



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

**CITY HALL – COUNCIL CHAMBERS
TUESDAY
December 8th, 2020
6:00 pm**

This meeting will be conducted pursuant to the provisions of the Governor’s Executive Order which suspends certain requirements of the Ralph M. Brown Act. Members of the public may participate in the meeting remotely through an electronic meeting in the following ways; via phone by dialing (669) 900-6833 enter ID: [94715229957#](tel:94715229957) followed by *9 on your phone when prompted to signal you would like to speak, or by computer at <https://www.zoom.us/j/94715229957>. Public comment will also be accepted via email at planningcommissionpubliccomment@madera.gov.

CALL TO ORDER

ROLL CALL

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

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, but are not required, to identify themselves and state the subject of their comments. If the subject is an item on the Agenda, the Chairperson has the option of asking the speaker to hold the comment until the hearing is opened. 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

PUBLIC HEARING ITEMS:

1. SPR 2020-10 & CUP 2020-10 – Discount Cigarette Shop

A noticed public hearing to adopt a resolution denying Site Plan Review 2020-10 and Conditional Use Permit 2020-10. Originally noticed public hearing to consider a resolution to adopt findings of categorical exemption pursuant to CEQA Guidelines, Section 15301 (Existing Facilities) and to approve SPR 2020-10 and CUP 2020-10 approving the establishment of a discount cigarette shop (Mad-Town Smoke Shop) for the purpose of selling cigarettes and tobacco accessories, including vaping products, as well as other merchandise at 319 W. Olive Ave. This item is a continuance from the November 10, 2020 Planning Commission meeting with direction to staff to prepare a resolution affirming the Planning Commission's November 10, 2020 tentative decision to deny Site Plan Review 2020-10 & Conditional Use Permit 2020-10.

2. TSM 2020-04 – Vineyard West Phase III

TSM 2020-04 is an application for a 137-lot single family residential subdivision (Vineyard West Phase II). The subject property is located on an approximately 30.45-acre parcel bounded by Riverview Drive to the north, Caitlan Drive to the east, Sunset Avenue to the south, and the Road 24 Alignment to the west. The proposed subdivision is consistent with a previously adopted Mitigated Negative Declaration.

3. TPM 2019-03 MOD – Pecan Square Modification to Conditions of Approval

A noticed public hearing to clarify a condition of approval to make clear that the dedication of park land is required prior to just the recordation of Tentative Subdivision Map (TSM) 2019-03 and not prior to the recordation of Tentative Parcel Map (TPM) 2019-03. The subject property is approximately 76.25 acres in total and is located at the southwest corner of Madera Ave. (State Route 145) and Pecan Ave. with PD-6000, PD-3000, PD-1500 (Planned Development) and CN (Commercial Neighborhood) Zone Districts and LD (Low Density Residential), MD (Medium Density Residential), HD (High Density Residential) and C (Commercial) General Plan land use designations (APN: 012-480-005). The modification is a mere clarification as to process regarding timing and will not affect the physical environment in any way. No further analysis is required under the California Environmental Quality Act (CEQA).

4. Madera Town Center - Development Agreement Annual Review

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, 2019. 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 has complied in good faith with the terms of the development agreement. (APN: 013-240-001)

NON-PUBLIC HEARING ITEMS:

1. Adoption of the 2021 Planning Commission Meeting Calendar

ELECTION OF OFFICERS:

1. Election to Fill Planning Commission Chairperson Vacancy

ADMINISTRATIVE REPORTS:

COMMISSIONER REPORTS:

ADJOURNMENT:

The next regular meeting will be held on January 12th, 2021.

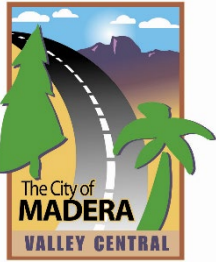
In compliance with the Americans with Disabilities Act, the meeting room is accessible to the physically disabled and the services of a translator can be made available. Requests for additional accommodations for the disabled, signers, assistive listening devices or translators needed to assist participation 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

Supplemental Staff Report: Discount Cigarette Shop SPR 2020-10 & CUP 2020-10 Item # 1 – December 8, 2020

PROPOSAL: Applications for a site plan review (SPR 2020-10) and conditional use permit (CUP 2020-10) to establish a discount cigarette shop (Mad-Town Smoke Shop) was heard at the November 10, 2020 Planning Commission hearing. The Planning Commission made a tentative determination that the proposed use, which would sell cigarettes and tobacco accessories in an existing commercial building, did not meet public health and safety requirements and directed City staff to return with an updated resolution with appropriate findings for denial. This item is to present the findings for denial to Planning Commission for action.

APPLICANT:	Mukhtar Quhshi Khaled Sharhan 9126 Road 24 Madera, CA 93637	OWNER:	Shawn Bidsal West Coast Investments Inc. 14039 Sherman Way Suite 2 Van Nuys, CA 91405
SITE ADDRESS:	319 W. Olive Ave	APN:	010-202-016
APPLICATIONS:	SPR 2020-10 CUP 2020-10	CEQA:	Exemption

This staff report supplements the staff report presented to the Planning Commission meeting of November 10, 2020. At that meeting, staff made its presentation, and a public hearing was held. The complete staff report and packet is attached for your reference, as well as written comments received.

During the public hearing there were comments received in opposition to the approval of Site Plan Review 2020-10 (SPR 2020-10) and Conditional Use Permit 2020-10 (CUP 2020-10), including from the Madera County Department of Public Health. After the public hearing was closed, the Planning Commission discussed the matter and then made the following motion: Continue the application for Site Plan Review 2020-10 and Conditional Use Permit 2020-10 to the December 8, 2020 Planning Commission hearing with direction to staff to return with an updated resolution with appropriate findings for denial.

The Planning Commission also identified grounds for denial to be included in the draft resolution including location of the proposed smoke shop in proximity to schools and stores already permitted to sell tobacco products as well as the negative impact on public health, specifically on youth, resulting from increased access to smoke shops relative to areas of high youth activity. The motion passed 4 to 2, and this matter was continued to the meeting of December 8, 2020.

City staff have returned to the Planning Commission with a resolution as directed. Although the initial direction was to deny the CUP as all the appropriate findings can be made to approve the Site Plan, in the present matter a Site Plan Review as proposed cannot be approved without a valid Conditional Use Permit. As such, denial of Conditional Use Permit 2020-10 would also require denial of Site Plan Review 2020-10.

RECOMMENDATION

If the Planning Commission wishes to affirm its tentative decision to deny CUP 2020-10, the Commission must adopt a resolution to deny. Given the public hearing has been closed, the Planning Commission is not required to re-open the public hearing for this meeting but has the option to do so if it so chooses.

PLANNING COMMISSION ACTION

As directed by the Planning Commission, staff has prepared and returned with a resolution. If the Planning Commission wishes to affirm its tentative decision to deny SPR 2020-10 and CUP 2020-10, the Commission may adopt the resolution, which will deny SPR 2020-10 and CUP 2020-10 as follows:

Motion 1: Motion to adopt a resolution of the Planning Commission of the City of Madera denying Site Plan Review 2020-10 and Conditional Use Permit 2020-10.

(OR)

As a decision has not yet been finally rendered by the Planning Commission, in the alternative the Planning Commission may also choose to take the following action if desired:

Motion 2: Move to adopt a resolution of the Planning Commission of the City of Madera adopting a Finding of a Categorical Exemption pursuant to CEQA Guidelines Section 15301 (Existing Facilities), approving Site Plan Review 2020-10 and Conditional Use Permit 2020-10, based on and subject to the findings and conditions of approval as set forth in the staff report of November 10, 2020 and the attached resolution;

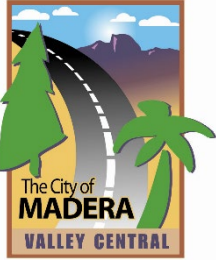
(OR)

Motion 3: Move to continue the public hearing on Site Plan Review 2020-10 and Conditional Use Permit 2020-10 to January 12, 2021, with direction to staff to return with an updated resolution as follows: (Specify – Planning Commission should specify the nature of the updated resolution.)

ATTACHMENTS

- Attachment 1: Planning Commission Staff Report Packet for Categorical Exemption, SPR 2020-10, and CUP 2020-10
- Attachment 2: Madera County Department of Public Health Comments
- Attachment 3: Planning Commission Resolution for Denial

**Attachment 1: Planning Commission Staff Report Packet for Categorical Exemption, SPR
2020-10 and CUP 2020-10**



CITY OF MADERA PLANNING COMMISSION

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

Staff Report: Discount Cigarette Shop SPR 2020-10 and CUP 2020-10 Item # 1 – November 10, 2020

PROPOSAL: An application for a site plan review (SPR 2020-10) and conditional use permit (CUP 2020-10) to establish a discount cigarette shop (Mad-Town Smoke Shop). The shop will sell cigarettes and tobacco accessories, including vaping products, as well as other merchandise like hats and shirts. The shop proposes to occupy a vacant tenant space of approximately 1,617 square feet in an existing commercial building. No construction is proposed, except for minor interior change to improve the tenant space.

APPLICANT:	Mukhtar Quhshi Khaled Sharhan 9126 Road 24 Madera, CA 93637	OWNER:	Shawn Bidsal West Coast Investments Inc. 14039 Sherman Way Suite 2 Van Nuys, CA 91405
SITE ADDRESS:	319 W. Olive Ave	APN:	010-202-016
APPLICATIONS:	SPR 2020-10 CUP 2020-10	CEQA:	Exemption

LOCATION: The project site is a vacant tenant space (319 W. Olive Ave) located at the Bethard Square shopping center at the northwest corner of W. Olive Ave. and S. I St. within an existing commercial building.

STREET ACCESS: The project site has street access from W. Olive Ave and S. I St.

PROJECT SIZE: The tenant space is approximately 1,617 square feet

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: C1 (Light Commercial)

SITE CHARACTERISTICS: The project will occupy a vacant tenant space (319 W. Olive Ave) located in an existing commercial building. The commercial building is part of the Bethard Square development at the northwest corner of W. Olive Ave and S. I St. The shopping center has other commercial and service uses within the center. Surrounding property uses to the east and south include an urgent care, a restaurant, and an auto parts store. Additionally, residential uses are located to the north and west of the shopping

center. The project site and surrounding area to the east and south is designated and zoned for commercial uses, while the parcels to the north and west are designated and zoned for residential uses.

ENVIRONMENTAL REVIEW: An exemption has been prepared consistent with Section 15301 (Existing Facilities) of California Environmental Quality Act (CEQA) Guidelines.

SUMMARY: The applicants, Mukhtar Quhshi and Khaled Sharhan, propose to install a discount cigarette shop (Mad-Town Smoke Shop) into an existing vacant tenant space. The project will include minimal interior changes to the space.

The proposed use is consistent with the current C1 (Light Commercial) zone district. After review of the proposed project, the cigarette shop is anticipated to be compatible with existing commercial uses in the shopping center and the surrounding uses. Conditions, as appropriate, have been recommended for the site plan review (SPR 2020-10) and the conditional use permit (CUP 2020-10) to ensure consistency with the Zoning Ordinance and General Plan.

APPLICABLE CITY CODES AND PROCEDURES

Site Plan Review

MMC § 10-3.4.0102 Site Plan Review Applicability

A site plan review is required for all projects which require a use permit, including a change of use where no on-site construction is proposed. If the Commission cannot make the appropriate findings, the development should be denied. Conditions may be attached to the approval of the site plan 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.

Conditional Use Permit

MMC § 10-3.1301 – MMC § 10.3.1311 Use Permits

Subject to the Planning Commission's approval of Determination of Use (DOU 2015-01), the sale of tobacco requires a conditional use permit. The City's Zoning Ordinance allows for the granting of a use permit by the Planning Commission subject to the Planning 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 even after imposing appropriate conditions, the use permit should be denied. Conditions may be attached to the approval of the use permit to ensure compatibility. In addition, the application may be subject to further review, modification, or revocation by the Commission as necessary.

Development and Operational Standards

MMC § 10-3.801 - MMC § 10-3.805 Light Commercial Zones

MMC § 5-8.03 Self Service Displays Prohibited

The project site is subject to the development standards of the C1 zone district. The proposed use will be occupying an existing tenant space and there are no improvements proposed or required on-site for the establishment of the proposed use. Title 5, Chapter 8 (Ban on Self Service Tobacco Displays) will apply to the conditional use permit required for the sale of tobacco products.

ANALYSIS

Site Plan Review

The project is proposing to make minor interior changes to a commercial tenant space to accommodate a discount cigarette shop. The facility is located within an existing commercial strip development, with nearby residential uses.

The tenant space was developed for commercial use and has accommodated a variety of commercial uses during its existence. The site has sufficient utility service and will not put additional stress on the City of Madera's public infrastructure and utilities systems. The necessary water, electricity, and waste services associated with the commercial use are available on-site as it is located within an existing commercial strip development. Off-street parking is available in front of the building.

Conditional Use Permit

In September 2015, the Planning Commission concluded through the determination of use process that the sale of tobacco and tobacco related products and sundries would require the approval of a use permit. With this action (DOU 2015-01), the Commission noted its concerns that tobacco sales be located sensibly within the commercial areas of the City, mindful of surrounding land uses. The project site is located in a commercial strip development with some residential uses adjacent to the north and west. Given that all findings required by the Municipal Code Section 10-3.1307 for the tobacco CUP can be made, staff recommends approval of the proposed conditional use permit (CUP 2020-10).

Title 5, Chapter 8 of the Madera Municipal Code prohibits the self-service sale of tobacco products. The cigarette shop will be equipped with counters to ensure that all buyers are served by sellers, rather than having self-service tobacco products available. This is to prevent the increased incidence of shoplifting and underage smoking.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Staff have performed a preliminary environmental assessment and have determined that the project is exempt under Section 15301 of the State CEQA Guidelines because the project will occupy an existing building on an existing lot with existing services and utilities, and any modifications to the structure will only be minor interior changes involving negligible or no expansion of existing or former commercial use. Further, none of the exceptions under Section 15300.2 of the CEQA Guidelines are applicable to this project.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Though approval of a cigarette shop is not specifically addressed in the vision or action plans, the overall project does indirectly support one of the four visions for the City: Good Jobs and Economic Opportunities. This principle recognizes the need to provide commercial opportunities within the City.

RECOMMENDATION

The information presented in this report provides support for the adoption of a resolution conditionally approving Site Plan Review 2020-10 and a resolution conditionally approving Conditional Use Permit 2020-10. It is recommended that the Commission consider the information in this report, as well as

testimony received at the public hearing, and make a determination on Site Plan Review 2020-10 and Conditional Use Permit 2020-10, subject to the findings and conditions of approval.

PLANNING COMMISSION ACTION

The Commission will be acting on the Categorical Exemption, Site Plan Review 2020-10 and Conditional Use Permit 2020-10 and determining to either:

- Adopt a resolution adopting a Finding of a Categorical Exemption pursuant to CEQA Guidelines Section 15301 for the project, and approving Site Plan Review 2020-10 as conditioned and Conditional Use Permit 2020-10 as conditioned (Motion 1); or
- Continue the hearing to December 8, 2020, with direction to staff to return with an updated resolution with appropriate findings modifying the conditions of approval for the following reasons: (Specify – Planning Commission should articulate reasons for modifications to findings and conditions of approval) (Motion 2); or
- Move to continue the application for Site Plan Review 2020-10 and Conditional Use Permit 2020-10 to the December 8, 2020 Planning Commission hearing with direction to staff to return with an updated resolution with appropriate findings for denial for the following reasons: (Specify – Planning Commission should articulate reasons for denial.)(Motion 3).

Motion 1: Move to adopt a resolution of the Planning Commission of the City of Madera adopting a Finding of a Categorical Exemption pursuant to CEQA Guidelines Section 15301 (Existing Facilities), approving Site Plan Review 2020-10 and Conditional Use Permit 2020-10, based on and subject to the findings and conditions of approval as follows:

Findings to Approve a Site Plan Review

Finding a: The proposal is consistent with the General Plan and Zoning Ordinance.

The property is zoned C1 (Light Commercial), which is consistent with the existing General Plan land use designation of C (Commercial). The tenant space being occupied is located within an existing commercial building. While minor changes will be required to improve the tenant space prior to occupancy, no on-site improvements are proposed or required. Site Plan Review 2020-10 is consistent with the purpose and intent of the C1 (Light Commercial) zone district and does not conflict with City standards or other provisions of the Code.

Finding b: The proposal is consistent with any applicable specific plans.

The project site is not subject to any applicable specific plans.

Finding c: The proposed project includes facilities and improvements; vehicular and pedestrian ingress, egress, and internal circulation; and location of structures, services, walls, landscaping, and drainage that are so arranged that traffic congestion is avoided, pedestrian and vehicular safety and welfare are protected, there will be no adverse effects on surrounding property, light is deflected away from adjoining properties and public streets, and environmental impacts are reduced to acceptable levels.

Site Plan Review 2020-10 has been reviewed and is consistent with surrounding uses. The project includes the use of an existing building that is located within a developed shopping center with adequate improvements and parking already installed. The project will not generate significant amounts of noise, light, or traffic.

Finding d: The proposed project is consistent with established legislative policies relating to traffic safety, street dedications, street improvements, and environmental quality.

Site Plan Review 2020-10 requires no street improvements as it is located within an existing commercial center with adequate improvements and parking already installed. The project will not have a significant impact on traffic or the environment.

Findings to Approve a Conditional Use Permit

Finding a: The proposal is consistent with the General Plan and Zoning Ordinance.

The property is zoned C1 (Light Commercial), which is consistent with the existing General Plan land use designation of C (Commercial). The proposed use (cigarette shop) is conditionally permitted, based on the Planning Commission's approval of DOU 2015-01. Conditional Use Permit 2020-10, subject to the conditions of approval, is consistent with the purpose and intent of the C1 (Light Commercial) zone district and does not conflict with City standards or other provisions of the Code.

Finding b: The proposed use will be compatible with the surrounding properties.

The project site is suited for commercial sales. The project site is located within a larger commercial shopping center and is surrounded by other commercial uses to the east and south, with residential uses to the north and west. As conditioned, the sale of certain tobacco products for off-site consumption will be compatible with surrounding properties and is consistent with applicable requirements regulating such use.

Finding c: The establishment, maintenance, or operation of the use or building applied for 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 such proposed use or be detrimental or injurious to property and improvements in the neighborhood or general welfare of the city.

As discussed above, the proposed use is compatible with surrounding properties and will not have a significant, adverse environmental impact. The Madera Police Department has reviewed the project and did not oppose the proposed use, and there is no evidence in the administrative record of the following:

- The commission of three or more violent felonies (crimes against the person) and/or narcotic or dangerous drug sales within the subject premises or in the area immediately adjacent thereto.
- The arrest of the owner and/or an employee for violations occurring within the subject premises, or in the area immediately adjacent thereto, which violations can be found to be reasonably related to the operation of the business.

- The sustaining by the subject premises of an administrative suspension or revocation or other such sanction as may be imposed by the California State Department of Alcoholic Beverage Control, including payment in lieu of such suspension or revocation.
- The failure by the owner or other person responsible for the operation of the premises to take reasonable steps to correct objectionable conditions after having been placed on notice by the official of the City that such conditions exist. Such official may include, but not be limited to the: Code Enforcement Officer, Police Chief, Fire Marshall or City Attorney. Objectionable conditions may include, but not be limited to, disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking or excessive loud noise. Such conduct shall be attributable to the subject premises whether occurring within the subject premises or in the area immediately adjacent thereto.

(OR)

Motion 2: Move to continue the public hearing on SPR 2020-10 and CUP 2020-10 to the December 8, 2020 with direction to staff to return with an updated resolution with appropriate findings modifying the conditions of approval for the following reasons: (Specify – Planning Commission should articulate reasons for modifications to findings and conditions of approval)

(OR)

Motion 3: Move to continue the application for Site Plan Review 2020-10 and Conditional Use Permit 2020-10 to the December 8, 2020 Planning Commission hearing with direction to staff to return with an updated resolution with appropriate findings for denial for the following reasons: (Specify – Planning Commission should articulate reasons for denial.)

ATTACHMENTS

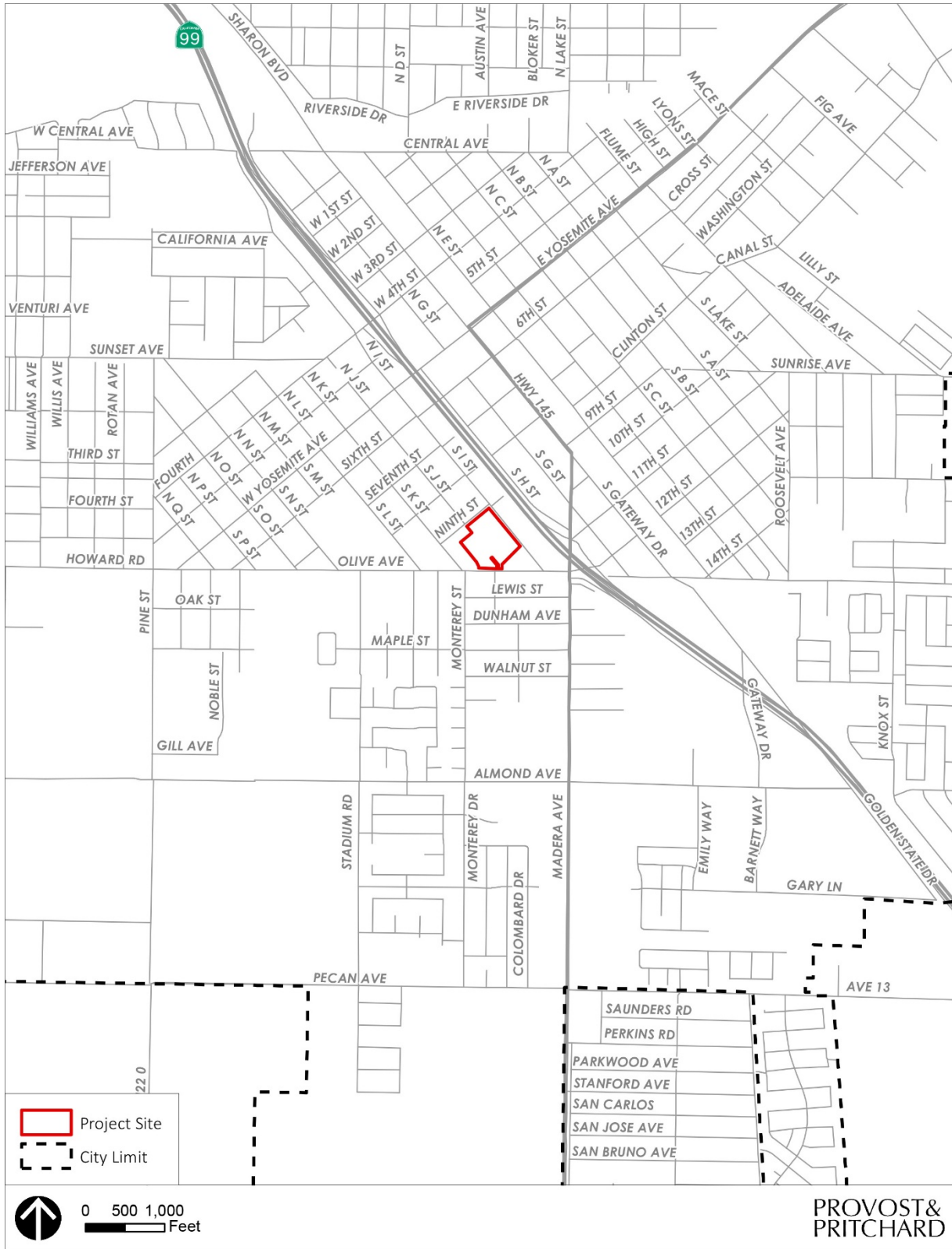
Attachment 1: Vicinity Map

Attachment 2: Aerial Photo

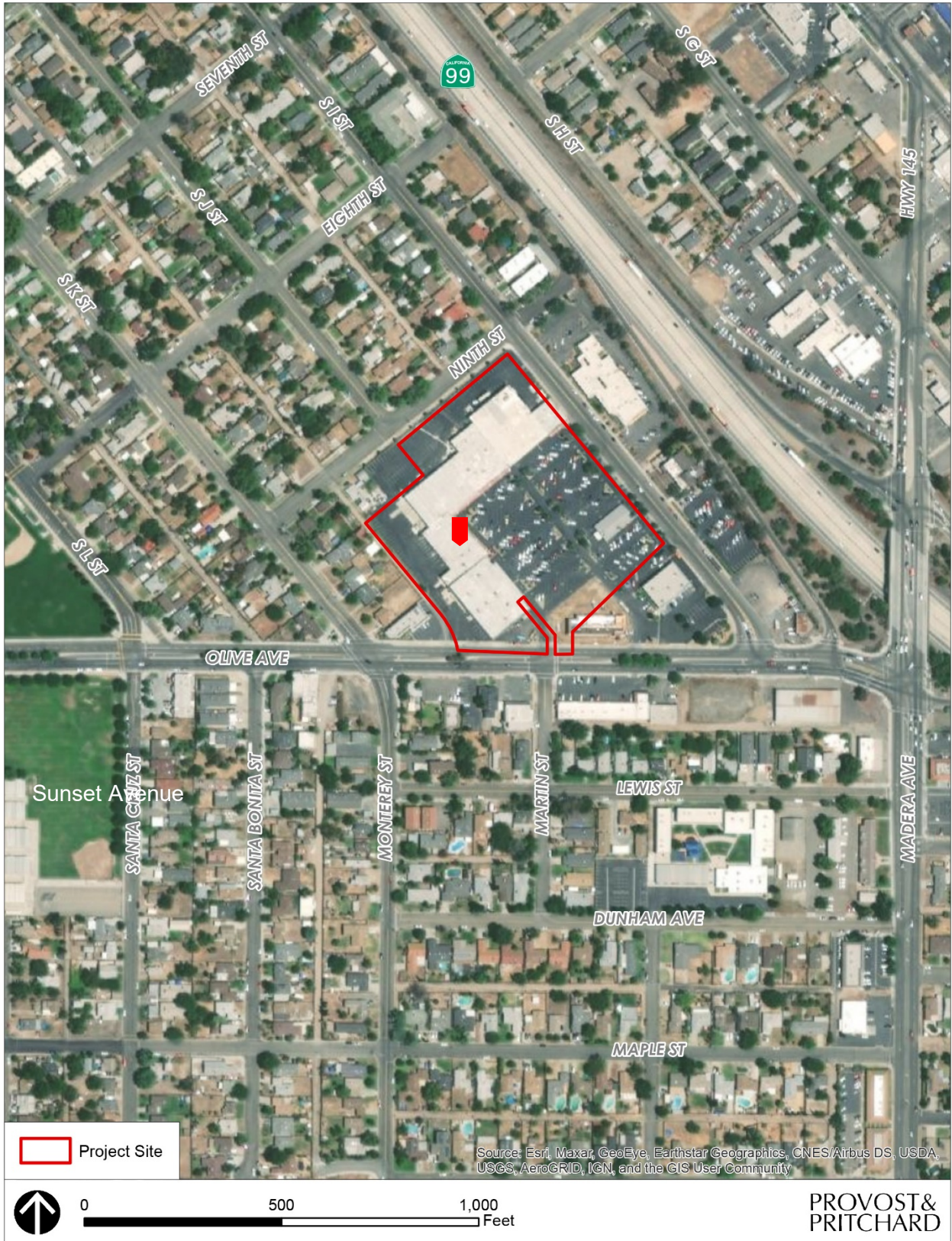
Attachment 3: Tenant Space Plan

Attachment 4: Planning Commission Resolution for Categorical Exemption, SPR 2020-10, and CUP 2020-10

Attachment 1: Vicinity Map



Attachment 2: Aerial Photo



**Attachment 4: Planning Commission Resolution for Categorical Exemption, SPR 2020-10 and
CUP 2020-10**

RESOLUTION NO. 1862

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA
ADOPTING A CATEGORICAL EXEMPTION PURSUANT TO CEQA GUIDELINES
SECTION 15301 (EXISTING FACILITIES) AND APPROVING SITE PLAN REVIEW
2020-10 AND CONDITIONAL USE PERMIT 2020-10 (DISCOUNT CIGARETTE SHOP,
319 WEST OLIVE AVENUE)**

WHEREAS, Shawn Bidsal (“Owner”) owns an existing commercial building at 319 West Olive Avenue in Madera, California (“site”); and

WHEREAS, Mukhtar Quhshi and Khaled Sharhan (“Applicants”) are acting on behalf of the Owner (“site”); and

WHEREAS, the site contains an existing commercial building that is planned for and surrounded by commercial uses; and

WHEREAS, the Applicants are seeking a site plan review (SPR) to allow for a new use to be located within a tenant space within the existing commercial building on APN 010-202-016, as proposed by SPR 2020-10; and

WHEREAS, the Applicants are seeking a conditional use permit (CUP) to establish a discount cigarette shop, to be located within a tenant space within the existing commercial building on APN 010-202-016; and

WHEREAS, based on a preliminary environmental assessment, this project would be subject to a Class 1 (Existing Facilities) categorical exemption (CEQA Guidelines Section 15301) ;

WHEREAS, a Categorical Exemption has been prepared in accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et. seq.; and

WHEREAS, under the City’s Municipal Code, the Planning Commission is authorized to review and approve site plan reviews, conditional use permits and environmental assessments for associated projects on behalf of the City; and

WHEREAS, the City provided notice of the Planning Commission hearing as required by law; and

WHEREAS, the Planning Commission received and reviewed SPR 2020-10 and CUP 2020-10 at a duly noticed meeting on November 10, 2020; and

WHEREAS, a public hearing was held, the public was provided an opportunity to comment, and evidence, both written and oral, was considered by the Planning Commission; and

WHEREAS, the Planning Commission now desires to adopt a Categorical Exemption for the project, and approve SPR 2020-10 and CUP 2020-10, with conditions.

NOW THEREFORE, be it resolved by the Planning Commission of the City of Madera as follows:

1. Recitals: The above recitals are true and correct and are incorporated herein.

2. CEQA: The Planning Commission finds and determines that the project is exempt under Section 15301 of the State CEQA Guidelines because the project will occupy an existing building on an existing lot with existing services and utilities, and any modifications to the structure will only be minor interior changes involving negligible or no expansion of existing or former commercial use. Further, none of the exceptions under Section 15300.2 of the CEQA Guidelines are applicable to this project.

3. Findings for SPR 2020-10: The Planning Commission finds and determines that there is substantial evidence in the administrative record to support the approval of SPR 2020-10, as conditioned. With conditions, the project is consistent with the requirements of the Municipal Code, including Section 10-3.4.0106. The Planning Commission further approves, accepts as its own, incorporates as if set forth in full herein, and makes each and every one of the findings, based on the evidence in the record, as follows:

a. The proposal is consistent with the General Plan and Municipal Code.

Basis for Finding: The property is zoned C1 (Light Commercial), which is consistent with the existing General Plan land use designation of C (Commercial). The tenant space being occupied is located within an existing commercial building. While minor changes will be required to improve the tenant space prior to occupancy, no on-site improvements are proposed or required. Site Plan Review 2020-10 is consistent with the purpose and intent of the C1 (Light Commercial) zone district and does not conflict with City standards or other provisions of the Code.

b. The proposal is consistent with any applicable specific plans.

Basis for Finding: The project site is not subject to any applicable specific plans.

c. The proposed project includes facilities and improvements; vehicular and pedestrian ingress, egress, and internal circulation; and location of structures, services, walls, landscaping, and drainage that are so arranged that traffic congestion is avoided, pedestrian and vehicular safety and welfare are protected, there will be no adverse effects on surrounding property, light is deflected away from adjoining properties and public streets, and environmental impacts are reduced to acceptable levels.

Basis for Finding: Site Plan Review 2020-10 has been reviewed and is consistent with surrounding uses. The project includes the use of an existing building that is located within a developed shopping center with adequate improvements and parking already installed. The project will not generate significant amounts of noise, light, or traffic.

d. The proposal is consistent with established legislative policies relating to traffic safety, street dedications, street improvements, and environmental quality.

Basis for Finding: Site Plan Review 2020-10 requires no street improvements as it is located within an existing commercial center with adequate improvements and parking already installed. The project will not have a significant impact on traffic or the environment.

With the conditions imposed, the project will not be detrimental or injurious to property and improvements in the neighborhood or general welfare of the City.

4. Findings for CUP 2020-10: The Planning Commission finds and determines that there is substantial evidence in the administrative record to support the approval of CUP 2020-10, as conditioned. With conditions, the project is consistent with the requirements of the Municipal Code, including Section 10-3.1307. The Planning Commission further approves, accepts as its own, incorporates as if set forth in full herein, and makes each and every one of the findings, based on the evidence in the record, as follows:

- a. The proposal is consistent with the General Plan and Zoning Ordinance.

Basis for Finding: The property is zoned C1 (Light Commercial), which is consistent with the existing General Plan land use designation of C (Commercial). The proposed use (cigarette shop) is conditionally permitted, based on Planning Commission adoption of Determination of Use (DOU) 2015-01. Conditional Use Permit 2020-10, subject to the conditions of approval, is consistent with the purpose and intent of the C1 (Light Commercial) zone district and does not conflict with City standards or other provisions of the Code.

- b. The proposed use will be compatible with the surrounding properties.

Basis for Finding: The project site is suited for commercial sales. The project site is located within a larger commercial shopping center and is surrounded by other commercial uses to the east and south, with residential uses to the north and west. As conditioned, the sale of certain tobacco products for off-site consumption will be compatible with surrounding properties and is consistent with applicable requirements regulating such use.

- c. The establishment, maintenance, or operation of the use or building applied for 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 such proposed use or be detrimental or injurious to property and improvements in the neighborhood or general welfare of the city.

Basis for Finding: As discussed above, the proposed use is compatible with surrounding properties and will not have a significant, adverse environmental impact. The Madera Police Department has reviewed the project and did not oppose the proposed use, and there is no evidence in the administrative record of the following:

- The commission of three or more violent felonies (crimes against the person) and/or narcotic or dangerous drug sales within the subject premises or in the area immediately adjacent thereto.
- The arrest of the owner and/or an employee for violations occurring within the subject premises, or in the area immediately adjacent thereto, which violations can be found to be reasonably related to the operation of the business.
- The sustaining by the subject premises of an administrative suspension or revocation or other such sanction as may be imposed by the California State

Department of Alcoholic Beverage Control, including payment in lieu of such suspension or revocation.

- The failure by the owner or other person responsible for the operation of the premises to take reasonable steps to correct objectionable conditions after having been placed on notice by the official of the City that such conditions exist. Such official may include, but not be limited to the: Code Enforcement Officer, Police Chief, Fire Marshall or City Attorney. Objectionable conditions may include, but not be limited to, disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking or excessive loud noise. Such conduct shall be attributable to the subject premises whether occurring within the subject premises or in the area immediately adjacent thereto.

5. Approval of SPR 2020-10 and CUP 2020-10: Given that all findings can be made, the Planning Commission hereby approves SPR 2020-10 and CUP 2020-10 as conditioned as set forth in the Conditions of Approval attached as Exhibit "A."

6. Effective Date: This resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 10th day of November 2020, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Israel Cortes
Planning Commission Chairperson

Attest:

Gary Conte
Planning Manager

Exhibit "A" – Conditions of Approval for SPR 2020-10 and CUP 2020-10

EXHIBIT "A"
SPR 2020-10 AND CUP 2020-10 (TOBACCO PRODUCTS)
CONDITIONS OF APPROVAL
November 4, 2020

Notice to Applicant

In accordance with the provisions of Government Code Section 66020(d)(1), the imposition of fees, dedications, reservations, or exactions for this project are subject to protest by the project applicant at the time of approval or conditional approval of the development or within ninety (90) calendar days after the date of imposition of fees, dedications, reservation, or exactions imposed on the development project. This notice does not apply to those fees, dedications, reservations, or exactions which were previously imposed and duly noticed; or where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

IMPORTANT: PLEASE READ CAREFULLY

This project is subject to a variety of discretionary conditions of approval. These include conditions based on adopted City plans and policies; those determined through site plan, conditional use permit review, and environmental assessment essential to mitigate adverse effects on the environment including the health, safety, and welfare of the community; and recommended conditions for development that are not essential to health, safety, and welfare, but would on the whole enhance the project and its relationship to the neighborhood and environment.

Discretionary conditions of approval may be appealed. All code requirements, however, are mandatory and may only be modified by variance, provided the findings can be made.

All discretionary conditions of approval for SPR 2020-10 will ultimately be deemed mandatory unless appealed by the applicant to the City Council within ten (10) days after the decision by the Planning Commission. All discretionary conditions of approval for CUP 2020-10 will ultimately be deemed mandatory unless appealed by the applicant to the City Council within fifteen (15) days after the decision by the Planning Commission. In the event you wish to appeal the Planning Commission's decision or discretionary conditions of approval for either entitlement, you may do so by filing a written appeal with the City Clerk. The appeal shall state the grounds for the appeal and wherein the Commission failed to conform to the requirements of the zoning ordinance. This should include identification of the decision or action appealed and specific reasons why you believe the decision or action appealed should not be upheld.

Approval of this site plan review and conditional use permit shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development.

Approval of this use permit and/or conditional use permit may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this use permit or site plan review, the zoning ordinance, and all City standards and specifications. This use permit and site plan review is granted, and the conditions imposed, based upon the application submittal provided by the applicant, including any operational statement. The application is material to

the issuance of this use permit and site plan review. Unless the conditions of approval specifically require operation inconsistent with the application, a new or revised use permit is required if the operation of this establishment changes or becomes inconsistent with the application. Failure to operate in accordance with the conditions and requirements imposed may result in revocation of the use permit, site plan review, or any other enforcement remedy available under the law. The City shall not assume responsibility for any deletions or omissions resulting from the site plan review process, use permit review process, or for additions or alterations to any construction or building plans not specifically submitted and reviewed and approved pursuant to this use permit or subsequent amendments or revisions. These conditions are conditions imposed solely upon the site plan review or use permit as delineated herein and are not conditions imposed on the City or any third party. Likewise, imposition of conditions to ensure compliance with federal, state, or local laws and regulations does not preclude any other type of compliance enforcement.

These conditions are applicable to any person or entity making use of this use permit, and references to “developer” or “applicant” herein also include any applicant, property owner, owner, lessee, operator, or any other person or entity making use of this use permit.

Conditions of Approval

- Site Plan Review is subject to Conditions of Approval 1 through 16 and 25 through 28.
- Conditional Use Permit 2020-10 (Sale of Tobacco Products) is subject to Conditions of Approval 1 through 28.

General Conditions

1. Approval of this site plan review shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development.
2. Approval of this site plan review may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this site plan review, the zoning ordinance, and all City standards and specifications. This site plan review is granted, and the conditions imposed, based upon the application submittal provided by the applicant, including any operational statement. The application is material to the issuance of this site plan review. Unless the conditions of approval specifically require operation inconsistent with the application, a new or revised site plan review is required if the operation is found to be out of conformance with the application. Failure to operate in accordance with the conditions and requirements imposed may result in revocation of the permit or any other enforcement remedy available under the law. The City shall not assume responsibility for any deletions or omissions resulting from the site plan review process or for additions or alterations to any construction or building plans not specifically submitted and reviewed and approved pursuant to this site plan review or subsequent amendments or revisions. These conditions are conditions imposed solely upon the site plan and are not conditions imposed on the City or any third party. Likewise, imposition of conditions to ensure compliance with federal, state, or local laws and regulations does not preclude any other type of compliance enforcement.
3. These conditions are applicable to any person or entity making use of this site plan and of this conditional use permit, and references to “developer” or “applicant” herein also include any applicant, property owner, owner, lessee, operator, or any other person or entity making use of

this site plan and conditional use permit. Furthermore, "project site" refers to the portion of APN 010-202-016 that is being rented, improved, and used by the applicant. The following conditions apply only to these portions of the subject site, unless specifically noted otherwise.

4. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specifically noted in the conditions or mandated by statutes.
5. The applicant shall submit to the City of Madera Planning Department a check in the amount necessary to file a Notice of Exemption at the Madera County Clerk. This amount shall equal the Madera County filing fee in effect at the time of filing. Such check shall be made payable to the Madera County Clerk and submitted no later than three (3) days following action on SPR 2020-10 and CUP 2020-10.
6. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by the applicant's signature on the Acknowledgement and Acceptance of Conditions of Approval. Please note this site plan review approval (SPR 2020-10) will expire one (1) year from the effective date, unless a building permit is issued by the Building Official and construction is commenced and diligently pursued toward completion of the site or structures which were the subject of the site plan or the required action is taken to extend the approval before expiration date (Municipal Code Section 10-3.4.0114, Lapse of Site Plan Approval). Please also note that conditional use permit approval (CUP 2020-05) is conditioned upon the privileges granted being utilized within 12 months after the effective date thereof. Failure to utilize such permit within such 12-month period shall render the permit null and void unless a timely written request for extension is submitted to the Planning Commission prior to the expiration of this permit.
7. It shall be the responsibility of the property owner, operator, and/or management to ensure that any required permits, inspections, and approvals from any regulatory agency be obtained from the applicable agency prior to issuance of a building permit and/or the issuance of a certificate of completion, as determined appropriate by the City of Madera Planning Department.
8. Approval of this project is for the benefit of the applicant. The submittal of applications by the applicant for this project was a voluntary act on the part of the applicant not required by the City. Therefore, as a condition of approval of this project, the applicant agrees to defend, indemnify, and hold harmless the City of Madera and its agents, officers, consultants, independent contractors, and employees ("City") from any and all claims, actions, or proceedings against the City to attack, set aside, void, or annul an approval by the City concerning the project, including any challenges to associated environmental review, and for any and all costs, attorneys fees, and damages arising therefrom (collectively "claim").

The City shall promptly notify the applicant of any claim and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

Nothing in this condition shall obligate the City to defend any claim and the City shall not be required to pay or perform any settlement arising from any such claim not defended by the City, unless the City approves the settlement in writing. Nor shall the City be prohibited from independently defending any claim, and if the City does decide to independently defend a claim, the applicant shall be responsible for City's attorneys' fees, expenses of litigation, and costs for that independent defense, including the costs of preparing any required administrative record.

Should the City decide to independently defend any claim, the applicant shall not be required to pay or perform any settlement arising from any such claim unless the applicant approves the settlement.

Planning Department

9. The project site shall be developed in conformance with the site plan as reviewed and approved under SPR 2020-10 and CUP 2020-10. Minor modifications to the site plan, which are necessary to meet regulatory, engineering, or similar constraints or requirements may be made at the discretion of the Planning Manager without an amendment to SPR 2020-10 or CUP 2020-10. However, should the Planning Manager determine that modifications are substantive, he/she may require that an amendment to SPR 2020-10 and/or to CUP 2020-10 be filed for review and approval through the applicable City process.
10. Any proposed future modifications to the site, including, but not limited to, the building structural exteriors, parking/loading areas, shall require an amendment to SPR 2020-10 and/or CUP 2020-10.
11. All on-site improvements shall be completed prior to final building inspection and shall be completed in conformance with SPR 2020-10 and CUP 2020-10 to the satisfaction of the City of Madera prior to issuance of a certificate of completion.
12. The project site 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, the property owner, operator, and/or manager may be subject to corrective action.
13. No signs are approved as part of SPR 2020-10 or CUP 2020-10. Signs shall be reviewed and approved under separate permit in accordance with the Madera Municipal Code.
14. Vandalism and graffiti shall be corrected in accordance with the provisions of the Madera Municipal Code.
15. The property owner, operator, and/or manager shall operate the site in a manner that does not generate noise, odor, blight, or vibration that adversely affects adjacent properties.
16. The property owner, operator, and/or manager shall keep the property clear of all trash, rubbish, and debris at all times.

Conditional Use Permit 2020-10

17. Conditional Use Permit 2020-10 allows for the sale of cigarettes in either single packs or cartons of ten or fewer. Other tobacco-related products allowed for sale at the store shall be as follows:
 - a. Smokeless tobacco
 - b. Roll-your-own pouched/canned tobacco
 - c. Cigars and cigarillos (except for any flavored products such as, but not limited to, grape, watermelon, bubblegum and fruit punch flavored products)
 - d. Rolling papers
18. Conditional Use Permit 2020-10 prohibits the sale of the following tobacco and tobacco related products:
 - a. Vape products, including juices

- b. Hookah products, including hookah tobacco/charcoal
 - c. E-cigarettes
 - d. Pipes and pipe tobacco
19. Conditional Use Permit 2020-10 prohibits the sale of drug related paraphernalia such as bongs, pipes and other product meant for use with non-tobacco substances as determined by the Planning Manager.
20. All tobacco and tobacco-related products shall be secured behind a counter or other fixture, unavailable to the public except with the assistance of a store employee.
21. There shall be no exterior display of signage promoting or advertising the sale of cigarettes, tobacco and/or tobacco related products on the project site.
22. Property owner/applicant and/or benefactors of CUP 2020-10 shall post “No Smoking” signage to the extent required by law.
23. The property owner, operator, and/or manager, and/or benefactor of CUP 2020-10 shall comply with all federal, state and local laws. Material violations of any of those laws concerning the use(s) may be cause for revocation of said permit. Such conditions that constitute such violation include, but are not limited to:
- a. The commission of three or more violent felonies (crimes against the person) and/or narcotic or dangerous drug sales within the subject premises or in the area immediately adjacent thereto.
 - b. The arrest of the owner and/or an employee for violations occurring within the subject premises, or in the area immediately adjacent thereto, which violations can be found to be reasonably related to the operation of the business.
 - c. The sustaining by the subject premises of an administrative suspension or revocation or other such sanction as may be imposed by the California State Department of Alcoholic Beverage Control, including payment in lieu of such suspension or revocation.
 - d. The failure by the owner or other person responsible for the operation of the premises to take reasonable steps to correct objectionable conditions after having been placed on notice by the official of the City that such conditions exist. Such official may include, but not be limited to the: Code Enforcement Officer, Police Chief, Fire Marshall or City Attorney. Objectionable conditions may include, but not be limited to, disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking or excessive loud noise. Such conduct shall be attributable to the subject premises whether occurring within the subject premises or in the area immediately adjacent thereto.
24. CUP 2020-10 shall be subject to periodic reviews and inspections 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 Planning Commission so that it may be determine whether to consider setting a hearing regarding revocation of the permit.

Building Department

25. A building permit is required for all construction on the site.

26. A business license is required and a business license inspection shall be conducted prior to operation.

Fire Department

27. The applicant shall provide a key for the existing Knox Box.
28. The applicant shall provide fire extinguishers per the California Fire Code.

-END OF CONDITIONS-

Attachment 2: Madera County Department of Public Health Comments
(received via email)

Members of the City of Madera Planning Commission,

The Madera County Department of Public Health's Tobacco Control Program would like to express our concerns about another tobacco retailer being establishing in the West Olive area of the City of Madera. Our environments play an important role in shaping our overall health and the establishment of a new tobacco retailer would have a negative environmental impact on the overall health of our community. Issues such as location, density, and types of tobacco retailers in the community can result in an increase in tobacco use rates and contribute to the health inequities of our residents.

Increased availability of tobacco products has been linked to an increase of tobacco use among adults and youth. Research has shown that when there is a high density of tobacco retailers near homes and schools, the community's health suffers. For example, youth are at greater risk of experimenting with smoking/vaping when routinely exposed to tobacco retailers and their advertising and children are more likely to smoke when they live or go to school in neighborhoods with a high density of tobacco retailers. Having more tobacco retailers in the City of Madera also increases the use of tobacco products among those that are already smokers/vapers, resulting in an increase in the harm to their health and making it harder for them to quit.

The City has made tremendous progress in tobacco control efforts. Last year, the Madera City Council voted to amend and update the City's smoking regulations to protect the health of the community by adopting a smoke and vape-free parks policy. The new smoking regulations will help protect community members visiting a local park from exposure to secondhand smoke and promote healthy habits. We acknowledge and appreciate the City Council for protecting youth from tobacco exposure as demonstrated by the City's smoke free parks policy.

Here are our concerns;

1. The current proposed location for this new tobacco retailer has a population with a higher percentage of poverty. An estimated 74% of this area population is at or below the Federal Poverty level. Research has indicated that individuals living in poverty are at higher risk for becoming addicted to tobacco products. Tobacco companies are systematically targeting low income communities because they know people with low socioeconomic status are at high risk of smoking. A 2016 report on the economics of tobacco from the U.S. National Cancer Institute and World Health Organization stated that, "tobacco use accounts for a significant share of the health disparities between the rich and poor."
2. When you take a closer look at the neighborhood, you will notice there are already two tobacco retailers in the same shopping center location. If approved this new shop would be the third establishment within walking distance from each other.

3. This proposed location is a huge concern because it would increase the exposure to tobacco marketing for youth daily that walk to and from Madera High School. According to the California Tobacco Health Assessment Tool, an estimated 16 retailers are located within 1,000 feet of schools in the City of Madera. Currently, there are four tobacco retailers within 1,000 feet of Madera High School. Density/zoning of tobacco retailers near youth sensitive areas is a huge public health concern because research has shown that children and youth exposed to tobacco marketing increase their risk by up to 3x to initiate tobacco use. Currently, more than 15% of youth in Madera County used some form of tobacco in the last 60 days. In the state of California, from 2017 to 2018, tobacco use among youth increased by 78% accounting for more than 3.8 million youth, mostly due to the use of e-cigarettes. If the high rates of tobacco use continue at the current rate more than 5.8 million youth under the age of 18 will die of premature death due to smoking related illness.

4. In the last year, a total of 23 people in the United States have died from vaping related illness. Three of those deaths were reported in California. Over 1,299 cases of vaping related illnesses have been reported and 15% of cases are among patients under the age of 18. Many Counties across California have already adopted policies that restrict the location and density to help protect the health of their communities. Last year, the Madera City Council voted to amend and update the City's smoking regulations to protect the health of the community by adopting a smoke and vape-free parks policy. The new smoking regulations will help protect community members visiting a local park from exposure to secondhand smoke and promote healthy habits. Approving this new establishment would be a step backward in finding a solution to the high rates of tobacco use among youth and will have detrimental consequences to the health of our community.

We urge you to take into consideration the issues we have raised and to support the healthy future of the residents of the City of Madera. Thank you.

Attachment 3: Planning Commission Resolution for Denial

RESOLUTION NO. 1863

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA DENYING A CATEGORICAL EXEMPTION PURSUANT TO CEQA GUIDELINES SECTION 15301 (EXISTING FACILITIES) AND DENYING SITE PLAN REVIEW 2020-10 AND CONDITIONAL USE PERMIT 2020-10 (DISCOUNT CIGARETTE SHOP, 319 WEST OLIVE AVENUE)

WHEREAS, Shawn Bidsal (“Owner”) owns an existing commercial building at 319 West Olive Avenue in Madera, California (“site”); and

WHEREAS, Mukhtar Quhshi and Khaled Sharhan (“Applicants”) are acting on behalf of the Owner (“site”); and

WHEREAS, the site contains an existing commercial building that is planned for and surrounded by commercial uses; and

WHEREAS, the Applicants are seeking a conditional use permit (CUP) to establish a discount cigarette shop, to be located within a tenant space within the existing commercial building on APN 010-202-016; and

WHEREAS, consistent with the use proposed by the CUP, the Applicants are also seeking a site plan review (SPR) to allow for a new use to be located within a tenant space within the existing commercial building on APN 010-202-016, as proposed by SPR 2020-10; and

WHEREAS, a Categorical Exemption (CEQA Guidelines Section 15301) has been prepared for the proposed project in accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et. seq.; and

WHEREAS, under the City’s Municipal Code, the Planning Commission is authorized to review and approve site plan reviews, conditional use permits and environmental assessments for associated projects on behalf of the City; and

WHEREAS, the City provided notice of the Planning Commission hearing as required by law; and

WHEREAS, the Planning Commission received and reviewed SPR 2020-10 and CUP 2020-10 at a duly noticed meeting on November 10, 2020; and

WHEREAS, a public hearing was held, the public was provided an opportunity to comment, and evidence, both written and oral, was considered by the Planning Commission; and

WHEREAS, the public hearing was closed prior to a tentative decision by the Planning Commission; and

WHEREAS, after the public hearing was closed, the Planning Commission discussed the matter and then approved a motion to continue the application for Site Plan Review 2020-10 and Conditional Use Permit 2020-10 to the December 8, 2020 Planning Commission hearing with direction to staff to

return with an updated resolution with appropriate findings for denial for consideration by the Planning Commission; and

WHEREAS, the Planning Commission also identified the following grounds for denial to be included in the draft resolution including location of the proposed smoke shop in proximity to schools and stores already permitted to sell tobacco products as well as the negative impact on public health, specifically on youth, resulting from increased access to smoke shops relative to areas of high youth activity; and

WHEREAS, City staff have returned to the Planning Commission as directed; and

WHEREAS, after having considered all evidence, testimony, and information before it, the Planning Commission now desires to take final action to deny SPR 2020-10 and CUP 2020-10.

NOW THEREFORE, be it resolved by the Planning Commission of the City of Madera as follows:

1. Recitals: The above recitals are true and correct and are incorporated herein.
2. CEQA: The Planning Commission finds and determines that CEQA is not required as no portion of the project is being approved, and CEQA is not required for a project which a public agency rejects or disapproves pursuant to Public Resources Code section 21080(b)(5).

Findings for CUP 2020-10: The Planning Commission finds and determines that there is substantial evidence in the administrative record to deny the approval of CUP 2020-10 and makes each and every one of the findings, based on the evidence in the record, as follows: The proposal is inconsistent with Zoning Ordinance and will not be compatible with the surrounding properties. The establishment, maintenance, or operation of the use will, under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of 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, and approval is not warranted per Madera Municipal Code section 10-3.1307. The basis for these findings includes the following:

- a. Given the specific conditions of the area location, including an excess of tobacco sales in conjunction with the location of nearby sensitive uses including nearby schools and routes to school take by youth, and recognizing there is an inter-relationship between the sale and consumption of tobacco and undue concentration of licenses with crimes and nuisances, public health, etc., and a link between smoking and a higher percentage of poverty, the Planning Commission finds the proposed use will be detrimental to the public welfare or injurious to property.
- b. Increased availability of tobacco products has been linked to an increase of tobacco use among adults and youth. Research has shown that when there is a high density of tobacco retailers near homes and schools, the community's health suffers. For example, youth are at greater risk of experimenting with smoking/vaping when routinely exposed to tobacco retailers and their advertising and children are more likely to smoke when they live or go to school in neighborhoods with a high density of tobacco retailers. Having more tobacco retailers in the City of Madera also increases the use of tobacco products among those that are already smokers/vapers, resulting in an increase in the harm to their health and making it harder for them to quit. Increased use of tobacco

results in a higher mortality rate and other significant and adverse impacts to physical health.

- c. The current proposed location for this new tobacco retailer has a population with a higher percentage of poverty. An estimated 74 percent of this area population is at or below the Federal Poverty level. Individuals living in poverty are at higher risk for becoming addicted to tobacco products. Tobacco companies are systematically targeting low income communities because they know people with low socioeconomic status are at high risk of smoking. A 2016 report on the economics of tobacco from the U.S. National Cancer Institute and World Health Organization stated that, "tobacco use accounts for a significant share of the health disparities between the rich and poor."
- d. The project is located in an area with an undue concentration of tobacco CUPs or sales. There already two existing tobacco retailers in the same shopping center location, and granting an additional CUP for tobacco use would result in more than half of the tobacco retailers located at this shopping center and a total of five retailers within easy walking distance of Madera High School. If approved this new shop would be the third establishment within walking distance from each other. The public convenience or necessity would not be served by an additional use for the sale of tobacco products as proposed by the Project.
- e. The approval of the CUP would result in an increase exposure to tobacco marketing and products for youth that walk to and from Madera High School on a regular basis. In order to travel to school, children pass within feet of the shopping center location as well as through the area having a higher percentage of poverty and an undue concentration of stores selling tobacco products. According to the California Tobacco Health Assessment Tool, an estimated 16 retailers are located within 1,000 feet of schools in the City of Madera. Currently, there are four tobacco retailers within 1,000 feet of Madera High School. Density/zoning of tobacco retailers near youth sensitive areas is a huge public health concern because research has shown that children and youth exposed to tobacco marketing increase their risk by up to time the average to initiate tobacco use. Currently, more than 15 percent of youth in Madera County used some form of tobacco in the last 60 days. In the state of California, from 2017 to 2018, tobacco use among youth increased by 78 percent accounting for more than 3.8 million youth, mostly due to the use of e-cigarettes. If the high rates of tobacco use continue at the current rate more than 5.8 million youth under-age of 18 will die of premature death due to smoking related illness. Proposed CUP 2020-10 will result in adverse nuisances and other secondary effects of tobacco sales near a sensitive use.

3. Findings for SPR 2020-10: The Planning Commission finds and determines that there is substantial evidence in the administrative record to deny the approval of SPR 2020-10 and makes each and every one of the findings, based on the evidence in the record, as follows:

- a. SPR 2020-10 is inconsistent with the Zoning Ordinance.

Basis for Finding: The property is zoned C1 (Light Commercial), which is consistent with the existing General Plan land use designation of C (Commercial). The tenant space being occupied is located within an existing commercial building. While minor changes will be required to improve the tenant space prior to occupancy, no on-site improvements are

proposed or required. However, the intent and use of the subject site is on the premise of the sale of tobacco and tobacco products for which is subject to a conditional use permit. Absent approval of CUP 2020-10, the proposed site plan would be inconsistent with Determination of Use 2015-01 and Sections 10-3.1301 through 10.3.1311 of the City's Municipal Code. Therefore, Site Plan Review 2020-10 would be inconsistent with the purpose and intent of the C1 (Light Commercial) zone district and cannot be granted.

4. Denial of SPR 2020-10 and CUP 2020-10: Based on each of the forgoing findings, the Planning Commission hereby denies SPR 2020-10 and CUP 2020-10.
5. Effective Date: This resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 8th day of December 2020, by the following vote:

AYES:

NOES:

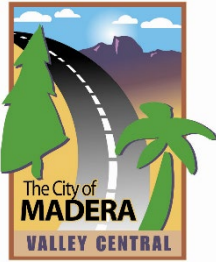
ABSTENTIONS:

ABSENT:

Robert Gran Jr.
Planning Commission Vice Chairperson

Attest:

Gary Conte
Planning Manager



CITY OF MADERA PLANNING COMMISSION

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

Staff Report: Vineyard West Phase III TSM 2020-04 Item # 2 – December 8, 2020

PROPOSAL: An application for a tentative subdivision map (TSM 2020-04) for a 137-lot single family residential subdivision (Vineyard West Phase III) on an approximately 30.45-acre parcel. This is the third phase of a previously approved tentative subdivision map. Phase I and Phase II of the map were recorded in 2003 and 2004, respectively.

APPLICANT:	DMP Development Corp Michael Pistoresi 2001 Howard Road Site 211 Madera, CA 93637	OWNER:	DMP Development Corp Michael Pistoresi 2001 Howard Road Site 211 Madera, CA 93637
SITE ADDRESS:	No address assigned	APN:	006-450-011
APPLICATIONS:	TSM 2020-04	CEQA:	Consistent with adopted Mitigation Negative Declaration

LOCATION: The subject property is bounded by Riverview Drive to the north, Caitlan Drive to the east, Sunset Avenue to the south, and the Road 24 Alignment to the west.

STREET ACCESS: The project site has street access from Sunset Avenue and Riverview Drive.

PROJECT SIZE: 30.45 Acres

GENERAL PLAN DESIGNATION: LD (Low Density Residential)

ZONING DISTRICT: PD 6000 (Planned Development, one unit per 6,000 square feet of site area)
PD 4500 (Planned Development, one unit per 4,500 square feet of site area)

SITE CHARACTERISTICS: The project is located on a vacant parcel. Surrounding uses include a Madera Irrigation District canal and the Fresno River to the north, agricultural uses to the west and south, and existing single family residential to the east.

ENVIRONMENTAL REVIEW: The proposed subdivision was analyzed as part of a Mitigated Negative Declaration adopted for the original tentative subdivision map. No further analysis is required.

SUMMARY: The applicant, DMP Development Corp., is proposing TSM 2020-04, a 137-lot single family residential subdivision (Vineyard West Phase III) on an approximately 30.45-acre parcel. The proposed use is consistent with the current LD (Low Density Residential) General Plan designation. After review of the proposed project, the TSM is anticipated to be compatible with the surrounding land uses in the area. Conditions, as appropriate, have been recommended for the tentative subdivision map (TSM 2020-04) to ensure consistency with the Zoning Ordinance and General Plan and other applicable City plans and policies.

PREVIOUS APPROVALS

TSM 2020-04 is proposing a 137-lot single family residential subdivision on just over 30 acres. The property is the third phase of development of the previously approved Vineyard West subdivision, which includes two prior phases: Phase I is a 47-lot single family residential subdivision and Phase II is a 44-lot single family residential subdivision. Final maps for Phases I and II were recorded in 2003 and 2004, respectively, and both phases have been constructed. While Phase III was also approved under the original Vineyard West subdivision map and subsequently modified in 2005, no final map was recorded for Phase III and construction did not move forward. A precise plan for Phase III was also approved in 2005 with the approval of the modified Phase III subdivision map. All phases (I through III) of the Vineyard West subdivision were evaluated under a Mitigation Negative Declaration (MND), which was adopted by the City Council and subsequently confirmed by Planning Commission in 2005. The current proposal under TSM 2020-04 remains consistent with the analysis conducted under the adopted MND.

ANALYSIS

The California Subdivision Map Act (Government Code Section 66410, et seq.) establishes most of the procedures for subdivision of land. Other components are contained within Chapter 2 (Subdivisions) of Title 10 (Planning and Zoning) of the Madera Municipal Code. Generally, a tentative subdivision map is required in order to subdivide land into five or more parcels.

TSM 2020-04 proposes to subdivide the approximately 30.45-acre property into 137 parcels. The proposed density is consistent with the LD (Low Density Residential) land use designation per the General Plan, which requires a density of 2.1 to 7 dwelling units per acre (du/ac). The proposed subdivision results in a density of approximately 4.5 du/ac. This density is also consistent with the existing zone districts of PD 4500 and PD 6000, which are compatible with the LD (Low Density Residential) land use designation and allow the proposed lot sizes ranging from 6,180 square feet to just over 10,130 square feet.

While a precise plan was also approved with the original tentative subdivision map, indicating the intent to implement the R-1 development standards, the precise plan has since expired requiring that a new precise plan application be submitted for review and approval to confirm design expectations for the subdivision and to reflect changes that have occurred in product type and mix. Submittal of the precise plan application and review and approval by the City will be required prior to approval of the final map. The conditions of approval for TSM 2020-04 reflect this requirement.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As noted above, a Mitigation Negative Declaration (MND) was prepared for the original Vineyard West subdivision map. The MND analyzed the 234-lot single family residential Vineyard West subdivision.

Phases I and II comprise a total of 91 lots with Phase III proposing an additional 137 lots for a total of 228 single family residential lots. The proposed TSM 2020-04 remains within the scope of the original evaluation, circumstances on the site have not changed, and there is no new substantial information of significant importance that would alter the outcome of the adopted MND. No further analysis is required.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

A continuation of the City's planned growth for residential land uses, as proposed by TSM 2020-04, supports the vision for Well Planned Neighborhoods and Housing. This principle recognizes that the provision of housing opportunities is a key component in the implementation of the City's General Plan and vision for the community.

RECOMMENDATION

The information presented in this report provides support for the adoption of a resolution conditionally approving Tentative Subdivision Map 2020-04. It is recommended that the Commission consider the information in this report, as well as testimony received at the public hearing, and make a determination on Tentative Subdivision Map 2020-04, subject to the findings and conditions of approval.

PLANNING COMMISSION ACTION

The Commission will be acting on the environmental determination and Tentative Subdivision Map 2020-04 and determining to either:

- Adopt a resolution approving Tentative Subdivision Map 2020-04 as conditioned (Motion 1); or
- Continue the hearing to January 12, 2021, with direction to staff to return with an updated resolution with appropriate findings modifying the conditions of approval for the following reasons: (Specify – Planning Commission should articulate reasons for modifications to findings and conditions of approval) (Motion 2); or
- Move to continue the application for Tentative Subdivision Map 2020-04 to the January 12, 2021 Planning Commission hearing with direction to staff to return with an updated resolution with appropriate findings for denial for the following reasons: (Specify – Planning Commission should articulate reasons for denial.)(Motion 3).

Motion 1: Move to adopt a resolution of the Planning Commission of the City of Madera approving Tentative Subdivision Map 2020-04, based on and subject to the findings and conditions of approval as follows:

Findings to Approve a Tentative Subdivision Map

Finding a: The proposed subdivision is consistent with the General Plan and specific plans.

The proposed TSM 2020-04 is consistent with the General Plan designation of LD (Low Density Residential). The procedural requirements of the Map Act have been met, and all parcels comply with the General Plan, including all applicable general plan, engineering, and zoning standards pertaining to grading, drainage, utility connections, lot size and density. In this

regard, the design and improvements of the subdivision, subject to the conditions of approval, will be consistent with the requirements and improvement standards of the City of Madera. There is no specific plan applicable the site.

Finding b: The design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

The tract map is consistent with the City of Madera General Plan. Additionally, the proposed parcels will comply with minimum lot size standards and the residential land uses consistent with the General Plan and Zoning Ordinance. There is no applicable specific plan applicable to the site.

Finding c: The site is physically suitable for the type of development.

The tract map sub-divide the approximately 30.45-acre property into 137 parcels. The proposed density is consistent with the LD (Low Density Residential) land use designation per the General Plan, which requires a density of 2.1 to 7 dwelling units per acre (du/ac). The proposed subdivision results in a density of approximately 4.5 du/ac. This density is also consistent with the existing zone districts of PD 4500 and PD 6000, which are compatible with the LD (Low Density Residential) land use designation and allow the proposed lot sizes ranging from 6,180 square feet to just over 10,130 square feet, and the site is physically suitable for such proposed type of residential development. Development is required to be consistent with the General Plan, zoning ordinance, and the tentative subdivision map, and there are no unusual conditions that would render the site physically unsuitable for such subsequent type of consistent development.

Finding d: The site is physically suitable for the proposed density of development.

The tract map will create 137 parcels to support residential uses with standard setbacks and ample useable space. As described in further detail above, each parcel will meet the minimum of lot size of 4,500 square feet or 6,000 square feet as appropriate for the existing zoned districts, and the site is physically suitable for such proposed density of development. Any development is required to be consistent with the General Plan, the zoning ordinance, and the tentative subdivision map. Such consistency would likewise require consistency with setbacks, building code, and other requirements that would ensure suitable density of development.

Finding e: The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

The project site is not located in a sensitive environment but rather in an area surrounded primarily by other residential land uses. An initial study was prepared for this project consistent with the California Environmental Quality Act (CEQA), which resulted in a proposed mitigated negative declaration (MND) for the project. As determined in the MND, the project will not have a significant, adverse effect on the environment as mitigated. Therefore, the tentative subdivision map would not result in a substantial adverse effect to special status species, riparian or other natural habitat, wetlands, movement of migratory fish or wildlife species, or conflict with any local, regional or state preservation or conservation plans.

Finding f: The design of the subdivision or the type of improvements is not likely to cause serious public health problems.

The lots created will comply with all applicable sanitary sewer, water service and storm water runoff requirements, as well as other similar environmental and life safety regulations and standards. Thus, the project is not likely to cause serious public health problems.

Finding g: The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public-at-large, for access through or use of property within the proposed subdivision.

There are no public easements that currently encumber the property to be divided. All modifications made to the existing public improvements fronting the parcels upon development of the properties will be required to current City standards. Additionally, the subdivision is designed to ensure that it will not conflict with easements and appropriate dedications will be required to ensure public easements for right-of-way, etc., are secured.

(OR)

Motion 2: Move to continue the public hearing on Tentative Subdivision Map 2020-04 to January 12, 2021 with direction to staff to return with an updated resolution with appropriate findings modifying the conditions of approval for the following reasons: (Specify – Planning Commission should articulate reasons for modifications to findings and conditions of approval)

(OR)

Motion 3: Move to continue the application for Tentative Subdivision Map 2020-04 to the January 12, 2021 Planning Commission hearing with direction to staff to return with an updated resolution with appropriate findings for denial for the following reasons: (Specify – Planning Commission should articulate reasons for denial.)

ATTACHMENTS

Attachment 1: Vicinity Map

Attachment 2: Aerial Photo

Attachment 3: Tentative Subdivision Map (TSM) 2020-04

Attachment 4: Planning Commission Resolution for TSM 2020-04

Attachment 1: Vicinity Map

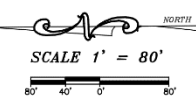
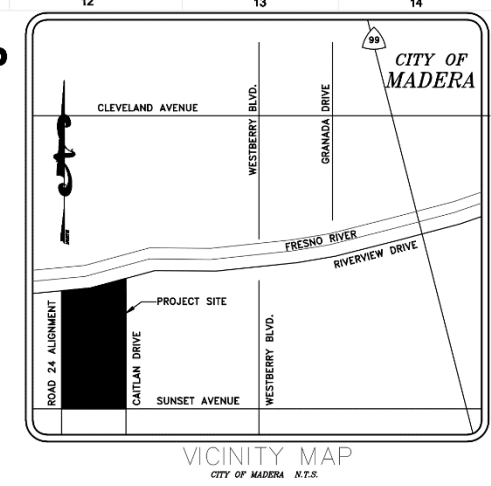
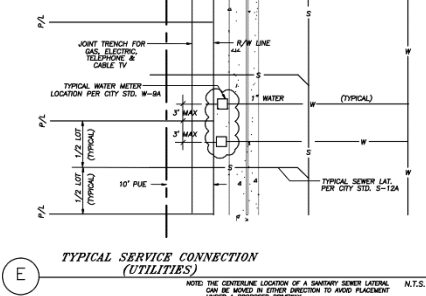
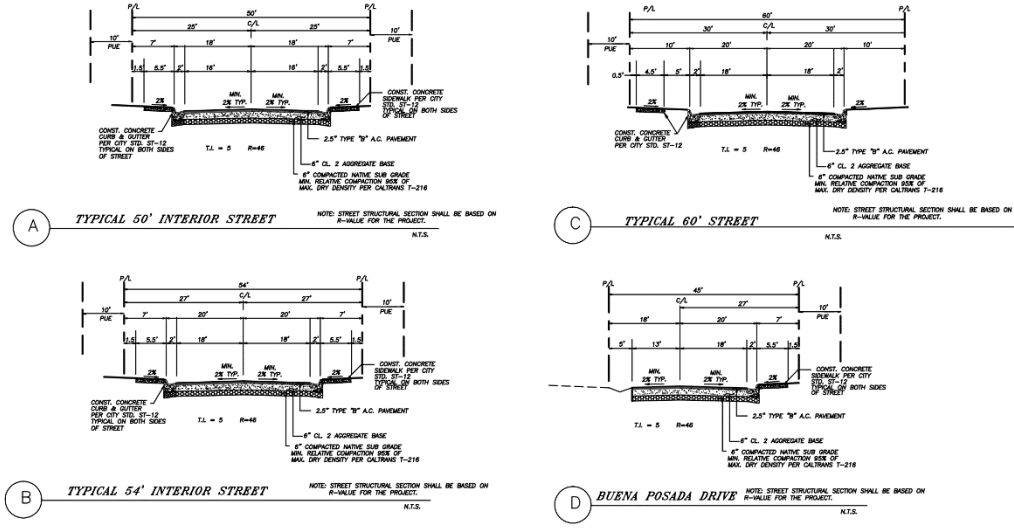
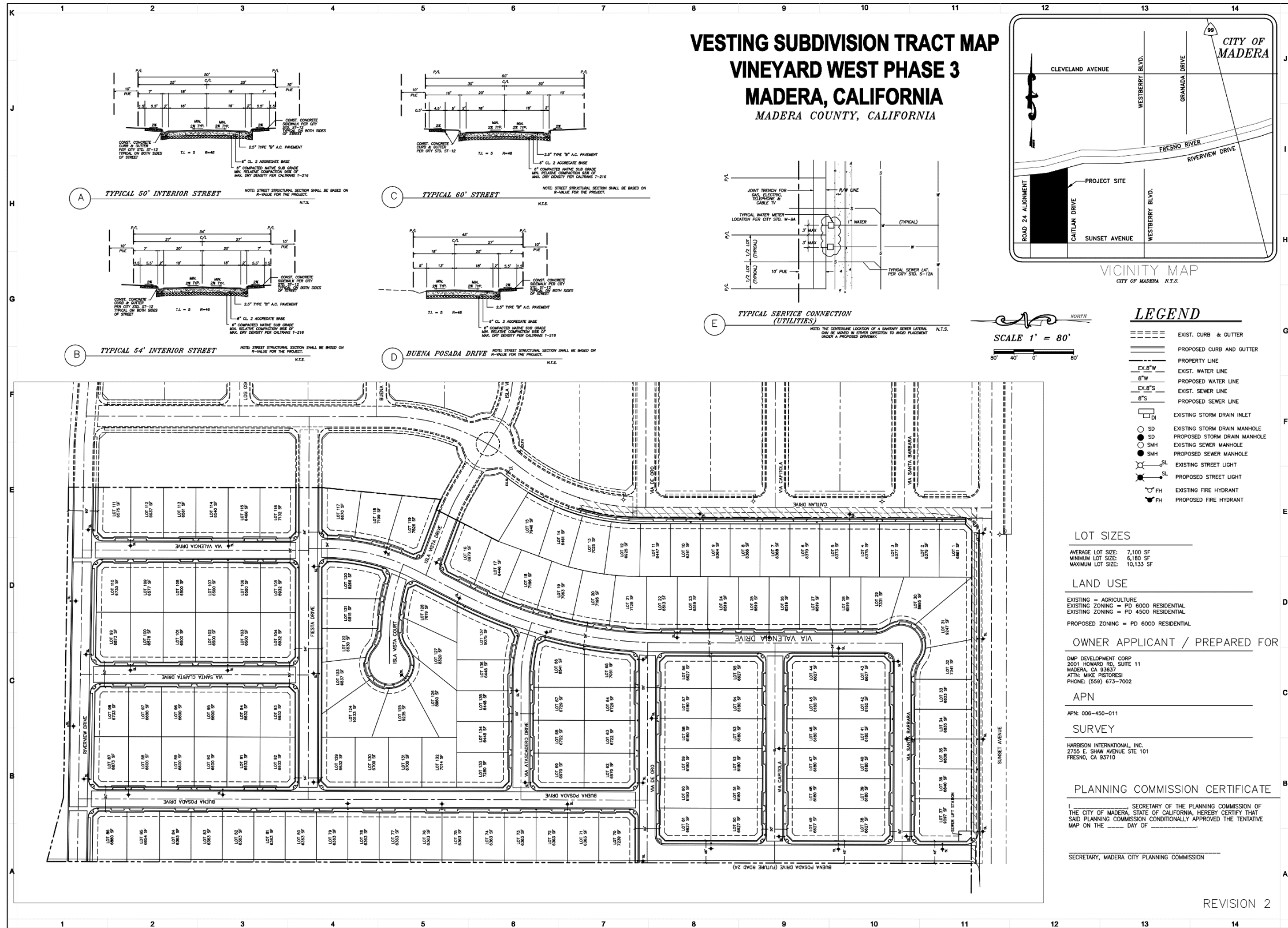


Attachment 2: Aerial Photo



Attachment 3: Tentative Subdivision Map (TSM) 2020-04

VESTING SUBDIVISION TRACT MAP
VINEYARD WEST PHASE 3
MADERA, CALIFORNIA
 MADERA COUNTY, CALIFORNIA



LEGEND

- EXIST. CURB & GUTTER
- PROPOSED CURB AND GUTTER
- PROPERTY LINE
- EX.W EXIST. WATER LINE
- 8"W PROPOSED WATER LINE
- EX.S EXIST. SEWER LINE
- 8"S PROPOSED SEWER LINE
- DI EXISTING STORM DRAIN INLET
- SD EXISTING STORM DRAIN MANHOLE
- SD PROPOSED STORM DRAIN MANHOLE
- SMH EXISTING SEWER MANHOLE
- SMH PROPOSED SEWER MANHOLE
- SL EXISTING STREET LIGHT
- SL PROPOSED STREET LIGHT
- FH EXISTING FIRE HYDRANT
- FH PROPOSED FIRE HYDRANT

LOT SIZES
 AVERAGE LOT SIZE: 7,100 SF
 MINIMUM LOT SIZE: 6,180 SF
 MAXIMUM LOT SIZE: 10,133 SF

LAND USE
 EXISTING = AGRICULTURE
 EXISTING ZONING = PD 6000 RESIDENTIAL
 EXISTING ZONING = PD 4500 RESIDENTIAL
 PROPOSED ZONING = PD 6000 RESIDENTIAL

OWNER APPLICANT / PREPARED FOR
 DMP DEVELOPMENT CORP
 2001 HOWARD RD, SUITE 11
 MADERA, CA 93637
 ATTN: MIKE PISTORESI
 PHONE: (559) 673-7002

APN
 APN: 006-450-011

SURVEY
 HARBISON INTERNATIONAL, INC.
 2755 E. SHAW AVENUE STE 101
 FRESNO, CA 93710

PLANNING COMMISSION CERTIFICATE
 I, _____ SECRETARY OF THE PLANNING COMMISSION OF THE CITY OF MADERA, STATE OF CALIFORNIA, HEREBY CERTIFY THAT SAID PLANNING COMMISSION CONDITIONALLY APPROVED THE TENTATIVE MAP ON THE _____ DAY OF _____

SECRETARY, MADERA CITY PLANNING COMMISSION

HARBISON INTERNATIONAL INC.
 ENGINEERS - SURVEYORS - PLANNERS
 2755 E. SHAW AVE., SUITE 101, FRESNO, CA 93710
 PHONE: (559) 294-7485 FAX: (559) 294-7481

OVERALL
VESTING SUBDIVISION TRACT MAP
VINEYARD WEST PHASE 3
MADERA, CALIFORNIA

REVISIONS:
 No. Date Drawn:
 Approved: JMM
 Project No. 20-105
 Project No. 6-17-2020
 Project No. 6-30-2020
 Project No. 11-9-2020

Title
 TRACT MAP

Sheet No.
 C-1
 OF 3 SHEETS

The City of Madera, California, is hereby certifying that this map is a true and correct copy of the original map as filed with the County Recorder of Madera County, California. The City of Madera, California, is not responsible for any errors or omissions in this map. The City of Madera, California, is not responsible for any errors or omissions in this map. The City of Madera, California, is not responsible for any errors or omissions in this map.



Attachment 4: Planning Commission Resolution for TSM 2020-04

RESOLUTION NO. 1864

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA
APPROVING TENTATIVE SUBDIVISION MAP 2020-04 (VINEYARD WEST PHASE III)**

WHEREAS, DMP Development Corp. (“Owner”) owns APN 006-450-011 in Madera, California (“site”); and

WHEREAS, the 30.45-acre site is vacant and is planned for Low Density Residential land uses; and

WHEREAS, the Owner is seeking a tentative subdivision map (TSM) to allow for a 137-lot single family residential subdivision, as proposed by TSM 2020-04, which essentially replaces an expired tentative subdivision map that was previously approved for phase III of the project; and

WHEREAS, based on a preliminary environmental assessment, this project was determined to be consistent with a Mitigated Negative Declaration prepared and adopted for the original Vineyard West subdivision and no further analysis is required; and

WHEREAS, under the City’s Municipal Code, the Planning Commission is authorized to review and approve tentative subdivision maps on behalf of the City; and

WHEREAS, the City provided notice of the Planning Commission hearing as required by law; and

WHEREAS, the Planning Commission received and reviewed TSM 2020-04 at a duly noticed meeting on December 8, 2020; and

WHEREAS, a public hearing was held, the public was provided an opportunity to comment, and evidence, both written and oral, was considered by the Planning Commission; and

WHEREAS, the Planning Commission now desires to approve TSM 2020-04, with conditions.

NOW THEREFORE, be it resolved by the Planning Commission of the City of Madera as follows:

1. Recitals: The above recitals are true and correct and are incorporated herein.
2. CEQA: This project has been previously assessed. The Planning Commission finds that pursuant CEQA Guidelines § 15162 subsequent environmental review is not required for TSM 2020-04 based on the following:
 - a. No substantial changes are proposed in the project which will require major revisions of the previous mitigated negative declaration due (MND) to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. In this case, TSM 2020-04 maintains the same density, intensity, and use for the 137 lots it creates, and is otherwise consistent with the development originally proposed for phase III of the project as contemplated by the MND. As such, the proposed tentative map has the same environmental impacts assessed in the MND.

b. No substantial changes occur with respect to the circumstances under which the project is undertaken, which will require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. In this case, the original tentative map for phase III expired, and the new proposed vesting tentative map is consistent with the originally approved tentative map that was assessed by the MND. Additionally, the property will continue to be used for residential uses as originally contemplated, and there are no new substantial changes in the physical environment that were not anticipated in the MND, including its analysis in light of the development contemplated in the General Plan.

c. There is no new information, which was not known and could not have been known at the time of the previous mitigated negative declaration that the project will have significant effect not discussed in the MND. The project will not have any more significant effects than that already discussed and assessed in the MND. Furthermore, since a MND was previously adopted for the project, the considerations set forth in CEQA Guidelines § 15162(a)(3)(C) and (D), related to the adequacy and feasibility of previously adopted mitigation measures, are not applicable.

Based upon these findings, it has been determined that no further environmental documentation is required for vesting TSM 2020-04.

3. Findings for TSM 2020-04: The Planning Commission finds and determines that there is substantial evidence in the administrative record to support the approval of TSM 2020-04, as conditioned. With conditions, the project is consistent with the requirements of the Municipal Code, including Sections 10-2.402 and 10-2.402.6.3 . The Planning Commission further approves, accepts as its own, incorporates as if set forth in full herein, and makes each and every one of the findings, based on the evidence in the record, as follows:

a. *The proposed subdivision is consistent with the General Plan and specific plans.*

The proposed TSM 2020-04 is consistent with the General Plan designation of LD (Low Density Residential). The procedural requirements of the Map Act have been met, and all parcels comply with the General Plan, including all applicable general plan, engineering, and zoning standards pertaining to grading, drainage, utility connections, lot size and density. In this regard, the design and improvements of the subdivision, subject to the conditions of approval, will be consistent with the requirements and improvement standards of the City of Madera. There is no specific plan applicable the site.

b. *The design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.*

The tract map is consistent with the City of Madera General Plan. Additionally, the proposed parcels will comply with minimum lot size standards and the residential land uses consistent with the General Plan and Zoning Ordinance. There is no applicable specific plan applicable to the site.

c. *The site is physically suitable for the type of development.*

The tract map sub-divide the approximately 30.45-acre property into 137 parcels. The proposed density is consistent with the LD (Low Density Residential) land use designation

per the General Plan, which requires a density of 2.1 to 7 dwelling units per acre (du/ac). The proposed subdivision results in a density of approximately 4.5 du/ac. This density is also consistent with the existing zone districts of PD 4500 and PD 6000, which are compatible with the LD (Low Density Residential) land use designation and allow the proposed lot sizes ranging from 6,180 square feet to just over 10,130 square feet, and the site is physically suitable for such proposed type of residential development. Development is required to be consistent with the General Plan, zoning ordinance, and the tentative subdivision map, and there are no unusual conditions that would render the site physically unsuitable for such subsequent type of consistent development.

- d. *The site is physically suitable for the proposed density of development.*

The tract map will create 137 parcels to support residential uses with standard setbacks and ample useable space. As described in further detail above, each parcel will meet the minimum of lot size of 4,500 square feet or 6,000 square feet as appropriate for the existing zoned districts, and the site is physically suitable for such proposed density of development. Any development is required to be consistent with the General Plan, the zoning ordinance, and the tentative subdivision map. Such consistency would likewise require consistency with setbacks, building code, and other requirements that would ensure suitable density of development.

- e. *The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.*

The project site is not located in a sensitive environment but rather in an area surrounded primarily by other residential land uses. An initial study was prepared for this project consistent with the California Environmental Quality Act (CEQA), which resulted in a proposed mitigated negative declaration (MND) for the project. As determined in the MND, the project will not have a significant, adverse effect on the environment as mitigated. Therefore, the tentative subdivision map would not result in a substantial adverse effect to special status species, riparian or other natural habitat, wetlands, movement of migratory fish or wildlife species, or conflict with any local, regional or state preservation or conservation plans.

- f. *The design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

The lots created will comply with all applicable sanitary sewer, water service and storm water runoff requirements, as well as other similar environmental and life safety regulations and standards. Thus, the project is not likely to cause serious public health problems.

- g. *The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public-at-large, for access through or use of property within the proposed subdivision.*

There are no public easements that currently encumber the property to be divided. All modifications made to the existing public improvements fronting the parcels upon development of the properties will be required to current City standards. Additionally, the

subdivision is designed to ensure that it will not conflict with easements and appropriate dedications will be required to ensure public easements for right-of-way, etc., are secured.

4. Approval of TSM 2020-04: Given that all findings can be made, the Planning Commission hereby approves TSM 2020-04 as conditioned as set forth in the Conditions of Approval attached as Exhibit "A."

5. Effective Date: This resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 8th day of December 2020, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Robert Gran Jr.
Planning Commission Vice Chairperson

Attest:

Gary Conte
Planning Manager

Exhibit "A" – Conditions of Approval for TSM 2020-04

EXHIBIT "A"
TSM 2020-04 (VINEYARD WEST PHASE III)
CONDITIONS OF APPROVAL
November 23, 2020

Notice to Applicant

Pursuant to Government Codes Section 66020(d)(1) and/or Section 66499.37, any protest related to the imposition of fees, dedications, reservations, or exactions for this project or any proceedings undertaken regarding the City's actions taken or determinations made regarding the project, including but not limited to validity of conditions of approval must occur within ninety (90) calendar days after the date of decision. This notice does not apply to those fees, dedications, reservations, or exactions which were previously imposed and duly noticed; or where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

IMPORTANT: PLEASE READ CAREFULLY

This project is subject to a variety of discretionary conditions of approval. These include conditions based on adopted City plans and policies; those determined through plan review and environmental assessment essential to mitigate adverse effects on the environment including the health, safety, and welfare of the community; and recommended conditions for development that are not essential to health, safety, and welfare, but would on the whole enhance the project and its relationship to the neighborhood and environment.

Approval for TSM 2020-04 will ultimately be deemed final unless appealed by the applicant to the City Council within fifteen (15) days after the decision by the Planning Commission. In the event you wish to appeal the Planning Commission's decision, you may do so by filing a written appeal with the City Clerk. The appeal shall state the grounds for the appeal and wherein the Commission failed to conform to the requirements of the ordinance. This should include identification of the decision or action appealed and specific reasons why you believe the decision or action appealed should not be upheld.

These conditions are applicable to any person or entity making use of this tentative subdivision map, and references to "developer" or "applicant" herein also include any applicant, property owner, owner, lessee, operator, or any other person or entity making use of this tentative subdivision map.

General Conditions

1. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specifically noted in the conditions or mandated by statutes.
2. The applicant shall comply with all mitigation measures required by the mitigated negative declaration approved for this project.
3. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by the applicant's signature on the Acknowledgement and Acceptance of Conditions of Approval.
4. TSM 2020-04 shall be valid for a period of 24 months from the date of its conditional approval. Prior to expiration of the conditionally approved tentative map an extension or extensions to this period may be requested pursuant to Section 66453.3 of the Subdivision Map Act.

5. Any minor deviation from the approved map or any condition contained herein shall require prior written request by the applicant and approval by the Planning Manager.
6. It shall be the responsibility of the property owner, operator, and/or management to ensure that any required permits, inspections, and approvals from any regulatory agency be obtained from the applicable agency prior to issuance of a building permit and/or the issuance of a certificate of completion, as determined appropriate by the City of Madera Planning Department.
7. Approval of this project is for the benefit of the applicant. The submittal of applications by the applicant for this project was a voluntary act on the part of the applicant not required by the City. Therefore, as a condition of approval of this project, the applicant agrees to defend, indemnify, and hold harmless the City of Madera and its agents, officers, consultants, independent contractors, and employees ("City") from any and all claims, actions, or proceedings against the City to attack, set aside, void, or annul an approval by the City concerning the project, including any challenges to associated environmental review, and for any and all costs, attorneys fees, and damages arising therefrom (collectively "claim").

The City shall promptly notify the applicant of any claim and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

Nothing in this condition shall obligate the City to defend any claim and the City shall not be required to pay or perform any settlement arising from any such claim not defended by the City, unless the City approves the settlement in writing. Nor shall the City be prohibited from independently defending any claim, and if the City does decide to independently defend a claim, the applicant shall be responsible for City's attorneys' fees, expenses of litigation, and costs for that independent defense, including the costs of preparing any required administrative record. Should the City decide to independently defend any claim, the applicant shall not be required to pay or perform any settlement arising from any such claim unless the applicant approves the settlement.

Planning Department

8. A Precise Plan shall be submitted and approved prior to approval of the Final Map for TSM 2020-04.
9. Any proposed modifications not considered minor changes in accordance with Section 10-2.402.9 (Amendments to Approved Subdivisions) shall require an amendment to TSM 2020-04.
10. Vandalism and graffiti shall be corrected in accordance with the provisions of the Madera Municipal Code.
11. The property owner, operator, and/or manager shall operate the site in a manner that does not generate noise, odor, blight, or vibration that adversely affects adjacent properties.
12. The property owner, operator, and/or manager shall keep the property clear of all trash, rubbish, and debris at all times.

Building Department

13. A building permit is required for all construction on the site.

Fire Department

14. All homes shall be equipped with residential fire sprinklers.
15. The fire hydrant system shall comply with appendices B&C of the California Fire Code and the City of Madera Standards. One fire hydrant is required and placement at Riverview Drive is acceptable.
16. Buena Posada Drive shall be constructed as a public road capable of supporting fire apparatus.

Engineering DepartmentGeneral Conditions

17. Prior to recording of the final map, all action necessary for annexation into Community Facilities District 2005-01 shall have been taken, and all property included in said subdivision shall be made a part of such district and subject to its taxes.
18. A final subdivision map shall be required per Section 10-2.502 of the municipal code. 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.
19. Park land as may be identified elsewhere in these conditions shall be dedicated to the City in advance of, or in conjunction with, recordation of the final subdivision map.
20. 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.
21. A benchmark shall be established per City Standards and related data shall be submitted to the Engineering Department prior to acceptance of the improvements. The City Engineer shall designate or approve the location.
22. 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.
23. Nuisance on-site lighting shall be redirected as requested by City Engineer within 48 hours of notification.
24. Development impact fees shall be paid at time of building permit issuance.
25. Improvement plans sealed by an engineer shall be submitted to the Engineering Division according to the Engineering Plan Review Submittal Sheet and Civil Plan Submittal Checklist.
26. The developer shall pay all required fees for processing the subdivision map and completion of the project. Fees due may include but shall not be limited to the following: subdivision map review and processing fee, plan review, map recording, easement acceptance, encroachment permit processing and improvement inspection fees.

27. 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.
28. Improvements within the City right-of-way require an Encroachment Permit from the Engineering Division if initiated prior to execution of an Improvement Agreement.
29. The improvement plans for the project shall include the most recent version of the City's General Notes.
30. The developer shall comply with the Federal Emergency Management Agency (FEMA) requirements as may be applicable.

Water

31. 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.
32. Unless the City Engineer or fire flow analysis specifies larger lines, water lines, a minimum of eight (8) 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 installations of 18 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 existing city main. If the subdivision is constructed in phases, blow-offs will be required at each termination point. All water system bacterial analysis testing costs shall be reimbursed to the City prior to approval of any units for final occupancy. Fees shall be based on rates established by the Department of Public Works.
33. Prior to beginning any framing construction, approved fire hydrants shall be installed in accordance with spacing requirements for residential development (400 feet) or commercial development (300 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.
34. Water services shall be placed three (3) feet from either property line, opposite of streetlight 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.
35. One water quality sampling station shall be installed within the subdivision and approved by the water quality division of the Public Works Department.
36. All water sources used for construction activities shall have an approved backflow device installed. All water trucks/storage tanks will be inspected for proper air gaps or back-flow prevention devices.
37. Water service connection(s) shall be constructed to current City standards including an Automatic Meter Reading (AMR) water meter installed within the City's right-of-way. Backflow prevention devices shall be required for any water service not serving a residence and installed within private property.
38. A separate water meter and backflow prevention device shall be required for landscape areas.

39. Existing wells if any shall be abandoned as directed and permitted by City of Madera for compliance with state standards.
40. The developer shall construct a 12-inch water main along Sunset Avenue from its current termination point at the intersection of Sunset Avenue and Caitlin Drive to the western property line of the proposed project site. The water main shall be constructed to current City standards. The oversize component (difference in cost between 12-inch and 8-inch pipe) of the construction of this line is considered reimbursable through the City's Development Impact Fee Program, subject to availability of funds. Half of the 8-inch component is reimbursable from adjacent properties as they develop and connect.
41. The developer shall construct a 12-inch water main along Riverview Drive from its current termination point at the intersection of Riverview Drive and Caitlin Drive to the western property line of the proposed project site. The water main shall be constructed to current City standards. The oversize component (difference in cost between 12-inch and 8-inch pipe) of the construction of this line is considered reimbursable through the City's Development Impact Fee Program, subject to availability of funds. Half of the 8-inch component on the river side of the street is reimbursable through the City's Development Impact Fee Program, subject to availability of funds.
42. The developer shall construct a water main connecting the 12-inch water mains in Sunset Avenue and Riverview Drive to allow for completion of a looped water system.

Sewer

43. The developer shall construct a 12-inch sewer main along Sunset Avenue from its current termination point at the intersection of Sunset Avenue and Caitlin Drive to the western property line of the proposed project site. The sewer main shall be constructed to current City standards. The oversize component (difference in cost between 12-inch and 8-inch pipe) of the construction of this line is considered reimbursable through the City's Development Impact Fee Program, subject to availability of funds. Half of the 8-inch component is reimbursable from adjacent properties as they develop and connect.
44. The developer shall construct a 10-inch sewer main along Riverview Drive from its current termination point at the intersection of Riverview Drive and Caitlin Drive to the western property line of the proposed project site. The sewer main shall be constructed to current City standards. The oversize component (difference in cost between 10-inch and 8-inch pipe) of the construction of this line is considered reimbursable through the City's Development Impact Fee Program, subject to availability of funds. Half of the 8-inch component on the river side of the street is reimbursable through the City's Development Impact Fee Program, subject to availability of funds.
45. Due to physical constraints already built into the existing sewer system, the developer is permitted to consider two options for development of Vineyard Estates based upon a documented meeting between developer and City on January 15, 2008. Options as detailed in said meeting were: 1) Construct lift station as proposed by the applicant (DMP) but with additional requirements as requested by the City to reduce or eliminate the potential for adverse consequences should power be lost or a pump goes down for any reason. The specifics of the additional requirements have previously been forwarded to DMP but include an emergency backup generator and a backup pump. If the lift station is constructed, the cost of maintaining shall be borne through a Homeowners Association (HOA) formed by DMP or successor of interest in the property. Maintenance shall be performed by a private contractor

through an agreement with the HOA; or 2) Construct a parallel sewer main in Sunset Road east of the westerly limits of the existing sewer manhole at Caitlin Drive to Liberty Lane or some point in between that will allow gravity flow of the sewer system within Vineyard West Phase III. The cost of this parallel main shall not include the construction of the main between Buena Posada Drive and Caitlin Drive as this segment was originally included in the conditions of approval for Vineyard West Phase III.

46. Sewer lines installed within internal publicly owned streets to serve the development within the subdivision shall be sized accordingly and shall be a minimum of eight (8) inches in diameter. Sewer main connections to any existing city main six (6) 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. Digital video disc (DVD) shall be submitted to the City Engineer and be approved prior to paving with all costs to be borne by the subdivider.
47. Sewer services shall be located at the approximate centerline of each lot or as required for construction of residential development with a clean-out installed per City Standards and identified on the curb face. Termination of service shall be 10 feet past property line. Where contiguous sidewalks are installed, the 4-inch-sewer clean out shall be located 18 inches back of sidewalk in a dedicated public utility easement. Sewer clean-outs shall not be located within sidewalk or approach areas unless approved by the City Engineer. Sewer services shall be installed 10 feet beyond the property lines as a part of the sewer system installation for testing purposes.
48. Existing septic tanks, if found, shall be removed, permitted, and inspected by City of Madera Building Department.

Storm Drain

49. Storm runoff from the northerly portion of this project site is to be served by a system installed by the adjacent French Cove Subdivision. The developer shall construct a 24-inch storm drain line along Riverview Drive from its current termination point at the intersection of Riverview Drive and Caitlin Drive to the point at which a storm drain analysis performed in accordance with the storm drainage master plan indicates is necessary. Said analysis and consideration of NPDES Permit requirements will also serve to confirm size of pipe in Riverview Drive.
50. Storm runoff from the southerly portion of this project site is to be served by the Mosesian Basin located to the southeast of this project site. The developer shall construct a 24-inch storm drain line along Sunset Avenue from its current termination point at Sunset Avenue and Caitlin Drive to the extent necessary to convey storm runoff to the existing basin. 24-inch storm drain size shall be confirmed through a storm drain analysis performed in accordance with the storm drainage master plan.
51. 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 or expand 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.
52. This project shall, as applicable, 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. CAS000004. For the purpose of this proposed

development, post development runoff shall match or be less than pre-development runoff. The development shall be subject to future inspections by City or other designated agencies relative to the improvements installed as a result of this condition to ensure they remain in compliance with the conditions imposed under this condition. This condition is directly applicable to this project due to the existing outfall into the Fresno River.

Streets

53. The developer shall provide a traffic study that addresses and mitigates the impacts of the planned development on the street system. The intersection of Westberry Boulevard/Sunset Avenue shall be evaluated as part of the traffic study. The traffic study shall be submitted to the Engineering Department for review and approval prior to submittal of improvement plans.
54. The developer shall be a proponent of annexing into existing Landscape Maintenance District (LMD) Zone 27B. Where applicable, said Landscape Maintenance District shall address maintenance of landscape planting between side- and rear-yard fencing and edge of sidewalk. If the annexation into LMD Zone 27B is not attainable, the developer shall at their sole expense, form a new Landscape Maintenance District zone. The subdivider shall sign and submit a landscape district formation and inclusion form, an engineer's report and map prior to recording of any final map.
55. 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 27B 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 improvement which are required to be constructed by the developer and included in the City-wide 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 needed by the Parks Department for maintenance of eligible landscaping shall be refunded to the developer.
56. The existing Sunset Avenue farm to market roadway shall be reconstructed in its entirety. The north half of Sunset Avenue along the entire project frontage shall be an 80-foot collector roadway standard with a five-foot sidewalk pattern. The north half of the street shall include but not be limited to fire hydrants, streetlights, curb and gutter, park strip, sidewalk and a 28-foot (gutter lip to centerline) asphalt section. The south half of the street shall (or as existing right-of-way will allow) include, but not be limited to, one permanently paved 12-foot travel lane, one half of a 12-foot wide center turn lane) and a four-foot shoulder (shoulder requirement per Air District Standards), and drainage swale, or a 12-foot travel lane and a combination of shoulder/AC dike and drain inlets as may be necessary to accommodate existing and completed project storm runoff. Adequate transitions with the existing improvements relative to grade and alignment shall be provided in accordance with applicable standards (i.e. California Manual on Uniform Traffic Control Devices or Caltrans Highway Design Manual). The three lanes (36-feet total) centered on ultimate street centerline, which includes the center turn lane (12-foot wide) and two travel lanes (each 12-foot wide), are eligible for reimbursement through the City's Impact Fee program, subject to availability of funds.
57. All streets internal and external to the subdivision shall be designed with a 2% cross slope. Variations to absorb grade variations on private property are not permitted.

58. Pavement markings/stripping on Sunset Avenue to the west of Via Cerioni shall be eradicated and repainted as necessary to provide transitions in accordance with California Manual on Uniform Traffic Control Devices.
59. A Street Easement Dedication shall be made to dedicate sufficient right-of-way along the entire project parcel frontage on Sunset Avenue to provide a half-street width of forty (40-ft) feet, north of the center line, to accommodate for a collector standard roadway.
60. The full width of Riverview Drive along the project frontage shall be improved to a 60-foot residential roadway standard with a five-foot sidewalk pattern and a cul-de-sac or other options that may be approved by the City Fire Marshall. The south half of the street shall include but not be limited to fire hydrants, streetlights, curb and gutter, park strip and sidewalk. The north half of the street shall be limited to curb and gutter, and planting of street trees or other landscaping in accordance with City standards. Landscaping shall be designed as determined by Planning and/or Parks Department.
61. Fencing shall be installed between Riverview Drive and the Madera Irrigation District (MID) Canal as an extension of the fencing to the east constructed by previous subdivisions in accordance with plans approved by MID and the City Engineer.
62. Interior streets shall be constructed in accordance with City standards for a residential street including a five-foot sidewalk, curb and gutter, streetlights, fire hydrants and all other components necessary to complete construction per City standards.
63. An approved on-site or off-site turn-around shall be provided at the end of each stub-out or roadway 150 feet or more in length pursuant to the uniform fire code. Cul-de-sacs shall be no longer than 450 feet. Any off-site turn-around shall have a maintenance covenant and easement recorded prior to recording of final map. The developer is responsible for all fees associated with the approval of all documents.
64. "No Parking" signs shall be installed along the Sunset Avenue frontage per City standards.
65. Traffic calming features, as approved by the City Engineer, shall be implemented throughout all interior streets associated with the subdivision. Maximum distance between calming devices shall be 300 feet. Any increase in separation shall be approved by the City Engineer.
66. 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 or commercial buildings.
67. Access ramps shall be installed at all curb returns per current City standards.
68. Driveway approaches shall be constructed per current City standards.
69. The developer shall be required to install streetlights along Sunset Avenue and Riverview Drive frontages and all interior streets associated with the subdivision in accordance with current City spacing standards. Streetlights shall be LED using Beta Lighting standards or equal in accordance with City of Madera standards.
70. 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 front door to 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 a 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.

71. If developed in phases, each phase shall have two (2) 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 "A" asphalt over 6 inches of 90 percent compacted native soil or 4 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 recording the final map for any phased development.
72. 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" x 36" tracing with City of Madera logo on bottom right corner. The cover sheet shall indicate the total linear feet of all streets, fire hydrant and street water main linear feet, and sewer line linear 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, updated standards available on the City of Madera website. The plans are to include the City of Madera title block and following:
 - a. Detailed site plan with general notes, including the location of any existing wells and septic tanks;
 - b. Street plans and profiles;
 1. Drainage ditches, culverts, and other structures (drainage calculations to be submitted with the improvement plans)
 2. Streetlights
 3. Traffic signals
 4. Construction details including traffic signage and 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 shall be prepared by a landscape architect or engineer.
 - f. Storm water pollution control plan and permit.
 - g. Itemized quantities of the off-site improvements to be dedicated to the City.
73. Submittals shall include **(submit a PDF and the stated number of hard copies for each item)**:
 - 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. Four hard copies of complete improvement plans
- h. Three hard copies of landscape and irrigation plans
- i. Two sets of drainage calculations
- j. Two copies of the engineers estimate

Partial submittals will not be accepted by the engineering department.

74. 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 3-sack sand slurry mix extending one-foot past curb and gutter in each direction.
75. The applicant shall coordinate with the pertinent utility companies as required regarding establishment of appropriate easements and under-grounding of service lines. A ten-foot-public utility easement will be required along all interior lot frontages.
76. All existing and proposed public utilities (electric, telephone, cable, etc.) shall be undergrounded, except transformers, which may be mounted on pads. Public utility easements shall be dedicated outside and adjacent to all streets rights-of-way. All public utilities within the subdivision and adjacent to the project property frontage on peripheral streets (on the development side of the street centerline) shall be placed underground except those facilities exempted by the public utilities Commission Regulations or operating at 70,000 volts or greater.
77. A preliminary title report and plan check fees along with the engineer's estimated cost of installing the improvements shall be submitted with the initial improvement plan submittal. Inspection fees shall be paid prior to initiating construction.
78. 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 must 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 who prepared the report are to be noted on the final map.
79. The subdivider shall enter an Improvement Agreement in accordance with the municipal code prior to recording of the final map. The subdivision agreement shall include for deposit with the City a performance bond, labor, material bond, cash bond, or other bonds as required by the City Engineer, prior to acceptance of the final map.
80. The subdivider may commence off-site construction prior to approval of the final map in accordance with Section 7-2.02 MMC, an encroachment permit, providing improvement plans are approved and submitting 100 percent performance bond, additional bond (50 percent labor & 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 shall be per City of Madera Development Application Fees as approved by City Council and shall be paid at the time of permit.
81. The developer's engineer, upon completion of the 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 improvements by the City.

Improvement Inspections

82. 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.
83. 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.
84. 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 will verify prior to inspection that the contractor requesting inspection is using plans signed by the City Engineer.
85. No occupancy of any buildings within the subdivision or parcels shall be granted until improvements are completed to the satisfaction of the City Engineer. After request for final improvement inspection, the generation of a written punch list will require a minimum of five working days.

Special Engineering Conditions

86. A six-foot high decorative masonry block wall shall be constructed along the Sunset Avenue and Riverview Drive frontages.
87. Direct residential access to Sunset Avenue is prohibited and this shall be noted on the final map.
88. 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.
89. Lot fill in excess of 12 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 12 inches or more will require construction of a retaining wall.
90. Retaining walls, if required, shall be 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.
91. Prior to the issuance of any building permits or any construction on the subdivision or parcels, 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.
92. Any construction work on MID facilities must not interfere with either irrigation or storm water flows, or MID operations. Prior to any encroachment upon, removal or modification of MID facilities, the developer must submit two sets of preliminary plans for MID approval. Permits must 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 will require removal of MID facilities at the owners' expense. Turnouts and gates shall be salvaged and returned to the MID yard.
93. Prior to recording the final 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 must be paid in full. Assessments are due and payable in full November first of the year preceding the assessment year.

94. The developer of the property can expect to pay current and future development impact fees, including, but not limited to sewer (special service area), water, streets, bridge, public works, parks, public safety and drainage, that are in place at the time building permits are issued.
95. Final street names shall be approved by the Planning Department prior to recording the map for each phase of the development or approval of the improvement plans. Road names matching existing county roads must maintain the current suffix. All streets, even the small segments, shall have street names on the final map. Entry streets, cul-de-sacs and courts should utilize the name of the nearest subdivision street.
96. 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 item, all adjacent sidewalks shall retain a minimum clear walkway width of five feet.

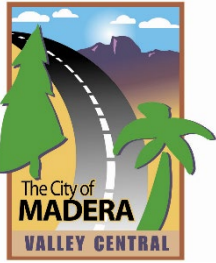
San Joaquin Valley Air Pollution Control District

97. The applicant shall consult with and shall comply with the requirements of the San Joaquin Valley Air Pollution Control District, including but not limited to compliance with Regulation VIII (Fugitive PM₁₀ Prohibitions) and Rule 9510 (Indirect Source Review).

Madera Unified School District

98. The applicant shall be responsible for payment of fees to the Madera Unified School District and shall provide the City with evidence of payment, or evidence of the District's determination that no payment is required, prior to issuance of a certificate of occupancy.

-END OF CONDITIONS-



CITY OF MADERA PLANNING COMMISSION

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

Staff Report: Pecan Square Modification to Conditions of Approval TPM 2019-03 MOD Item # 3 – December 8, 2020

PROPOSAL: To clarify a condition of approval to make clear that the dedication of park land is required prior to just the recordation of Tentative Subdivision Map (TSM) 2019-03 and not prior to the recordation of Tentative Parcel Map (TPM) 2019-03.

APPLICANT:	D.R. Horton	OWNER:	Robert & Judee Atamian, Trustee
SITE ADDRESS:	No address assigned	APN:	012-480-005
APPLICATIONS:	TPM 2020-03 MOD	CEQA:	Consistent with adopted Mitigated Negative Declaration

LOCATION: The subject property is approximately 76.25 acres in total located at the southwest corner of Madera Ave (State Route 145) and Pecan Ave.

STREET ACCESS: The project site has street access from Pecan Ave. Future site access may be provided via Madera Ave (State Route 145).

PROJECT SIZE: The project site is a total size of 76.25 acres.

GENERAL PLAN DESIGNATION: LD (Low Density Residential); MD (Medium Density Residential); HD (High Density Residential); C (Commercial)

ZONING DISTRICT: PD-6000, PD-3000, PD-1500 (Planned Development: 6,000 sq ft, 3,000 sq ft, 1,500 sq ft site area per dwelling unit, respectively); CN (Commercial Neighborhood)

SITE CHARACTERISTICS: The subject property is open land historically used for agricultural cultivation. Adjacent land to the south and southwest is open agricultural land; to the west is rural residential; to the north and east is single family residential; to the northeast is neighborhood commercial. Areas to the east, south and west are outside the current City limits.

ENVIRONMENTAL REVIEW: This project has already been environmentally assessed. The modification is a mere clarification as to process regarding timing and will not affect the physical environment in any way. As such, no further analysis is required under the California Environmental Quality Act (CEQA).

SUMMARY: Planning Commission previously approved TPM 2019-03 and TSM 2019-03, subject to conditions of approval, at the regularly scheduled hearing held on May 12, 2020. City Council subsequently ratified Planning Commission's approval at their June 17, 2020 hearing. TPM 2019-03 proposed to subdivide the 76.25 acre site into two parcels: Parcel 1 sized at approximately 53.75 acres and Parcel 2 sized at approximately 22.5 acres. TSM 2019-03 proposed to further subdivide the resulting 22.5-acre Parcel 2 into 112 single family residential lots with a 0.58-acre park site, in accordance with the City's adopted Quimby Act provisions.

Also approved or recommended for approval by Planning Commission on May 12, 2020 were the following applications:

- Precise Plan (PPL) 2020-04, which established developments standards and design expectations for the proposed TSM. Planning Commission approved the application at their May 12, 2020 hearing and the City Council ratified the approval at their June 17, 2020 hearing.
- General Plan Amendment (GPA) 2019-03, which requested a reconfiguration of the existing land use designations of LD (Low Density Residential), MD (Medium Density Residential), HD (High Density Residential), and C (Commercial) on the subject site. Planning Commission recommended approval to City Council who subsequently approved the application at the June 17, 2020 City Council hearing.
- Rezone (REZ) 2019-06, which proposed zoning consistent with the requested General Plan land use designations. Planning Commission recommended approval to City Council who subsequently approved the application at the June 17, 2020 City Council hearing.

A Mitigated Negative Declaration was adopted for this project pursuant to CEQA.

TPM 2019-03 MOD

The City received a request from the applicant's representative, QK, in November 2020 to modify one of the conditions of approval (Condition No. 6) applicable to the TPM and TSM. The condition requires that park land be dedicated prior to or concurrent with the recordation of both the TPM and the TSM. The approved condition reads as follows:

Condition No. 6 (as approved): The park land, as shown in the Tentative Parcel Map (TPM) and Tentative Subdivision Map (TSM), shall be dedicated to the City in advance of, or in conjunction with, recordation of the final subdivision map or parcel map. *TSM & TPM*

This condition implicitly anticipated that both the TPM and TSM would be recorded together. However, project conditions have now changed and the TPM will be recorded earlier. In order to facilitate a transfer of Parcel 2 from the current landowner (Atamian Trustees) to the future developer (D.R. Horton), the applicant is requesting that the recordation of the TPM be allowed to proceed prior to park land being dedicated to the City. The TSM would be developed as conditioned, including the requirement to transfer park land to the City of Madera prior to recordation of the TSM. The proposed condition would read as follows:

Condition No. 6 (as proposed): The park land, as shown in the ~~Tentative Parcel Map (TPM) and~~ Tentative Subdivision Map (TSM), shall be dedicated to the City in advance of, or in conjunction with, recordation of the final subdivision map ~~or parcel map.~~ *TSM & ~~TPM~~*

With this clarification the park land will still be dedicated prior to recordation of the TSM and development of Parcel 1.

ANALYSIS

The modifications to Condition No. 6 would correct a technical error identifying the park land as part of the Tentative Parcel Map. The proposed changes would still require that park land be dedicated to the City prior to or concurrent with the recordation of the TSM. This would ensure that the City would have acquired the park land before development occurs within the proposed residential subdivision.

The modifications to Condition No. 6 as proposed would have no impact on the approvals for PPL 2020-04, GPA 2019-03, REZ 2019-06, or TSM 2019-03.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

This project has already been environmentally assessed. The modification is a mere clarification as to process regarding timing and will not affect the physical environment in any way. As such, no further analysis is required under the California Environmental Quality Act (CEQA).

RECOMMENDATION

The information presented in this report provides support for the adoption of a resolution approving TPM 2019-03 MOD. It is recommended that the Commission consider the information in this report, as well as testimony received at the public hearing, and make a determination on the clarification to TPM 2019-03 MOD, subject to the findings and conditions of approval.

PLANNING COMMISSION ACTION

The Commission will be acting on TSM 2019-03 MOD determining to either:

- Adopt a resolution approving TPM 2019-03 MOD (Motion 1);
- Continue the hearing to January 12, 2021, with direction to staff to return with an updated resolution with appropriate findings modifying the conditions of approval for the following reasons: (Specify – Planning Commission should articulate reasons for modifications to findings and conditions of approval) (Motion 2); or
- Move to continue the application for TPM 2019-03 MOD to the January 12, 2021 Planning Commission hearing with direction to staff to return with an updated resolution with appropriate findings for denial for the following reasons: (Specify – Planning Commission should articulate reasons for denial.)(Motion 3).

Motion 1: Move to adopt a resolution of the Planning Commission of the City of Madera approving TPM 2019-03 MOD, based on and subject to the findings and conditions of approval as follows:

Findings to Approve a Tentative Parcel Map

Finding a: The proposed subdivision, together with its design and improvements, is consistent with the General Plan.

The proposed modification to Condition No. 6 for TPM 2019-03 would not alter the design or improvements previously approved by the Planning Commission at their May 12, 2020

hearing. While the proposed modification will alter the timing for dedication of park land, the dedication will still be made consistent with City requirements prior to or concurrent with the recordation of the associated TSM 2019-03, as modified by TSM 2019-03 MOD. The approved TPM 2019-03 has already been found consistent with the intent and designation of the General Plan. As TPM 2019-03 MOD makes no modification to the design of the tentative parcel map, this finding can be made.

Finding b: The proposed subdivision, together with its design and improvements, is consistent with any applicable specific plans.

The project site is not subject to any applicable specific plans.

Findings to Approve a Tentative Subdivision Map

Finding a: The proposed subdivision, together with its design and improvements, is consistent with the General Plan.

The proposed modification to Condition No. 6 for TSM 2019-03 would not alter the design or improvements previously approved by the Planning Commission at their May 12, 2020 hearing. Dedication of park land will continue to be required prior to or concurrent with the recordation of TSM 2019-03, as modified by TSM 2019-03 MOD. The approved TSM 2019-03 has already been found consistent with the intent and designation of the General Plan. As TSM 2019-03 MOD makes no modification to the design of the tentative subdivision map, this finding can be made.

Finding b: The proposed subdivision, together with its design and improvements, is consistent with any applicable specific plans.

The project site is not subject to any applicable specific plans.

(OR)

Motion 2: Move to continue the public hearing on TPM 2019-03 MOD to January 12, 2021 with direction to staff to return with an updated resolution with appropriate findings modifying the conditions of approval for the following reasons: (Specify – Planning Commission should articulate reasons for modifications to findings and conditions of approval.)

(OR)

Motion 3: Move to continue the applications for TPM 2019-03 MOD to the January 12, 2021 Planning Commission hearing with direction to staff to return with an updated resolution with appropriate findings for denial for the following reasons: (Specify – Planning Commission should articulate reasons for denial.)

ATTACHMENTS

Attachment 1: Aerial Photo

Attachment 2: TPM 2019-03

Attachment 3: TSM 2019-03

Attachment 4: Planning Commission Resolution for TPM 2019-03 MOD

Attachment 1: Aerial Photo



Attachment 2: TPM 2019-03

TENTATIVE
PARCEL MAP NO. 2019 -

IN THE CITY OF MADERA, COUNTY OF MADERA, STATE OF CALIFORNIA
CONSISTING OF 2 (TWO) SHEETS
SHEET 1 (ONE) OF 2 (TWO)
NOVEMBER 2019

LEGAL DESCRIPTION:

REAL PROPERTY IN THE CITY OF MADERA, COUNTY OF MADERA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:
THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 11 SOUTH, RANGE 17 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF MADERA, COUNTY OF MADERA, STATE OF CALIFORNIA ACCORDING TO THE OFFICIAL PLAT THEREOF.
EXCEPTING THEREFROM, THOSE PORTIONS CONVEYED TO THE STATE OF CALIFORNIA BY DEEDS RECORDED NOVEMBER 21, 1974 IN BOOK 1214, PAGE 837 OF OFFICIAL RECORDS, AS DOCUMENT NO. 14054 AND RECORDED FEBRUARY 4, 1993 AS DOCUMENT NO. 9303243 OF OFFICIAL RECORDS.
ALSO EXCEPTING THEREFROM, THOSE PORTIONS CONVEYED TO THE COUNTY OF MADERA BY DEED RECORDED APRIL 3, 1998 AS DOCUMENT NO. 9809005 OF OFFICIAL RECORDS.
APN: 012-480-005-000

RECORD OWNERSHIP: SUBDIVIDER:

ROBERT "BOB" ATAMAN AND JUDEE ATAMAN
12180 ROAD 26 #1
MADERA, CA 93637
APN: 012-480-005

D.E. HORTON & SONS, INC.
419 N. MURRAY AVENUE
MADERA, CA 93637
(559)836-9850

BASIS OF ELEVATIONS

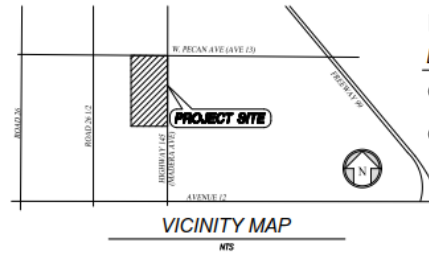
MADERA COUNTY BRASS DISK IN CONCRETE LOCATED AT THE INTERSECTION OF PECAN AVENUE (AVENUE 13) AND ROAD 26. BENCHMARK ID = 5-67, ELEVATION=259.42 FT, DATUM=NGVD'29.

NOTES:

- EXISTING ZONING: PD(MD00), PD(MD00), PD(1500), PF, CH (PLANNED DEVELOPMENT), PUBLIC FACILITY, NEIGHBORHOOD COMMERCIAL
- EXISTING USE: VACANT
- PROPOSED LAND USE: RESIDENTIAL, R1(RUS)
- SITE AREA: 22.50 ACRES (NET)
- SITE ADDRESS: 300 PECAN AVENUE, MADERA, CA 93637
- ASSESSOR'S PARCEL ID: 012-480-005
- ANY GRASS DIFFERENTIALS ACROSS EXISTING AND PROPOSED PROPERTY LINES WILL BE MITIGATED PER CITY OF MADERA REQUIREMENTS.
- ALL EXISTING WATER LINES, SEWERS, AND STORM DRAINS WILL REMAIN UNLESS OTHERWISE NOTED.
- NO EXISTING TREES WERE OBSERVED ON-SITE AT THE TIME OF THE FIELD SURVEY.
- THERE ARE NO KNOWN UNDERGROUND FEATURES SUCH AS WELLS OR CEESPOOLS WITHIN THE PROPOSED SUBDIVISION OTHER THAN WHAT IS SHOWN ON THE MAP.
- TO THE BEST OF OUR KNOWLEDGE, THERE ARE NO DUMP SITES ON THIS PROPERTY.
- WATER SUPPLY AND SEWER SERVICES ARE FROM THE CITY OF MADERA.
- A PORTION OF THIS AREA IS SUBJECT TO FLOOD INUNDATION PER FIRM PANEL 1170E, ZONE AO.
- BOUNDARY INFO SHOWN IS CONSIDERED APPROXIMATE AND IS BASED ON RECORD INFORMATION ONLY.

UTILITY INFORMATION:

SEWER: CITY OF MADERA, 209 WEST FOURTH STREET, MADERA, CA 93637, PHONE: (559)661-5400
GAS AND ELECTRIC: PACIFIC GAS AND ELECTRIC COMPANY, 2871 AIRPORT DRIVE, MADERA, CA 93637, PHONE: (800)742-5000
WATER: CITY OF MADERA, 209 WEST FOURTH STREET, MADERA, CA 93637, PHONE: (559)661-5400
TELEPHONE: AT&T CALIFORNIA, 5025 EAST OLIVE AVENUE, RM. E-100-05, FRESNO, CA 93762, PHONE: (559)454-3778
STORM DRAIN: MADERA COUNTY WATER & NATURAL RESOURCES, 200 WEST 4TH STREET, MADERA, CA 93637, PHONE: (559)875-7703



LEGEND

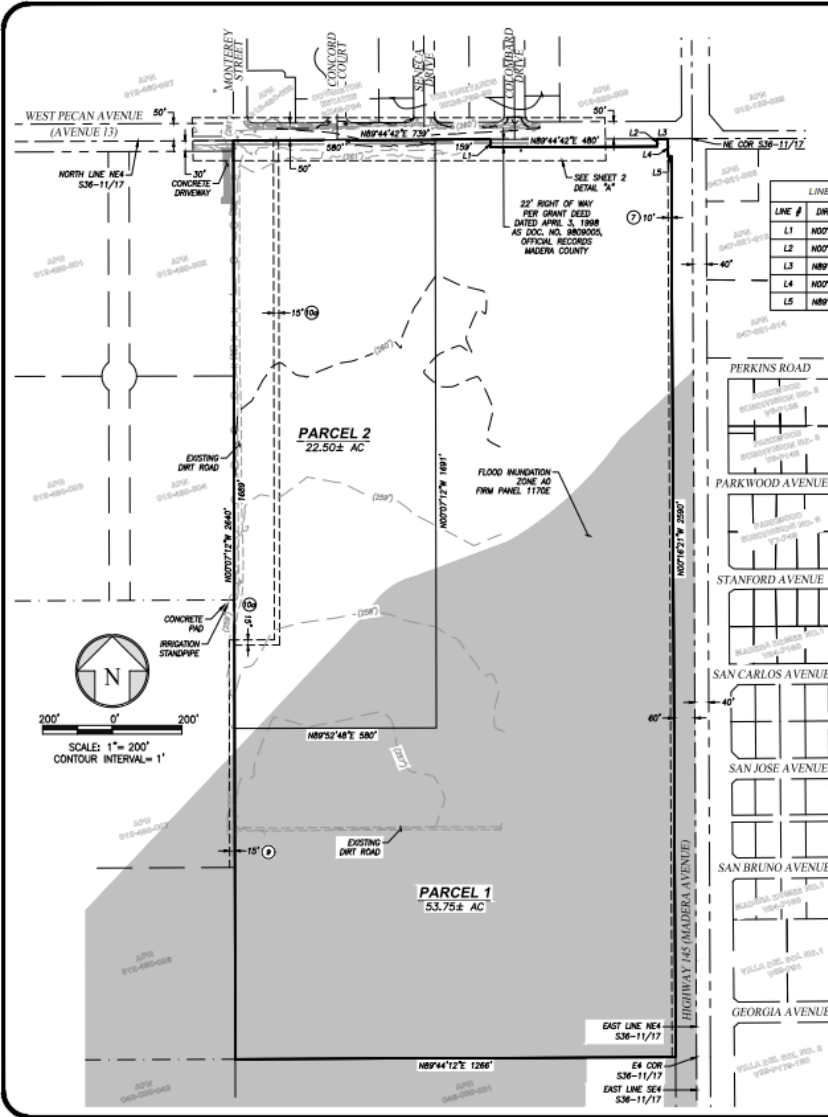
- EXISTING CONTOUR LINE
- EXISTING BARBED WIRE FENCE
- EXISTING CHAIN LINK FENCE LINE
- NOTES: DENOTES AN EXISTING EASEMENT (SEE EASEMENT NOTE)
- EXISTING FIRE HYDRANT
- M.C.R. MADERA COUNTY RECORDS
- EXISTING STREET LIGHT
- ADJACENT PROPERTY LINE
- EXISTING EASEMENT LINE AS NOTED
- OVERALL PARCEL BOUNDARY LINE
- PARCEL BOUNDARY LINE
- ROAD RIGHT OF WAY LINE
- SECTION LINE
- SECTIONAL BREAKDOWN LINE
- EXISTING SEWER MANHOLE
- EXISTING SIGN
- EXISTING WATER VALVE
- EXISTING CONCRETE

EASEMENT NOTES:

- 7 DENOTES AN EASEMENT FOR THE PURPOSE OF IRRIGATION PIPELINE FACILITIES IN FAVOR OF THE CITY OF MADERA PER GRANT DEED RECORDED FEBRUARY 4, 1993 AS DOCUMENT NUMBER 9303243, M.C.R.
- 8 DENOTES AN EASEMENT FOR THE PURPOSE OF AN UNDERGROUND DRAINAGE PIPELINE IN FAVOR OF THE CITY OF MADERA PER GRANT DEED RECORDED NOVEMBER 18, 1998 AS DOCUMENT NO. 9833820, M.C.R.



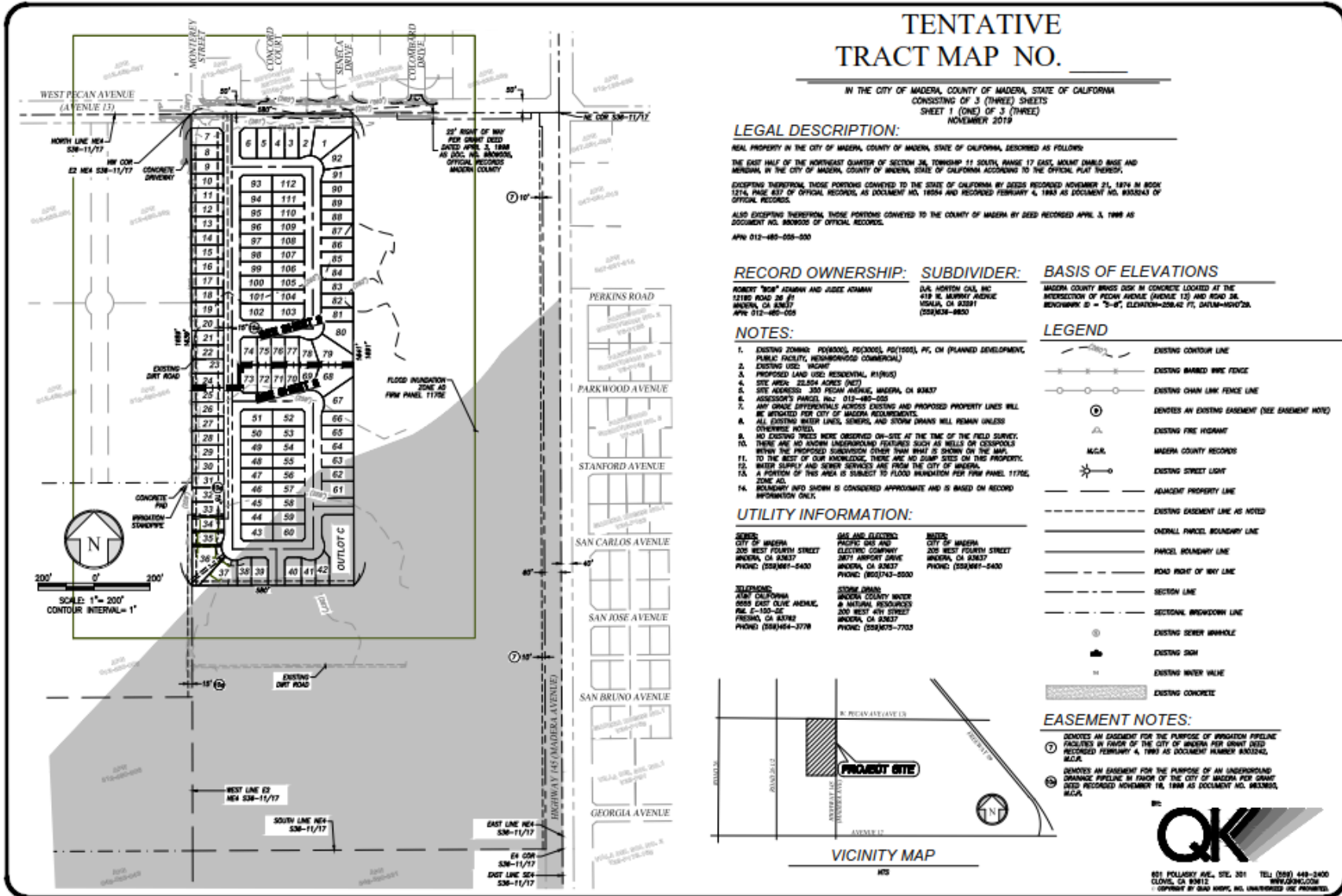
601 POLLACKY AVE., STE. 301 TEL: (559) 449-2400
MADERA, CA 93637 WWW.QK-ENG.COM
COPYRIGHT BY Q&K ANP, INC. UNAUTHORIZED USE PROHIBITED.



LINE TABLE

LINE #	DIRECTION	LENGTH
L1	N02°46'04"W	22'
L2	N02°46'04"W	22'
L3	N89°44'42"E	30'
L4	N02°15'53"W	50'
L5	N89°44'42"E	10'

Attachment 3: TSM 2019-03



**Attachment 4: Planning Commission Resolution for Categorical Exemption,
TPM 2020-03 MOD**

RESOLUTION NO. 1865

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA
APPROVING TPM 2019-03 MOD (PECAN SQUARE)**

WHEREAS, Robert & Judee Atamian Trustee (“Owner”) owns APN 012-480-005, a 76.25-acre site located at the southwest corner of Pecan Ave and Madera Ave (State Route 145) in Madera, California (“site”); and

WHEREAS, D. R. Horton (“Applicant”) is acting on behalf of the Owner; and

WHEREAS, TPM 2019-03 and TSM 2019-03 were approved by the Planning Commission on May 12, 2020 and ratified by the City Council on June 17, 2020; and

WHEREAS, the Applicant is seeking to modify Condition No. 6 to clarify the timing for when park land will be dedicated to the City of Madera, as proposed under TPM 2019-03 MOD; and

WHEREAS, this project has already been environmentally assessed, the modification is a mere clarification as to regarding the timing process and will not affect the physical environment in any way, and no further analysis is required under the California Environmental Quality Act (CEQA);and,

WHEREAS, under the City’s Municipal Code, the Planning Commission is authorized to review and approve modifications to previously approved tentative parcel mapson behalf of the City; and

WHEREAS, the City provided notice of the Planning Commission hearing as required by law; and

WHEREAS, the Planning Commission received and reviewed TPM 2019-03 MOD at a duly noticed meeting on December 8, 2020; and

WHEREAS, a public hearing was held, the public was provided an opportunity to comment, and evidence, both written and oral, was considered by the Planning Commission; and

WHEREAS, the Planning Commission now desires to approve TPM 2019-03 MOD , as conditioned, with clarification to condition of approval No. 6 regarding dedication of park land.

NOW THEREFORE, be it resolved by the Planning Commission of the City of Madera as follows:

1. Recitals: The above recitals are true and correct and are incorporated herein.
2. CEQA: A Mitigated Negative Declaration has already been approved for the project, and the project has already been environmentally assessed. The modification to condition of approval No. 6 is a mere clarification as to process regarding timing and will not affect the physical environment in any way. As such, the Planning Commission determines that no further analysis is required under CEQA.
3. Findings for TPM 2019-03 MOD: The Planning Commission finds and determines that there is substantial evidence in the administrative record to support the approval of TPM 2019-03 MOD, as conditioned. The project is consistent with the requirements of the Municipal Code, including Section

10-2.402. The Planning Commission further approves, accepts as its own, incorporates as if set forth in full herein, and makes each and every one of the findings, based on the evidence in the record, as follows:

- a. The proposed subdivision, together with its design and improvements, is consistent with the General Plan.

Basis for Finding: The proposed modification to Condition No. 6 for TPM 2019-03 would not alter the design or improvements previously approved by the Planning Commission at their May 12, 2020 hearing. While the proposed modification will alter the timing for dedication of park land, the dedication will still be made consistent with City requirements prior to or concurrent with the recordation of the associated TSM 2019-03, as modified by TSM 2019-03 MOD. The approved TPM 2019-03 has already been found consistent with the intent and designation of the General Plan. As TPM 2019-03 MOD makes no modification to the design of the tentative parcel map, this finding can be made.

- b. The proposal is consistent with any applicable specific plans.

Basis for Finding: The project site is not subject to any applicable specific plans.

4. Approval of TPM 2019-03 MOD: Given that all findings can be made, the Planning Commission hereby approves TPM 2019-03 MOD as subject to the updated conditions as set forth in the Conditions of Approval attached as Exhibit "A."

- 5. Effective Date: This resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 8th day of December 2020, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Robert Gran Jr.
Planning Commission Vice Chairperson

Attest:

Gary Conte
Planning Manager

Exhibit "A" – Conditions of Approval for Pecan Square TPM 2019-03, TSM 2019-03, PPL 2020-04 as modified by TPM 2019-03 MOD

EXHIBIT A
PECAN SQUARE
TPM 2019-03, TSM 2019-03, PPL 2020-04
as modified by TPM 2019-03 MOD
CONDITIONS OF APPROVAL
November 20, 2020

CONDITIONS OF APPROVAL

General Conditions

1. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specifically noted in the conditions or mandated by statutes.
2. Any minor deviation from the approved map or any condition contained herein shall require prior written request by the applicant and approval by the Planning Manager.
3. 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 establishment of the use.

Engineering

4. Prior to recording of the final map or parcel map, all action necessary for annexation into Community Facilities District 2005-01 shall have been taken, and all property included in said subdivision or parcel map shall be made a part of such district and subject to its taxes. *TSM & TPM*
5. A final subdivision or parcel map shall be required per Section 10-2.502 of the municipal code. For subdivisions, 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. *TSM & TPM*
6. The park land, as shown in the ~~Tentative Parcel Map (TPM) and~~ Tentative Subdivision Map (TSM), shall be dedicated to the City in advance of, or in conjunction with, recordation of the final subdivision map ~~or parcel map~~. *TSM & TPM*
7. 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. *TSM*
8. A survey benchmark shall be established per City Standards and related data shall be submitted to the Engineering Department prior to acceptance of the improvements that correspond to the extent of the proposed development of the subdivision map. *TSM*
9. Prior to any site construction or initiation of work within a public right-of-way, a construction route and traffic control plan will be reviewed and approved by the City Engineer. The construction route and traffic control plan shall depict proposed construction vehicle routes to and from the site. This will minimize potential damage to other streets and disruption to the neighborhood. *TSM & TPM*

10. Nuisance on-site lighting shall be redirected as requested by City Engineer within 48 hours of notification. *TSM & TPM*
11. Development impact fees shall be paid at time of building permit issuance. *TSM & TPM*
12. Improvement plans sealed by an engineer shall be submitted to the Engineering Division according to the Engineering Plan Review Submittal Sheet and Civil Plan Submittal Checklist. *TSM & PM*
13. The developer shall pay all required fees for processing the subdivision or parcel map and completion of the project. Fees due may include but shall not be limited to the following: subdivision or parcel map review and processing fee, plan review, map recording, easement acceptance, encroachment permit processing and improvement inspection fees. *TSM & TPM*
14. 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. *TSM & TPM*
15. Prior to the construction of improvements within the City right-of-way require an Encroachment Permit from the Engineering Division. *TSM & TPM*
16. The improvement plans for the project shall include the most recent version of the City's General Notes. *TSM & TPM*
17. Proposed improvements shall account for the areas of the TPM and TSM which lie within the boundaries of a FEMA Special Flood Hazard Area, Zone AO. *TSM & TPM*

Water

18. Prior to approval of subsequent development associated with Parcel 1 of the TPM, the City shall determine if a new water well is required to accommodate demands of the future proposed development. If a well is determined to be needed to accommodate anticipated needs of future development within Parcel 1 of the TPM the future developer of Parcel 1 will also be asked to design the well, dedicate right-of-way and construct a municipal well. The developer of the TPM may finance the development of the well, if the City has not acquired the proper funds at the time of construction. If City funding is not secured, then the developer of the TPM will construct and fund the municipal well. The cost of the well shall be 100% reimbursed by the City, upon the availability of funds. If a well is not immediately determined to be necessary, an appropriate well site shall be identified and offered for dedication as part of a future TPM or TSM. *TPM*
19. Prior to framing construction on-site, a water system shall be designed to meet the required fire flow for this type of development and approved by the fire department. Fire flows shall be determined by Uniform Fire Code appendix III-A. *TSM & TPM*
20. Unless the City Engineer or fire flow analysis specifies larger lines, water lines, a minimum of 8 inches in diameter shall be installed in all streets proposed within each corresponding map. Water main installation shall be per the City of Madera installation procedures and guidelines. Any new water main or fire hydrant line installations of 18 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 connections to existing City main. If the subdivision is

constructed in phases, blow-offs will be required at each termination point. All water system bacterial analysis testing costs shall be reimbursed to the City prior to approval of any units for final occupancy. Fees shall be based on rates established by the Department of Public Works. *TSM & TPM*

21. Prior to beginning any framing construction, approved fire hydrants shall be installed in accordance with spacing requirements for residential development (400 feet) or commercial development (300 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. *TSM & TPM*
22. As it pertains to the TSM and future TSMs water services shall be placed 3 feet from either property line, opposite of streetlight 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. *TSM*
23. One water quality sampling station shall be shown on the improvement plans and installed within the subdivision and approved by the water quality division of the Public Works Department. *TSM*
24. Prior to commencement of grading or excavation on site, all water sources used for construction activities shall have an approved backflow device installed. All water trucks/storage tanks will be inspected for proper air gaps or back-flow prevention devices. *TSM & TPM*
25. Water service connections serving the TSM and developments within the TPM shall be constructed per current City standards including water meters located within the City's right-of-way. *TSM & TPM*
26. Water service connection(s) shall be shown on the improvement plans and shall be constructed to current City standards including an Automatic Meter Reading (AMR) water meter installed within City's right-of-way and a backflow prevention device installed within private property. *TSM & TPM*
27. A separate water meter and backflow prevention device shall be required for landscape areas. *TSM & TPM*
28. Existing wells if any shall be abandoned as directed and permitted by the City of Madera for compliance with state standards, prior to the issuance of building permits or any activities in which the well to be abandoned may be further damaged resulting in potential contamination to the aquifer below. *TSM & TPM*
29. Prior to final occupancy pertaining to future development of Parcel 1 of the TPM, the future developer shall construct a 12-inch water main along State Route 145 from its current termination point at the intersection of Pecan Avenue and State Route 145 to the southern property line of the proposed project site. The water main shall be constructed to current City standards. The oversize component (difference in cost between 12-inch and 8-inch pipe) of the construction of this line is considered reimbursable through the City's Development Impact Fee Program, subject to availability

of funds. Half of the 8-inch component is reimbursable from adjacent properties as they develop and connect. *TPM*

30. Prior to the issuance of an encroachment permit for off-site improvements. The developer shall reimburse its fair share cost for the 8-inch component of the water line to the City for the previously constructed water main along the project frontage on Pecan Avenue. *TSM & TPM*

Sewer

31. The existing sewer system that serves this section of the City is approaching or at capacity due to a constricted section of the sewer system on Pecan Avenue. The developer shall construct the following master plan improvements to accommodate sewer loads for this development:
32. The developer of the TSM shall construct a parallel 18-inch sewer main in Pecan Avenue from the easterly edge of the TSM to the furthest extent west that the TSM expands. From the westerly edge of the TSM, the parallel 18-inch sewer main shall be constructed to extend to nearest sewer main on Stadium Road in place prior to final occupancy. *TSM*
33. The future developer of Parcel 1 of the TPM shall construct a parallel 18-inch sewer main on Pecan from the intersection of Pecan Avenue and State Route 145 to the easterly edge of the TSM, or to nearest sewer main in place at the time of construction to the west. *TPM*
34. If the sewer main will be required to be extended beyond the extent of the TSM, reimbursement of construction costs shall be provided to the entity which installs the sewer main.
35. The construction of the parallel sewer main in Pecan Avenue mentioned in Conditions 31a, b and c is considered 100% reimbursable through the City's Development Impact Fee Program, subject to availability of funds. Impact fee credits that are due and payable at the time of building permit issuance are available for use on these specific improvements due to identified deficiencies in the overall system capacity that will be improved at completion of said improvements. *TSM & TPM*
36. Sewer lines installed within internal publicly owned streets to serve the development within the TSM and TPM shall be sized accordingly and shall be a minimum of 8 inches in diameter. Sewer main connections to any existing City main 6 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. *TSM & TPM*
37. Prior to recordation of the final subdivision map, the TSM'S approved improvement plans shall depict sewer services located at the approximate centerline of each lot or as required for construction of residential development with a clean-out installed per City Standards and identified on the curb face. Termination of service shall be 10 feet past property the line. Where contiguous sidewalks are installed, the 4-inch-sewer clean out shall be located 18 inches back of the sidewalk in a dedicated public utility easement. Sewer clean-outs shall not be located within sidewalk or approach areas unless approved by the City Engineer. Sewer services shall be installed 10 feet beyond the property lines as a part of the sewer system installation for testing purposes. *TSM*

38. Sewer service connections shall be constructed to current City Standards. Each parcel shall have a separate sewer service connection or record a reciprocal easement agreement across all parcels. *TPM*
39. Existing septic tanks, if found on-site or within any area subject to construction of public or private improvements, shall be removed, permitted, and inspected by City of Madera Building Department. *TSM & TPM*

Storm Drain

40. A detailed drainage study shall be provided to support the chosen path of conveyance and design of any necessary conveyance facilities prior to any excavating or grading activities. *TSM & TPM*
41. Storm runoff from this project site is planned to go to the Agajanian Basin (also referred to as the Atamian Basin) located southwest of the proposed 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 or expand the basin to an amount equivalent to this project's impact on the basin. The extent of the improvements required shall correspond to the extent of the TSM and the remaining extent of the TPM. The improvements corresponding with the TSM shall be required to be complete within 24 months of recordation of the final subdivision map. The improvements pertaining to developments in Parcel 1 of the TPM shall be required prior to the issuance of the first building permit. Any temporary improvements installed that may need to be removed or re-located cannot be reimbursed. All improvements should be installed in their permanent location. *TSM & TPM*
42. The project shall, as applicable, 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 Discharges Order No. 2013-0001-DWQ, NPDES General Permit No. CAS000004. For the purpose of this proposed development, post development runoff shall match or be less than pre-development runoff. The development shall be subject to future inspections by City or other designated agencies relative to the improvements installed as a result of this condition to ensure they remain in compliance with the conditions imposed under this condition. *TSM & TPM*

Streets

43. The developer shall be a proponent of annexing into existing Landscape Maintenance District (LMD) Zone 8. If the annexation into LMD Zone 8 is not attainable, the developer shall at their sole expense, form a new Landscape Maintenance District zone. The subdivider shall sign and submit a landscape district formation and inclusion form, an engineer's report and map prior to recording of any final map. *TSM & TPM*
44. 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 8 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 which are required to be constructed by the developer and included in the City-wide 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 needed by the Parks Department for maintenance of eligible landscaping shall be refunded to the developer. *TSM*

45. Prior to final occupancy of any development of Parcel 1 of the TPM, the west half of State Route 145 along the entire project frontage of Parcel 1 of the TPM shall be improved to a 100-foot arterial roadway per City standards. Adequate transitions with the existing improvements relative to grade and alignment shall be provided. In addition to basic City arterial and Caltrans highway improvements, off-site construction requirements including additional lanes are subject to complying with the mitigation measures provided within the traffic study. *TPM*
46. The south half of Pecan Avenue shall be improved to a 100-foot arterial roadway standard with a five-foot sidewalk pattern. The extent of the improvements required shall correspond to the extent of the TSM and Parcel 1 of the TPM. The street frontage improvements for the TSM shall be required within 24 months of recordation of the final subdivision map and the improvements that pertain to the frontage along Parcel 1 of the TPM shall be required prior to first occupancy for the parcel map. The south half of the street shall include but not be limited to fire hydrants, streetlights, curb and gutter, park strip, sidewalk, a 30-foot asphalt section and a 16-foot landscaped median island. Adequate transitions with the existing improvements relative to grade and alignment shall be provided. The two lanes (28-feet total), which includes the median island and east bound travel lane, are eligible for reimbursement through the City's Impact Fee program, subject to availability of funds. *TSM & TPM*
47. Prior to or in conjunction with the recordation of final subdivision map, the developer shall provide sufficient right-of-way and associated improvements to allow for westbound U-turn movements at Pecan Avenue and Monterey Street. *TSM*
48. The developer shall provide a temporary paved pathway on the south side of Pecan Avenue between the westerly edge of the TSM connecting the sidewalk approximately 150 east of Munras Avenue. This is contingent on the City confirming the acquisition of right-of-way for the path of travel to connect with the existing sidewalk near Munras Avenue. *TSM*
49. An Irrevocable Offer of Dedication shall be made to dedicate sufficient right-of-way along the entire project parcel frontage on Pecan Avenue to provide a half-street width of fifty (50-ft) feet, south of the center line, to accommodate for an arterial standard roadway, prior to or in conjunction with the recordation of the final subdivision and parcel map. *TSM & TPM*
50. An Irrevocable Offer of Dedication or dedication deemed by Caltrans shall be made for additional right-of-way along State Route 145 in accordance with that specified by Caltrans through the traffic study, prior to, or concurrent, with the recordation of the final tentative parcel map. *TPM*
51. The developer shall dedicate a 10-foot Public Utility Easement (PUE) along Pecan Avenue and State Route 145 adjacent to entire project site as well as all internal publicly dedicated streets prior to, or concurrent with, recordation of final subdivision map and final parcel map. . *TSM & TPM*

52. Interior streets shall be constructed in accordance with City standards for a residential street, or as may be applicable, including a five-foot sidewalk, curb and gutter, streetlights, fire hydrants and all other components necessary to complete construction per City standards, prior to acceptance of improvements by the City. *TSM & TPM*
53. An approved on-site or off-site turn-around shall be provided at the end of each stub-out or roadway 150 feet or more in length pursuant to the uniform fire code. Cul-de-sacs shall be no longer than 450 feet. Any off-site turn-around shall have a maintenance covenant and easement recorded prior to recording of final map. The developer is responsible for all fees associated with the approval of all documents. *TSM & TPM*
54. Prior to approval of the first project with Parcel 1 of the tentative parcel map, the future developer shall provide a traffic study that addresses and mitigates the impacts of the planned developments within the boundaries of the TSM and TPM on the street system. At a minimum, the intersection of Pecan Avenue & Madera Avenue, the intersection of Pecan Avenue & Monterey Street, the intersection of Madera Avenue & Avenue 12 and the project driveways shall be evaluated as part of the traffic study. Study shall also address minimum storage requirements and conflicts between study location and adjacent intersections or driveways. Caltrans should be contacted to confirm scope. *TPM*
55. Driveway locations shall be planned in conjunction with developments proposed as part of the Tentative Parcel Map as well as existing driveways and intersection. Minimum spacing of driveways/streets shall be a 400 to 500 feet regardless of individual project/phase limits. Failure to place initial driveways at proper minimum spacing and plan for left turn storage requirements may result in the inability to construct future driveways that adequately serve proposed land uses. *TPM*
56. The traffic generated as part of the traffic study prepared for the TSM shall be considered as the first phase of a multi-phase development for the purposes of preparing the traffic study associated with the development of Parcel 1 of the TPM and assigning fair share responsibility for identified mitigation measures to all land areas originally associated with the TPM (the TSM is included in TPM for the purposes of this condition). If fair share calculations as determined in the first phase traffic study are less than that determined in the TPM traffic study, those monetary amounts shall be assigned to the future developer of Parcel 1 of the TPM or shall be the responsibility of the future developer of the TPM. *TSM & TPM*
57. "No Parking" signs shall be installed along Pecan Avenue and State Route 145 frontages per City standards for corresponding frontage of the tentative subdivision map and tentative parcel map. *TSM & TPM*
58. Industry standard traffic calming features, as approved by the City Engineer, shall be implemented throughout all interior streets associated with the TSM and TPM. Maximum distance between calming devices shall be 300 feet. Any increase in separation shall be approved by the City Engineer. Approval of traffic calming features shall be sought prior to approval of the off-site improvement drawings. *TSM & TPM*
59. 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 or commercial buildings. *TSM & TPM*

60. Access ramps shall be installed at all curb returns per current City standards prior to issuance of certification of complete of the improvements. *TSM & TPM*
61. Driveway approaches shall be constructed per current City standards. *TSM & TPM*
62. The developer shall be required to install streetlights along Pecan Avenue and Madera Avenue frontages and all interior streets associated with the TSM and TPM in accordance with current City spacing standards. The extent of the installation of streetlights required shall correspond to the extent of the tentative subdivision map and the remaining tentative parcel map. The adjacent installations for the TSM shall be required within 24 months from the recordation of the final subdivision map and the installations adjacent to the TPM shall be required prior to issuance of first occupancy for the parcel map. Streetlights shall be LED using Beta Lighting standards or equal in accordance with City of Madera standards. *TSM & TPM*
63. 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 front door to 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 a 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. *TSM*
64. If developed in phases, each phase shall have two (2) 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 6 inches of 90% compacted native soil or four (4) 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 recording the final map for any phased development. *TSM & TPM*
65. 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" x 36" tracing with City of Madera logo on bottom right corner. The cover sheet shall indicate the total linear feet of all streets, fire hydrant and street water main linear feet, and sewer line linear feet, a list of items and quantities of all improvements installed and constructed for each phase respectively, as well as containing an index schedule. All development is subject to the City Standards, updated standards available on the City of Madera website. The plans are to include the City of Madera title block and following:
 - a. Detailed site plan with general notes, including the location of any existing wells and septic tanks;
 - b. Street plans and profiles;
 - Drainage ditches, culverts, and other structures (drainage calculations to be submitted with the improvement plans)
 - Streetlights

- Traffic signals
- a. Construction details including traffic signage and stripping plan.
- b. Water and sewer plans (sewage flow and water demand calculations to be submitted with the improvement plans).
- c. Grading plan indicating flood insurance rate map, community panel number and effective date.
- d. Landscape and irrigation plans shall be prepared by a landscape architect or engineer.
- e. Storm water pollution control plan and permit.
- f. Itemized quantities of the off-site improvements to be dedicated to the City.

TSM & TPM

66. Submittals shall include (submit a PDF and the stated number of hard copies for each item):
- 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. Four hard copies of complete improvement plans
 - h. Three hard copies of landscape and irrigation plans
 - i. Two sets of drainage calculations
 - j. Two copies of the engineers estimate

Partial submittals will not be accepted by the engineering department.

PLEASE NOTE: If COVID-19 measures are still in place at the time of submittal, all submittals must be electronic.

Caltrans District 6, Madera Avenue/State Route 145 Requirements

64. Caltrans District 6 Requirements pursuant to Pecan Square Traffic Impact Study (TIS) prepared by VRPA Technologies, Inc., for Q-K Inc.
- a) In the 2040 Scenario, it is recommended that a dual left turn lane be added to the northbound leg to maintain symmetry between the lane lines of the southbound and northbound approaches. Considering these improvements, the need for right-of-way is anticipated along the west side of Madera Avenue as well as the south side of Pecan Avenue including corner clearance on the southwest corner of the intersection.
 - b) The approximate cost of the cumulative intersection improvements was found to be \$2,576,977. The approximate fair share cost that the developer can expect to contribute based on the fair share percentage of 7.4% as calculated on page 37 of the Pecan Square Development TIS is calculated below:

Approximate Fair Share Cost = Fair Share Percentage x Intersection Improvements Cost
Approximate Fair Share Cost = 0.074 x \$2,576,977.00 = \$190,120.00.

Traffic Mitigation Agreement (TMA) for the collection and tracking of these funds needs to be executed prior to issuance of City building permits and payment of fair share mitigation amount needs to occur prior to occupancy. *TSM & TPM*

65. 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 3-sack sand slurry mix extending one-foot past curb and gutter in each direction. *TSM & TPM*
66. The applicant shall coordinate with the pertinent utility companies as required regarding establishment of appropriate easements and under-grounding of service lines prior to approval of improvement plans. A ten-foot-public utility easement will be required along all interior lot frontages. *TSM & TPM*
67. All existing and proposed public utilities (electric, telephone, cable, etc.) shall be undergrounded, except transformers, which may be mounted on pads. Public utility easements shall be dedicated outside and adjacent to all streets rights-of-way. All public utilities within the subdivision and adjacent to the project property frontage on peripheral streets (on the development side of the street centerline) shall be placed underground except those facilities exempted by the public utilities Commission Regulations or operating at 70,000 volts or greater. All of which shall take place within 24 months from the recordation of any final map or prior to final occupancy of building permits for all other development types. *TSM & TPM*
68. A preliminary title report and plan check fees along with the engineer's estimated cost of installing the improvements shall be submitted with the initial improvement plan submittal. Inspection fees shall be paid prior to initiating construction. *TSM & TPM*
69. 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 must 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 who prepared the report are to be noted on the final map. *TSM*
70. The sub-divider shall enter a subdivision agreement in accordance with the municipal code prior to recording of the final map. The subdivision agreement shall include for deposit with the City a performance bond, labor, material bond, cash bond, or other bonds as required by the City Engineer, prior to acceptance of the final map. *TSM*
71. For all developments that may be eligible for reimbursements, a reimbursement agreement is required. *TSM & TPM*
72. The sub-divider may commence off-site construction prior to approval of the final map in accordance with Section 7-2.02 MMC, an encroachment permit, providing improvement plans are approved and submitting 100% performance bond, additional bond (50% labor & 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 shall be per City of Madera Development Application Fees as approved by City Council and shall be paid at the time of permit. *TSM*

73. The developer's engineer, upon completion of the 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 improvements by the City. *TSM & TPM*

Improvement Inspections:

74. 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. *TSM & TPM*
75. 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. *TSM & TPM*
76. 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 will verify prior to inspection that the contractor requesting inspection is using plans signed by the City Engineer. *TSM & TPM*
77. No occupancy of any buildings within the subdivision or parcels shall be granted until improvements are completed to the satisfaction of the City Engineer. After request for final improvement inspection, the generation of a written punch list will require a minimum of five working days. *TSM & TPM*

Special Engineering Conditions:

78. 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, therefore. *TSM & TPM*
79. Lot fill in excess of 12 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 12 inches or more will require construction of a retaining wall. *TSM & TPM*
80. Retaining walls, if required, shall be 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. *TSM & TPM*
81. Prior to the issuance of any building permits or any construction on the subdivision or parcels, 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. *TSM & TPM*
82. Any construction work on MID facilities must not interfere with either irrigation or storm water flows, or MID operations. Prior to any encroachment upon, removal or

modification of MID facilities, the developer must submit two sets of preliminary plans for MID approval. Permits must 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 will require removal of MID facilities at the owners' expense. Turnouts and gates shall be salvaged and returned to the MID yard. *TSM & TPM*

83. Prior to recording the final subdivision map or parcel 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 must be paid in full. Assessments are due and payable in full November first of the year preceding the assessment year. *TSM & TPM*
84. The developer of the property can expect to pay current and future development impact fees, including, but not limited to sewer (special service area), water, streets, bridge, public works, parks, public safety and drainage, that are in place at the time building permits are issued. All fees must be paid, as applicable, prior to building permits. *TSM & TPM*
85. Final street names shall be approved by the Building Official prior to recording the map for each phase of the development or approval of the improvement plans. Road names matching existing county roads must maintain the current suffix. All streets, even the small segments, shall have street names on the final map. Entry streets, cul-de-sacs and courts should utilize the name of the nearest subdivision street. *TSM & TPM*
86. The applicant shall coordinate with the United States post office relative to the proposed location of the postal boxes for the project, prior to approval of final occupancy. In regard to this item, all adjacent sidewalks shall retain a minimum clear walkway width of five feet. *TSM & TPM*

Fire Department

87. The subdivision development shall be provided with a minimum of two points of access for emergency vehicles, prior to the issuance of occupancy. *TSM*
88. Prior to any on-site framing, fire hydrants or other acceptable fire suppression equipment shall be provided at the streets and shall comply with the City of Madera Engineering standards and the California Fire Code (CFC). *TSM*

Planning Department

General

89. All conditions of approval shall be the financial responsibility of the developer/owner, except where specified in the conditions of approval listed herein or mandated in statutes. *TSM & TPM*
90. Project approval is conditioned upon acceptance of the conditions of approval contained herein within thirty (30) days, as evidenced by the applicant/owner's signature on the required Acknowledgement and Acceptance of Conditions of Approval form.
91. Vandalism and graffiti on walls, fences and/or homes shall be corrected pursuant to the Madera Municipal Code.

Street Names

92. The internal street names shall comply with the recommendations of the Planning Department with approval of the Final Map. *TSM*

Tentative Subdivision Map

93. There shall be no access to lots from street side of corner lots or street rear of double frontage lots as noted by the relinquishment of access notation on the tentative subdivision map (lots 1-7, 39, 40, 43, 51, 52, 60, 61, 73, 74, 93, 102, 103, 112). *TSM*

Fences and Walls

94. A six (6') foot tall decorative split-faced masonry block wall with capstone shall be developed within the subdivision as follows: *TSM & PPL*

- Along all rear property lines of lots abutting West Pecan Avenue (lots 1-6).
- Along the street side yard of corner lot 6 and 7 which is extending from the rear property line to the front yard setback line.
- Along all property lines abutting the dedicated park space (Lot 42).
- All walls proposed on property located in the side yard shall be six feet tall along the side property line. In addition, when the wall is located within the front yard setback, the height of the wall will be decreased to 2.5 feet.

95. Except as provided for in the above condition, six (6') foot tall wooden fencing shall be provided along all side and rear yards. *TSM*

96. Any retaining walls greater than eighteen (18") inches in height shall be split-faced masonry block. Residential fencing shall have a gate that allows for easy access by an automated solid waste container provided by the City. The width of the gate shall be a minimum of thirty-six (36") inches. *TSM*

Precise Plan for the Tentative Subdivision Map

97. 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.

98. 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.

99. 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.

100. Any minor deviation from the approved elevations and floor plans or any condition contained herein shall require prior written request by the applicant and approval by the Planning Manager, at a minimum. *TSM*

101. Any substantial future modifications to the subdivision lots involving, but not limited to, building exteriors, parking/loading areas, fences/walls, new buildings or landscaping shall require an amendment to Precise Plan 2020-04. *TSM & PPL*

102. 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 establishment of the use. *TSM & PPL*

- 103. The project shall be developed in accordance with the elevation drawings and floor plans, as reviewed and approved with Precise Plan 2020-04. Minor modifications to Precise Plan 2020-04 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. *TSM & PPL*
- 104. Fire Department: All dwellings shall be equipped with residential fire sprinklers, smoke alarms and carbon monoxide detectors. *TSM & PP*
- 105. Illuminated addresses shall be provided at certificate of occupancy and temporary construction addresses shall be provided during construction. *TSM & PPL*
- 106. Vandalism and graffiti on walls, fences and/or homes shall be corrected pursuant to the MMC. *TSM & PPL*
- 107. Four models are approved as part of Precise Plan 2020-04. The homes shall be constructed upon the lots encompassed within TSM 2019-03. The home models are as follows:

MODEL NAME	FLOOR AREA	BED/BATH
Adams	1,515 sq. ft.	3 bed/2 bath
Coolidge	1,862 sq. ft.	3 bed/2 bath
Lincoln	2,554 sq. ft.	4 bed/3 bath
Monroe	2,814 sq. ft.	4 bed/3 bath

Models have attached two-car garages with a three-car option. *PPL*

- 108. The Developer shall construct homes as they are shown in the rendered elevations, provided in PPL 2020-04 and included in the staff report to Planning Commission. Specifically, the N415, N419, N424 and N428 models. Each elevation of each model shall have at least three different three-color paint schemes. Any new or additional models require approval by the Planning Commission through an amendment to the Precise Plan. *TSM & PPL*
- 109. All standards for the location and design of buildings (including accessory structures) and fences which are not specifically included in Precise Plan 2020-04 and TSM 2019-03 shall conform to R1 (Residential) Zone District standards. *TSM & PPL*
- 110. Except otherwise conditioned herein, all driveways and encroachments shall conform to City standards regarding setbacks from adjacent property lines, and near intersections. All approaches shall conform to City standards. *TSM & PPL*
- 111. The floor plans of all units shall be reversible and driveway approaches on corner lots shall be located on the interior side of the property. *PPL*
- 112. The appearance of a home is affected by at least three primary features, which are the home model, alternative elevations for each plan, and color. Homes built on side-by-side lots shall not repeat more than two of these primary home features. The model floor plans shall not be repeated on more than two consecutive lots. *PPL*
- 113. The minimum setbacks for all lots within the TSM and PPL shall be:
 - Front: Twelve feet to living space, twenty feet to garage

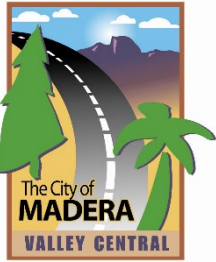
- Interior side: Five feet
 - Exterior side: Ten feet
 - Rear: Fifteen feet
114. The front setback shall vary from the minimum of twelve feet to living space to a maximum of twenty feet to living space, with at least a two-foot variation amongst any two adjacent lots, and a five-foot variation over any five consecutive lots, regardless of home model. Garages shall be setback a minimum of twenty feet. *TSM & PPL*
115. A ten percent minor variation for rear setbacks may be granted with approval by the Planning Director when deemed necessary. *PPL*
116. Any variation to the development standards of Precise Plan 2020-04 shall require an amendment to the precise plan. *PPL*
117. The applicant shall submit a color and materials presentation board as a component of the precise plan. The color and materials presentation board shall be approved by the Planning Manager and shall be included in the precise plan. *TSM & PPL*
118. The construction of buildings approved as a component of the precise plan shall be consistent with the approved color and materials presentation board, as reviewed and approved by the Planning Department. Any alteration shall require, at a minimum, approval by the Planning Manager. *TSM & PPL*
119. [Removed by Planning Commission]
120. All exterior lighting shall be down shielded and directed in such a way as to not interfere with the driving safety of vehicular traffic. Exposed bulbs shall not be permitted. *TSM & PPL*
121. The specifications and types of exterior lighting fixtures to be installed in the subdivision area shall be submitted to and approved by the Planning Department prior to issuance of any building permit(s). *TSM*
122. The development of any temporary construction trailer, materials storage yard and/or model home sales center on any lot in the subdivision requires approval of a Zoning Administrator Permit. *TSM*
123. Along all side and rear property lines, wood fencing shall be required for all single-family homes. Any retaining walls greater than eighteen inches in height shall be split-block masonry. Residential fencing shall have a gate that will allow for easy access by an automated solid waste container provided by the City. The width of the gate shall be a minimum of 36 inches. *TSM*
124. Street side yard fencing shall be set back no less than five feet. *TSM*
125. Heating ventilation and air-conditioning (HVAC) units shall be ground-mounted. No roof-mounted HVAC units shall be allowed. All ground-mounted HVAC equipment shall be located in the interior side or rear yards behind six-foot tall fencing. There shall be no allowance for the placement of HVAC units in the exterior side yard. *TSM & PPL*
126. If fireplaces are installed, they shall be either gas-burning or EPA-certified wood-burning. Natural gas and electric outlets are recommended to be installed in the rear yard for barbecues. Outside electric outlets are recommended in the front and rear yards of the

November 20, 2020

units to facilitate the use of electric lawn mowers, edgers, etc. Electric or low nitrogen oxide emitting gas-fired water heaters should be installed. *TSM*

127. A detailed landscaping and irrigation landscaping and irrigation plan shall be prepared by a licensed landscape architect, stamped and submitted as part of the submittals for a building permit plan check. Each home model shall have its own landscape and irrigation plan. Landscape and irrigation plans shall be approved by the Planning Department prior to issuance of building permits. Landscape and irrigation plans shall be designed for front yards for the entire subdivision as a whole. Installation shall be completed in conjunction with occupancy of the individual homes. The plans shall demonstrate compliance with the State of California's Model Water Efficient Landscape Ordinance (MWELO). *TSM & PPL*

128. The approval of TSM 2019-03 and TPM 2019-03 shall not become final until the date when City Council approval of Rezone 2019-06 becomes final and effective.



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 #4 – December 8, 2020

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:	Span Development, LLC	OWNER:	Span Development, LLC
SITE 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 December 2020, the property was purchased by Span Development, LLC. In accordance with the terms of the Development Agreement, a successor-in-interest is bound by the Development Agreement as the 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 (DA) Terms Triggering Compliance by Applicant

	Description	Timing of Compliance	Status
1.	Provide water well site	If project constructed – at first occupancy	Constructed Outside DA
2.	Construct water well	If project constructed – at first occupancy	Constructed Outside DA
3.	Construct water line to well	Developer has completed this improvement	Constructed Outside DA
4.	Construct water line along project frontage	If project constructed – at first occupancy	Constructed Outside DA
5.	Construct sewer line to property	If project constructed – at first occupancy	Majority Constructed Outside DA
6.	Construct sewer lift station	If project constructed – at first occupancy	Outstanding
7.	Construct 5 traffic signals	If project constructed – at first occupancy	Two Signal Constructed Outside DA

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

As shown in Table 1, the development agreement outlines a series of obligations that the project developer, or successors-in-interest, 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 previously completed the installation of the water line from the west side of the freeway to the originally proposed City 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 have been completed as part of the Madera Travel Center (Love's) off-site construction. Completion of these improvements by Love's relieves 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 developer 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, 2020.

Findings

- As summarized in Table 1 of this staff report the developer 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, 2020.

(OR)

Motion 2: Move to find that the developer 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, 2020.

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

Municipal Code Section 10-3.1715 – Periodic Review of Development Agreements
Development Agreement between City of Madera and Zelman Retail Partners, Inc.

**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)

Doc#: 2007029718
8/08/2007 3:30 PM

**RECORDING REQUESTED
BY:**

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

CONFORMED COPY
This document has not been
compared with the original.
MADERA COUNTY CLERK-RECORDER

WHEN RECORDED MAIL TO:

Zelman Retail Partners, Inc
Allen Matkins Leck Gamble Mallory
& Natsis 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

<u>Exhibit "E"</u>	Sewer Work
<u>Exhibit "F"</u>	Traffic Mitigation Work
<u>Exhibit "G"</u>	Floodway and Basin Work
<u>Exhibit "H"</u>	Intentionally Omitted
<u>Exhibit "I"</u>	Development Exactions
<u>Exhibit "J"</u>	20-Foot Wildlife Corridor Easement

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

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 Borings. 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 Deferral 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 "I" (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 mortgagees 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 lien 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 mortgagee 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 the formation documents for such Maintenance District which provides for prepayment 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 & Natsis 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

By: Steven A. Mindt
MAYOR Steven A. Mindt

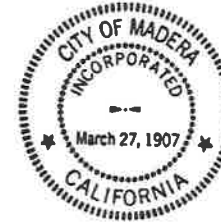
ATTEST:
Sonia Alvarez, CITY
CLERK

By: Sonia Alvarez
City Clerk

(Seal)

APPROVED AS TO FORM:

Joseph A. Soldani
City Attorney Joseph A. Soldani



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

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.

EXHIBIT "B"

EXHIBIT "C"

MAXIMUM REIMBURSEMENT SCHEDULE

Description of Work	Quantity	Unit	Unit Cost	Total Cost
Storm Drain Main Ave 17 (a)				
18 inch	1867	LF	\$45.00	\$84,015.00
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	\$6.00	\$777,088.00
Arterial Median Island - Landscape for 30' island	19754	SF	\$6.00	\$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 @ Waldon (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%	\$1,868,832.00
A&E fees			7%	\$5,974,591.00
Development Overhead/General Conditions/Insurance/Management			15%	\$358,475.46
Maximum Reimbursement for Public Improvements Installed by Developer	Total			\$418,221.37
				\$896,188.65
				\$7,647,476.48

EXHIBIT "C"

Notes:

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

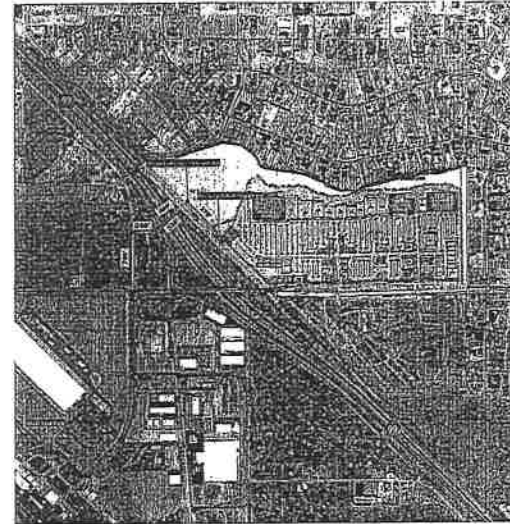
749376.201.A
Z9369-258/7-24-07/mg/mg

EXHIBIT "C"
-2-

749376.201.A
Z9369-258/7-24-07/mg/mg

EXHIBIT "D"
-1-

EXHIBIT "D"
WATER WORK AND WELL SITE LOCATION



- LEGEND
- Proposed Well Site
 - Existing Well Site
 - Proposed Cross Connection
 - 30" Conduit
 - 12" Valance
 - Proposed Sewer Line

MADERA TOWN CENTER
CROSS CONNECTION STUDY - MADERA, CA

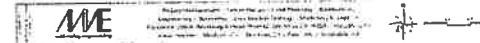
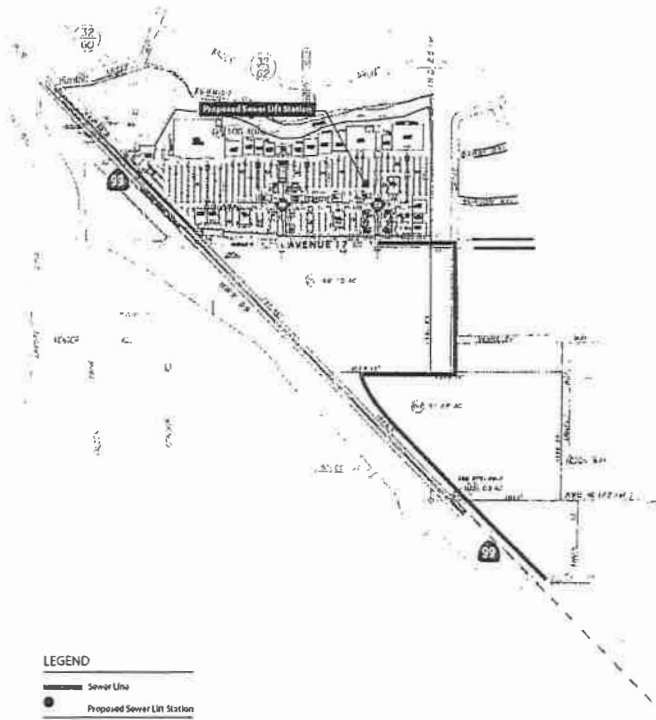


EXHIBIT "E"

SEWER WORK AND SITE



**MADERA TOWN CENTER
SEWER WORK - MADERA, CA**



Project Management • Urban Design • Land Planning • Civil/Structural
Engineering • Surveying • Construction Staking • Marketing & Sales
Civil and Structural Engineering in San Jose, CA, Berkeley, CA, 94704 • 415.226.4211
www.me-engineers.com • Madera, CA • Stockton, CA • Fresno, CA • Reno, NV • Scottsdale, AZ

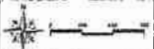


EXHIBIT "F"

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 "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 88°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;

05290basin.doc

- 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, P.L.S. 7789
License expiration date: 12/31/2007



05290basin.doc

EXHIBIT "H"

INTENTIONALLY OMITTED

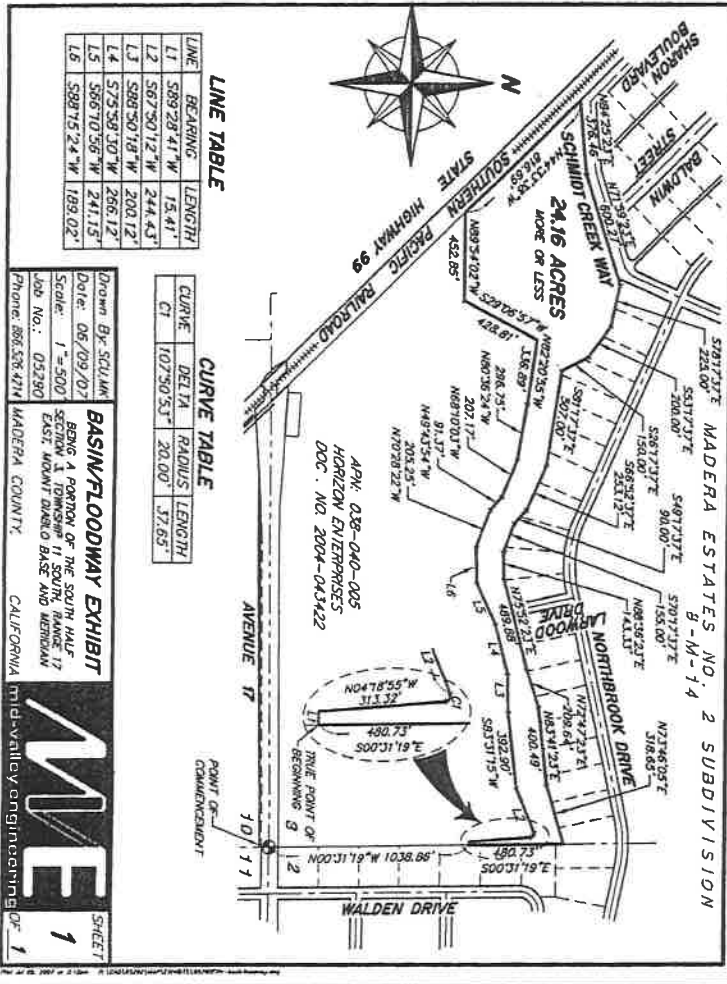


EXHIBIT "G"

EXHIBIT "H"

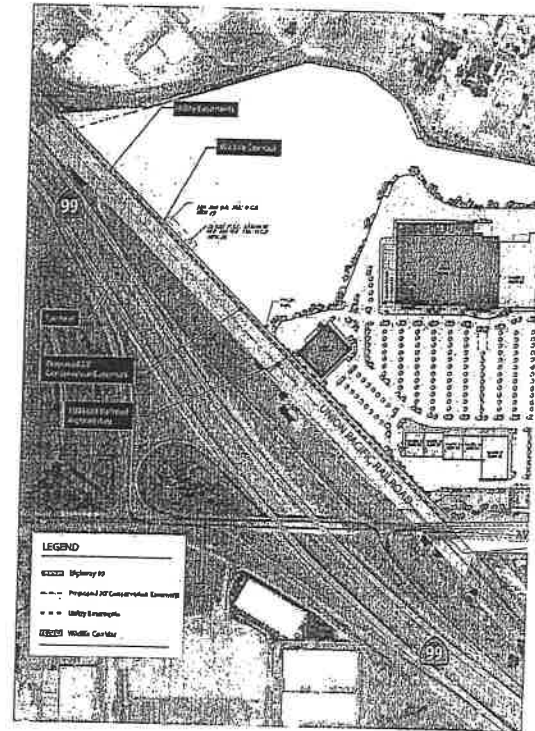
EXHIBIT "I"

**DEVELOPMENT EXACTIONS APPLICABLE TO PROJECT
INCLUDING FEE CREDIT AMOUNTS**

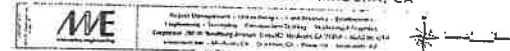
<i>Impact Fee Category</i>	<i>Phase I Square feet</i>	<i>Unit Cost</i>	<i>Extension</i>
(I) IMPACT FEES CREDITED			
Sewer Add. Obl. NE	567,000	0.169	\$95,823.00
Sewer Exist. Obl. NE	567,000	0.036	\$20,412.00
Storm Drain NE	567,000	1.210	\$686,070.00
Streets 16 Ft Arterial med.	567,000	0.142	\$80,514.00
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**



2021 Planning Commission Meetings

Tuesday, January 12th, 2021

Tuesday, February 9th, 2021

Tuesday, March 9th, 2021

Tuesday, April 13th, 2021

Tuesday, May 11th, 2021

Tuesday, June 8th, 2021

Tuesday, July 13th, 2021

Tuesday, August 10th, 2021

Tuesday, September 14th, 2021

Tuesday, October 12th, 2021

Tuesday, November 9th, 2021

Tuesday, December 14th, 2021

**Election to fill Planning Commission
Chairperson Vacancy**