	\$300,000	\$300,000
E.3	Traffic Signal (Ave 17 & Sharon Blvd.)	1	LS	\$300,000.00	\$300,000	1	LS	\$300,000	\$300,000
	Subtotal Direct Costs Traffic Signal Improvements				\$600,000				\$600,000
	<i>Subtotal Traffic Signal - Soft and Indirect Costs [Note 3]</i>				\$204,880				\$204,937
	Total Traffic Signal Costs				\$804,880				\$804,937

Exhibit D

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VII. MISCELLANEOUS STREET IMPROVEMENTS (UTILITIES & MISC. CONSTRUCT.)

E.6	Parkway Landscaping/Irrigation [P]1	14,065	SF	\$5.00	\$70,325	14,065	SF	\$5	\$70,325
E.7	Parkway Landscaping/Irrigation [AO]1	8,052	SF	\$5.00	\$40,260	-	SF	\$5	\$0
E.8	Dry Utility Trenching, Conduits, Pull Boxes	3,600	LF	\$50.00	\$180,000	-	LF	\$50	\$0
E.9	Street Lights (LED)	14	EA	\$4,500.00	\$63,000	-	EA	\$4,500	\$0
E.10	Street Signage and Striping	1	LS	\$50,000.00	\$50,000	0.72	LS	\$50,000	\$36,042
Subtotal Direct Costs Miscellaneous Street Costs					\$403,585	\$106,367			
Subtotal Miscellaneous Street and Utilities - Soft and Indirect Costs [Note 3]					\$137,811	\$36,331			
Total Miscellaneous Street and Utilities Costs					\$541,396	\$142,698			

VIII. RAMP IMPROVEMENTS

A.5	SR-99 N/B Ramp Import and Earthwork	12,000	CY	\$15.00	\$180,000	12,000	CY	\$15.00	\$180,000
A.8	N/B Off-ramp Pavement Removal	7,800	SF	\$2.00	\$15,600	7,800	SF	\$2.00	\$15,600
A.18	N/B Ramp Pavement (9.0" A.C. / 21.0" A.B.)2	20,000	SF	\$9.50	\$190,000	20,000	SF	\$9.50	\$190,000
A.20	Sawcut Pavement (SR-99 N/B Off Ramp)	1,000	LF	\$2.00	\$2,000	1,000	LF	\$2.00	\$2,000
E.11	SR-99 N/B Off-Ramp Signage and Striping	1	LS	\$25,000.00	\$25,000	1.00	LS	\$25,000	\$25,000
E.12	SR-99 N/B Off-Ramp Retaining Walls and other Misc.	1	LS	\$400,000.00	\$400,000	1.00	LS	\$400,000	\$400,000
Subtotal Direct Costs Ramp Improvements					\$812,600	\$812,600			
Subtotal Ramp Improvements - Soft and Indirect Costs [Note 3]					\$277,476	\$277,554			
Total Ramp Improvements Costs					\$1,090,076	\$1,090,154			

IX. SANITARY SEWER

B.1	Connect to Existing Sewer	1	EA	\$2,200.00	\$2,200	1.00	EA	\$2,200	\$2,200
B.2	15" PVC - Non Parcel Frontage	2,324	LF	\$80.00	\$185,920	2,324	LF	\$80	\$185,920
B.3	15" PVC - Along Parcel Frontage	1,280	LF	\$80.00	\$102,400	1,280	LF	\$68	\$86,400
B.4	15" PVC (including trench repair)	1,006	LF	\$110.00	\$110,660	1,006	LF	\$110	\$110,660
B.5	24" PVC (including trench repair)	319	LF	\$235.00	\$74,965	319	LF	\$235	\$74,965
B.6	48" Diameter Sanitary Sewer Manhole	11	EA	\$4,700.00	\$51,700	11	EA	\$4,700	\$51,700
B.7	48" Diameter Sanitary Sewer Manhole (in exsiting pavement)	5	EA	\$8,000.00	\$40,000	5	EA	\$8,000	\$40,000
Subtotal Direct Costs Sanitary Sewer Improvements					\$567,845	\$551,845			
Subtotal Sanitary Sewer - Soft and Indirect Costs [Note 3]					\$193,900	\$188,489			
Total Sanitary Sewer Costs					\$761,745	\$740,334			

X. CITY STORM DRAINAGE FACILITY

C.1	30" CL III RCP	1,318 LF	\$120.00	\$158,160	1,318 LF	\$120	\$158,160
C.2	18" CL III RCP	1,473 LF	\$58.00	\$85,434	1,473 LF	\$58	\$85,434
C.3	12" CL III RCP	236 LF	\$55.00	\$12,980	236 LF	\$55	\$12,980
C.4	12" CL III RCP (in existing pavement)	90 LF	\$95.00	\$8,550	90 LF	\$95	\$8,550
C.5	Storm Drain Manhole	7 EA	\$6,000.00	\$42,000	7 EA	\$6,000	\$42,000
C.6	Temporary Drain Inlet	3 EA	\$2,000.00	\$6,000	3 EA	\$2,000	\$6,000
C.7	Curb Inlet	7 EA	\$5,200.00	\$36,400	7 EA	\$5,200	\$36,400
Subtotal Direct Costs City Storm Drain Improvements				\$349,524			
Subtotal City Storm Drain - Soft and Indirect Costs [Note 3]				\$119,351			
Total City Storm Drainage Facility Costs				\$468,875			

XI. UN-USED IMPROVEMENT CATEGORY

XII. WATER SYSTEM IMPROVEMENTS

D.1	24" PVC Main, incl. gate valves - Non Parcel Frontage	2,278 LF	\$215.00	\$489,770	2,278 LF	\$215	\$489,770
D.2	24" PVC Main, incl. gate valves - Along Parcel Frontage	2,500 LF	\$215.00	\$537,500	2,500 LF	\$203	\$506,250
D.3	24" PVC Main (including trench repair)	44 LF	\$235.00	\$10,340	44 LF	\$235	\$10,340
D.4	Fire Hydrant Assembly	4 EA	\$5,500.00	\$22,000	4 EA	\$0	\$0
D.5	Connect to Existing Water	1 EA	\$5,700.00	\$5,700	1 EA	\$5,700	\$5,700
Subtotal Direct Costs Water System Improvements				\$1,065,310			
Subtotal Water System - Soft and Indirect Costs [Note 3]				\$363,768			
Total Water System Costs				\$1,429,078			

XIII. OFF-SITE TRAFFIC MITIGATION FEES

Cumulative Year Traffic Mitigation Fees	1 LS	\$733,798	\$733,798	1.00 LS	\$733,798	\$733,798
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TOTAL INFRASTRUCTURE IMPROVEMENT COSTS***\$8,124,831****TOTAL REIMBURSEMENT AMOUNT*****\$6,866,004**

*A Municipal Water Well will be developed as part of the Infrastructure Improvements. The Costs of the Water Well are not included in this Schedule of Costs and Reimbursements, though 100% of Well Development Costs are eligible for Reimbursement.

NOTES:

- 1.) [R] = Project Frontage or Other Project Improvement
[AO] = Additional "Oversized" Improvement Required by City
- 2.) Northbound Off-ramp pavement section is based on Caltrans Project Study Report (PSR).
- 3.) Soft and Indirect Costs Include Contingencies (10%), Engineering (10%), Contractor Overhead (10%); Traffic Control, Construction Staking, Plan Check and Inspection



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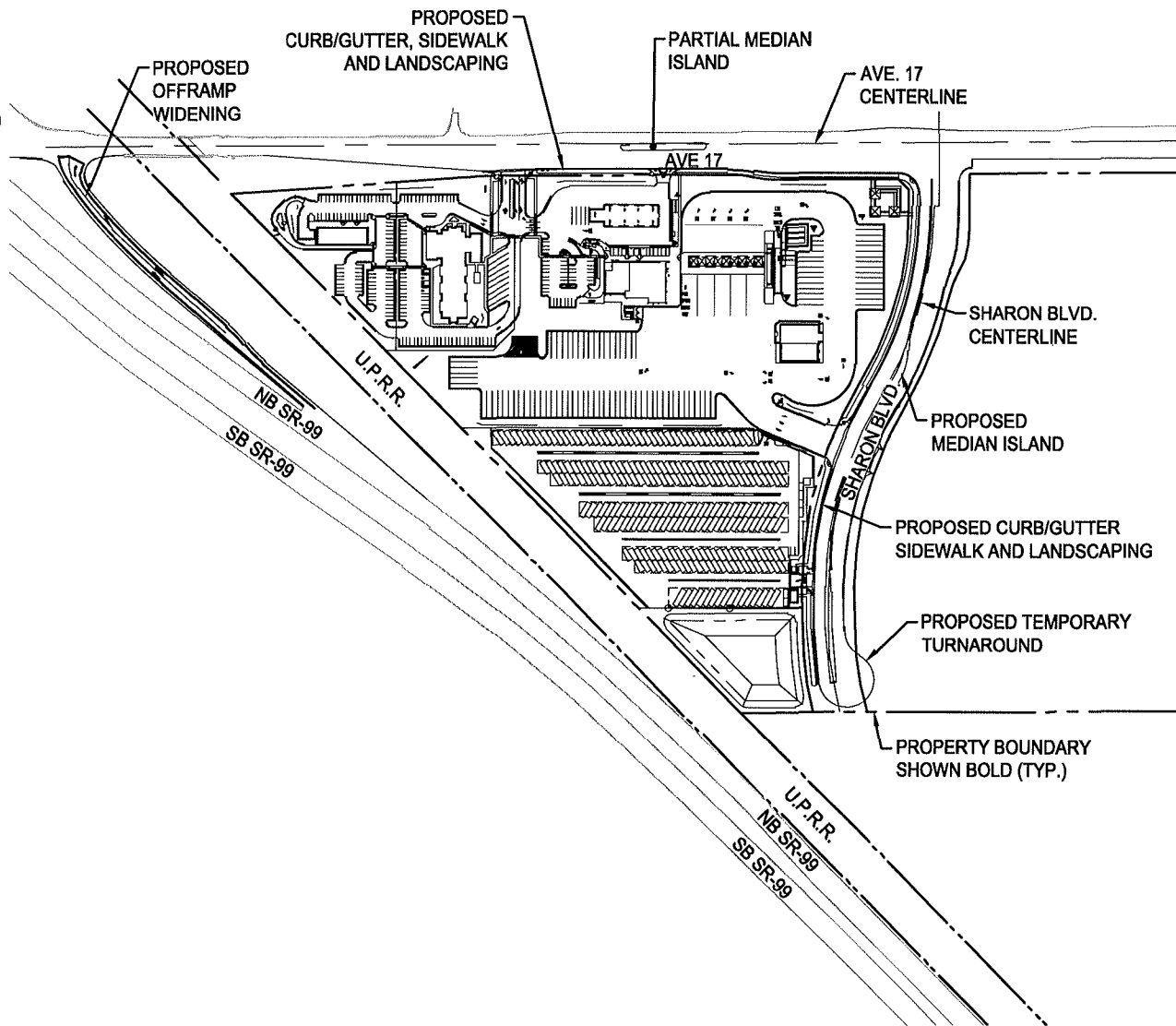
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NORTH



EXHIBIT 'E'
ROADWAY IMPROVEMENTS

SHEET 1 OF 2



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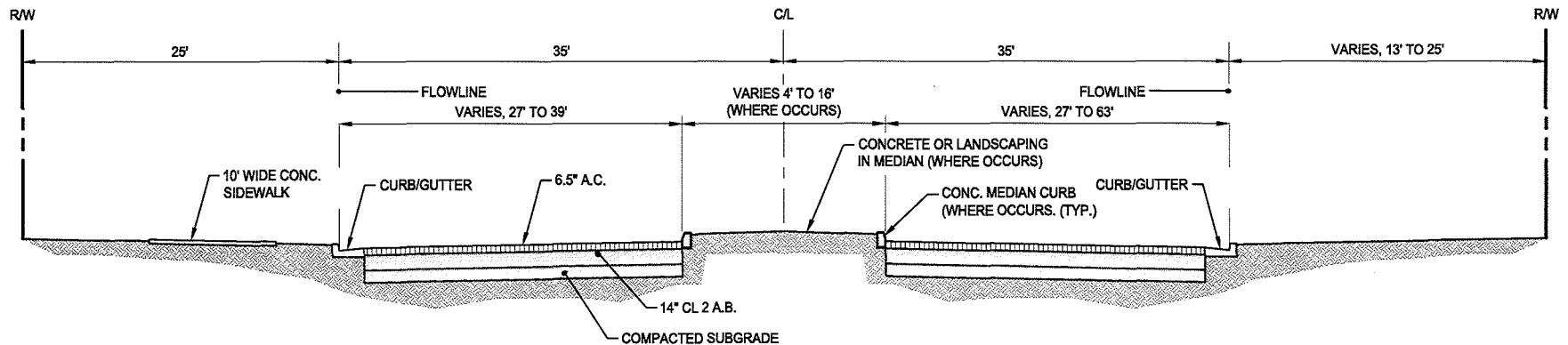
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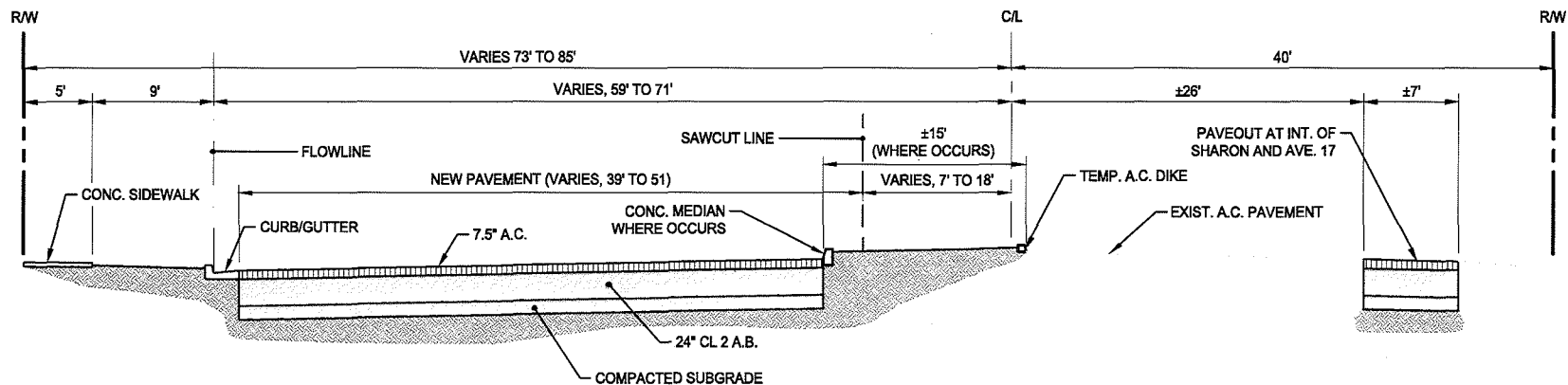
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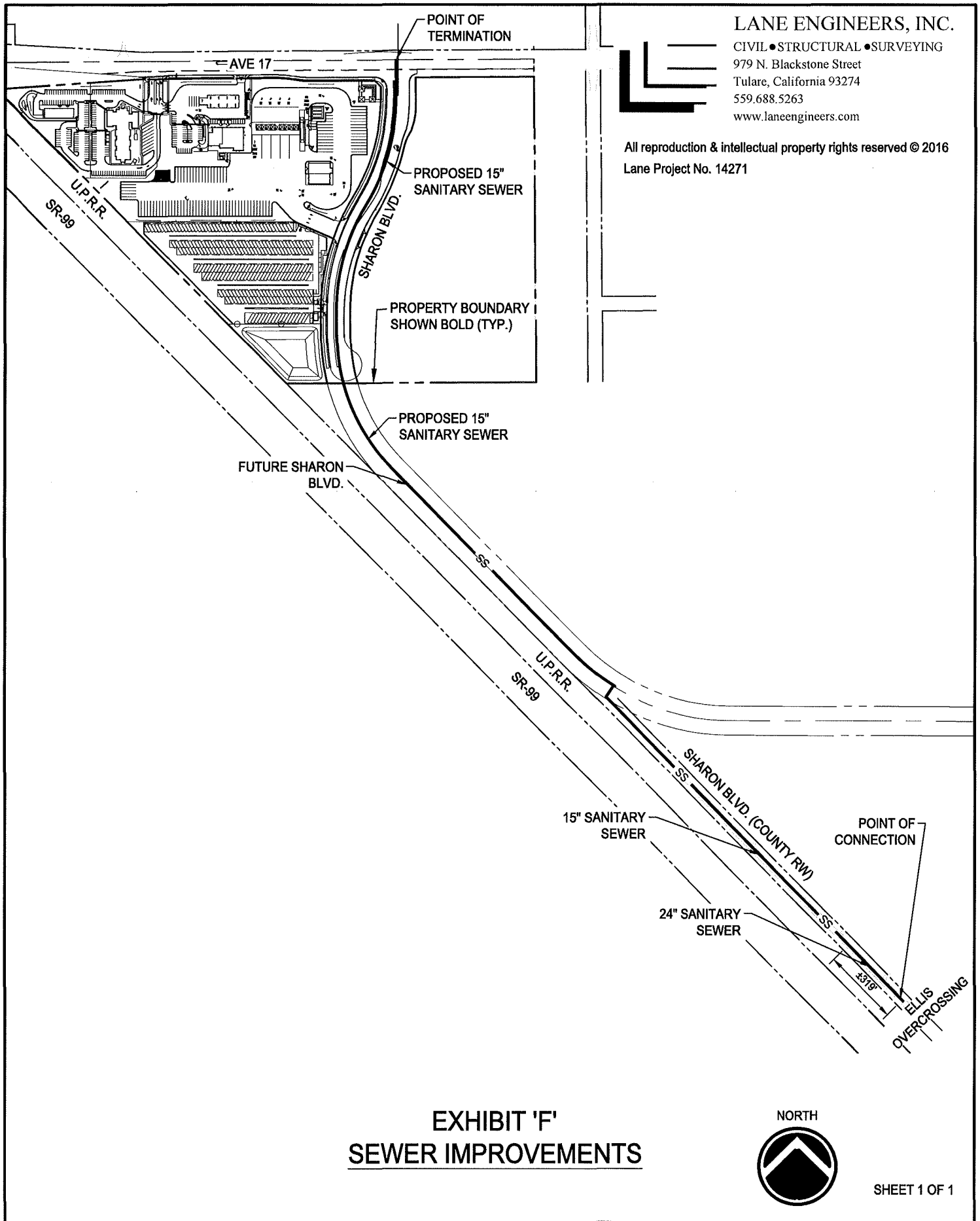


SHARON BOULEVARD STREET SECTION (LOOKING NORTH)



AVENUE 17 STREET SECTION (LOOKING NORTH)

EXHIBIT 'E'
ROADWAY IMPROVEMENTS



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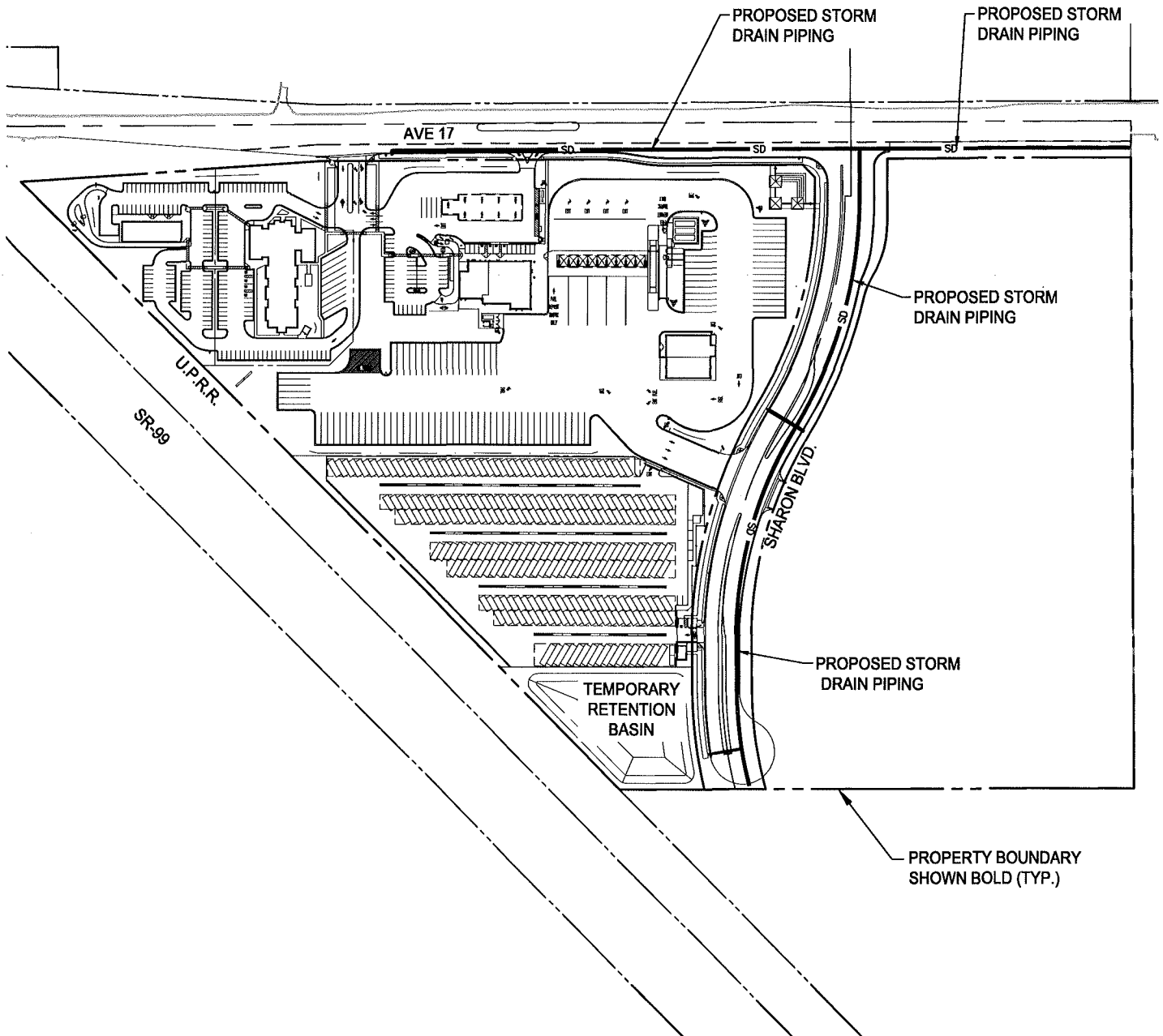


EXHIBIT 'G'
STORM DRAIN IMPROVEMENTS



SHEET 1 OF 1



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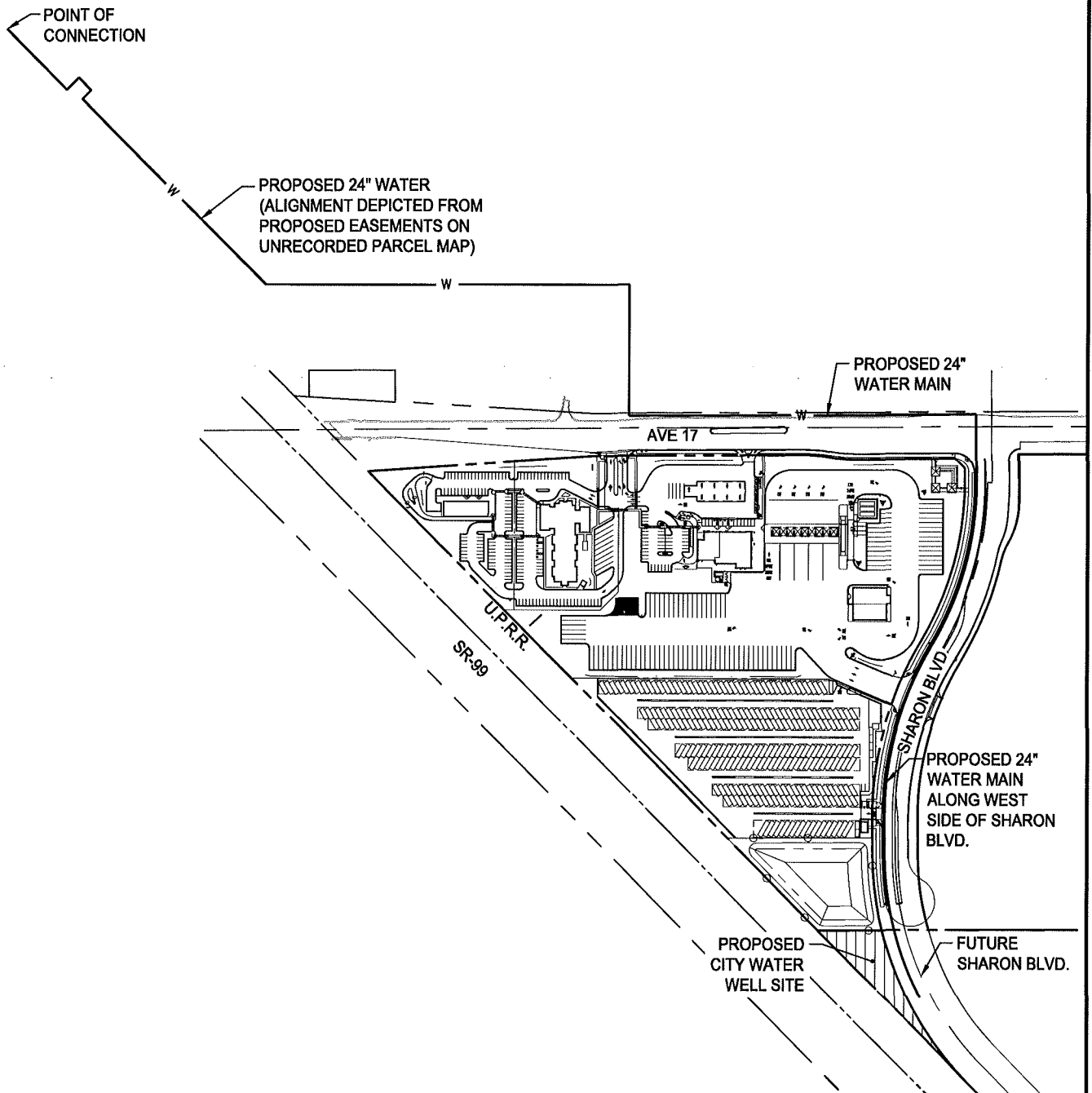


EXHIBIT 'H'
WATER IMPROVEMENTS



SHEET 1 OF 1



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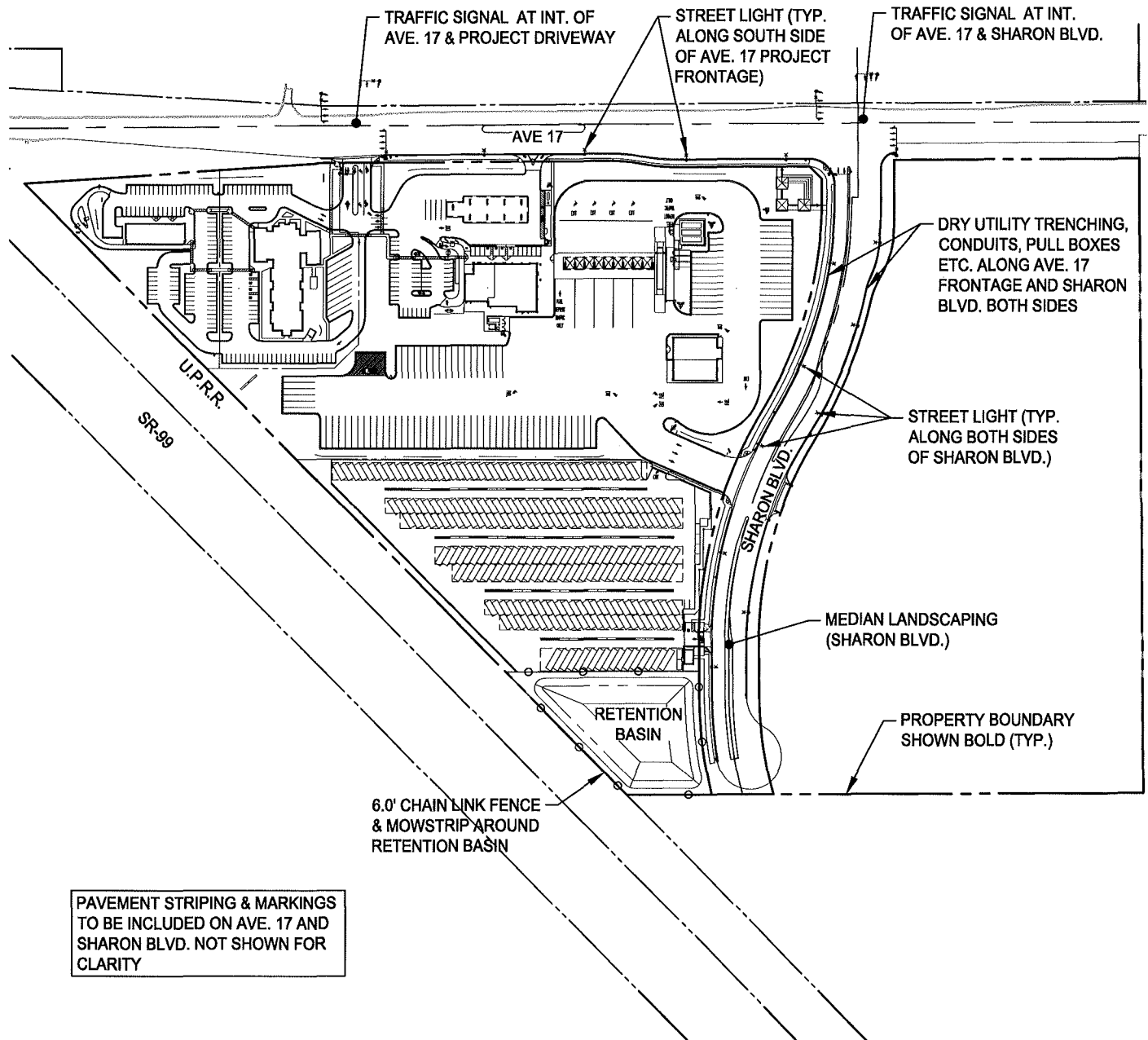


EXHIBIT 'I'
DRY UTILITY AND MISC. IMPROVEMENTS



SHEET 1 OF 1

EXHIBIT J

Form of Assumption and Assignment Agreement

OFFICIAL BUSINESS

Document entitled to free recording
Government Code Section 6103

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Madera
205 West Fourth Street
Madera, CA 93637
Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made by and between Love's Country Stores of California, Inc., a California Corporation ("Love's"), and _____, a _____ ("Assignee").

RECITALS

1. On _____, 2016, the City of Madera and Love's entered into that certain "Development Agreement" (the "Development Agreement"). Pursuant to the Development Agreement, Love's agreed to develop the Project Site (as that term is defined in the Development Agreement) as set forth in the Development Agreement. The Development Agreement was recorded against the Property in the Official Records of Madera County on _____, 20____, as Instrument No. 20____ - _____.
2. Love's intends to convey the Project Site (or a portion thereof) to Assignee, as more particularly identified and described in Exhibit A attached hereto and incorporated herein by this reference (the "Assigned Parcel").
3. Love's desires to assign and Assignee desires to assume all of Love's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Assigned Parcel.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, Love's and Assignee hereby agree as follows:

1. Love's hereby assigns, effective as of its conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations of Love's under the Development Agreement with respect to the Assigned Parcel. Love's retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect the Project Site other than the Assigned Parcel, if any.

2. Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Love's under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Love's under the Development Agreement with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for Love's as the "Developer" under the Development Agreement with respect to the Assigned Parcel.

3. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. The Notice Address described in the Development Agreement with respect to the Assigned Parcel shall be:

5. This Agreement may be signed in identical counterparts.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of this ____ day of _____, 20____.

Love's Country Stores
of California, Inc.

ASSIGNEE:

_____/

a _____

a _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____