

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

**COUNCIL CHAMBERS - CITY HALL
TUESDAY
January 12, 2016
6:00 pm**

CALL TO ORDER

ROLL CALL

Commissioner Kenneth Hutchings (Chairperson)
Commissioner Ruben Mendoza (Vice Chairperson)
Commissioner Robert Gran, Jr.
Commissioner Bruce Norton
Commissioner Pamela Tyler
Commissioner Jim DaSilva
Commissioner Jeff Dal Cerro

INTRODUCTION OF STAFF

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

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

NON-PUBLIC HEARING ITEMS

NP1. Election of Chairperson and Vice-Chairperson for 2016

MINUTES: December 8, 2015

CONSENT ITEMS: None

PUBLIC HEARING ITEMS

1. Development Agreement Annual Review - Madera Town Center

A public hearing to conduct 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, 2015. 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 principle party to the agreement, Zelman Retail Partners, has complied in good faith with the terms of the development agreement. (APN: 013-240-001) An environmental impact report (EIR) was prepared and certified for the shopping center project. No additional environmental review is required in conjunction with the annual review of the development agreement.

2. CUP 2015-05 & CUP 2015-06 – DPF Filters Revocation Review Continuance

A continued public hearing to consider revocation of two Conditional Use Permits which allowed for the establishment of two uses. The first use is the maintenance and installation of diesel particulate filter systems on both diesel trucks and stationary diesel power generation systems. The second use is the storage of diesel “big rig” tractors and trailers. The project site is located at 2832 North Golden State Boulevard in the I (Industrial) General Plan land use designation (APN: 013-250-002).

3. CUP 2015-32 & SPR 2015-37 - Iglesia Pentecostes Espiritu y Fuego

A noticed public hearing to consider a conditional use permit and site plan review to allow for the establishment of a church in a commercial development located at the southeast corner of West Olive Avenue and Martin Street (200 West Olive Avenue) in the C1 (Light Commercial) Zone District, with a C (Commercial) General Plan land use designation. (APN: 012-053-017) The Planning Commission will consider a Categorical Exemption for the project pursuant to CEQA Section 15301.

4. CUP 2015-34 & SPR 2015-39 - Bachelorette Novelty Shop

A noticed public hearing to consider a conditional use permit and site plan review to allow for the establishment of a bachelorette apparel and novelty shop at the southeast corner of West Clark Street and Country Club Drive (1475 Country Club Drive) in the C1 (Light Commercial) Zone District, with a C (Commercial) General Plan land use designation. (APN: 003-210-009) The Planning Commission will consider a Categorical Exemption for the project pursuant to CEQA Section 15301.

5. ABN 2015-02 - Silva Ford H Street Vacation

A noticed public hearing to consider a request for General Plan Conformity and an Environmental Determination for a proposed vacation of approximately 750 feet of South H Street right-of-way immediately north of Madera Avenue. The street section is not required for provision of access to private property and/or important to street circulation.

6. REZ 2015-03 - Nassar West Yosemite Rezone

A noticed public hearing to consider a rezone of property from the R1 (Low Density Residential) Zone District to the WY (West Yosemite Professional Office) Zone District. The property encompasses two parcels located on the south side of West Yosemite Avenue, west of its intersection with O Street (1006 and 1010 West Yosemite Avenue), within the O (Office) General Plan land use designation (APN: 010-104-001 and 002).

7. GPA 2016-02 & REZ 2016-02 - MUSD General Plan Amendment & Rezoning

A noticed public hearing to consider a General Plan amendment and rezoning of approximately 18.96 acres of land located at the northwest corner of Tozer Street (Road 28) and South A Street. The property is proposed to be rezoned into the PF (Public Facility) Zone District. The General Plan amendment would change the General Plan land use designation from the MD (Medium Density) land use designation to the P&SP (Public and Semi-Public) land use designation.

8. GPA 2016-01 & REZ 2016-01 - Parksdale General Plan Amendment & Rezoning

A noticed public hearing to consider a General Plan amendment and rezoning of approximately 600 properties encompassing approximately 500 acres of land located in and near Parksdale (County Service Area #3) immediately east of the City. The boundaries of the rezoning area are generally described as Avenue 13 ½ to the north, Avenue 13 to the south, Road 29 ¼ to the east, and Road 28 to the west. A General Plan amendment is proposed to accurately reflect existing land uses. An Addendum to the 2009 General Plan Environmental Impact Report has also been prepared pursuant to CEQA Guidelines Section 15162 and 15164.

ADMINISTRATIVE REPORTS

- Christopher Boyle, Planning Manager – Update on Commissioner Conference

COMMISSIONER REPORTS

ADJOURNMENT: The next regular meeting will be held on February 8, 2016.

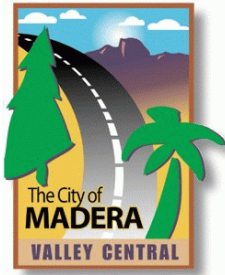
In compliance with the Americans with Disabilities Act, the meeting room is accessible to the physically disabled and the services of a translator can be made available. Requests for additional accommodations for the disabled, signers, assistive listening devices or translators needed to assist participation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

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

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

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

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



CITY OF MADERA
PLANNING COMMISSION

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

**Staff Report: Madera Town Center
Development Agreement Annual Review (& CEQA Exemption)
Item #1 – January 12, 2016**

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

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

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

STREET ACCESS: Avenue 17

PARCEL SIZE: 101 Acres (Approximately)

GENERAL PLAN DESIGNATION: HC (Highway Commercial)

ZONING DISTRICT: C-2 (Heavy Commercial)

SITE CHARACTERISTICS: The parcel was formerly utilized as a dairy and is now vacant. The property has approximately 2,300 feet of frontage along Avenue 17, which forms the southern boundary, and approximately 2,100 feet of frontage along Freeway 99, which forms the western boundary. Schmidt Creek, a natural drainage feature, lies along the northern boundary and separates the project site from the rural residential subdivision to the north. A portion of the site currently lies within the 100 year flood zone.

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 to address refinements to the conceptual site plan which was referenced in the initial EIR. No additional environmental review is required in conjunction with the annual review of the development agreement.

SUMMARY & RECOMMENDATION: The Madera Town Center Development Agreement was considered by the Planning Commission in July 2007 and approved by the City 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.

PRIOR ACTION

In 2006, the City Council approved general plan amendment and rezoning applications in order to facilitate the annexation of the 100+ acre subject property at Avenue 17 and Freeway 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 City Council in August 2007.

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

ANALYSIS

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

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

- The agreement would have a term of 20 years, during which the cumulative development requirements applied to the project would not change.
- Development exactions would be locked in during the term of the agreement and would not increase.
- The Project would develop infrastructure and utilities consisting of a water well, water pipelines, sewer lines, five traffic signals, Avenue 17 street frontage improvements and Freeway 99 ramp improvements.
- The project would dedicate, to the City, property for a storm drain and flood management basin, pump site, water well site, and property along Avenue 17 for street right-of-way.

- The City will credit the applicable categories of project's capital facility "impact" fees towards the cost of the off-site improvements (i.e. sewer impact fees credited towards off-site sewer line construction).
- The City will reimburse the developer for off-site construction costs, up to a total of \$7,386,371.00 during the term of the agreement. The source of the reimbursement will be the City's share of sales tax revenue generated by the project. Annual reimbursement payments shall be in an amount not to exceed 50% of the first \$1,300,000 of project-generated sales tax revenue which is received by the City.
- In no event shall the aggregate of the fee credit and the reimbursement amount exceed the developer's reasonable and actual costs and expense of constructing and installing the Infrastructure Improvements.

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

**Table 1
Development Agreement Terms Triggering Compliance by Applicant**

	Description	Timing of Compliance
1.	Provide water well site	If project constructed – at first occupancy
2.	Construct water well	If project constructed – at first occupancy
3.	Construct water line to well	Developer has completed this improvement
4.	Construct water line along project frontage	If project constructed – at first occupancy
5.	Construct sewer line to property	If project constructed – at first occupancy
6.	Construct sewer lift station	If project constructed – at first occupancy
7.	Construct 5 traffic signals	If project constructed – at first occupancy
8.	Construct Avenue 17 improvements	If project constructed – at first occupancy
9.	Re-stripe SR 99 NB Ramp	If project constructed – at first occupancy
10.	Construct basin and floodway (Schmidt Creek) improvements	If project constructed – at first occupancy
11.	Dedicate basin and floodway improvements to the City	After completion of improvements, and acceptance by City Engineer
12.	Construct SR 99/Avenue 17 Interchange Improvements	If project constructed – at first occupancy
13.	Pay Phase 1 Interchange Impact Fee	If project constructed – at first occupancy

14.	Dedicate 20' wildlife corridor	Unspecified. (Assumed to occur with dedication of floodway improvements)
15.	Dedicate Infrastructure Improvements	After completion, and acceptance by City Engineer
16.	Provide evidence of actual and reasonable costs for reimbursable expenses	After City has accepted infrastructure

As shown in Table 1, the development agreement outlines a series of obligations that the project developer, Zelman Madera LLC, will need to comply with. The majority of these obligations relate to the construction and dedication of public improvements. The agreement specifies that the completion of these improvements is only triggered when and if the shopping center is constructed, and then allows until the first occupancy at the shopping center to complete the improvements. The project developer has completed the installation of the water line from the west side of the freeway to the well site on the east side of freeway (Item 3 in Table 1).

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 ...;*

SUMMARY OF RECOMMENDATIONS

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

PLANNING COMMISSION ACTION

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

Motion 1: Move to approve a resolution declaring a statement of compliance under periodic review for the development agreement approved in conjunction with the Madera Town Center Project (Ord 821), for the period through August 1, 2015.

Findings

- As summarized in Table 1 of this staff report, Zelman Madera LLC has complied with the terms of the development agreement which trigger compliance on the part of the applicant. There are no developer obligations which required compliance during the period through August 1, 2015.

(OR)

Motion 2: Move to find that Zelman Madera LLC has not complied in good faith with the terms of the development agreement approved in conjunction with the Madera Town Center Project (Ord 821), for the period through August 1, 2015.

Findings

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

(OR)

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

ATTACHMENTS

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

RESOLUTION NO. _____

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA DECLARING A STATEMENT OF COMPLIANCE UNDER PERIODIC REVIEW FOR THE DEVELOPMENT AGREEMENT APPROVED IN CONJUNCTION WITH THE MADERA TOWN CENTER PROJECT (ORD 821 C.S.), FOR THE PERIOD THROUGH AUGUST 1, 2015

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

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

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

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

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

WHEREAS, the Planning Commission held a public hearing on this matter on January 12, 2015 and considered the information provided in a written staff report; and

WHEREAS, the Planning Commission has made the following finding:

1. Zelman Madera LLC, Inc has complied with the terms and conditions of the Development Agreement (ORD 821 C.S.), through August 1, 2015 as summarized in Exhibit A, attached hereto and incorporated by reference, and, Zelman Madera LLC has demonstrated a

continuing good faith effort to implement the terms and conditions as set forth in the Development Agreement.

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

1. The above recitals are true and correct.
2. The Planning Commission of the City of Madera hereby declares that the Zelman Madera LLC, Inc is in compliance with the terms and conditions of the Development Agreement approved in conjunction with the Madera Town Center project (Ord 821 C.S.), through August 1, 2015.
3. This resolution is effective immediately upon adoption.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 12th day of January, 2016, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Chairperson
City of Madera Planning Commission

Attest:

Christopher Boyle
Planning Manager

Exhibit A

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

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

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

10-3.1715 PERIODIC REVIEW

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

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

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

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

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

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

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

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

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

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8/08/2007 3:30 PM
CONFORMED COPY
This document has not been compared with the original.
MADERA COUNTY CLERK-RECORDER

RECORDING REQUESTED BY:
City Clerk
City Hall
205 West Fourth Street
Madera, California 93637

WHEN RECORDED MAIL TO:
Zelman Retail Partners, Inc
Allen Matkins Leck Gamble Mallory
& Natis 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."

**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 "J" 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 "J" 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", "E", "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, or official policy, governing:

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

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

- Exhibit "E"
- Exhibit "F"
- Exhibit "G"
- Exhibit "H"
- Exhibit "I"
- Exhibit "J"

Sewer Work

Traffic Mitigation Work

Floodway and Basin Work

Intentionally Omitted

Development Exactions

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

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

as set forth on Exhibit "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 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 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 Protect 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 acknowledgment 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 3.1.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 3.1 and 3.2.

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

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

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

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

With a copy to:

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

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

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

And

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

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

IN WITNESS WHEREOF, the City of Madera and Developer hereto have agreed to and executed this Development Agreement.

DATED: August 1, 2007

By: 
MAYOR Steven A. Mindt

ATTEST:
Sonia Alvarez, CITY
CLERK

By: 
City Clerk
(Seal)

APPROVED AS TO FORM:

City Attorney Joseph A. Soldani



DATED: 8/3, 2007

DEVELOPER

ZELMAN RETAIL PARTNERS, INC.

By [Signature]
(Signature)

Brett M. Fey

(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. FEY, 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)

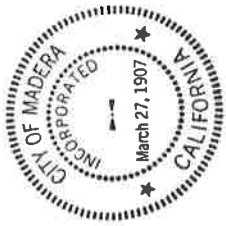


City of Madera
205 West Fourth Street
Madera, CA 93637
(559) 661-5405

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

Title: Mayor, City of Madera

Signer's Name:

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 "A"

749376.206.L
Z9389-238734-07/mg/mg

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"

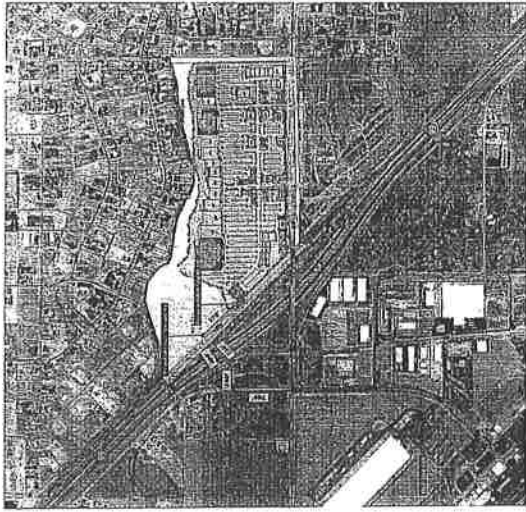
MAXIMUM REIMBURSEMENT SCHEDULE

Description of Work	Quantity	Unit	Unit Cost	Total Cost
Storm Drain Main Ave 17 (a)	1867	LF	\$45.00	\$84,015.00
18 inch				
24 inch	63	LF	\$55.00	\$3,465.00
42 inch storm drain, on-site (b)	2750	LF	\$100.00	\$275,000.00
SD Retention Basin	1	LS	\$400,000.00	\$400,000.00
12 inch Sewer Main in 17 (c)	566	LF	\$100.00	\$56,600.00
12" Sewer ext. to Walden then south to Sharon (c)	6450	LF	\$115.00	\$741,750.00
12" Water on Avenue 17-100% reimbursable (d)	1573	LF	\$65.00	\$102,245.00
12" Water Main Freeway and Railroad Crossing (d)	1	LS	\$598,000.00	\$598,000.00
12 inch Water Main in Golden State Drive (d)	976	LF	\$65.00	\$63,440.00
12 inch Water Main on-site (f)	2640	LF	\$65.00	\$171,600.00
Water Well (d)	1	EA	\$1,000,000.00	\$1,000,000.00
Paving Four (4)-12 foot Arterial Lanes	97136	SF	\$8.00	\$777,088.00
Arterial Median Island - Landscape for 30' island	19754	SF	\$8.00	\$158,032.00
Arterial Median Island - Decorative Concrete	4442	SF	\$14.00	\$62,188.00
Traffic Signal @ Center	2	LS	\$500,000.00	\$1,000,000.00
Traffic Signal @ 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%	\$5,974,591.00
A&E fees			7%	\$418,221.37
Development Overhead/General Conditions/Insurance/Management			15%	\$996,188.65
Maximum Reimbursement for Public Improvements Installed by Developer				\$7,647,476.48

EXHIBIT "C"

EXHIBIT "D"

WATER WORK AND WELL SITE LOCATION



LEGEND
 [Symbol] Project Well Site
 [Symbol] Existing Well Site
 [Symbol] Proposed Cross Connection
 [Symbol] 8" Conduit
 [Symbol] 12" Conduit
 [Symbol] Proposed Well Area

MADERA TOWN CENTER
 CROSS CONNECTION STUDY - MADERA, CA



EXHIBIT "D"

749376.200LA
 Z9369-2587-24-07/mg/mg

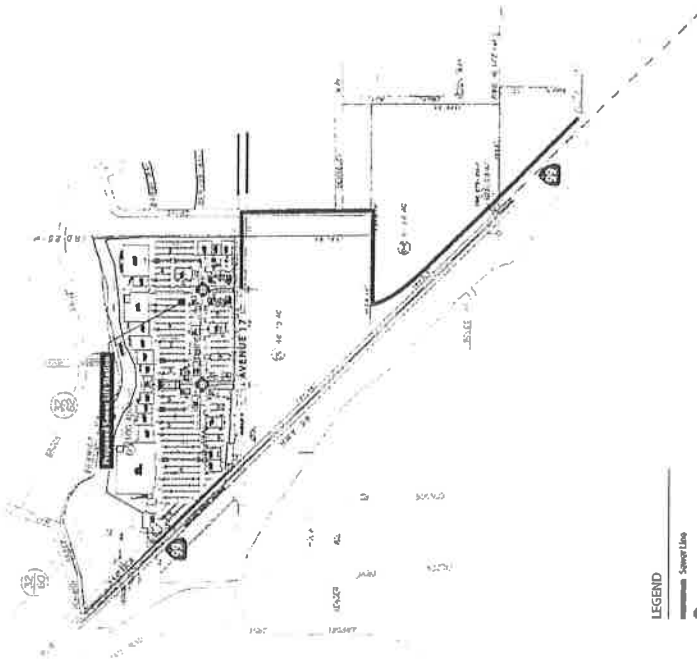
EXHIBIT "C"
 -2-

749376.200LA
 Z9369-2587-24-07/mg/mg

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

EXHIBIT "E"

SEWER WORK AND SITE



LEGEND

- Sewer Line
- Proposed Sewer Lift Station

MADERA TOWN CENTER
SEWER WORK - MADERA, CA

ME
M&E Engineering, Inc.
10000 E. 1st Street, Suite 100
Madera, CA 93694
Tel: 518.238.1111
Fax: 518.238.1112
www.mandee.com

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23469-2387-24-07/mg/mg

EXHIBIT "E"

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

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23469-2387-24-07/mg/mg

EXHIBIT "F"

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, thence Northwesterly along said curve through a central angle of 107°50'53" arc distance of 37.65 feet,
- 3) South 67°05'12" West, a distance of 244.43 feet,
- 4) South 83°31'15" West, a distance of 392.91 feet,
- 5) South 88°50'18" West, a distance of 200.12 feet,
- 6) South 75°59'30" West, a distance of 266.12 feet,
- 7) South 66°10'56" West, a distance of 241.15 feet,
- 8) South 88°15'24" West, a distance of 189.02 feet,
- 9) North 70°28'22" West, a distance of 205.25 feet,
- 10) North 49°43'54" West, a distance of 91.37 feet,
- 11) North 68°10'03" West, a distance of 207.17 feet,
- 12) North 80°36'24" West, a distance of 296.75 feet,
- 13) North 82°20'55" West, a distance of 336.88 feet,
- 14) South 29°06'57" West, a distance of 428.81 feet,
- 15) North 69°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;

- 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 209.84 feet;
- 13) North 83°41'23" East, a distance of 400.49 feet;
- 14) North 73°46'05" East, a distance of 318.65 feet to a point on the East line of said Section 3, also being the Westerly Boundary Line of that certain Subdivision Map of "Madera Estates Subdivision" filed for record on March 24, 1959 in Volume 7 of Maps at Pages 132 through 138, Madera County Records; thence, along said East line of said Section 3, South 00°31'19" East, a distance of 480.73 feet to the TRUE POINT OF BEGINNING.

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



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

EXHIBIT "H"

INTENTIONALLY OMITTED

EXHIBIT "H"
-1-

749376.206.A
29369-2387.24-07/mg/mg

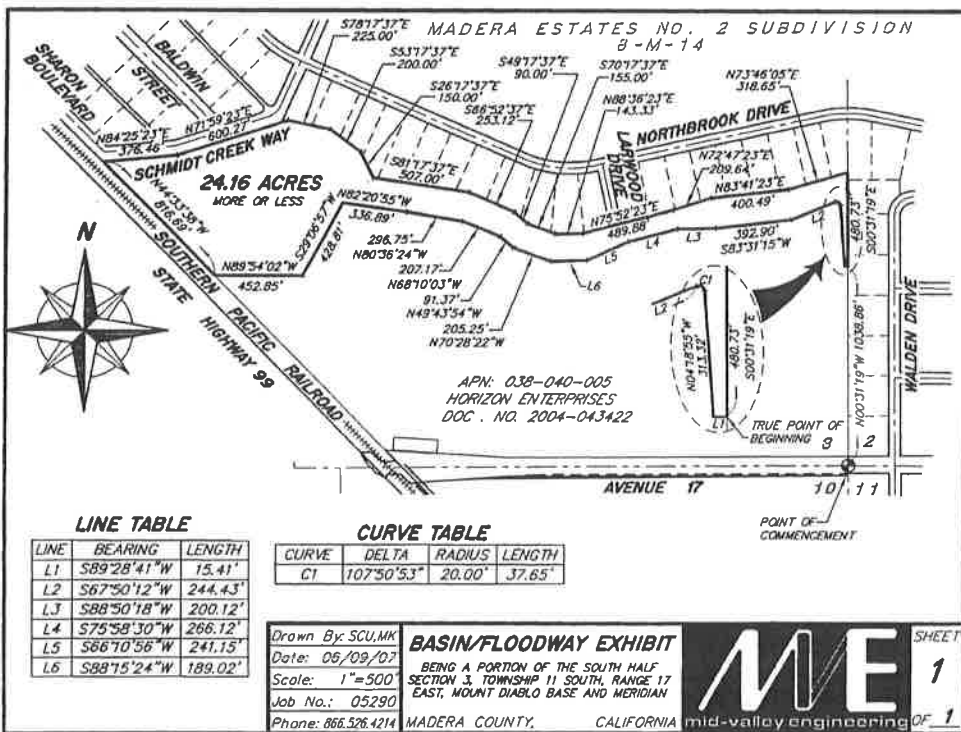


EXHIBIT "G"
-3-

749376.206.A
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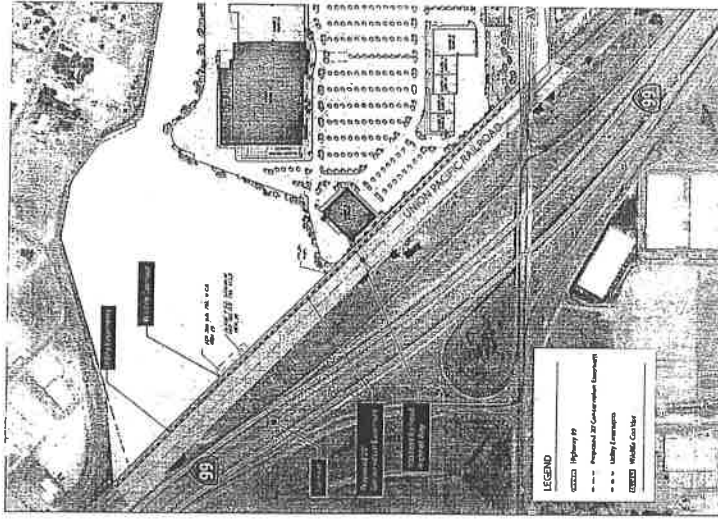
EXHIBIT "I"

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

Impact Fee Category	Phase I Square feet	Unit Cost	Extension
(I) IMPACT FEES CREDITED			
Sewer Add. Obl. NE	567,000	0.169	\$95,823.00
Sewer Exist. Obl. NE	567,000	0.036	\$20,412.00
Storm Drain NE	567,000	1.210	\$686,070.00
Streets 16 Ft Arterial med.	567,000	0.142	\$80,514.00
Streets 24 Ft collector	567,000	0.251	\$142,317.00
Streets 12 Ft Arterial	567,000	0.251	\$142,317.00
Transportation Facility Fee	567,000	0.254	\$144,018.00
Traffic Signals	567,000	0.087	\$49,329.00
Water Impact Fee - pipes	567,000	0.133	\$75,411.00
Water Impact Fee -wells	567,000	0.763	\$432,621.00
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

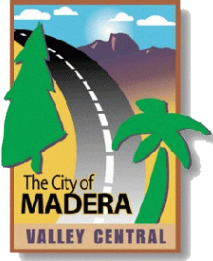
EXHIBIT "J"

20-FOOT WILDLIFE CORRIDOR



**MADERA TOWN CENTER
CONSERVATION STUDY - MADERA, CA**

ME
The local community has the right to a safe, healthy, and beautiful environment.
Conservation with a human face. Madera, CA. 95376-2000
Conservation with a human face. Madera, CA. 95376-2000
Conservation with a human face. Madera, CA. 95376-2000



CITY OF MADERA
PLANNING COMMISSION

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

**Staff Report: DPF Filters Revocation
CUP 2015-05 & CUP 2015-06
Item #2 – January 12, 2016**

PROPOSAL: A continued public hearing to consider revocation of Conditional Use Permit 2015-05 and Conditional Use Permit 2015-06, allowing for a diesel particulate filter systems business and the storage of diesel “big rig” tractors and trailers.

APPLICANT:	Donald Holt	OWNER:	Future Investments, Ltd.
ADDRESS:	2832 North Golden State Blvd.	APN:	013-250-002
APPLICATIONS:	CUP 2015-05 & CUP 2015-06	CEQA:	Categorical Exemption

LOCATION: The project site is located on the west side of Golden State Boulevard, approximately 800 north of the Ellis Street overpass.

STREET ACCESS: The site is accessed from North Golden State Boulevard.

PARCEL SIZE: Approximately 8.25 acres

GENERAL PLAN DESIGNATION: I (Industrial)

ZONING DISTRICT: IP (Industrial Park)

SITE CHARACTERISTICS: The project site is the former auto auction yard, located immediately west of the State Route 99 freeway right-of-way. A mini-storage facility is immediately north of the site and D&L Towing is directly south. Vacant industrial land is located west of the project site.

ENVIRONMENTAL REVIEW: The current revocation of the DPF Filters use permits has been determined to be categorically exempt under the California Environmental Quality Act (CEQA) guidelines, Section 15301, (Existing Facilities).

SUMMARY: The site is in compliance with the conditions of approval for Conditional Use Permit 2015-05 and 2015-06. Staff recommends that the Planning Commission make a determination that revocation is not warranted as all conditions have been brought into compliance.

APPLICABLE CODES AND PROCEDURES

MMC §10-3.1002, Industrial Zones, Uses Permitted
MMC § 10-3.1301 Use Permits

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.

All use permits which have been granted may be revoked by the Planning Commission after a hearing as set forth below in the event the user of such permit, or his or its successor in interest to the real property in favor of which the permit was granted, breaches or fails to abide by any of the conditions designated in such permit.

PRIOR ACTION

The use permits and site plan review were approved as part of the rezoning (Rezone 2015-01) of the property from the IP (Industrial Park) Zone District to the I (Industrial) Zone District. The Planning Commission conditionally approved the entitlements on June 9, 2015. The rezone was adopted as ordinance and is not subject to this review. The Planning Commission reviewed the use permit for compliance with conditions of approval at its October 9, 2015 regular meeting and directed that a public hearing be scheduled to determine if revocation is warranted. At the November 10, 2015 revocation hearing, the Planning Commission continued the public hearing to December 8, 2015 in order to allow the applicant to take meaningful action toward compliance with the required conditions of approval. On December 8, 2015, the Commission provided additional time to facilitate full compliance with the conditions of approval.

ANALYSIS

History

These applications were made with the intent of resolving business license citations active on the site. The diesel particulate filter system installation business and truck storage yard were not allowed uses in the IP (Industrial Park) Zone District and no business license could be approved. The business opened on the IP zoned property, even though representatives of the business had been advised of its non-permitted status. The applicant did complete the rezone to the I (Industrial) Zone District, which provided for the desired uses subject to Planning Commission approval of the conditional use permits and site plan review.

Findings of This Review

Attached is a matrix of the conditions of approval for the DPF Filters entitlements. These conditions were evaluated by staff and found to be in compliance. Significant improvements have been completed and the site is now developed consistent with the approved conditions of approval. General Plan conformance findings can be made.

RECOMMENDATION

It is recommended that the Planning Commission consider this information, together with testimony provided during the public hearing, and make the appropriate findings and decision

regarding the project. Staff's determination, based on its review of the facts, is that revocation is not warranted at this time.

PLANNING COMMISSION ACTION

The Commission would be taking action regarding Conditional Use Permit 2015-05 and 2015-06, determining to either:

- revoke the use permits
- continue the hearing, or
- find that revocation of the use permits is not warranted at this time

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

Motion 1: Move to find that revocation of Conditional Use Permit 2015-05 and 2015-06 is not warranted at this time for the following findings:

Findings

- Conditions of approval adopted by the Planning Commission and agreed to by the applicant and property owner are currently being complied with.
- Site improvements required to be completed within specific timeframes have been completed.
- Based on observations of staff and the evidence from the whole of the record, the use is now operating in compliance with conditions of approval; and
- The continued operation of the use will not under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare 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;
- The above findings are supported by evidence presented at the public hearing, by field observations by multiple City departments, and in staff reports during the processing and review of this entitlement; which is made a part of this record by this reference.

(OR)

Motion 2: Move to continue the review hearing of Conditional Use Permit 2015-05 and 2015-06 to February 9, 2016 to allow the applicant to comply with all of the conditions of approval of Conditional Use Permit 2015-05 and 2015-06.

(OR)

Motion 3: Move to revoke Conditional Use Permit 2015-05 and 2015-06 effective immediately, based on and subject to the following reasons: (please specify)

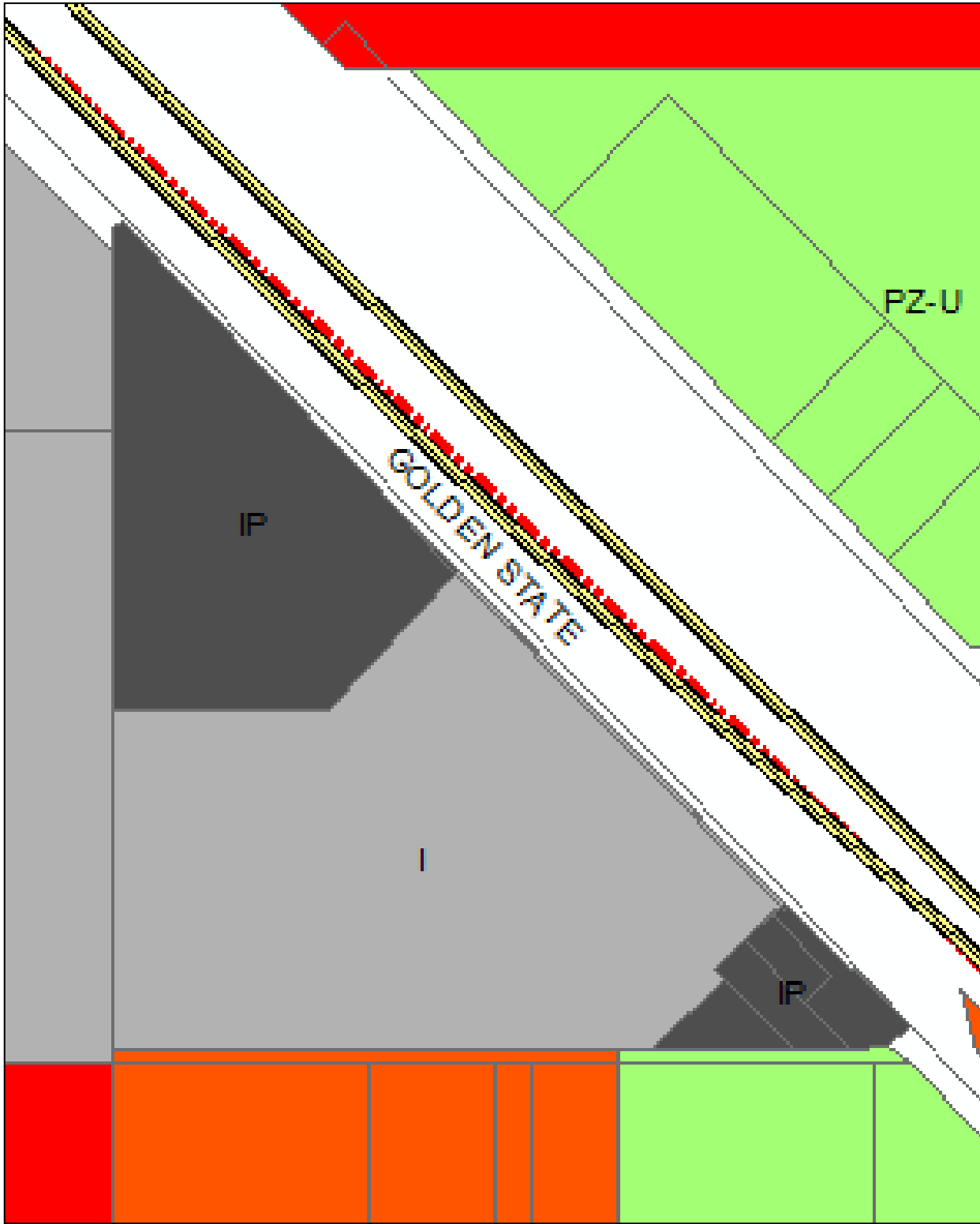
ATTACHMENTS

Aerial Map
Zoning Map
Conditions of Approval Compliance Matrix

Aerial Photo



Zoning Map

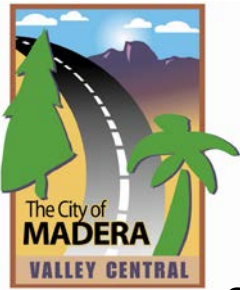


Conditions of Approval Compliance Matrix

<p>1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by receipt in the Planning Department of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within thirty days of the date of approval for this use permit.</p>	<p>Received</p>
<p>2. Conditional Use Permit 2015-05 allows for the maintenance and installation of diesel particulate filter systems on both diesel trucks and stationary diesel power generation systems, consistent with the stated conditions of approval. CUP 2015-05 will become null and void with the discontinuance of the use on the site.</p>	<p>Procedural</p>
<p>3. Conditional Use Permit 2015-06 allows for the parking/storage of diesel "big rig" tractors and trailers, consistent with the stated conditions of approval. CUP 2015-06 will become null and void with the discontinuance of the use on the site or the expiration of CUP 2015-05.</p>	<p>Procedural</p>
<p>4. Site Plan Review 2015-15 will expire one year from date of issuance, unless positive action is taken on the project as provided in the Municipal Code 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).</p>	<p>Procedural</p>
<p>5. This use permit shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If at any time, the use is determined by Staff to be in violation of the conditions of approval, Staff may schedule a public hearing before the Planning Commission within 45 days of the violation to consider revocation of the permit.</p>	<p>Procedural</p>
<p>Planning Department</p>	
<p>6. Vandalism and graffiti shall be corrected per the Madera Municipal Code.</p>	<p>In compliance</p>
<p>7. The property owner, operator and manager shall keep the property clear of all trash, rubbish and debris at all times; and dumping of refuse shall be restricted to the dumpster and refuse containers owned by the property owner. Outdoor storage of goods or materials shall not be allowed.</p>	<p>In compliance</p>
<p>8. The applicant shall operate in a manner that does not generate significant noise, odor or vibration that adversely affects any adjacent properties.</p>	<p>In compliance</p>
<p>9. The applicant shall comply with all federal, state and local laws. Material violation of any applicable laws concerning the use will be cause for revocation of this permit.</p>	<p>In compliance</p>
<p>10. Site Data</p> <ul style="list-style-type: none"> • One (1) parcel, approximately 8.25 acres (APN: 013-250-002) • Building Area – Approximately 7,200 square feet. • Approved Use of Buildings: <ul style="list-style-type: none"> • Diesel truck filter service and installation "Big Rig" Truck Storage (as a component of the DPF use) • Minimum Parking Requirements: 22 parking stalls • Parking Provided: There is more than sufficient parking available. • Loading Spaces Required: None 	<p>In compliance</p>

11. There shall be no limitation on the hours of operation for the diesel particulate filter systems business or the associated “big rig” tractor and trailer parking/storage use. The uses shall be operated as one cohesive business.	Procedural
12. When the diesel particulate filter systems business is discontinued, the associated “big rig” tractor and trailer parking/storage use shall also cease.	Procedural
13. No recreational vehicles, boats or other types of commercial or personal vehicles shall be stored on the site. Only the parking/storage of “big rig” tractors and trailers shall be permitted.	In compliance
14. The unpaved parking lot surface shall be improved with a gravel surface. The unpaved vehicle parking and traffic areas shall be maintained consistent with the San Joaquin Valley Air Pollution Control District’s Rule 8071 – Unpaved Vehicle/Equipment Traffic Areas at all times.	In compliance
15. A parking layout for “big rig” truck storage shall be reviewed and approved by the Planning Department so as to ensure an organized truck parking field.	Received
16. The “big rig” parking field shall be screened from view by incorporation of a landscaped property frontage.	In compliance
17. All signage shall be consistent with the Madera Municipal Code.	In compliance
18. The applicant shall secure all required permits for signage and, if necessary, remove non-permitted on-building signage.	In compliance
19. No signage, to include banners, shall be attached to or displayed from the perimeter fencing. As an alternative, the applicant may propose to install a permanent freestanding sign as a component of permitted signage.	In compliance
20. The entire project frontage to North Golden State Boulevard shall be landscaped with screening vegetation sufficient to enhance the aesthetics of the property frontage while screening the activities within. A landscape and irrigation plan shall be submitted to the Planning Department for review and approval with thirty (30) days. All landscaping shall be installed within ninety (90) days after Planning Department approval.	In compliance
21. The property owner shall maintain all landscaping in a healthy and well-manicured appearance to achieve and maintain the landscaping design that was approved by the City. This includes, but is not limited to, ensuring properly operating irrigation equipment at all times, trimming and pruning of trees and shrubs, mowing lawns consistent with industry standards, and replacing dead or unhealthy vegetation.	Ongoing
Engineering Department	
22. Nuisance onsite lighting shall be redirected as requested by the City Engineer within 48 hours of notification.	In compliance
23. Improvements within City right-of-way require an Encroachment Permit from the Engineering Department.	Procedural
24. The developer shall pay all required fees for completion of project. Fees due may include but shall not be limited to the following: agreement processing, plan review, encroachment permit processing and improvement inspection fees.	In compliance
25. The developer shall make application to enter into a deferral agreement for participation of constructing future street improvements along its western property line in accordance with the City of Madera Circulation Element and Airport Specific Plan.	In compliance
26. At such time that City water service are extended to and/or across the property frontage to the public right-of-way, the property shall make connection and pay all necessary connection and impact fees.	Procedural
27. At such time that City sewer service are extended to and/or across the property frontage to the public right-of-way, the property shall make	Procedural

connection and pay all necessary connection and impact fees.	
Fire Department Conditions	
28. Site access must be maintained around the parking lot. Fire lanes must be posted in accordance with the California Fire Code and California Vehicle Code.	In compliance
29. A key box will be required for emergency access.	In compliance
30. Portable fire extinguishers are required in accordance with the California Fire Code.	In compliance



CITY OF MADERA
PLANNING COMMISSION

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

**Staff Report: Iglesia Pentecostes Espiritu Santo y Fuego
CUP 2015-32, SPR 2015-37 & Environmental Determination
Item #3– January 12, 2016**

PROPOSAL: An application for a conditional use permit and site plan review to allow for the establishment of a church.

APPLICANT:	Juan C. Bedolla	OWNER:	Khalid B. Chaudhry
ADDRESS:	200 West Olive Avenue Suite AA	APN:	012-053-017
APPLICATION:	CUP 2015-32 & SPR 2015-37	CEQA:	Categorical Exemption

LOCATION: The property is located on the southeast corner of West Olive Avenue and Martin Street.

STREET ACCESS: The site has access to West Olive Avenue and Martin Street.

PARCEL SIZE: 0.73-acre commercial center, of which the church suite is a part thereof.

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: C1 (Light Commercial)

SITE CHARACTERISTICS: The 0.73-acre commercial center encompasses one fully developed parcel. Iglesia Pentecostes Espiritu Santo y Fuego is located in one of the commercial suites on the parcel, with parking provided on-site as a component of the center overall. There is commercial development along the West Olive Avenue commercial corridor. Residential development is found to the south of the project site.

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

SUMMARY & RECOMMENDATION: The use is consistent with the purpose and intent of the Zoning Ordinance. Staff recommends approval of the use permit and site plan review.

APPLICABLE CODES AND PROCEDURES

MMC § 10-3.802 Light Commercial Zone
MMC § 10-3.405 Uses
MMC § 10-3.1202 Parking Regulations
MMC § 10-3.1301 Use Permits
MMC § 10-3.4.0102 Site Plan Review Applicability

A church may be allowed in any zone subject to the approval of a conditional use permit by the Planning Commission. 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, the use permit should be denied.

Conditions may be attached to the approval of the use permit to ensure compatibility. Project design may be altered and on or off-site improvements required in order to make the project compatible with nearby uses. In addition, the application may be subject to further review, modification or revocation by the Commission as necessary.

PRIOR ACTION

Various land use entitlements have been granted by the Planning Commission on the project site over time. The last approved entitlements were Conditional Use Permit 2005-21, which allowed for the establishment of the existing Renteria Martial Arts, and Conditional Use Permit 2015-02, which allowed for beer and wine sales in conjunction with the operation of Pho Dera restaurant.

ANALYSIS

Background

Churches are allowed in any zone in the City with the approval of a use permit. The commercial site is occupied by varying commercial uses including a restaurant, a martial arts studio, a tax service, and retail uses. The church has operated for some time without the required permits. City staff notified the applicant of the requirement for a use permit and site plan review, and shortly thereafter this application was filed.

Operations

Iglesia Pentecostes Espiritu Santo y Fuego (church) is located in an approximately 1,400 square foot tenant suite. The floorplan includes an assembly room/sanctuary with seating and a raised platform. Four smaller rooms serve as an office, a breakroom, and two restrooms. Services are currently held on Sundays as well as evening assemblies on Tuesdays and Thursdays. The church will operate as a nonprofit organization with activities confined to the interior of the tenant suite. Typical church activities are compatible with commercial uses. This use permit allows for up to three special event or fundraising activities a year. A temporary use permit must be applied for at least 3 weeks prior to the event/activity so that staff can determine compatibility of proposed activities with surrounding uses.

Parking

The commercial complex was developed with 40 parking spaces serving 10,080 square feet of floor area. These accommodations equate to a parking ratio of one stall per each 252 square feet of lease area. Uses typical of this type of commercial development require one parking stall per each 300 square feet of floor area.

CURRENT TENANT	GROSS FLOOR AREA	DAYTIME REQUIREMENTS	NIGHT/SUNDAY REQUIREMENTS
ABC Pho Dera	2,280	20	20
Beauty Parlor	960	3	-
ACDC Battery	1,040	3	-
Martial Arts Studio	3,720	-	10
Liberty Tax	680	2	-
Iglesia Pentecostes	1,400	-	10
TOTAL	10,080	28	40

The City of Madera parking ordinance allows parking stalls to serve as “joint use” stalls in some cases. In the case of a church, up to 100% of required parking can be supplied by uses primarily considered to be daytime uses such as offices or retail shops. On this site, the parking requirements of the beauty parlor, battery store, and tax service can be considered daytime uses. The martial arts studio and proposed church are considered Sunday/night time uses, and the restaurant can be expected to draw customers both during the day and night time hours. The parking requirements of the site are shown in the table above. The church requires the provision of 10 parking stalls based on a ratio of one parking stall for every four (4) seats provided in the sanctuary. As there are 40 stalls provided and no more than 40 stalls are required at any one time, there is adequate parking on site to serve the use.

Site Improvements

Recommended site improvements include improvements that were also required by Conditional Use Permit 2015-02 Pho Dera ABC that have not been satisfied. These include an updated water meter, sewer clean out, and upgrading the handicap access ramp at the corner of West Olive Avenue and Martin Street to meet current City and ADA standards. Although also made the responsibility of the church, Pho Dera will be advised that failure to comply with the agreed upon conditions of approval may lead to revocation of their use permit for the sale of beer and wine.

The project site currently does not have a trash enclosure and dumpsters are left in public view. A trash enclosure to serve the site is required as a condition of approval. The enclosure should be located and designated to serve all of the tenants on the site.

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

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Though approval of a church is not specifically addressed in the vision or action plans, the overall project does indirectly support Strategy 336 which encourages cooperation and continued collaboration with the church community.

SUMMARY OF RECOMMENDATIONS

The information presented in this report supports conditional approval of the use permit request.

PLANNING COMMISSION ACTION

The Commission would be taking action regarding Conditional Use Permit 2015-32 and Site Plan Review 2015-37, determining to either:

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

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

Motion 1: Move to approve the requested Conditional Use Permit 2015-32 and Site Plan Review 2015-37 based on and subject to the findings and conditions of approval as listed.

Findings

- This project is categorically exempt under Section 15301, Existing Facilities, of the California Environmental Quality Act (CEQA) since there will be negligible expansion of the existing use of the structure.
- The operation of a church is consistent with the purposes of the C (Commercial) General Plan designation and the C1 (Light Commercial) Zone District which provide for the use, subject to the issuance of a conditional use permit.
- There is adequate parking on site to allow for the proposed church.
- As conditioned, the development will be compatible with surrounding properties.
- As conditioned, the establishment, maintenance or operation of the use will not under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare 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.

CONDITIONS OF APPROVAL

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by receipt in the Planning Department of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within thirty days of the date of approval for this use permit.
2. Conditional Use Permit 2015-32 allows for the establishment of a church, consistent with the stated conditions of approval.

3. The applicant's failure to utilize this use permit within one year following the date of this approval shall render the conditional use permit null and void unless a written request for extension has been submitted to and approved by the Planning Commission.
4. The use permit may be made null and void without any additional public notice or hearing at any time by the owners of the property voluntarily submitting to the City a written request to permanently extinguish the conditional use permit.
5. This conditional use permit will expire if the use is discontinued for a twelve-month period.
6. Site Plan Review 2015-37 will expire one year from date of issuance, unless positive action is taken on the project as provided in the Municipal Code and a request to extend the approval is received before the expiration date (Municipal Code Section 10-3.4.0114, Lapse of Site Plan Approval).
7. This use permit shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If at any time, the use is determined by Staff to be in violation of the conditions of approval, Staff may schedule a public hearing before the Planning Commission within 45 days of the violation to consider revocation of the permit.

Building Department

8. A building permit is required for all improvements. The tenant space must meet the requirements of the California Building Code, California Fire Code, and Americans with Disabilities Act within 90 days of this approval.
9. Current State of California and federal handicap requirements shall apply to the entire site and all structures and parking thereon. Compliance shall be checked at permit stage, shall be confirmed at final inspection.

Fire Department

10. Portable fire extinguishers are required. One 2A10BC rated fire extinguisher for every 3,000 square feet or fraction thereof.
11. A key box is required if one does not already exist.
12. A complete egress analysis is required for the secondary means of egress which includes the accessible means of egress.
13. A building permit must be obtained for a change of occupancy unless it can be demonstrated that the last "approved" use of the space prior to this tenant was an assembly occupancy. A change in Occupancy requires the space to comply with current requirements for the new occupancy. Plans prepared by a licensed architect would be required.
14. All interior wall finishes must comply with Chapter 8 of the California Building Code and all wall and ceiling coverings must comply with the California Fire Code for flame-spread and smoke generation.

15. Panic hardware is required at egress doors.
16. Emergency lighting is required.
17. The occupant load must be properly posted.

Engineering Department

18. Nuisance onsite lighting shall be redirected as requested by the City Engineer within 48 hours of notification.
19. Improvements within the City right-of-way require an Encroachment Permit from the Engineering Department.
20. The improvement plans for the project shall include the most recent version of the City's General Notes.
21. The developer shall pay all required fees for completion of project. Fees due include but shall not be limited to the following: encroachment permit processing and improvement inspection fees.

Water

22. The existing water service connection shall be upgraded to current city standards within 90 days of this approval, including Automatic Meter Read water meter located within City right-of-way and a backflow prevention device located within private property.

Sewer

23. The existing sewer service connection shall be upgraded to current City standards with sewer clean out within 90 days of this approval.

Streets

24. The existing handicap access ramp at the corner of West Olive Avenue and Martin Street shall be upgraded to meet current City and ADA standards within 90 days of this approval.

Planning Department

25. This use permit allows for the establishment of a 1,400 square foot church. The site includes no less than forty (40) on-site parking stalls to serve the 10,080 square foot building. The church shall operate consistent with the approved floor plan, including a sanctuary with seating for no more than 40 people.
26. Vandalism and graffiti shall be corrected per the Madera Municipal Code.
27. Up to three (3) special events and/or fundraising activities may be permitted each year with the approval of a Temporary Use Permit in each case. In no case shall any special event/fundraising activity cause a reduction in parking below the number of stalls required to serve the site. Special events shall only occur during daytime hours, when ample parking is available to serve the site.

28. No kitchen facilities shall be developed wherein Environmental Health Department approval would be required. Existing cooking facilities shall be removed.
29. No nursery facility shall be developed as a component of the lease space.
30. The applicant shall operate in a manner that does not generate significant noise, odor or vibration that adversely affects any adjacent properties.
31. The property owner, operator and manager shall keep the property clear of all trash, rubbish and debris at all times; and dumping of refuse shall be restricted to the dumpster/refuse containers belonging to the subject property.
32. The applicant shall comply with all federal, state and local laws. Material violation of any applicable laws concerning the use will be cause for revocation of this permit.
33. The church may be open from as early as 6:00 am in the morning to as late as 10:00 pm at night, seven days a week.
34. All required parking shall be permanently maintained with all parking spaces as shown on the required site plan submittal. Any modifications in the approved parking layout shall require approval by the Planning Manager.
35. Church staff and parishioners shall only utilize parking stalls provided onsite. The neighboring properties shall not be adversely impacted by church activities.
36. A trash enclosure to serve the entirety of the commercial site shall be constructed within 90 days of this approval. The enclosure shall be located per the direction of the Public Works Department. The enclosure shall be painted in a color that matches the existing building.
37. All signage shall be in compliance with the Madera Sign Ordinance. All signage is required to have an approved Sign Permit issued by the Planning Department per MMC §10-6.

(OR)

Motion 2: Move to continue the request for approval of Conditional Use Permit 2015-32 and Site Plan Review 2015-37 to the February 9, 2016 Planning Commission meeting: (specify)

(OR)

Motion 3: Move to deny the request for Conditional Use Permit 2015-32 and Site Plan Review 2015-37 based on the following findings: (specify)

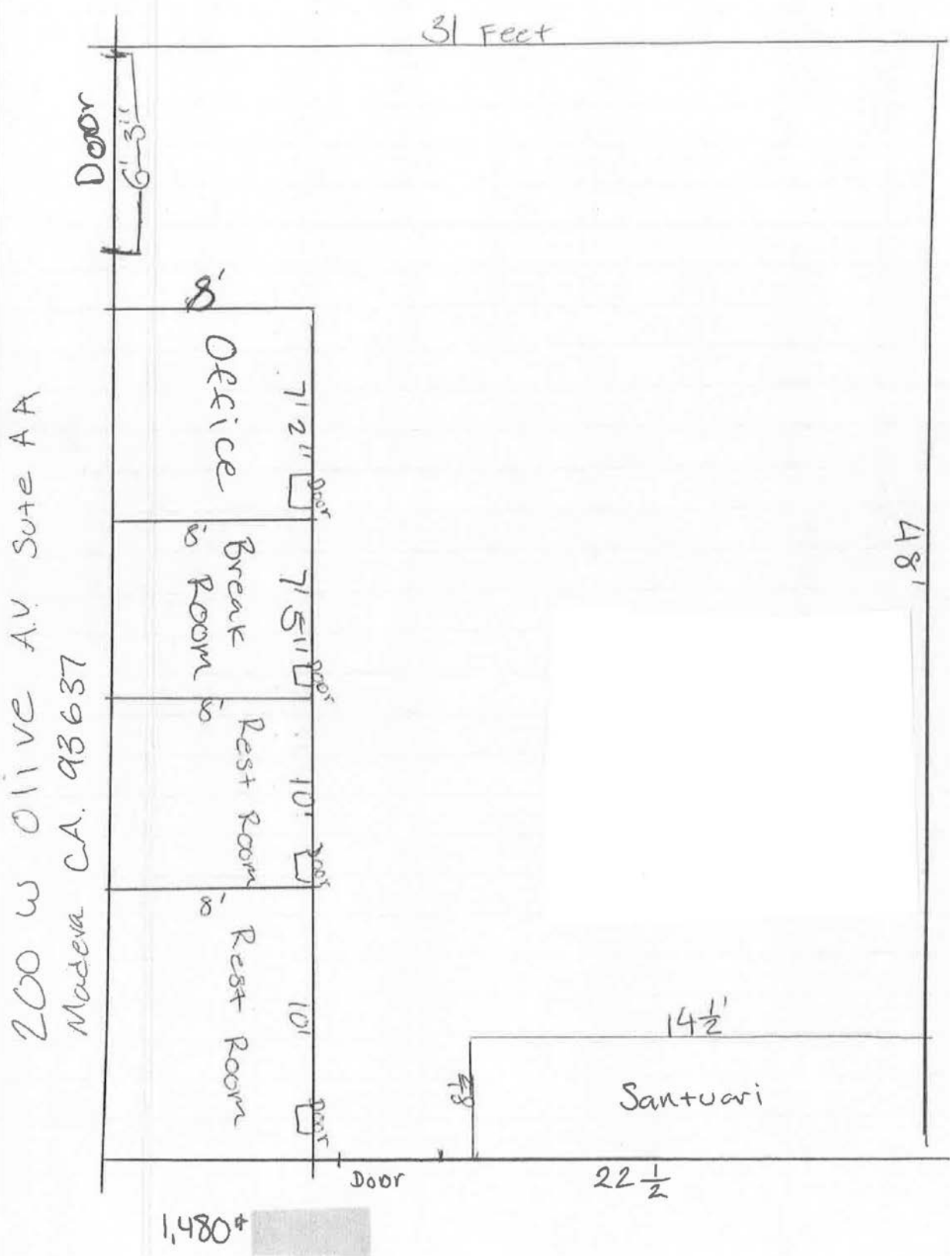
ATTACHMENTS

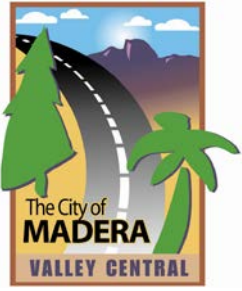
Aerial Photo
Floor Plan

Aerial Photo



Floor Plan





CITY OF MADERA
PLANNING COMMISSION

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

**Staff Report: Bachelorette Novelty Shop
CUP 2015-34, SPR 2015-39 & Environmental Determination
Item #4 – January 12, 2016**

PROPOSAL: An application for a conditional use permit and site plan review to allow for the establishment of a bachelorette novelty shop.

APPLICANT:	Alex Brioni	OWNER:	Jared Ennis
ADDRESS:	1475 Country Club Drive	APN:	003-210-009
APPLICATION:	CUP 2015-34 & SPR 2015-39	CEQA:	Categorical Exemption

LOCATION: This project site is located at the southeast corner of West Clark Street and Country Club Drive.

STREET ACCESS: The site has access to West Clark Street and Country Club Drive.

PARCEL SIZE: Approximately 0.95 acre

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: C1 (Light Commercial)

SITE CHARACTERISTICS: The property is a fully improved commercial site. The 8,000 square foot building includes multiple tenant suites. Neighboring tenants include Pizza Hut, a cell phone store, and a hydroponics store. The site is surrounded on all sides by commercial development, most notably Fallas Discount Store to the east.

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

SUMMARY: The use is consistent with the purpose and intent of the Zoning Ordinance which allows for the use subject to the approval of a use permit. Conditions of approval are proposed that will provide compatibility with surrounding uses. Staff recommends approval of the proposed conditional use permit and site plan review.

APPLICABLE CODES AND PROCEDURES

MMC § 10-3.802 Light Commercial Zones
MMC § 10-3.4.0101 Site Plan Review
MMC § 10-3.1202 Parking Regulations
MMC § 10-3.1301 Use Permits

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, the use should be denied. Conditions may be attached to the approval of the use permit to ensure compatibility. Project design may be altered and on or off-site improvements required in order to make the project compatible with nearby uses. In addition, the application may be subject to further review, modification or revocation by the Commission as necessary.

PRIOR ACTION

The existing site was developed in accordance with Site Plan Review 1990-11 which allowed for an 8,000 square foot commercial building. A number of use permits have been issued for various tenants including Conditional Use Permit 1992-18 to allow alcohol sales in conjunction with a restaurant and Conditional Use Permit 1997-25 which allowed for an arcade use. Both examples are no longer in operation and the use permit entitlements have expired.

ANALYSIS

Background

The City's General Plan indicates that land designated as C (Commercial) is appropriate for development of commercial uses. The commercial building where the applicant proposes to locate has been utilized by various retail uses over time. The City's Zoning Ordinance also allows for retail uses in the C1 (Light Commercial) Zone District, except that the proposed use is not specifically included in the City's use schedule. A Use Permit is required in this case to allow for a Planning Commission determination as to whether or not the use is appropriate in this location. Issues discussed as part of this analysis include operational concerns and parking.

Operations

The applicant wishes to operate a bachelorette novelty shop. Various offerings include intimate apparel, bachelorette party supplies, and products of a sexually explicit nature. These adult products do not place the business under the specific requirements of Chapter 7: Adult Oriented Businesses of the Madera Municipal Code. The adult oriented business ordinance specifically addresses and places restrictions upon live nude adult entertainment. Sales of sexually oriented merchandise is not addressed in Chapter 7. Instead, the use schedule of the C1 Zone District provides that "other uses which, in the opinion of the Commission, are of a similar nature" require the approval of a use permit by the Commission.

The bachelorette store under review proposes to sell merchandise of a sexually explicit nature. Staff recommends that this merchandise be placed behind a partition wall within the store, out of view from customers as they enter the store. The intent is to give customers the opportunity

to assess the store offerings and to continue as they see fit. A restriction on the sale of adult videos is also recommended. Business hours are proposed from 11:00 a.m. to 9:00 p.m., seven days a week. Restrictions on signage are included in the conditions of approval to reduce impacts to surrounding uses.

Parking

The site was developed with more than the required number of parking stalls. Thirty-five parking stalls serve the site. General retail, including the proposed use, requires one parking stall for every 300 square feet of floor area. The 8,000 square foot building would require twenty seven (27) parking stalls. The neighboring pizza restaurant has slightly higher parking demands than a retail use, but with thirty-five (35) stalls available, there is adequate onsite parking to serve the use.

This proposed conditional use permit was reviewed by various City Departments. The responses and recommendations have been incorporated into the recommended conditions of approval included in this report.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Though approval of a bachelorette novelty shop is 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 conditional approval of the use permit request.

PLANNING COMMISSION ACTION

The Commission would be taking action regarding Conditional Use Permit 2015-34 and Site Plan Review 2015-39, determining to either:

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

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

Motion 1: Move to approve the requested Conditional Use Permit 2015-34 and Site Plan Review 2015-39 based on and subject to the findings and conditions of approval as listed below.

Findings

- This project is categorically exempt under Section 15301, Existing Facilities, of the California Environmental Quality Act (CEQA) since there will be negligible expansion of the existing use of the structure.
- Operation of a bachelorette novelty shop is consistent with the purposes of the C (Commercial) General Plan designation and the C1 (Light Commercial) Zone District which provide for the use, subject to the issuance of a conditional use permit.

- There is adequate parking on site to serve the use.
- As conditioned, the development will be compatible with surrounding properties.
- As conditioned, the establishment, maintenance or operation of the use will not under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare 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.

CONDITIONS OF APPROVAL

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by receipt in the Planning Department of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within thirty days of the date of approval for this use permit.
2. Conditional Use Permit 2015-34 allows the operation of a bachelorette novelty shop, consistent with the stated conditions of approval.
3. The applicant's failure to utilize this use permit within one year following the date of this approval shall render the conditional use permit null and void unless a written request for extension has been submitted to and approved by the Planning Commission.
4. The use permit may be made null and void without any additional public notice or hearing at any time by the owners of the property voluntarily submitting to the City a written request to permanently extinguish the conditional use permit.
5. This conditional use permit will expire if the use is discontinued for a twelve-month period.
6. Site Plan Review 2015-39 will expire one year from date of issuance, unless positive action is taken on the project as provided in the Municipal Code or take the required action to extend the approval before expiration date (Municipal Code Section 10-3.4.0114, Lapse of Site Plan Approval).
7. Any proposed future modifications to the site, including but not limited to building exteriors, parking/loading areas, fence/walls, new buildings or landscaping shall require an amendment to this site plan review.
8. This use permit shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If at any time, the use is determined by Staff to be in violation of the conditions of approval, Staff may schedule a public hearing before the Planning Commission within 45 days of the violation to consider revocation of the permit.

Building Department

9. Current State of California and federal handicap requirements shall apply to the entire site and all structures and parking thereon. Compliance shall be checked at permit stage, shall be confirmed at final inspection and shall apply to proposed and future development.

Fire Department

10. Portable fire extinguishers are required. One 2A10BC rated fire extinguisher for every 3,000 square feet or fraction thereof.
11. Required building permits must be obtained for all improvements, including the dressing rooms.
12. A complete egress analysis is required.
13. Aisle widths must be a minimum of 36 inches. Displays will have to be modified to provide the required aisles if not provided.

Engineering Department

14. Nuisance onsite lighting shall be redirected as requested by the City Engineer within 48 hours of notification.
15. Improvements within the City right-of-way require an Encroachment Permit from the Engineering Department.
16. The developer shall pay all required fees for completion of project. Fees due include but shall not be limited to the following: encroachment permit processing and improvement inspection fees.

Water

17. The existing water service connection shall be upgraded to current city standards including Automatic Meter Read water meter located within City right-of-way and shall read in cubic feet and a backflow prevention device located within private property.

Sewer

18. The existing sewer service connection shall be upgraded to current City standards with sewer clean out.

Planning Department

19. This conditional use permit allows for establishment of a bachelorette novelty shop, including the sale of products of a sexually explicit nature. The name of the business shall be the Pink Rose.
20. A partition wall or other approved means of screening shall be included so that certain merchandise of a particularly sexually explicit nature (such as sex toys) is not visible when first entering the store.
21. The business owner shall immediately relocate merchandise to behind the partition wall upon the request of a Code Enforcement officer or the Planning Manager.
22. The sale of videos is restricted to only videos that have been rated by the Classification and Rating Administration of the Motion Picture Associate of America. No unrated videos may be sold. All video product shall be located behind the required partition wall.

23. Signage and any window displays shall not include images or products which depict or reveal the male or female form. A determination of compliance with this condition may be made by a Code Enforcement officer or the Planning Manager.
24. Vandalism and graffiti shall be corrected per the Madera Municipal Code.
25. The property owner, operator and manager shall keep the property clear of all trash, rubbish and debris at all times; and dumping of refuse shall be restricted to the dumpster and refuse containers designated for use by the tenant.
26. The applicant shall operate in a manner that does not generate noise, odor or vibration that adversely affects any adjacent properties.
27. The applicant shall comply with all federal, state and local laws. Material violation of any applicable laws concerning the use will be cause for revocation of this permit.
28. All parking and loading areas shall be marked and striped to City Standards: Perpendicular (90 degree) parking spaces shall measure a minimum of nine feet (9') wide by 19' deep (17' deep with 2' bumper overhang). Minimum drive aisle/backing/maneuvering space is twenty-six (26') feet for primary drive aisles. A new parking layout shall be submitted to the Planning Manager for approval within 30 days of approval of the conditional use permit.
29. On-site parking shall be provided at all times in conformance with the Municipal Code. All required parking shall be permanently maintained with all parking spaces to be shown on plans submitted for building permits. Any modifications in the approved parking layout shall require approval by the Planning Commission.
30. The property owner shall maintain all landscaping in a healthy and well-manicured appearance to achieve and maintain the landscaping. This includes, but is not limited to, ensuring properly operating irrigation equipment at all times, trimming and pruning of trees and shrubs, and replacing dead or unhealthy vegetation with drought tolerant plantings.
31. All signage shall be in compliance with the Madera Sign Ordinance and Condition No. 20. All signage is required to have an approved Sign Permit issued by the Planning Department per MMC §10-6.

(OR)

Motion 2: Move to continue the application for Conditional Use Permit 2015-34 and Site Plan Review 2015-39 to the February 9, 2016 Planning Commission meeting.

(OR)

Motion 3: Move to deny the request for Conditional Use Permit 2015-34 and Site Plan Review 2015-39 based on the following findings: (please specify)

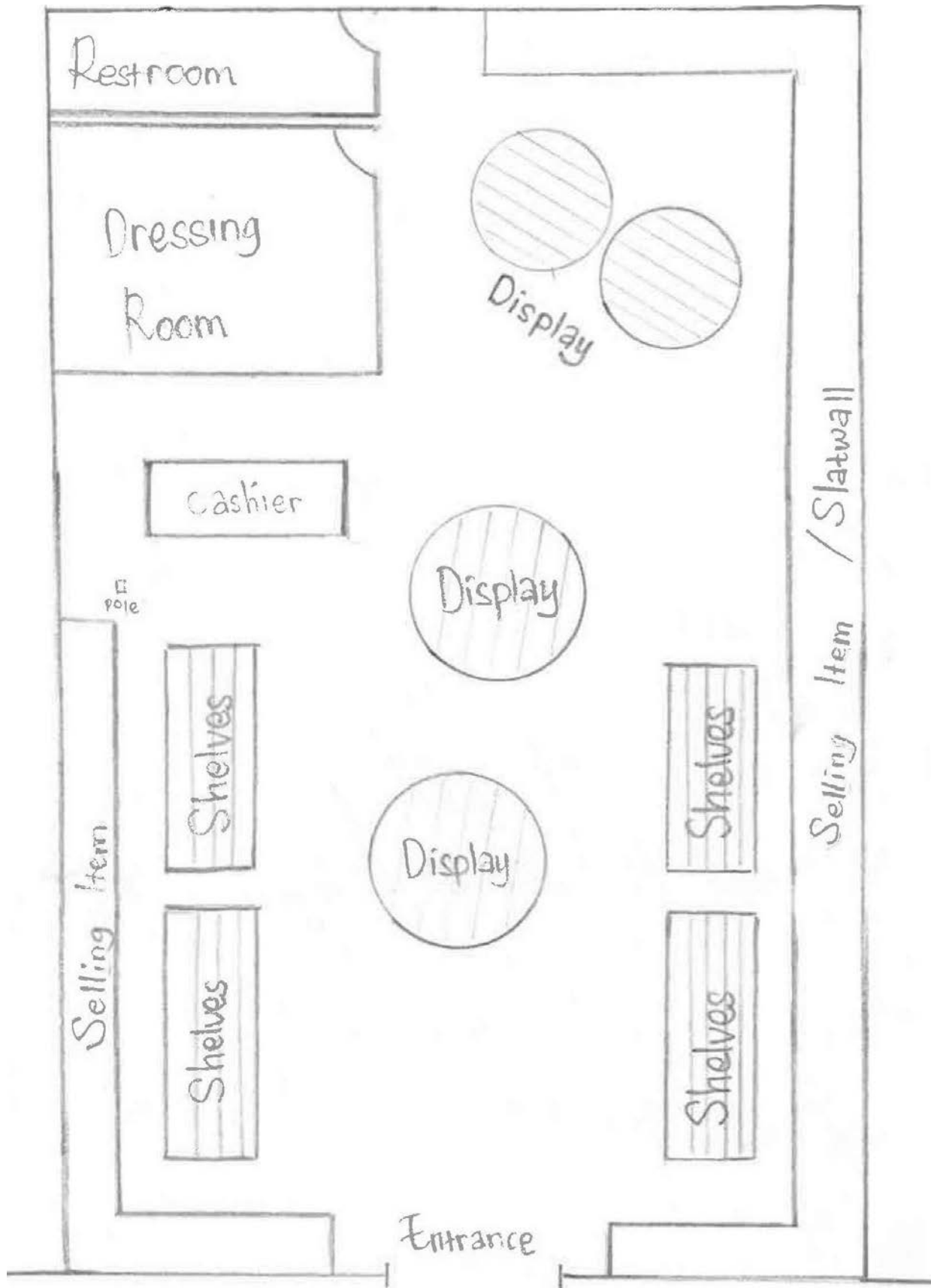
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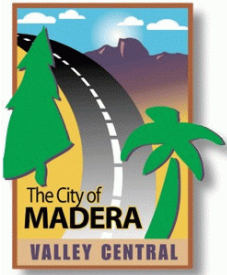
Aerial Photo
Conceptual Floor Plan

Aerial Photo



Floor Plan





CITY OF MADERA
PLANNING COMMISSION

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

**Staff Report: ABN 2015-02 – South H Street Summary Vacation
General Plan Conformity & Environmental Determination
for Vacation of a Street Segment
Item #5 – January 12, 2016**

PROPOSAL: General Plan Conformity and Environmental Determination for a proposed summary vacation of street right-of-way for a portion of South H Street located between the 9th Street alignment and the Madera Avenue right-of-way.

APPLICANT:	Lakhwinder Brar	OWNERS:	Dealer Properties, LLC
ADDRESS:	530 South G Street	APN:	010-212-012
APPLICATIONS:	ABN 2015-02	CEQA:	Categorical Exemption

LOCATION: The 45 foot wide by approximately 600 foot long segment of South H Street proposed for summary vacation is located south of the 9th Street alignment and north of the intersection of Madera Avenue and South H Street.

STREET ACCESS: Access to the street segment is taken from 8th Street to the north and Madera Avenue to the south.

STREET SEGMENT SIZE: Approximately 45 feet wide by 600 feet long (27,000 square feet)

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: Adjacent properties are zoned C1 (Light Commercial)

SITE CHARACTERISTICS: The existing street segment currently separates the Silva Ford commercial property from the State Route 99 freeway corridor.

ENVIRONMENTAL REVIEW: This project is categorically exempt under §15305 (Minor Alterations in Land Use Limitations) of CEQA Guidelines.

SUMMARY: The existing street segment does not provide meaningful benefit or service to the City. The summary vacation of this street segment is in conformity with the City's General Plan, would not create any significant environmental impacts and has been determined to be exempt from CEQA.

APPLICABLE CODES AND PROCEDURES

Section 65402 of the Government Code; and
Section 8300 et. Seq. of the Streets and Highway Code.

The proposed summary vacation of the street right-of-way requires that the Commission do two things:

- ◆ First, is to determine if the summary vacation is in conformity with the General Plan.
- ◆ Second, is to affirm the environmental determination.

PRIOR ACTION: None

ANALYSIS

The proposed summary vacation would eliminate an approximately 600 foot long segment of South H Street that is located immediately north of its intersection with Madera Avenue. The street section would be incorporated into the adjacent Silva Ford property with a cul-de-sac bulb being constructed at the northern most frontage with the car dealership. All through traffic across the street segment would be eliminated as a result of the vacation.

A traffic study was prepared in order to analyze potential impacts to vehicular circulation in proximity of the segment proposed for vacation. The study was reviewed by both the City of Madera Engineering Department and the California Department of Transportation. Both agencies found that the street segment is not critical to the City's circulation system and does not support meaningful traffic volumes to any degree. Closure of the street segment would only marginally impact the few properties fronting onto the remainder of the street segment. These properties would have to utilize the other alternative street segments that are readily available. The abandonment could ultimately provide the benefit of reduced traffic impacts along the affected segment of South H Street and incrementally reduce city-wide street maintenance requirements.

If the summary vacation is approved by the Commission, a site plan review application will be required to ultimately memorialize the conversion of the vacated street section into an integral component of the car dealership property. The specific design of the cul-de-sac bulb on the northern end of the vacated street section will be identified in the site plan review, along with any right-of-way dedications/easements and street improvements required. In order to accommodate the cul-de-sac, it is likely that the applicant will be required to dedicate a small portion of the existing parking lot area. At the southern terminus of the vacated street section, the site plan review will also address the frontage design along Madera Avenue. No additional driveway encroachments onto Madera Avenue will be incorporated into the frontage improvements. Final vacation of the street will coincide with completion of the improvements identified as part of site plan review.

General Plan Conformity

While procedurally, the Commission is required to consider whether the summary vacation is in conformity with the General Plan, there is relatively little nexus between the proposed action and the City's General Plan goals and policies. There is not a General Plan Policy that requires or prefers the retention of unnecessary street sections. In this case, the street section is being abandoned in order to provide for better stewardship and utilization of the land. Hence, the proposed action of abandoning the segment of street right-of-way can be determined to be consistent with the General Plan.

CEQA

An exemption from the Environmental Quality Act under §15305 (Minor Alterations in Land Use Limitations) is proposed for this project, since the proposed summary vacation of the street segment is consistent with City's General Plan. The action is only to facilitate consolidation of the parcels and there is no evidence that the summary vacation will have any effect on the environment.

Staff has received communication from one South H Street property owner impacted by the vacation. The property owner voiced no opposition.

RECOMMENDATION

The proposed summary vacation is in conformity with the City's General Plan and is exempt from the California Environmental Quality Act under §15305 (Minor Alterations in Land Use Limitations). Staff recommends that the Commission forward a favorable report to the City Council.

PLANNING COMMISSION ACTION

The Commission will be taking action regarding the proposed summary vacation of a segment of street right-of-way.

Motion 1: Move to adopt a resolution adopting a report to the City Council making a determination of conformity with the General Plan for summary vacation of street right-of-way for an approximately 45 foot wide by 600 foot long segment of South H Street located between the 9th Street alignment and the Madera Avenue right-of-way; and affirming the determination that the project is exempt from the California Environmental Quality Act under §15305 (Minor Alterations in Land Use Limitations).

Findings

- The summary vacation of an approximately 45 foot wide by 600 foot long segment of street right-of-way is categorically exempt under §15305 (Minor Alterations in Land Use Limitations), of the California Environmental Quality Act (CEQA) which allows for minor alterations in land not involving the creation of a new parcel.
- The summary vacation of an approximately 45 foot wide by 600 foot long segment of street right-of-way is consistent with the purpose and intent of the General Plan and the C (Commercial) General Plan land use designation.

(OR)

Motion 2: Move to continue the application for Abandonment 2015-02 to the February 9, 2016 Planning Commission meeting for the following reasons: (specify)

(OR)

Motion 3: Move to deny the application for Abandonment 2015-02, based on and subject to the following reasons: (specify)

ATTACHMENTS

Arial Photo
Draft Resolution

Aerial Image



RESOLUTION NO. _____

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA MAKING A REPORT TO THE CITY COUNCIL OF THE CITY OF MADERA FINDING THAT THE SUMMARY VACATION OF AN APPROXIMATELY 45 FOOT WIDE BY 600 FOOT LONG SEGMENT OF SOUTH H STREET LOCATED BETWEEN THE 9TH STREET ALIGNMENT AND THE MADERA AVENUE RIGHT-OF-WAY IS IN CONFORMITY WITH THE CITY'S GENERAL PLAN AND THAT A CATEGORICAL EXEMPTION IS THE APPROPRIATE ENVIRONMENTAL DETERMINATION.

WHEREAS, It has been proposed that an approximately 45 foot wide by 600 foot long segment of South H Street located between the 9th Street alignment and the Madera Avenue right-of-way be vacated pursuant to the California Streets and Highway code §8300 et.seq.; and

WHEREAS, The City of Madera Planning Commission at its regularly scheduled meeting of January 12, 2016 has considered whether the proposed summary vacation of the street segment is in conformity with City of Madera's General Plan; and

WHEREAS, the Commission also considered and does affirm that the proposed summary vacation would not pose any significant environmental impacts and is appropriately determined to be categorically exempt under §15305 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines; and

WHEREAS, the proposed summary vacation of the street segment would not be in conflict with the goals and policies of the General Plan; and

WHEREAS, completion of site plan review will be required to ultimately memorialize the conversion of the vacated street section into an integral component of the car dealership property.

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

1. The above recitals are true and correct.
2. Based upon the testimony and information presented at the public meeting, and all evidence in the whole record pertaining to this matter, the Commission does hereby report to

the City Council that it finds that the proposed summary vacation of the street segment is in conformity with the City of Madera's General Plan.

3. The project has been determined categorically exempt under §15305 of the CEQA Guidelines.

4. This resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 12th day of January, 2016, by the following vote:

AYES:

NOES:

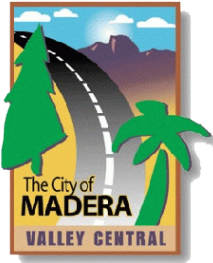
ABSTENTIONS:

ABSENT:

Planning Commission
Chairperson

Attest:

Christopher Boyle
Planning Manager



<p>CITY OF MADERA PLANNING COMMISSION</p>	<p>205 W. Fourth Street Madera CA 93637 (559) 661-5430</p>
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**Staff Report: Nassar West Yosemite Rezone
REZ 2015-03 & Environmental Determination
Item #6 – January 12, 2016**

PROPOSAL: An application to rezone two properties from the R1 (Low Density Residential) Zone District to the WY (West Yosemite Professional Office) Zone District.

APPLICANT:	Sami Nassar	OWNER:	Nassar II LP
ADDRESS:	1006 and 1010 West Yosemite Avenue	APN:	010-104-001 and 002
APPLICATIONS:	REZ 2015-03	CEQA:	Categorical Exemption

LOCATION: The project site is located on the south side of West Yosemite Avenue, west of its intersection with O Street.

STREET ACCESS: The site is accessed from West Yosemite Avenue.

PARCEL SIZE: Two parcels encompassing approximately 12,500 square feet

GENERAL PLAN DESIGNATION: O (Office)

ZONING DISTRICT: R1 (Low Density Residential)

SITE CHARACTERISTICS: The project site is two parcels currently developed with single family residential homes on each parcel. A mix of offices, single family residential, and a multiple family residential complex surrounds the project area.

ENVIRONMENTAL REVIEW: The proposed rezoning is exempt under Section 15061(b)(3) of the California Environmental Quality Act "CEQA". The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

SUMMARY & RECOMMENDATION: The proposed rezone provides consistency with the General Plan and prepares two parcels for future conversion to office uses. Staff recommends adoption of a Resolution recommending to the City Council adoption of an ordinance rezoning the property.

APPLICABLE CODES AND PROCEDURES

MMC §10-3-9.401, WY Zones
MMC §10-3.1501, Amendments

PRIOR ACTION: None

ANALYSIS

Rezone

The project site is within the O (Office) General Plan land use designation, which allows for the development of office centers near residential areas. The project site is currently within the R1 (Low Density Residential) Zone District. Although the property is currently developed with single family residential homes consistent with current zoning, it is the intent of the applicant to revitalize the site with office development in the future. Approval of the proposed rezone would provide the required zoning necessary to redevelop the property with office uses.

General Plan Conformity

The two parcels in question had been included within the recently completed General Plan Amendment 2015-02, which intended to correct inconsistencies between the General Plan and the Zoning Ordinance. These two parcels were removed from consideration, and the applicant subsequently filed this rezone application. Approval of the proposed rezoning to the WY (West Yosemite Professional Office) Zone District would provide consistency with the O (Office) General Plan land use designation. The applicant's intent is to ultimately redevelop the properties as offices.

General Plan Goal CD-1 calls for "the City of Madera [to] require that all new development is well-planned and of the highest possible quality. The City will seek to build an image of Madera as a contemporary small city with vibrant, livable neighborhoods and walkable pedestrian -and bicycle- oriented development." Goals CD-2 expands that vision by requiring that "all new development shall adhere to the basic principles of high-quality urban design, architecture and landscape architecture." Although development of office uses is not currently proposed, the proposed rezoning will provide the foundation for future development consistent with the goals and policies of the General Plan.

Other Department and Agency Comments

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

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

The first of the four core vision statements in the Vision Plan is "a well-planned city". The Commission, by considering how this development connects to other developments and how the neighborhood and infrastructure can be maintained, is actively implementing this key concept of the Vision Plan.

RECOMMENDATIONS

The information presented in this report supports approval of the rezone. It is recommended that the Commission consider this information, together with testimony provided at the public hearing, and adopt a Resolution recommending approval of the rezone to the City Council.

PLANNING COMMISSION ACTION

The Commission will be acting on Rezone 2015-03, determining to either;

- adopt a Resolution recommending to the City Council adoption of an ordinance rezoning the property
- continue the hearing, or
- deny the applications

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

Motion 1: Move to adopt a Resolution recommending to the City Council adoption of an ordinance rezoning the property to the WY (West Yosemite Professional Office) Zone District, with the findings and conditions as listed.

Findings

- The proposed rezoning is exempt under Section 15061(b)(3) of the California Environmental Quality Act "CEQA" because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.
- The proposed rezone will provide the required consistency between the General Plan and zoning.
- The proposed rezone represents good zoning practice.
- The rezone is not expected to be detrimental to the health, safety, peace, comfort or general welfare of the neighborhood or the city.

(OR)

Motion 2: Move to continue the public hearing on the adoption of an ordinance rezoning the property to the WY (West Yosemite Office) Zone District to the February 9, 2016 Planning Commission meeting.

(OR)

Motion 3: Move to deny the application for Rezone 2015-03, based on the following findings: (specify)

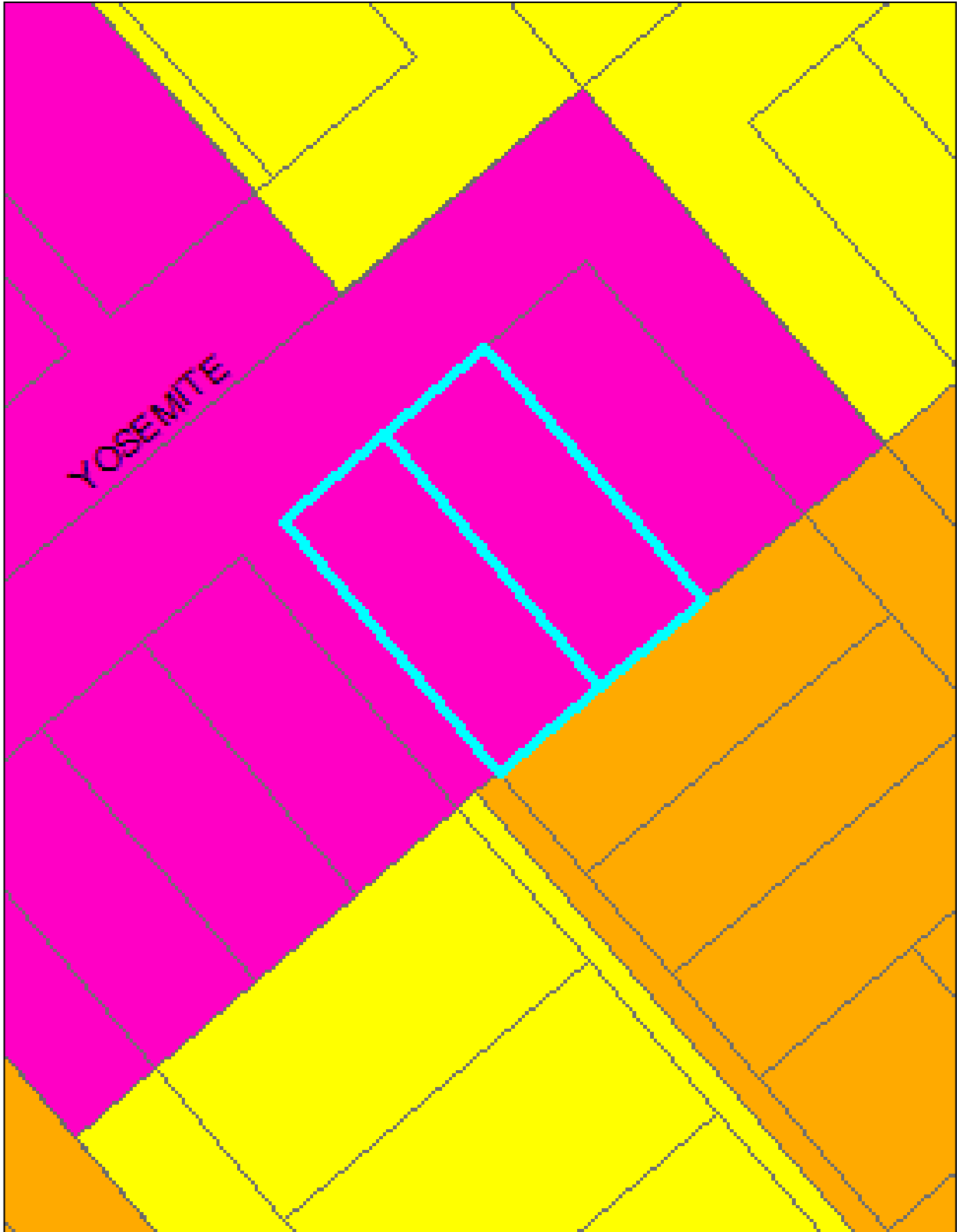
ATTACHMENTS

Aerial Map
General Plan Map
Zoning Map
Resolution of Recommendation to the City Council
 Exhibit A - Zoning Map
Draft Ordinance
 Exhibit A - Zoning Map

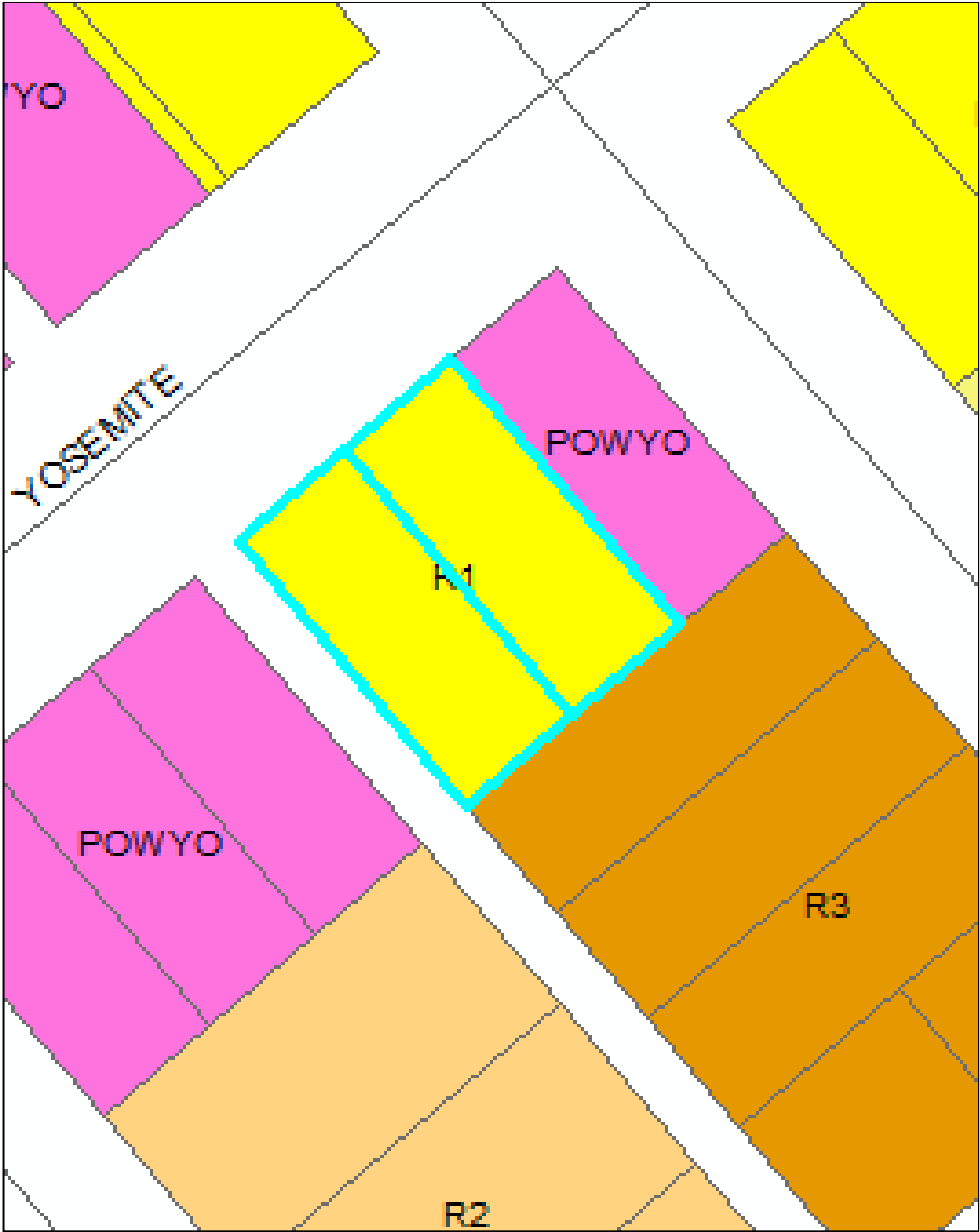
Aerial Photo



General Plan Map



Zoning Map



RESOLUTION NO. _____

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF MADERA ADOPTION OF AN ORDINANCE REZONING PROPERTY LOCATED AT 1006 AND 1010 WEST YOSEMITE AVENUE FROM THE R1 (LOW DENSITY RESIDENTIAL) ZONE DISTRICT TO THE WY (WEST YOSEMITE PROFESSIONAL OFFICE) ZONE DISTRICT.

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

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

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

WHEREAS, a proposal has been made to rezone two parcels encompassing 12,500 square feet located at 1006 and 1010 West Yosemite Avenue in the proximity of the intersection of West Yosemite Avenue and O Street, resulting in a change from the R1 (Low Density Residential) Zone District to the WY (West Yosemite Professional Office) Zone District, as shown in the attached Exhibit A; and

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

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

WHEREAS, the proposed rezoning is exempt under Section 15061(b)(3) of the California Environmental Quality Act "CEQA" because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to

CEQA; and

WHEREAS, the rezoning proposal was distributed for public review and comment to various local agencies and groups, and public notice of this public hearing was given by mailed and published notice, in accordance with the applicable State and Municipal Codes and standard practices; and

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

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

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

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 12th day of January, 2016, by the following vote:

AYES:

NOES:

ABSTENTIONS:

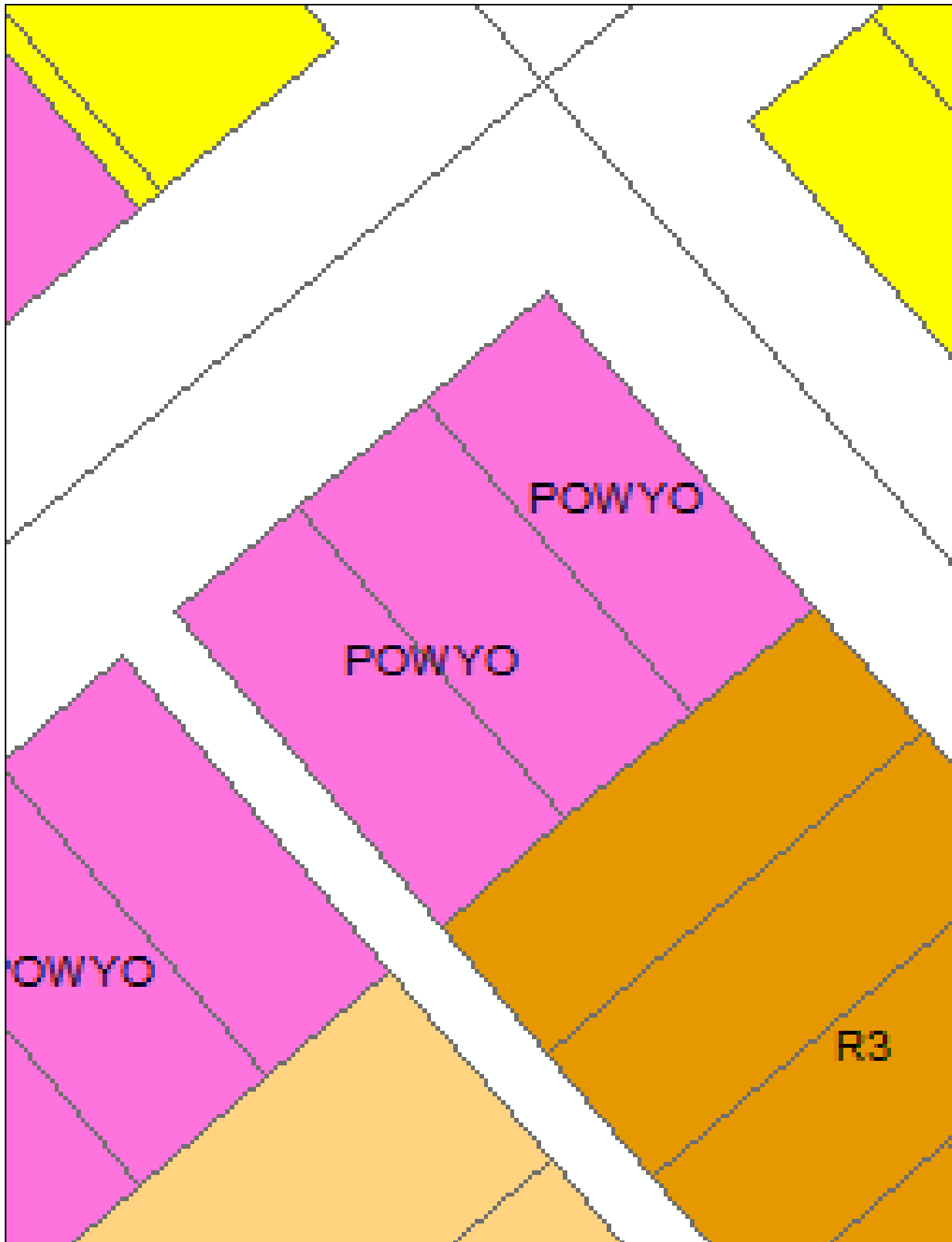
ABSENT:

Chairperson
City Planning Commission

Attest:

Christopher F. Boyle
Planning Manager

PLANNING COMMISSION RESOLUTION NO. ____
EXHIBIT 'A'



DRAFT ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA AMENDING THE OFFICIAL CITY OF MADERA ZONING MAP TO REZONE APPROXIMATELY 12,500 SQUARE FEET OF PROPERTY LOCATED AT 1006 AND 1010 WEST YOSEMITE AVENUE IN PROXIMITY TO THE INTERSECTION OF WEST YOSEMITE AVENUE AND O STREET FROM THE R1 (LOW DENSITY RESIDENTIAL) ZONE DISTRICT TO THE WY (WEST YOSEMITE PROFESSIONAL OFFICE) ZONE DISTRICT.

THE CITY COUNCIL OF THE CITY OF MADERA DOES ORDAIN AS FOLLOWS:

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

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

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

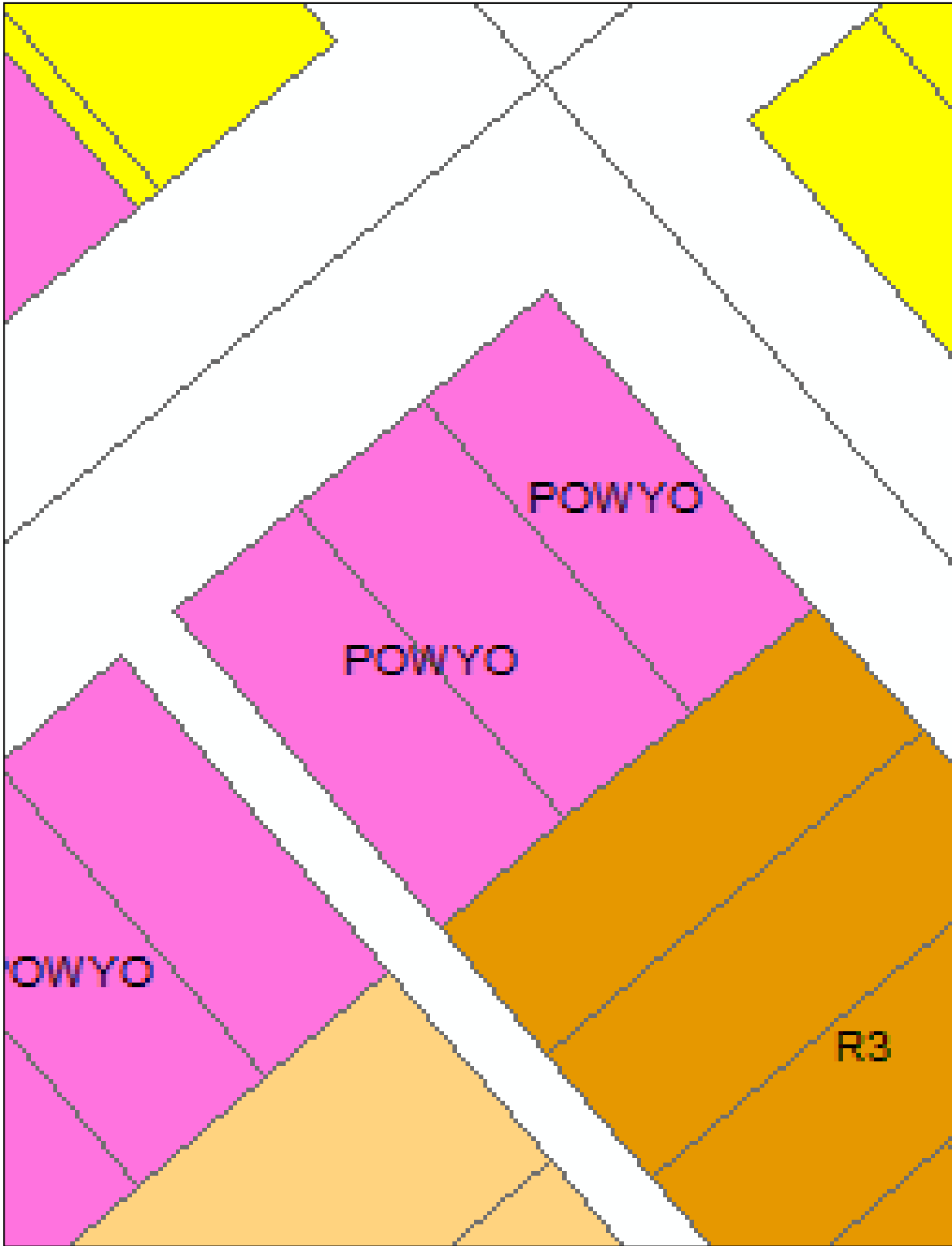
FINDINGS:

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

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

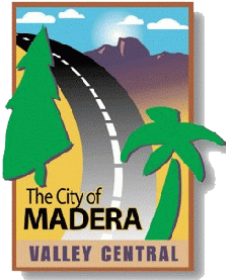
* * * * *

DRAFT ORDINANCE - EXHIBIT A



**GPA 2016-02 & REZ 2016-02
MUSD General Plan Amendment & Rezoning
Item #7 – January 12, 2016**

Staff recommends that the Planning Commission make a motion to continue this item to the February 9, 2016 regular Planning Commission meeting.



CITY OF MADERA
PLANNING COMMISSION

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

**Staff Report: GPA 2016-01 & REZ 2016-01
Parksdale General Plan Amendment & Rezoning
Item #8 – January 12, 2016**

PROPOSAL: Consideration of a resolution recommending to the City Council 1) adoption of an amendment to the Land Use element of the General Plan in order to provide specific changes to the land use map necessary to provide consistency with the existing land use pattern in Parksdale, and 2) approval of a rezoning of Parksdale to allow the submittal of an annexation application for the existing unincorporated community.

APPLICANT:	City	OWNER:	Multiple
ADDRESS:	Multiple	APN:	Multiple
APPLICATIONS:	GPA 2016-01 & REZ 2016-01	CEQA:	Addendum to EIR

LOCATION: The project affects the unincorporated community of Parksdale, generally bound by Avenue 13½ to the north, Avenue 13 to the south, Road 29¼ to the east, and Road 28 to the west.

STREET ACCESS: Refer to Exhibits A-C.

PARCEL SIZE: Various parcels ranging in size up to approximately 13.92 acres

EXISTING GENERAL PLAN DESIGNATION: MD (Medium Density) and VLD (Very Low Density Residential)

PROPOSED GENERAL PLAN DESIGNATION: LD (Low Density), C (Commercial) and RC (Resource Conservation)

PROPOSED PREZONING DISTRICT: R1 (Low Density Residential), R2 (Medium Density Residential), RA (Rural Residential), RCO (Resource Conservation and Open Space), C1 (Light Commercial) and C2 (Heavy Commercial)

SITE CHARACTERISTICS: Parksdale is an existing unincorporated community located southeast of the City of Madera. The area contains a mix of residential development including traditional small lot residential subdivisions and many rural residential home sites. Self Help Enterprises also developed multi-family housing in the area. County Service Area (CSA) 3 provides sewer and water service to some properties.

ENVIRONMENTAL REVIEW: An Addendum to the 2009 General Plan Environmental Impact Report has also been prepared pursuant to CEQA Guidelines Section 15162 and 15164.

SUMMARY: The proposed project provides compatibility between the General Plan and existing land uses, and establishes rezoning consistent with the General Plan. It is recommended that the Commission adopt a Resolution recommending approval of the requested general plan amendment and rezoning to the City Council.

APPLICABLE CODES AND PROCEDURES

MMC § 10-3.302 Zoning Maps

MMC § 10-3.303 Annexation Policy

GC § 65358, General Plan Amendments

City of Madera General Plan, adopted October 7, 2010

California Public Resources Code §21000, California Environmental Quality Act "CEQA"

PRIOR ACTION

In 2014, the Madera Local Agency Formation Commission (LAFCO) approved the SMD Annexation, including around 340 acres of property for a new neighborhood adjacent to Parksdale. Pursuant to State Law, LAFCO required that the City also file an application to annex Parkdale before the SMD property could be brought into the City limits. The annexation is also consistent with the City's General Plan, which calls for the city limits to expand to the east over time.

ANALYSIS

As required by LAFCO, the City of Madera is preparing an application to annex the unincorporated community of Parksdale. Prior to filing an application for annexation with the Madera Local Agency Formation Commission (LAFCO), the City must consider a general plan amendment to reflect existing densities in a portion of the affected area, and a rezoning of all of the property within the proposed annexation boundary. An addendum to the previously certified General Plan Environmental Impact Report has been prepared for the proposed project.

General Plan Amendment

As adopted, the General Plan includes mix residential densities for the Parksdale area. Existing rural residential home sites are primarily designated as VLD (Very Low Density Residential), conforming to the existing development pattern. Larger properties that are either undeveloped or significantly underdeveloped are designated as MD (Medium Density Residential), which allows for the future subdivision of these parcels into smaller residential lots. There are also three or four existing subdivisions with "traditional" 6000 square foot lots, plus or minus, that are similarly designated as MD by the existing General Plan.

In evaluating the pattern of existing development, it became apparent that the residential lots in the existing "traditional" subdivisions were developed to a lower density than called for by the MD designation shown in the City's 2009 General Plan. To ensure that General Plan land use designations are consistent with the existing pattern of development, and to eliminate future conflicts that could occur if an inaccurate zoning district was applied as part of the rezoning process, a general plan amendment is included in the project. The general plan amendment affects 302 residential lots, totaling approximately seventy-five (75) acres. The existing City General Plan designation is MD (Medium Density Residential), while the proposed designation is LD (Low Density) Residential. The designations for about six (6) acres of drainage basin property and an existing two (2) acre open space are proposed to be amended from MD (Medium Density Residential) and VLD (Very Low Density Residential) to RC (Resource Conservation) land use designation. The current General Plan also does not account for the existing commercial development currently located within the project area. Approximately three (3) acres are proposed to be changed from the VLD (Very Low Density Residential) to the C (Commercial) land use designation to acknowledge these existing nodes of commerce. The areas affected by the proposed changes are shown in Exhibit A to the attached resolution.

Rezoning

Prior to annexation, the City is required to prezone the property so that zoning will be in effect immediately upon annexation, when and if it occurs. The zoning districts assigned to properties

through the rezoning process must be consistent with the City’s General Plan. Therefore, no new development opportunities will be created that were not anticipated under the General Plan. It should also be noted that there are no specific development or construction projects associated with the project at this point.

The proposed rezoning includes approximately 445 acres within 629 parcels. An additional 45 acres of street rights-of-way are also included, bringing the total acreage involved with the rezoning to approximately 490. The area affected by the rezoning and the specific zoning districts proposed are shown in Exhibit B to the attached resolution. The table below demonstrates how consistency between the General Plan Designations and the proposed rezoning will be achieved.

Existing General Plan Designation	Proposed Rezoning District	Notes Regarding Parcels Involved
MD (Medium Density Residential)	PD - 4500 (Planned Residential)	Future single family residential subdivisions
MD (Medium Density Residential)	R2 (Medium Density Residential)	Existing apartment complexes
VLD (Very Low Density Residential)	RA (Rural Residential)	Existing rural residential home sites
LD (Low Density Residential) ¹	R1 (Single Family Residential) ¹	Existing single family residential subdivision lots ¹
RC (Resource Conservation) ²	RCO (Resource Conservation Open Space) ²	Existing open space and drainage basin sites ²
C (Commercial) ³	C1 (Light Commercial) and C2 (Heavy Commercial) ³	Existing commercial development ³

¹The LD (Low Density Residential) general plan designation for existing subdivision lots is proposed through a general plan amendment included with this project.

²The RC (Resource Conservation) general plan designation for the existing drainage basin parcels is proposed through a general plan amendment included with this project.

³The C (Commercial) general plan designation for the existing commercial parcels is proposed through a general plan amendment included with this project.

Addendum to the General Plan EIR

Pursuant CEQA Guidelines section 15164(b), the City of Madera, as lead agency for this project, has determined that an addendum to the adopted General Plan EIR be prepared for the Parksdale Annexation Project and all of its various components. None of the conditions described in CEQA Guidelines Section 15162 calling for the preparation of a subsequent EIR have occurred. Additional information regarding the EIR addendum, the criteria for its use, and the basis for determining its appropriateness can be found in the attached EIR Addendum. The City is required to consider the Addendum in conjunction with any action it takes regarding the project.

Notice to Affected Property Owners

All of the affected property owners were noticed as to the proposed changes to their properties. No objections were received as of preparation of this report.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

The proposed project does not directly implement or respond to Vision Madera 2025, though the annexation may be viewed as consistent with the first of the four core vision statements ... “a well-planned city”.

RECOMMENDATION

The proposed project provides compatibility between the General Plan and existing land uses, and establishes rezoning consistent with the General Plan. The actions will allow the submittal of an annexation application for Parksdale, which is specifically required as a condition of allowing the City to begin annexing property within the State Center Community College area. It is recommended that the Commission consider this information, together with testimony provided at the public hearing, and adopt a Resolution recommending approval of the requested general plan amendment and rezoning to the City Council.

PLANNING COMMISSION ACTION

The Commission will be acting on the changes in land use designation proposed within General Plan Amendment 2016-01 and Rezone 2016-01.

Motion 1: Move to adopt a Resolution recommending to the City Council approval of General Plan Amendment 2016-01 and Rezone 2016-01, allowing for the requested land use designation changes and rezoning as described in the in Exhibits A and B to the Resolution, with the findings as stated:

Findings

- An Addendum to the 2009 General Plan Environmental Impact Report has also been prepared pursuant to CEQA Guidelines Section 15162 and 15164, and considered as part of this proceeding.
- The proposed General Plan Amendment will provide consistency between the General Plan and existing land uses.
- The proposed rezoning will zone affected properties in a manner consistent with the General Plan.

(OR)

Motion 2: Move to continue the public hearing on General Plan Amendment 2016-01 and Rezoning 2016-01 to the February 9, 2016 Planning Commission meeting.

(OR)

Motion 3: Move to deny the application for General Plan Amendment 2016-01 and Rezoning 2016-01, based on the following findings: (specify)

ATTACHMENTS

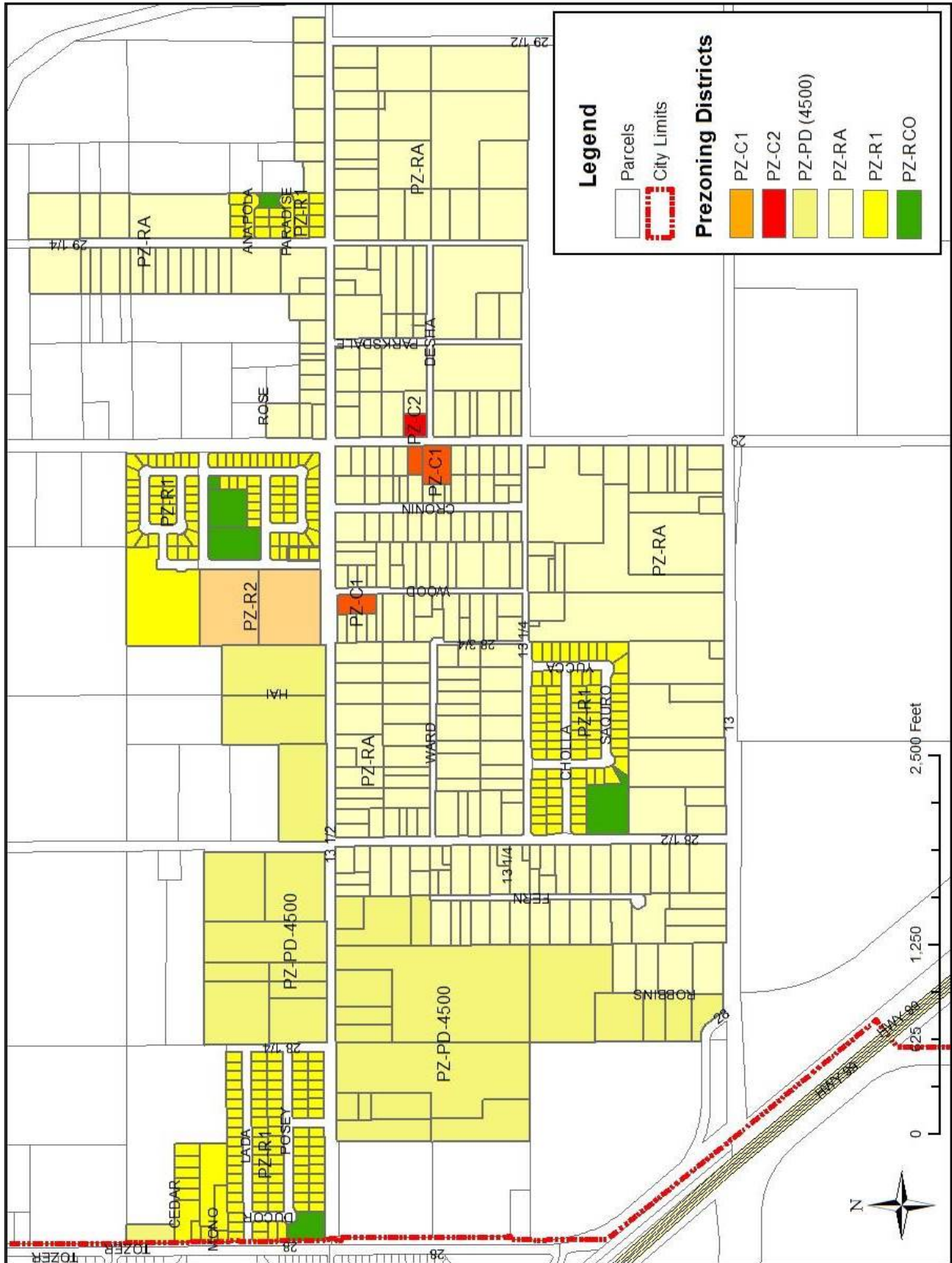
Exhibit A – General Plan Amendment

Exhibit B – Rezoning Area

Addendum to the 2009 General Plan Environmental Impact Report

Resolution of Recommendation to the City Council

EXHIBIT B



ADDENDUM

CITY OF MADERA GENERAL PLAN ENVIRONMENTAL IMPACT REPORT

PARKSDALE GENERAL PLAN AMENDMENT PREZONING & ANNEXATION

Prepared by:
City of Madera Community Development Department
205 W. 4th Street
Madera, CA 93637

SUMMARY

The City of Madera is proposing the annexation of the unincorporated community of Parksdale. Prior to filing an application for annexation with the Local Agency Formation Commission (LAFCO), the City will consider a general plan amendment to reflect existing densities in a portion of the affected area, and a rezoning of all of the property within the proposed annexation boundary. Additional related actions in support of the annexation may also be required. All elements of the project will be referred to cumulatively as the "Parksdale Annexation Project". An addendum to the previously certified General Plan Environmental Impact Report has been prepared for the proposed project.

Purpose of EIR Addendum and Criteria for Use

When a new or revised project is proposed for which an EIR was previously certified, or where there are changes in environmental setting, a determination must be made by the Lead Agency as to whether an Addendum or Subsequent EIR is necessary. CEQA Guidelines Sections 15162 and 15164 set forth criteria to assess which environmental document is appropriate. The criteria for determining whether an Addendum or Subsequent document is prepared are outlined below. If the criteria below are true, then an Addendum is the appropriate document:

- There are no substantial changes in the project which require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- There are no substantial changes with respect to the circumstances under which the project is undertaken which require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- There is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time of EIR adoption, that shows any of the following:
 - The project will have one or more significant effects not discussed in the EIR;
 - The project will result in impacts substantially more severe than those disclosed in the EIR;
 - Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponent declines to adopt the mitigation measure or alternative; or
 - Mitigation measures or alternatives that are considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment, but the project proponent declines to adopt the mitigation measure or alternative.

Conclusion

Based upon the information described herein, the proposed changes to the project description for the previously certified EIR will not result in new significant impacts or substantially increase the severity of impacts previously identified in the EIR, and there are no previously infeasible alternatives that are now feasible. None of the other factors set forth as triggering the need for a new or supplemental environmental document are present. Therefore, an Addendum is appropriate, and this Addendum has been prepared to address the environmental effects of the Parksdale Annexation project and all of its various elements. The City will consider this addendum, together with the Certified General Plan EIR, when the Proposed Project is approved. As the proposed project includes a reorganization under Cortese-Knox-Hertberg, LAFCO may also considered this document as it takes action on the proposed project.

A. Introduction

This document constitutes an Addendum to the Environmental Impact Report originally prepared for the City of Madera General Plan Update certified in October of 2009. This Addendum evaluates whether modifications/refinements to project which is currently proposed (the Parksdale Annexation Project) would result in any new or substantially more adverse significant effects or require any new mitigation measures not identified in the 2009 EIR.

B. Need for EIR Addendum

The City of Madera proposes a reorganization of agency boundaries whereby the City would annex the unincorporated community of Parksdale. In doing so, the existing boundaries of County Service Area 3 would be modified or dissolved. The specific elements of the project of which the City is aware are identified below and described in more detail in Section D of this Addendum. Additional, minor changes or additions may occur as the City and LAFCO consider the project. :

- General Plan Amendment to Reflect Existing Densities of Developed Areas (City of Madera)
- Rezoning of Properties within the Annexation Area (City of Madera)
- Adoption of Resolution of Intent to Annex Parksdale (City of Madera)
- Annexation of Parksdale to City (Madera LAFCO)
- Modification or Dissolution of CSA 3 Boundaries (Madera LAFCO)
- Authorization of Out of Area Service – As Necessary (Madera LAFCO)

The proposed project and its relationship to the General Plan and the previously certified EIR are described in more detail below.

C. Previously Certified General Plan EIR

On October 7, 2009, pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq., the Madera City Council certified a Final Environmental Impact Report (“EIR”) that addressed the environmental impacts of a comprehensive update of the City's General Plan.

General Plan EIR - Project Description

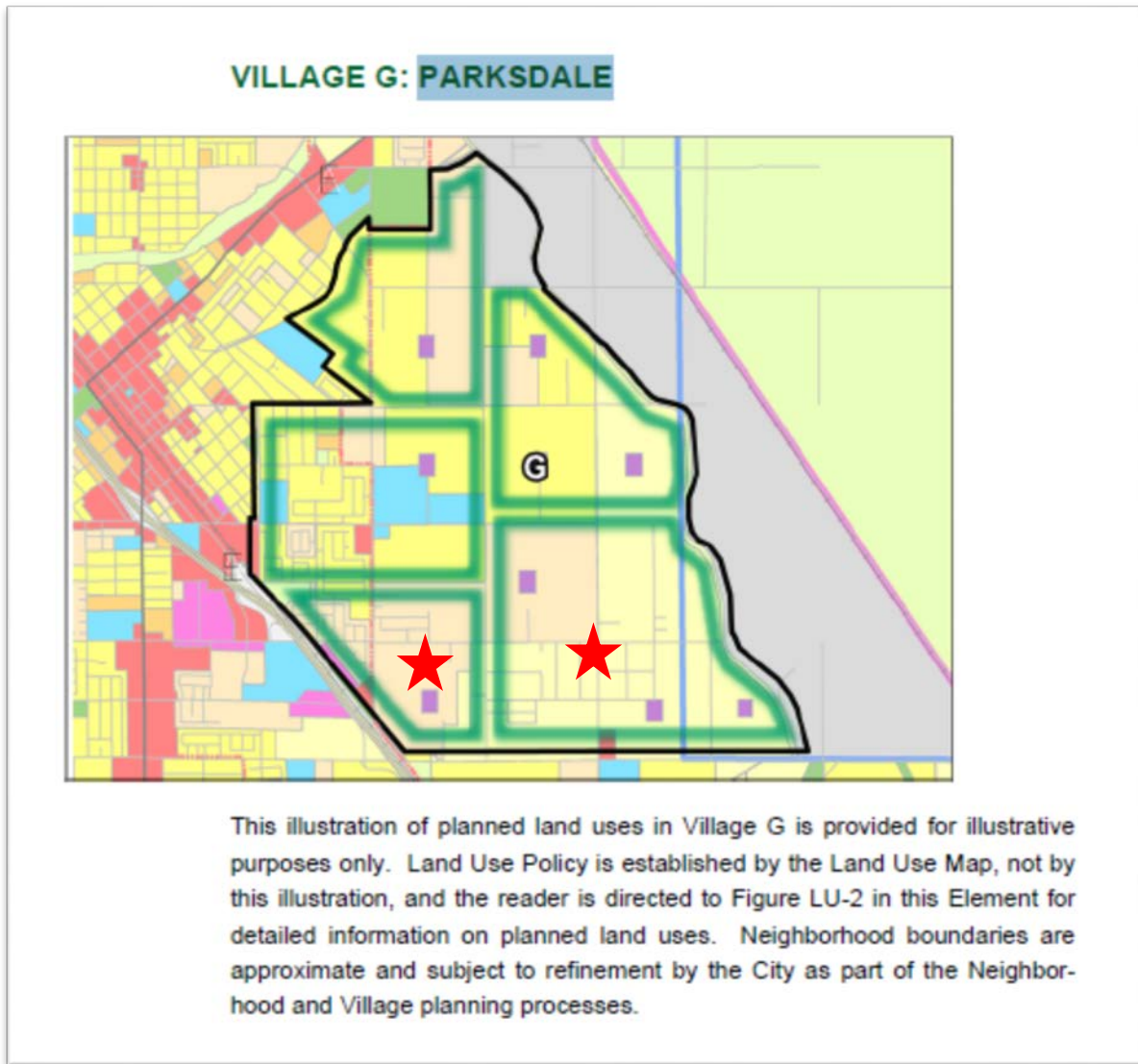
The purpose of the City’s General Plan is to function as a “constitution” for land use planning and to provide a basis for sound decisions regarding long-term physical development. The General Plan expresses the City’s development goals and establishes public policy relative to the distribution of future land uses, both public and private. The General Plan also provides the bridge between community values, visions and objectives, and physical decisions such as housing, public works projects, and growth management.

The City of Madera’s 2009 General Plan Update builds off of the goals and vision developed through the Vision 2025 process embarked on by the City and community to provide guidance for long-range planning. The update completed in 2009 addresses current and projected environmental and socioeconomic conditions of the City, incorporating local concerns and policy direction from the City Council and from Vision Madera 2025. The updated General Plan was developed with the assistance of an Advisory Committee appointed by the City Council.

The Planning Area for the City of Madera General Plan includes the incorporated City, the City's Sphere of Influence (SOI), and a larger study area encircling the sphere of influence. The Planning Area covers roughly 67,414 acres of land (about 105 square miles) in Madera County. The City of Madera occupies 9,512 acres (about one-seventh of the total Planning Area). The unincorporated community or neighborhood of Parksdale is located within the City's existing Sphere of Influence and, thus, within the General Plan Planning Area.

Relationship Between the General Plan EIR and the Proposed Project

The Parksdale community is located within the General Plan planning area, and more specifically within Village G of the Village Building Blocks Plan. The two "red-star" neighborhoods shown in the graphic below encompass the existing Parksdale - CSA 3 boundaries. The General Plan and its EIR anticipate the City's expansion into Village G, including incorporating the existing community into the village-oriented plan.



General Plan Action Item LU-3.1 also addresses and calls for the rezoning of lands outside the City limits when deemed necessary and appropriate by the City. The recommended rezoning of Parksdale is consistent with this Action Item.

Action Item LU-3.1 - Initiate an amendment to the Zoning Map to rezone all lands within the City to conform with the Land Use Map. Properties outside the city limits will be rezoned to conform with the Land Use Map when deemed necessary and appropriate by the City to facilitate annexation and/or the consideration of development projects by the City.

D. Description of Parksdale Annexation Project

The City of Madera proposes a reorganization of agency boundaries whereby the City would annex the unincorporated community of Parksdale. In doing so, the existing boundaries of County Service Area 3 would be modified or dissolved. The specific elements of the project are as follows:

- General Plan Amendment to Reflect Existing Densities of Developed Areas (City of Madera)
- Rezoning of Properties within the Annexation Area (City of Madera)
- Annexation of Parksdale to City (City of Madera)
- Modification or Dissolution of CSA 3 Boundaries (Madera LAFCO)
- Authorization of Out of Area Service – As Necessary (Madera LAFCO)

General Plan Amendment

As adopted, the General Plan includes a mix residential densities for the Parksdale area. Existing rural residential home sites are primarily designated as VLD (Very Low Density Residential), conforming to the existing development pattern. Larger properties that are either undeveloped or significantly underdeveloped are designated as MD (Medium Density Residential), which allows for the future subdivision of these parcels into smaller residential lots. There are also three or four existing subdivisions with “traditional” 6000 square foot lots, plus or minus, that are similarly designated as MD by the existing General Plan.

In evaluating the pattern of existing development, it became apparent that the residential lots in the existing “traditional” subdivisions were developed to a lower density than called for by the MD designation shown in the City’s 2009 General Plan. To ensure that General Plan land use designations are consistent with the existing pattern of development, and to eliminate future conflicts that could occur if an inaccurate zoning district was applied as part of the rezoning process, a general plan amendment is included in the project. The general plan amendment affects 302 residential lots, totaling approximately seventy-five (75) acres. The existing City General Plan designation is MD (Medium Density Residential), while the proposed designation is LD (Low Density) Residential. The designations for about six (6) acres of drainage basin property and an existing two (2) acre open space are proposed to be amended from MD (Medium Density Residential) and VLD (Very Low Density Residential) to RC (Resource Conservation) land use designation. The current General Plan also does not account for the existing commercial development currently located within the project area. Approximately three (3) acres are proposed to be changed from the VLD (Very Low Density Residential) to the C (Commercial) land use designation to acknowledge these existing nodes of commerce.

Prezoning

Prior to annexation, the City is required to prezone the property so that zoning will be in effect immediately upon annexation, when and if it occurs. The zoning districts assigned to properties through the prezoning process must be consistent with the City's General Plan. Therefore, no new development opportunities will be created that were not anticipated under the General Plan. It should also be noted that there are no specific development or construction projects associated with the project at this point.

The proposed prezoning includes approximately 445 acres within 629 parcels. An additional 45 acres of street rights-of-way are also included, bringing the total acreage involved with the prezoning to approximately 490. The area affected by the prezoning and the specific zoning districts proposed are shown in Exhibit B to the attached resolution. The table below demonstrates how consistency between the General Plan Designations and the proposed prezoning will be achieved.

Existing General Plan Designation	Proposed Prezoning District	Notes Regarding Parcels Involved
MD (Medium Density Residential)	PD - 4500 (Planned Residential)	Future single family residential subdivisions
MD (Medium Density Residential)	R2 (Medium Density Residential)	Existing apartment complexes
VLD (Very Low Density Residential)	RA (Rural Residential)	Existing rural residential home sites
LD (Low Density Residential) ¹	R1 (Single Family Residential) ¹	Existing single family residential subdivision lots ¹
RC (Resource Conservation) ²	RCO (Resource Conservation Open Space) ²	Existing open space and drainage basin sites ²
C (Commercial) ³	C1 (Light Commercial) and C2 (Heavy Commercial) ³	Existing commercial development ³

¹The LD (Low Density Residential) general plan designation for existing subdivision lots is proposed through a general plan amendment included with this project.

²The RC (Resource Conservation) general plan designation for the existing drainage basin parcels is proposed through a general plan amendment included with this project.

³The C (Commercial) general plan designation for the existing commercial parcels is proposed through a general plan amendment included with this project.

Annexation

The Parksdale area is located within the City's sphere of influence and planning area for its General Plan, but is outside the City limits. The project includes filing an application with the Madera LAFCO to annex Parksdale. The boundaries for this annexation, shown in Exhibit C, were set by LAFCO in 2014 in conjunction with its consideration and approval of a separate annexation application. After a completed application is submitted by the City of Madera, the annexation proceeding would be completed Madera LAFCO in accordance with state law and the local rules and procedures for Madera LAFCO. No development projects, and no public or private improvements, are being considered in conjunction with the annexation.

Modification or Dissolution of CSA 3 Boundaries

Water and sewer utilities to Parksdale are currently provided by County Service Area (CSA) - 3. In conjunction with annexation, the City expects that Madera LAFCO will modify or dissolve the boundaries of CSA 3 to recognize that the City of Madera will be the sole service delivery provider of sewer and water utilities to the neighborhood. With this action, the City anticipates that some or all of the existing infrastructure within CSA 3 will be transferred to City, and the City own, operate, and maintain that infrastructure as part of its normal systems. No expansions or improvements to existing utilities are proposed. Over time, the City may make improvements to existing improvements to improve efficiencies, correct existing deficiencies, or expand capacities if new development is proposed.

Authorization of Out of Area Services – As Necessary

Information reviewed by the City of Madera suggests that CSA-3 may currently provide services to properties which are outside the boundaries of the proposed annexation area, and potentially to properties which are outside the boundaries of CSA-3. Because it is likely that LAFCO will take action to dissolve or substantially modify the boundaries of CSA-3 if the annexation is approved, it is possible that CSA -3 may not be capable of providing services to these properties. In this event, the City may be required or requested to provide service to the affected properties.

D. General Plan EIR – Environmental Analysis and Evaluation of Criteria for Addendum

Pursuant CEQA Guidelines section 15164(b), the City of Madera, as lead agency for this project, has determined that an addendum to the adopted General Plan EIR be prepared for the Parksdale Annexation Project and all of its various components. None of the conditions described in CEQA Guidelines Section 15162 calling for the preparation of a subsequent EIR have occurred. This determination has been made based on the following factors:

- The General Plan EIR anticipates expansion to encompass General Plan Village G – which includes the proposed Parksdale Annexation area.
- The annexation area is comprised of an existing community.
- No development or construction projects are proposed as part of the project, and the project is not being undertaken as the first step of any future project of which the City is aware.
- No physical changes to the environment are proposed.
- A general plan amendment is included to ensure that designations throughout the proposed annexation area match the existing density of developed subdivision lots. The proposed designations are less intensive than existing designations.
- The proposed rezoning identifies zone districts which are consistent with the existing general plan designations. The proposal does not create additional opportunities for development where none are anticipated by the General Plan and the General Plan EIR.
- Any future development project within the annexation area, including the improvement or expansion of infrastructure, unless otherwise exempt from the California Environmental Quality Act, will require review under CEQA at such time as it proposed.

Pursuant to CEQA Guidelines section 15162(a)(1), there are no substantial changes proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Pursuant to CEQA Guidelines section 15162(a)(2), there are no substantial changes with respect to the circumstances under which the Parksdale Annexation Project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Pursuant to CEQA Guidelines section 15162(a)(3), no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was adopted, shows any of the following:

- a. The project will not have one or more significant effects not discussed in the previous EIR;
- b. Significant effects previously examined will not be substantially more severe than shown in the previous EIR;
- c. There are no mitigation measures previously found not to be feasible which would in fact be feasible and would not substantially reduce one or more significant effects of the project; or
- d. There are no mitigation measures which are considerably different from those analyzed in the previous EIR that would substantially reduce one or more significant effects of the environment.

Pursuant to CEQA Guidelines section 15162(b), since there are no significant changes to the project or its circumstances, and no new information has become available after adoption of the EIR, the City, as lead agency, has determined to prepare an addendum to the EIR.

Pursuant to CEQA Guidelines section 15164(c), the addendum is hereby attached to the adopted EIR.

Pursuant to CEQA Guidelines section 15164(d), the City will consider this addendum with the adopted EIR prior to making a decision on all actions related to the project. The City will also provide this addendum to LAFCO as part of the application submittal to annex Parksdale.

Prepared By:  _____

Date: December 28, 2015

RESOLUTION NO. ____

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF MADERA APPROVAL OF AN AMENDMENT OF THE GENERAL PLAN CHANGING THE LAND USE DESIGNATION OF APPROXIMATELY 86 ACRES OF THE CITY OF MADERA GENERAL PLAN LAND USE MAP AND THE PREZONING OF APPROXIMATELY 490 ACRES IN THE UNINCORPORATED COMMUNITY OF PARKSDALE

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

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

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

WHEREAS, the planning area for the General Plan includes the City limits, the City's sphere of influence, and an area outside the sphere of influence; and

WHEREAS, the City has initiated an amendment to the Madera General Plan amending the land use designations for approximately 86 acres of property outside the City limits within the unincorporated community of Parksdale to ensure that the general plan designation is consistent with the existing density of subdivided lots within the affected area; and

WHEREAS, the City has initiated a prezoning of property within the unincorporated community of Parksdale, comprised of approximately 490 total acres, to allow the submittal of an annexation application for Parksdale to the Madera Local Agency Formation Commission; and

WHEREAS, the zone districts included in the prezoning are consistent with the general plan designations for the affected property, as amended; and

WHEREAS, the City agrees that no subsequent change may be made to the general plan for the annexed territory or zoning that is not in conformance to the prezoning designations

for a period of two years after the completion of the annexation, unless the legislative body for the city finds at a public hearing that a substantial change has occurred in circumstances that necessitates a departure from the pre-zoning in the application to the commission.

WHEREAS, an environmental impact report (EIR) was previously certified in October 2009 by the City Council for the General Plan Update; and

WHEREAS, the expansion of the City to the east through and around community of Parksdale, and the incremental development of vacant and underutilized properties within Parkdale, was anticipated within, and its impacts addressed in conjunction with, the previously certified General Plan Environmental Impact Report; and

WHEREAS, the changes proposed in conjunction with the general plan amendment and rezoning of Parksdale area do not constitute significant changes which require the preparation of a subsequent environmental document under Sections 15162 and 15164 of the California Environmental Quality Act Guidelines; and

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

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

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

1. The above recitals are true and correct.
2. The Planning Commission hereby recommends that the Madera General Plan land use map be amended as specified in attached Exhibit "A".
3. The proposed amendment to the Land Use Map is hereby found consistent with all elements of the Madera General Plan.
4. The proposed rezoning is hereby found to be consistent with all elements of the General Plan, including the land use map as amended by this application.

5. The Planning Commission hereby recommends the City Council adopt an ordinance rezoning property as specified within the attached Exhibit "B".

6. None of the conditions described in CEQA Guidelines Section 15162 calling for the preparation of a subsequent EIR to the General Plan EIR have occurred and an addendum to the General Plan EIR has been considered and determined to be appropriate for the project.

7. This resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 12th day of January, 2016, by the following vote:

AYES:

NOES:

ABSTENTIONS:

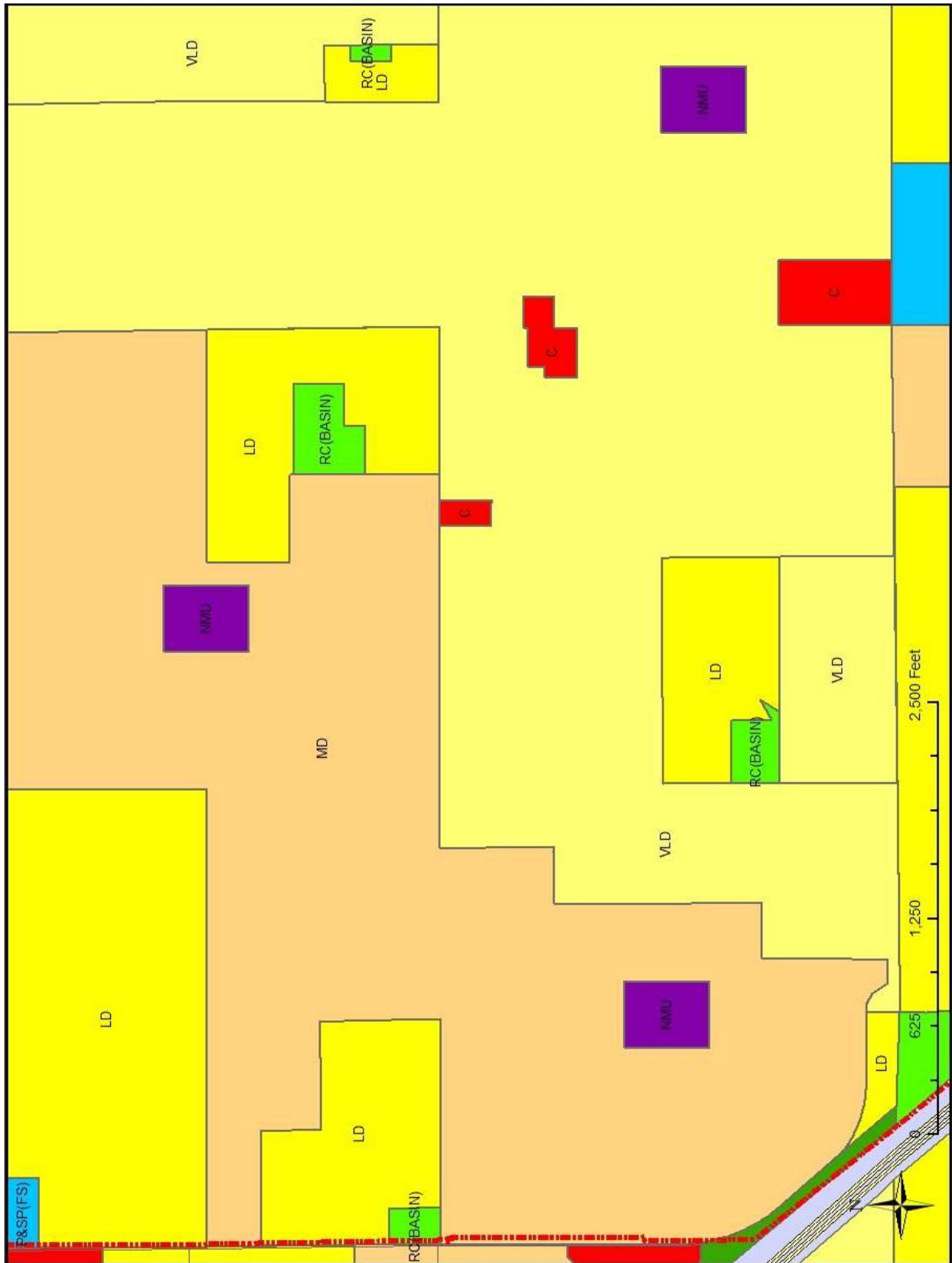
ABSENT:

Chairperson
City Planning Commission

Attest:

Christopher F. Boyle
Planning Manager

PLANNING COMMISSION RESOLUTION NO. ____
EXHIBIT 'A'



PLANNING COMMISSION RESOLUTION NO. _____
EXHIBIT 'B'

DRAFT ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MADERA AMENDING THE OFFICIAL CITY OF MADERA ZONING
MAP PREZONING THE SPECIFIC PARCELS IDENTIFIED WITHIN
EXHIBIT "A"

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

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

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

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

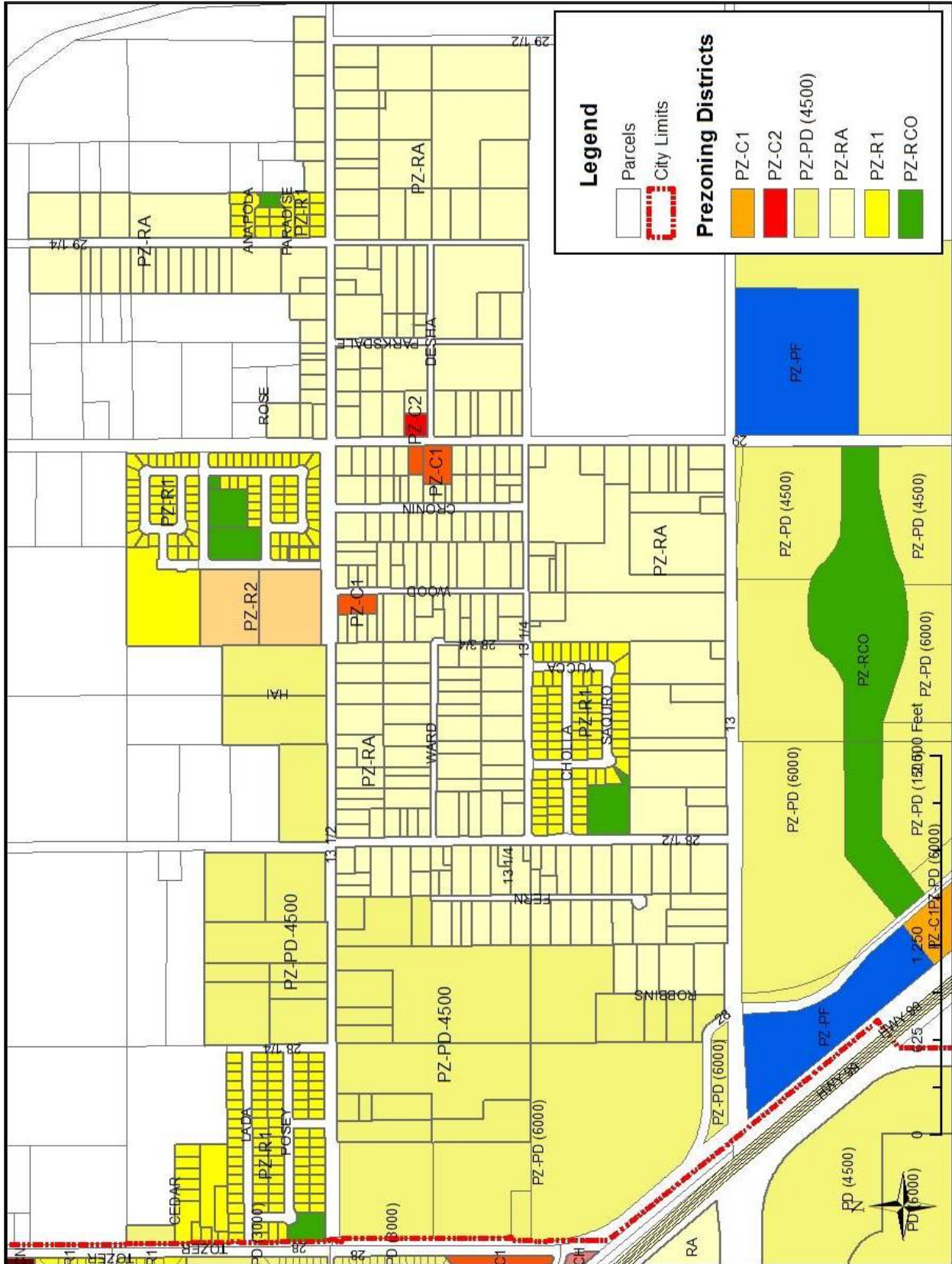
FINDINGS:

1. THE PROPOSED PREZONE WILL PROVIDE THE REQUIRED CONSISTENCY BETWEEN THE GENERAL PLAN AND ZONING ORDINANCE.
2. THE PREZONE IS NOT EXPECTED TO BE DETRIMENTAL TO THE HEALTH, SAFETY, PEACE, COMFORT OR GENERAL WELFARE OF THE NEIGHBORHOOD OR THE CITY.
3. THE CITY AGREES THAT NO SUBSEQUENT CHANGE MAY BE MADE TO THE GENERAL PLAN FOR THE ANNEXED TERRITORY OR ZONING THAT IS NOT IN CONFORMANCE TO THE PREZONING DESIGNATIONS FOR A PERIOD OF TWO YEARS AFTER THE COMPLETION OF THE ANNEXATION, UNLESS THE LEGISLATIVE BODY FOR THE CITY FINDS AT A PUBLIC HEARING THAT A SUBSTANTIAL CHANGE HAS OCCURRED IN CIRCUMSTANCES THAT NECESSITATES A DEPARTURE FROM THE PREZONING IN THE APPLICATION TO THE COMMISSION.

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

* * * * *

DRAFT ORDINANCE - EXHIBIT A



Legend

- Parcels
- City Limits

Prezoning Districts

- PZ-C1
- PZ-C2
- PZ-PD (4500)
- PZ-RA
- PZ-R1
- PZ-R2
- PZ-PF
- PZ-RCO