

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

**COUNCIL CHAMBERS - CITY HALL  
MONDAY  
FEBRUARY 13, 2017  
6:00 pm**

**CALL TO ORDER**

**ROLL CALL**

Commissioner Kenneth Hutchings (Chairperson)  
Commissioner Robert Gran, Jr. (Vice Chairperson)  
Commissioner Jim DaSilva  
Commissioner Bruce Norton  
Commissioner Pamela Tyler  
Commissioner Israel Cortes  
Commissioner Richard Broadhead

**INTRODUCTION OF STAFF**

**PLEDGE OF ALLEGIANCE**

**PUBLIC COMMENT**

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

**MINUTES:** January 10, 2017

**CONSENT ITEMS:**

**C1. SPR 2009-21 EXT4 & Multiple CUP Extensions – Foxglove Shopping Center Extension**

A request for an extension of an approved site plan review and various conditional use permits in support of the development of a retail shopping center. The property is 19.51 acres in size and is located on the southeast corner of Schnoor Avenue and Foxglove Way in the C2 (Commercial) Zone District with a C (Commercial) General Plan land use designation. An environmental impact report, mitigation monitoring and reporting program, statement of overriding considerations, and related findings for all project components were completed in conjunction with the proposal. The retail shopping center was approved and the environmental impact report was certified by the Planning Commission on February 12, 2013.

## **NON-PUBLIC HEARING ITEMS**

NONE

## **PUBLIC HEARING ITEMS**

### **1. CUP 2016-39 & SPR 2016-59 – Stormax Vehicular Storage Area**

A noticed public hearing to consider a conditional use permit and site plan review to allow for outdoor vehicular storage in conjunction with the Stormax mini storage facility located on the east side of Tozer Street, approximately 300 feet south of its intersection with East Yosemite Avenue (125 Tozer Street), in the C1 (Light Commercial) Zone District with a C (Commercial) General Plan land use designation. (APN: 008-110-014)

### **2. CUP 2017-01 & SPR 2017-01 – Quality Children’s Services (Daycare)**

A noticed public hearing to consider a conditional use permit and site plan review to allow for a commercial daycare facility within a former church located on the east side of Stinson Avenue, approximately 500 feet north of its intersection with South A Street (333 Stinson Avenue), in the R1 (Low Density Residential) Zone District with an LD (Low Density Residential) General Plan land use designation. (APN: 011-234-019)

### **3. CUP 2017-02 & SPR 2017-03 – H.O. Tire and Wheel Repair**

A noticed public hearing to consider a conditional use permit and site plan review to allow for the establishment of an auto tire and wheel business to be located on the east side of Noble Street, approximately 400 feet south of its intersection with Maple Street (421 Noble Street), in the I (Industrial) Zone District with an I (Industrial) General Plan land use designation. (APN: 012-402-006)

### **4. TSM 2016-02 – Sun Rise Estates**

A noticed public hearing to consider a tentative subdivision map proposing to subdivide four parcels (008-180-001, 002, 003 and 004) encompassing 22.52 acres into a 112-lot single family residential subdivision. The project site is located at the northwest corner of Sunrise Avenue and Tozer Street in the R1 (Low Density Residential) Zone District, with an LD (Low Density Residential) General Plan land use designation. A Negative Declaration will also be considered by the Planning Commission.

### **5. Development Agreement Annual Review – Madera Town Center**

An annual review of the development agreement approved in conjunction with the Madera Town Center project (Ordinance 821) for the period running through August 1, 2016. This annual review has been scheduled pursuant to Section 10-3.1715 of the Madera Municipal Code, which required that the Planning Commission determine whether the principal party to the agreement, Zelman Retail Partners, has complied in good faith with the terms of the development agreement. (APN: 013-240-001)

## **NON-PUBLIC HEARING ITEMS**

NONE

## **ADMINISTRATIVE REPORTS**

**COMMISSIONER REPORTS**

**ADJOURNMENT:** The next regular meeting will be held on March 14, 2017.

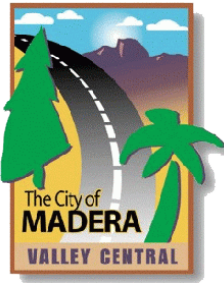
In compliance with the Americans with Disabilities Act, the meeting room is accessible to the physically disabled and the services of a translator can be made available. Requests for additional accommodations for the disabled, signers, assistive listening devices or translators needed to assist participation 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: Foxglove Shopping Center Extension  
SPR 2009-21 EXT4 & Multiple CUP Extensions  
Item #C1 – February 13, 2017**

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**PROPOSAL:** A request for extension of an approved site plan review and various conditional use permits in support of the development of a retail shopping center.

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<b>APPLICANT:</b>	Shaw/Feland Partnership	<b>OWNER:</b>	Same
<b>ADDRESS:</b>	None	<b>APN:</b>	013-160-005 & 013-160-016
<b>APPLICATIONS:</b>	SPR 2009-21 & CUP 2013-04, 05, 06 & 07	<b>CEQA:</b>	Environmental Impact Report

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**LOCATION:** The project site is located on the southeast corner of Schnoor Avenue and Foxglove Way.

**STREET ACCESS:** Foxglove Way and Schnoor Avenue

**PARCEL SIZE:** 19.51 acres

**GENERAL PLAN DESIGNATION:** C (Commercial)

**ZONING DISTRICT:** C2 (Commercial)

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**SITE CHARACTERISTICS:** The subject property is approximately 20 acres in size. The Home Depot Shopping Center and Sonic Drive-thru restaurant are located north of the site. Madera Market Place is located to the south. Schnoor Avenue fronts the property to the west. A Madera Irrigation District canal and State Route 99 are located directly east of the site. The project site contains unimproved disturbed land.

**ENVIRONMENTAL REVIEW:** An environmental impact report, mitigation monitoring and reporting program, statement of overriding considerations, and related findings for all project components were completed in conjunction with the proposal. The retail shopping center was approved and the environmental impact report was certified by the Planning Commission on February 12, 2013.

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**SUMMARY & RECOMMENDATION:** The shopping center remains compatible with surrounding commercial properties and is designed to be a positive attribute to the area. The information presented in this report supports conditional approval of the requested one-year time extension. No amendments to the original conditions of approval are recommended. It is recommended that a one-year time extension for the site plan review and conditional use permits be approved by the Planning Commission.

## **APPLICABLE CODES AND PROCEDURES**

MMC §10-3.4.0114 Lapse of Site Plan Approval

MMC §10-3.1311 Termination and Revocation

California Public Resources Code Section 21000 et. seq., California Environmental Quality Act.

The Commission, in considering the time extension request, may approve, deny or conditionally approve a time extension. If the time extension is denied, the applicant may re-file the site plan review and conditional use permit requests for further consideration by the Planning Commission. The applicant has made a written request for a one-year extension to February 12, 2018 consistent with the Planning Commission's prior approval of the project.

## **PRIOR ACTION**

The site plan review and conditional use permit entitlements were approved by the Planning Commission on February 12, 2013. Extensions have been granted by the Planning Commission on March 11, 2014, January 13, 2015, and February 9, 2016.

## **ANALYSIS**

The project proposes to develop a retail shopping center with up to 191,500 square feet of tenant space on approximately twenty acres of land. A primary anchor space would contain approximately 84,000 square feet gross floor area. Several smaller anchors, shops and freestanding pads would fill out the total square footage. Site Plan Review 2009-21 establishes site plan, building design, and construction requirements for the proposed shopping center. Multiple conditional use permits memorialize uses such as outdoor seating, a drive-thru window, and alcohol sales in conjunction with restaurants and retail stores.

The project site was historically used for agricultural purposes. Recent activity has been limited to annual weed control and the project site remains vacant and unimproved.

The applicant requested an extension to the site plan review and use permits in a written communication dated January 11, 2017. At present, the project is not prepared to move forward since there is not sufficient interest from tenants to justify commencing construction. As there have not been substantive changes in the City's Zoning Ordinance over the past year, a new application for the same project would likely generate similar conditions, hence, a time extension rather than a re-filing is appropriate.

If approved by the Commission, the project will have an additional year to commence construction. In total, five years of time will have been granted to project proponents since the original approval in 2013.

## **CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

Though approval of an extension to the previously approved site plan review is not specifically addressed in the vision or action plans, the overall project does indirectly support Action 115.1 to "encourage viable economic development".

## **SUMMARY OF RECOMMENDATIONS**

The information presented in this report supports approval of a one-year extension of the site plan review and conditional use permits as conditioned. It is recommended that the Commission consider this information and make a motion to approve the application extension, subject to the recommended conditions.

## **PLANNING COMMISSION ACTION**

The Commission will be taking action regarding the time extension for Site Plan Review 2009-21 and Conditional Use Permits 2013-04, 05, 06 and 07.

Motion 1: Move to approve the requested Time Extension to February 12, 2018, for Site Plan Review 2009-21 and Conditional Use Permits 2013-04, 05, 06 and 07, subject to the original conditions of approval as listed.

### Findings

#### **A. Site Plan Review Findings**

- The use, as defined by the master site plan, is consistent with the Madera General Plan and the Zoning Ordinance designation on the site, as amended by the proposal.
- The master site plan is consistent with established legislative policies relating to traffic safety, street improvements and environmental quality.
- All buildings and site features proposed are addressed under the environmental impact report (EIR) and mitigation monitoring and reporting program (MMRP) for project adopted on February 12, 2013.

#### **B. Conditional Use Permit Findings**

- The proposals to add a drive thru window, outdoor seating, and alcohol sales are ancillary uses to the retail shopping center are consistent with the purposes of the C (Commercial) General Plan designation and the C-2 (Heavy Commercial) Zone District, which provides for these uses subject to the issuance of a conditional use permit.
- There is adequate parking and site area to accommodate the participants of the existing and proposed uses, including stacking distances required for the drive-thru window.
- Because the site has been designed for the development of an integrated shopping center to accommodate a variety of retail and restaurant uses, the conditional uses proposed, as conditioned, will not be detrimental to the health, safety, peace, comfort, morals or general welfare of the neighborhood or the City, and will be compatible with the surrounding area and the City in general.

## **CONDITIONS OF APPROVAL**

#### **A. Site Plan Review Conditions**

##### General Conditions

1. The project approval is conditioned upon acceptance of these conditions contained herein within 30 calendar days, as evidenced by the applicant's signature on a required acknowledgment form.

2. The applicant's or owner's failure to utilize this site plan review within one year following the date of this approval shall render the site plan review null and void unless a written request for extension has been submitted to and approved by the Planning Commission.
3. The approval of this site plan review authorizes the development of the improvements as specified in the site plan, subject to the revisions and clarifications required in these conditions of approval below. All standard permits and approvals required for the improvements, including, but not limited to building permits, grading permits, and construction permits, shall be obtained prior to commencing construction. Modifications to actual building/unit sizes may be authorized by the Community Development Director prior to the issuance of building permits. Such changes may not substantively change the nature of the site plan or building elevations, and may not increase the overall square footage allowances for the development as specified in the environmental impact report for the project.
4. Any changes to the site plan required after, or because of, the preparation of grading plans, final on and off-site utility plans, or other changes made by the developer will require the approval of the Community Development Director. Substantive changes to the site plan, as determined by the Community Development Director, may require the completion of an amended site plan review process.
5. The development of the shopping center shall be subject to compliance with, and implementation of, the mitigation measures identified in the mitigation monitoring and reporting program approved as part of the Foxglove Shopping Center Final Environmental Impact Report.

### **Engineering Department**

6. Engineering plans for off-site improvements and for on-site public improvements shall comply with Section 27 of the City of Madera Standard Plans and Specifications and approved addenda, and shall be submitted to the City Engineer for review and approval, prior to issuance of building permits. Engineering plans shall be wet stamped by a licensed civil engineer and shall be accompanied by a final site plan showing existing and/or re-established lot corner monuments, including a bearing and distance for each boundary line. Plans shall show dedication of all land by easements or other mechanism which may be acceptable to the City for all public streets, sanitary sewer mains (on and off site), water mains (on and off site), storm drains lines (on and off site) and detention basins.
7. Construction work within the City rights-of-way shall not begin prior to obtaining an encroachment permit from the Engineering Division in accordance with Section VI, Madera Municipal Code. All encroachment permits shall be obtained prior to the commencement of construction within the public rights of way.
8. Excavated or graded material shall be sufficiently watered to prevent excessive amounts of air borne dust. Watering should occur at least twice a day with complete coverage, preferably in the late morning and after work as directed by the City Engineer.
9. Material transported offsite should be securely covered to prevent excessive amounts of dust.
10. Streets adjacent to the project may be required to be swept and silt removed manually or mechanically at least once a day as required by the City Engineer. Water hosing will not be allowed as a cleanup method.



## Grading and Drainage

11. Under the direction of a licensed architect or civil engineer, a site grading and drainage plan shall be prepared. No lot fill, rough grading or rough plumbing shall commence until plans are approved. Grading plan should include cut and fill quantities, along with a City Engineer approval signature line. This plan shall demonstrate that storm water drainage will be adequately handled. This plan shall be approved by the City Engineer prior to the issuance of any building permits. Storm drainage runoff engineering calculations shall be submitted for compliance with City standards.
12. As part of a master grading plan, the applicant shall provide detailed drainage calculations to demonstrate to the satisfaction of the City Engineer that the existing storm drain basin (Basin 43550) located southwest of the intersection of Foxglove Way and Schnoor Avenue is sufficiently sized to accommodate both the commercial development and the Fairgrounds related storm water runoff. Calculations shall be submitted for basin capacity and sizing of onsite main.
13. The site shall be graded to provide drainage to approved storm drainage facilities. Fill in excess of 8-inches requires compaction tests when supporting structures. Geotechnical and soil testing reports shall be submitted prior to issuance of building permits in compliance with state requirements.
14. Grading certification by developer's soils and civil engineers upon completion of each building pad shall be provided by letter or as built plans prior to temporary or final occupancy.

## Streets and Drives

15. The development shall implement any and all traffic mitigation measures specified in the Final Environmental Impact Report and Mitigation Monitoring and Reporting Program prepared for the Foxglove Shopping Center project. All measures requiring physical improvements shall be incorporated into civil improvement plans required pursuant to Condition #6.
16. Proposed entrances on North Schnoor Avenue shall be a minimum of 24 feet wide, shall be street type entrances with minimum face of curb radius of 15 feet and shall include the construction of standard handicapped ramps with an ADA accessible path from ramp to ramp. Proposed driveways shall be spaced in accordance with the results of the traffic study prepared for this project.
17. A median island shall be constructed on Foxglove Way that extends from North Schnoor Avenue to a minimum of 50 feet east of the first driveway on the north side of Foxglove Way.
18. Project driveways on Foxglove Way should be aligned with those on the north side of the street. If this is not feasible due to overall project design constraints, reasonable measures shall be implemented to minimize vehicular conflicts.
19. Free and unimpeded access shall be maintained from this development to the Marketplace shopping center located to the south.
20. All public utilities shall be undergrounded, except transformers, which may be mounted on pads.

21. Prior to the issuance of a grading permit, the developer shall dedicate an additional 8 feet to an existing 7 foot Public Utility Easement (PUE) to complete a 15-foot PUE along North Schnoor Avenue.
22. Prior to the issuance of the grading permit, the developer shall record a reciprocal ingress/egress, utility and parking easement acceptable to the City of Madera across the entire center that is applicable to all existing and/or future parcels. The easement shall provide the mutual right to cross access and parking for all future uses. With such easements in place, compliance with City parking standards for each building will be based on total number of spaces available at the Center.
23. Prior to issuance of a grading permit, the developer shall cause the existing 60 foot wide easement for access and utilities to be shifted westward to avoid the proposed structures being constructed within the easement.
24. The developer shall reimburse its fair share of cost to the City for previously constructed infrastructure in and on Foxglove Way to the extent that such infrastructure is utilized by the project. The developer shall not be responsible for reimbursement of cost for those improvements removed due to the project's reconstruction of Foxglove Way or improvements otherwise not incorporated into the project. Determination of fair share costs will be calculated in conjunction with submittal and review of civil plans for off-site improvements.
25. Additional detailed review will be conducted by the City when more detailed off-site street plans, and on/off site utility plans are submitted to the City; additional requirements may be specified based on this subsequent review. This will include, but not be limited to, further refinement to street plan for Foxglove Way alignment from Schnoor Avenue through transition to private drive alignment on the project site.

#### Sewer

26. Sewer service connection shall be constructed to current City standards.
27. Sewer connections larger than 4 inches shall require construction of a manhole.
28. Existing septic tanks, if found, shall be removed, permitted, and inspected by the City of Madera Building Department.
29. Prior to the issuance of encroachment permits to construct utility connections, the developer shall reimburse its fair share of cost to the City for the previously constructed sewer main in North Schnoor Avenue. Total reimbursement due by the developer to the City is \$12,293.00.

#### Water

30. Water service connection(s) shall be constructed to current City standards including water meter(s) located within the City right-of-way and shall read in cubic feet. A backflow prevention device shall be located within private property.
31. A separate water meter and backflow prevention device will be required for landscape consumption.
32. Existing wells, if any, shall be abandoned as directed and permitted by City of Madera for compliance with state standards.

33. Prior to the issuance of encroachment permits to construct utility connections, the developer shall reimburse its fair share of cost to the City for the previously constructed water main in North Schnoor Avenue. Total reimbursement due by the developer to the City is \$7,822.00.
34. Additional detailed review of the water system requirements will be conducted by the City when more detailed off-site street plans, and on/off site utility plans are submitted to the City; additional requirements may be specified based on this subsequent review.

## **Planning Department**

### Site Plan and Building Design - General

35. This site plan approval authorizes the development of an integrated shopping center with a cohesive parking and circulation system and consistent design criteria. All buildings, regardless of tenant, shall be designed and constructed in a manner consistent with the City's Design and Development Guidelines for Commercial Development and the master design guidelines prepared for the project.
36. Consistent with the above described guidelines, consideration will be given to all tenants to be allowed to retain important elements of their corporate identity and architectural details which support their branding and themed experience. While buildings and related site features shall incorporate a standard color palette, architectural features, roof types, and materials, etc., they may feature such aforementioned corporate elements and architectural details as well as variations to the color palette. Final elevations for all buildings/units are subject to the approval of the Community Development Director prior to the issuance of building permits.
37. The landscape and irrigation plan submitted for the project shall be in compliance with the State Department of Water Resources Model Water Efficient Landscape Ordinance.
38. Prior to the issuance of the first building permit, a final landscaping plan for the shopping center shall be submitted which encompasses the following revisions and clarifications:
  - a. A phasing plan for all site landscaping shall be submitted for approval.
  - b. All landscaping areas shall have a minimum of 75% vegetative ground cover.
  - c. Indicate species, size and spacing of shrubs where used. Clear distinction between landscaping symbols should be provided.
  - d. Clearly designate what is ground cover and what is turf.
  - e. Landscape islands with shade trees separating facing parking stalls shall be a minimum of 5'x18' (at outside of curb). Where used, tree wells shall be a minimum of 5' in length and minimum of 5' in width (at outside of curb).
  - f. Raised planters, free standing planters (pots, containers), and tree wells in walking surfaces (with grates) shall be incorporated along storefronts which abut parking spaces.
  - g. Root barriers shall be provided for all trees which are planted 5' or less from curb, gutter and walkways.

- h. Along the rear of the site, adjacent to the existing MID canal, it is recommended that efforts be made to create a more functional screen of this area for views from SR99. This can be accomplished in a variety of ways, including through the addition of berms or solid fencing, by planting additional evergreen trees, or combination thereof.
  - i. All landscaping shall be developed with permanent irrigation systems and shall be controlled with an irrigation control system approved by the Parks and Community Services Director. Tree wells should provide for deep watering versus surfacing watering.
  - j. All unpaved areas within the public right-of-way along the street frontages shall be landscaped and maintained by the developer/property owner. Landscaping shall be continuous from the curb-face, around the sidewalks, and up to the pavement in the parking area. Detailed landscape and irrigation plans shall be submitted and approved by the Parks and Community Services Director prior to issuance of any building permits. Street trees shall be placed as specified in the approved landscaping plan. No temporary or permanent occupancy of any buildings shall be approved until the landscaping has been installed as per the landscaping phasing plan, and approved by the Parks and Community Services Director.
  - k. Any fencing, landscaping and irrigation within the public right-of way shall not be installed until the Parks and Community Services Director approves the plans. Any deviation shall require prior written request by the developer and approval by the Parks and Community Services Director. Removal or modification shall be at the developer's expense. A landscaping water meter (if applicable) shall be connected after a back flow device.
  - l. The property owner shall maintain all landscaping in a healthy and well manicured appearance to achieve and maintain the landscaping design approved as part of the project's landscape and irrigation plan(s). This includes, but is not limit to, ensuring properly operating irrigation equipment at all times, trimming and pruning trees and shrubs, mowing lawns consistent with industry standards, replacing dead or unhealthy vegetation, etc.
  - m. Landscaping inspection fees for this project shall be paid in accordance with the fee schedule adopted by the Resolution of the City Council, no later than the issuance of building permits for the first building.
39. The location of all exterior transformers and similar utility/service equipment within the parking and circulation areas, common areas, and landscaped areas shall be shown on building plans; above ground features shall be screened with a combination of landscaping, berms, architecturally treated walls, etc. to the satisfaction of the Community Development Director.
40. All building-related electrical and utility service panels and equipment shall be enclosed in mechanical rooms or screened from public views with architectural features or landscaping.
41. Roof access ladders shall be located inside the buildings, or be located within an enclosure matching the adjacent architectural features.

42. Submit for review and approval a lighting plan and information (tear sheets) on fixtures. This should be accomplished in conjunction the requirements of the mitigation measures required for the project.
43. Outdoor lighting fixtures shall be directed downward and shielded away from adjacent properties, unless accent lighting is specifically authorized by the City. Any nuisance lighting conditions which are found to exist after commencement of operation shall be corrected by the owner to a configuration that is acceptable to City at the owner's expense, within (30) days of notification by the City.
44. A plan for internal pedestrian crossings shall be submitted for review and administrative approval by the Community Development Director which indicates the type and design of pavement markers (e.g., stamped concrete, pavers) pursuant to the provisions of the Master Design Guidelines. The use of painted lines in lieu of alternative pavement types to delineate pedestrian connections should be used only where alternative pavement is limited by ADA access requirements.
45. To the extent feasible, pedestrian connections/sidewalks shall be meandered with landscape strips to avoid long, continuous paved edges. Meander may be accomplished with a curvilinear or angular pattern.
46. The placement and design of bollards or planters adjacent to store fronts shall be shown on the building plans for all buildings. Any such features shall be consistent with the overall architectural style for the center. Bollards shall have decorative features rather than simple solid pipes or posts, and may vary by design.
47. Submit for review and administrative approval by the Community Development Director, a plan and detail for refuse storage areas. Where any side is exposed to public view, landscape screening (and berming, where possible) shall be incorporated, or the enclosure shall be surfaced with an architectural treatment compatible with the adjacent building.
48. Provide details and locations for cart storage areas in conjunction with each building permit application. Storage areas shall be buffered with landscaping or architectural features. The only signage allowed will be a basic symbol.
49. Vandalism and graffiti shall be corrected at the owner's expense within 72 hours of notification.

#### Site Plan and Building Design – Specific Modifications

50. Light sconces or other architectural embellishments should be included along building frontages to break up wall mass. Wainscoting and/or banding treatment are recommended at columns and entryways.
51. Major A – The building shall be modified in accordance with the provisions of the City's Design and Development Guidelines. A stucco finish shall be applied to the front exterior elevation, currently presented as a painted CMU block finish. This would bring the lines and exterior finish of the building closer to the conceptual elevations of other buildings in the shopping center.
52. Shops A1 and A2 – The buildings shall be modified in accordance with the provisions of the City's Design and Development Guidelines. Landscape features such as tree wells and/or planter beds shall be included at the rear of buildings where currently none are

indicated. The use of awnings or other structures placed over rear service doors should be considered.

53. Buildings B & C – The buildings shall be modified in accordance with the provisions of the City’s Design and Development Guidelines. Along the southeasterly elevation of Building C (side of building) the project shall include planters and/or tree wells along the curb face where parking spaces abut building. Architectural features shall be included to break up the wall massing of this side of the building, such as vertical landscaping, trellis structures, or combination thereof. The use of awnings or other structures placed over rear service doors should be considered.
54. Pads D, E & F – The rear (northwesterly elevation) of the building proposed for Pad F shall be modified consistent with the General Plan and the Design and Development Guidelines to take into consideration public views from Foxglove Way. A “four-sided building” shall be designed for Pad F and the utility equipment shall be screened by landscaping or by incorporating the mechanical areas into the architectural design of the building. Utility equipment for buildings proposed for Pads D & E should be located at the rear of buildings (southerly elevations), out of public views.
55. Pad G – Pharmacy Use - The building shall be modified to incorporate a smooth textured finish to soften the CMU construction, using colors from the center’s primary color palette. Along the northwesterly elevation of Building C (frontage of building facing Foxglove Way) the project shall include planters and/or tree wells along the curb face where parking spaces abut building. The screening enclosure for the trash compactor and trash bins must carry the same architectural treatments as the adjoining walls.
56. A design for the transit site shall be submitted for review and approval of the Community Development Director. The design should:
  - Encourage the use of transit services by providing a positive appealing space.
  - Be located in an area inclusive of the general activities.
  - Be a well landscaped attractive setting.
  - Provide separation from the traffic.
  - Provide a shade and rain shelter that is architecturally consistent with the area,
  - Include provisions for seating, trash receptacles and a screened area for depositing carts.

### Master Sign Plan

57. A master sign plan shall be developed to demonstrate unified sign styles within the center and to establish allowances for individual sign permits when they are proposed. The plan shall cover building signage, monument signage, or other freestanding signage including any proposed “directional monument”. The master sign plan shall be submitted by the applicant and reviewed and approved by the Planning Department prior to issuance of building permits.
58. All freestanding directional, monument and/or pylon type signs shall be designed to be consistent with the architecture and color schemes of the commercial center. Presentation of multiple tenant names and or symbols shall be done in a manner that provides a uniform consistent presentation. Consistency may be achieved in several ways including but not limited to uniform background colors, alignment of lettering, consistency in font sizes or types. The intent is not to prevent unique tenant identification, but to present corporate images/logos and signage in a thematically coordinated manner rather than in an uncoordinated, dissimilar fashion.

## **FIRE REQUIREMENTS**

59. Fire Department connections shall be located in posted fire lanes 40 feet from the structure protected. Where multiple FDC's are located together, each shall be clearly identified as to the building it serves.
60. Portable fire extinguishers must be provided. A minimum of at least one, 2A10BC-rated portable fire extinguisher is required for each 3,000 square feet of area or fraction thereof. The fire extinguishers must be mounted in visible and accessible locations with 75 feet of travel distance of all portions of each building.
61. Fire sprinklers are required in most buildings. The exact use and occupancy of the smaller structures will determine if fire sprinklers are required.
62. Exit signs and emergency lighting are required in buildings with two or more required exits.
63. Fire lanes need to be provided and clearly identified on the Site Plan including the method of posting. NOTE: The drive access along the north side of the project does not appear to provide proper turning movements for fire apparatus. This may require a slight redesign in building placement or parking layout.
64. The addresses for each building must be visible from the street and the method and placement must be shown on the front elevation of the plans.
65. A fire alarm system for supervision of the fire sprinkler system is required. An evacuation alarm may be required based upon the requirements of CFC Chapter 9 and CBC Chapter 9.
66. When commercial cooking systems are proposed, a fire suppression system will be required.
67. The specific use of the "Patio Areas" will need to be identified during the plan review phase.
68. There does not appear to be an adequate accessible path of travel at the rear of Building B and possibly not at Building A either. This shall be addressed prior to submittal for building permits.
69. The proposal shows interconnectivity with the rear of the Marketplace Shopping Center. The fire access lanes need to be identified for review. Careful attention should be given regarding maintenance of the fire lanes.
70. Note, this project will be subject to the City of Madera's new "Shell Building Policy" if such buildings are proposed as is common with this type of development.
71. Cross-access agreements are required for the multiple properties that comprise this site. The access to the existing Home Depot site will be affected and this must be clarified.
72. All onsite underground fire mains and above ground fire protection systems (such as fire hydrants) must be tested and operational prior to the delivery of combustible construction materials to the site.

## Building Plans, Permits, Processes

73. Existing property corners shall be found or installed and noted on the site plan, along with the distance from the property lines to the face of curb and street centerline. New property corners shall require record of survey prior to any site construction or issuance of building permits.
74. For each building to be constructed, provide a minimum of 2 sets of the following plans to the Building Division for the initial plan check. The size of plans shall be at least 36" x 24". A complete set of plans shall be prepared by and bearing the stamp and signature of an individual licensed to practice architecture, including the following required drawings drawn to an appropriate scale:
  - a. Site plan bearing City approval or a plan incorporating all site related conditions
  - b. Grading plan prepared by an individual licensed to practice land surveying, civil engineering or architecture
  - c. Floor plan
  - d. Site utilities plan showing on-site sanitary sewer, water, storm sewer, water meters, back flow prevention devices, roof drains, etc., and the connections to off-site utilities
  - e. All exterior elevations
  - f. Engineering plans and calculations
  - g. Foundation plan
  - h. Ceiling framing plan
  - i. Roof framing plan
  - j. Electrical plan
  - k. Plumbing plan
  - l. Mechanical plan
  - m. Sections and details
  - n. Disabled access compliance drawings
  - o. Energy compliance drawings and documentation
  - p. Landscape plan
  - q. Landscape irrigation plan
75. The site plan submitted with the each building permit application shall include all modifications and clarifications required by these conditions of approval, as applicable to the building proposed for construction. Information required on the plan shall include, but not be limited to: water and sewer service, water meter and sewer cleanout, backflow preventer location and type, existing fire hydrants within (100) feet and street lights within (100) feet, traffic striping and signing, and any other existing or proposed improvements.
76. The plans submitted for building permits shall show compliance with the herein listed conditions of approval and shall comply with the uniform building codes, along with federal and state laws, local resolutions and ordinances. Site development shall be consistent with the approved site plan, floor plan and elevations. Any deviations shall require prior written request and approval from the Community Development Director. The site plan and all plans submitted for building permit purposes shall be at a scale large enough to allow all dimensions and distances to be legible.
77. Site and buildings must meet federal and state disability access regulations. Each first floor unit must meet accessibility requirements from public spaces and parking lots to each unit. In addition, inside each unit all rooms must meet accessibility and be adaptable for future compliance to disabled access regulations.



### San Joaquin Valley Air Pollution Control District

78. The SJVAPCD has commented that the project is subject to District Rule 9510 (Indirect Source Review). District Rule 9510 states that a project proponent shall submit an Air Impact Assessment (AIA) prior to final discretionary approval. It is recommended that the project applicant consult with the SJVAPCD regarding District Rule 9510, as well as any other applicable District Rules and Regulations prior to submittal for building permits.

### Caltrans

79. The project applicant shall enter into a fair share agreement with Caltrans to address off-site improvements as identified in the Draft EIR and MMRP prepared for the Foxglove Shopping Center.
80. The applicant shall make all required traffic improvements as identified in the Draft EIR and MMRP prepared for the Foxglove Shopping Center.

### Madera Irrigation District

81. The applicant shall coordinate with Madera Irrigation District regarding the location and configuration of required fencing along the canal alignment.

## **B. Conditional Use Permit Conditions**

### General

1. Conditioned upon acceptance of the conditions of approval contained herein within thirty (30) days, as evidenced by the Applicant's dated signatures on the required acknowledgment.
2. An applicant's failure to utilize any 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 for the specified permit.

### Outdoor Seating (CUP 2013-04)

3. The defined outdoor seating areas for the site shall be limited to use in conjunction with food and beverage service, and may be defined and separated from the parking area by a planter or low fence. The seating areas shall not interfere with required path of travel required for the center.

### Drive-thru Use (CUP 2013-05)

4. A drive-thru window is proposed for the drug store use. There shall be adequate area to accommodate the drive-thru window and sufficient vehicle stacking area in both drive-thru lanes. The drive-thru window shall be incorporated into the design of the building and not substantively detract from the overall architectural value of the building.

### Alcohol Sales for On-Site Consumption (CUP 2013-06...)

5. Alcohol sales for on-site consumption of beer, wine and spirits, within the shopping center project shall be limited to sale and consumption within restaurant/cafe tenants where

alcohol is an accessory component to food service. Alcohol sale for on-site consumption shall be limited to Shops A1 and A2, and also for Pads D, E and F.

6. A separate conditional use permit shall be assigned to each specific location. Each shall operate independent of the others and each shall require individual review for compliance and/or any requested extensions or modifications.
7. Specific locations approved for alcohol sales for on-site consumption shall have the following use permit numbers assigned:
  - Shop A1 - CUP 2013-06A1
  - Shop A2 - CUP 2013-06A2
  - Pad D - CUP 2013-06D
  - Pad E - CUP 2013-06E
  - Pad F - CUP 2013-06F
8. The service and consumption of alcohol in the outdoor seating area for the five identified locations will require that a specific seating area be established, and defined with a fence and gate, and that alcohol not be taken from that area.
9. ~~Hours of operation for the restaurant/café uses shall not be earlier than 8:00 a.m. or later than midnight.~~
9. Sales of alcoholic beverages for on-site consumption shall not occur earlier than 8:00 a.m. or later than midnight.
10. The applicant must, prior to commencing the use contemplated by this permit, provide evidence of a valid ABC license for the sale of alcoholic beverages for consumption on-site of the premises of the restaurant/café use.
11. Music or obnoxious noise from the operation or business shall not be audible to persons in the public rights-of-way or on adjacent or nearby properties.
12. Loitering shall be prohibited in, upon the premises and in adjacent, and nearby areas both public and private.
13. An adult operator or employee 21 years of age or older shall be on site during all hours of operation.
14. The limitation/restriction on the number and locations for alcohol sales for on-site consumption within the center, as part of this approval, shall not be construed as a prohibition from a future conditional use permit application being submitted to the City for consideration.

#### Alcohol Sales for Off-Site Consumption (CUP 2013-07...)

15. Alcohol sales for off-site consumption within the shopping center project shall be limited to Major A (Grocery Store use) and Pad G (Pharmacy use) locations.
16. A separate conditional use permit shall be assigned to each specific location. Each shall operate independent of each other and require individual review for compliance and/or any requested extensions or modifications.

17. Specific locations approved for alcohol sales for off-site consumption shall have the following use permit numbers assigned:
  - Major A (Grocery Store use) – CUP 2013-07A
  - Pad G (Pharmacy use) – CUP 2013-07G
- ~~18. Sales of alcoholic beverages for off-site consumption shall not occur earlier than 8:00 a.m. or later than midnight.~~
19. The applicant must, prior to commencing the use contemplated by this permit, provide evidence of a valid ABC license for the sale of alcoholic beverages for consumption off the premises of the store.
20. Loitering shall be prohibited in, upon the premises and in adjacent, and nearby areas both public and private.
21. An adult operator or employee 21 years of age or older shall be on site during all hours of operation.
22. The limitation/restriction on the number and locations for alcohol sales for off-site consumption within the center, as part of this approval, shall not be construed as a prohibition from a future conditional use permit application being submitted to the City for consideration.

**(OR)**

Motion 2: Move to continue the requested time extension for Site Plan Review 2009-21 and Conditional Use Permits 2013-04, 05, 06 and 07 to a date specified, for the following reasons or in order for the following information to be provided: (specify)

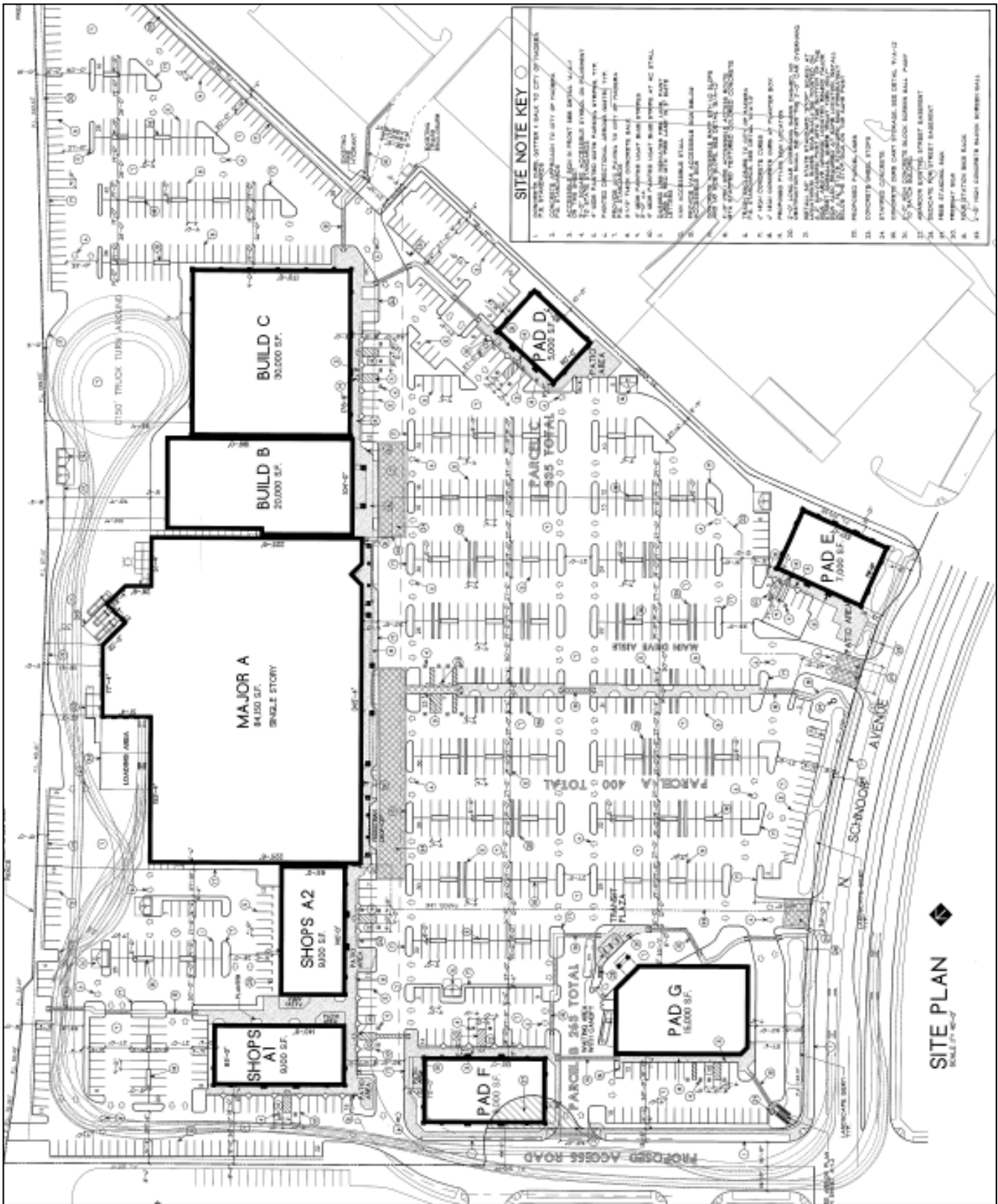
**(OR)**

Motion 3: Move to deny the requested time extension for Site Plan Review 2009-21 and Conditional Use Permits 2013-04, 05, 06 and 07: (specify)

## **ATTACHMENTS**

Site Plan  
Extension Request Letter

# Site Plan



## Extension Request

LAW OFFICES OF  
**DEWAYNE ZINKIN**  
5 RIVER PARK PLACE WEST, SUITE 203  
FRESNO, CALIFORNIA 93720  
Telephone: (559) 224-8100  
Facsimile: (559) 224-8111

DEWAYNE ZINKIN  
ATTORNEY AT LAW

RICHARD L. FAIRBANK  
ASSOCIATE

January 11, 2017

Mr. Dave Merchen  
Planning Manager  
City of Madera  
205 West Fourth Street  
Madera, CA 93637

Re: Foxglove and Schnoor - Site Plan Review – 2009-21

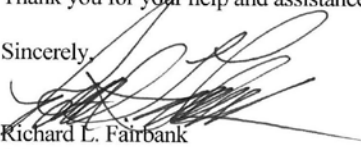
Chris,

The purpose of this letter is to request a one year extension for the Site Plan Review approval for SPR 2009-21 and all of the various conditional use permits that were granted and approved with it at the Planning Commission meeting on February 12, 2013. The use permits include, without limitation, conditional use permits for outdoor seating, a drive-thru window and alcohol sales. We are seeing some signs of recovery in the economy and increased interest from potential tenants and operators, and we are optimistic about commencing construction in 2017. We would like to request another one year extension from the City and I would appreciate it if you would please put that on the calendar of the City for action prior to the date of expiration. A check in the amount of \$1,158.00 for the extension filing fees will be delivered to your office today.

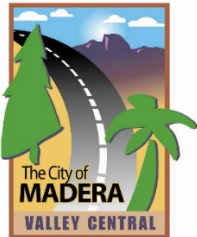
As you know, I believe that the efforts, costs, and obligations made and incurred by the Owner, in reliance upon the SPR-2009-21 and related CUPs would justify a finding that those entitlements have become vested and perfected, but I anticipate it will be some time before the City will be able to review that and agree, so out of an abundance of caution, this application is submitted for an extension.

Thank you for your help and assistance

Sincerely,

  
Richard E. Fairbank  
Attorney at Law

F:\Word\Madera Property\2 - DEVELOPMENT, CONSTRUCTION, MAINTENANCE\4 - CONSTRUCTION\City of Madera\Correspondence\20170104-RF to Chris Boyle  
re extension.doc



CITY OF MADERA  
PLANNING COMMISSION

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

**Staff Report: Stormax Vehicular Storage Area  
CUP 2016-39, SPR 2016-59 & Environmental Determination  
Item #1– February 13, 2017**

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**PROPOSAL:** An application for a conditional use permit and site plan review to allow for an 18,900 square foot outdoor vehicular storage area in conjunction with the Stormax mini storage facility.

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<b>APPLICANT:</b>	Stormax	<b>OWNER:</b>	Stormax
<b>ADDRESS:</b>	125 Tozer Street	<b>APN:</b>	008-110-014
<b>APPLICATION:</b>	CUP 2016-39 and SPR 2016-59	<b>CEQA:</b>	Categorical Exemption

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**LOCATION:** The property is located on the east side of Tozer Street, approximately 300 feet south of its intersection with East Yosemite Avenue.

**STREET ACCESS:** The site has access to Tozer Street.

**PARCEL SIZE:** Approximately 5.33 acres.

**GENERAL PLAN DESIGNATION:** C (Commercial)

**ZONING DISTRICT:** C1 (Light Commercial)

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**SITE CHARACTERISTICS:** The site is located directly east of the Rancho San Miguel shopping center. A Valero gas station (with a car wash and various retail stores) is located immediately to the northwest. Undeveloped commercial property is located immediately north of the project site. The Storey Road right-of-way is located to the northeast. Millview Elementary School is located immediately south.

**ENVIRONMENTAL REVIEW:** The project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA) guidelines, Section 15304 (Minor Alterations to Land).

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**SUMMARY:** Stormax has requested an 18,900 square foot outdoor vehicular storage area in conjunction with their mini storage facility. Whereas an outdoor vehicular storage use is not specifically described in the C1 (Light Commercial) Zone District, a use permit is required for, "Other uses which, in the opinion of the Commission, are of a similar nature." The C2 (Heavy Commercial) Zone District use schedule includes the "outdoor storage of goods and materials," substantiating the allowance for outdoor vehicular storage in the C1 zone, subject to the issuance of a use permit. Conditions of approval will guide the property to the current City standard.

## **APPLICABLE CODES AND PROCEDURES**

MMC § 10-3.801 Light Commercial Zones  
MMC § 10-3.405 Uses  
MMC § 10-3.1301 Use Permits  
MMC § 10-3.4.0102 Site Plan Review Applicability

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**

Conditional Use Permit (CUP) 2004-29 allowed for the phased construction of the Stormax mini storage facility. Since then, two (2) extensions (2005 and 2007) were approved which kept CUP 2004-29 active. In May of 2011, the Planning Commission approved CUP 2011-04 which allowed for the construction of an eighty-five (85') foot tall wireless telecommunications monopole fixture at the southwest corner of the property. A colocation on that monopole was recently approved.

## **ANALYSIS**

### Background

The Stormax mini storage facility was approved to be constructed in four (4) phases. During each phase, four (4) storage structures and a seven (7') foot tall masonry block wall for screening the storage structures from the public right-of-way are to be constructed. Once all phases of construction are complete, a seven (7') foot masonry block wall will be constructed along the Storey Road property frontage.

Recently in 2016, staff approved a site plan review (SPR 2016-41) to allow for a lease area for ground mounted equipment in conjunction with a colocation upon the wireless telecommunications monopole fixture. During staff's field inspection of the site, abandoned vehicles were located along the northern property line, visible from East Yosemite Avenue and Storey Road. The vehicles cumulatively created a blighted condition. Conditions of approval from previous use permits did not provide for outdoor vehicular storage as a component of the ministorage facility.

### Use Permit Applicability

Within the C1 (Light Commercial) Zone District, a use permit is required when "Other uses which, in the opinion of the Commission, are of a similar nature" are requested. Thus, since the outdoor storage of vehicles is not specifically identified within the C1 use schedules, a use permit is required under the "other uses" callout.

Other ordinance supports this determination. An outdoor vehicle storage area can be best described as "outdoor storage of goods and materials." Although not included in the C1 (Light Commercial) Zone District, the outdoor storage call out is included in the C2 (Heavy Commercial)

Zone District requirements for a use permit, substantiating the allowance within the C1 (Light Commercial) Zone District. Also, uses within both the C1 (Light Commercial) and C2 (Heavy Commercial) Zone Districts requiring an outdoor area for permanent sales or storage requires approval of a conditional use permit from the Planning Commission.

### Vehicular Storage Area

The vehicular storage area is proposed to be located within the Phase 3 segment of the ministorage facility. As a component of improvements currently proposed, all improvements within Phase 2 would be completed and one additional storage structure within Phase 3 would be constructed. All of the seven (7') foot tall perimeter screening wall along the northern property line would be constructed to screen the ministorage from the East Yosemite Avenue (State Route 145) corridor.

Conditional Use Permit 2004-29, included a condition of approval that required the reconstruction of Storey Road to collector street status along the project parcel frontage. The condition required the street improvement at such time Phase 4 of the project was completed. Because the project has taken an extended period of time to fully develop (over 12 years to date), the City Engineer included a condition as part of Conditional Use Permit 2016-39 which requires completion of the improvements along Storey Road. The applicant may enter into a deferral agreement that would require construction of the required improvements on the Storey Road parcel frontage within ten (10) years as a component of this approval. The seven (7') foot tall masonry block wall along the Storey Road property frontage would be constructed at such time as the other Storey Road improvements are completed.

As an alternative, outdoor vehicular storage will be discontinued at such time that all four (4) ministorage structures within Phase 3 are constructed consistent with the approved plans, thus removing the opportunity for on-site vehicular storage.

No site screening has been proposed by staff for the southern property line. The Planning Commission, at the December 14, 2004 public hearing, specifically allowed for chain link fencing on the interior property line that abuts to the school property.

The 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 vehicular storage area 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 conditional use permit request. It is recommended that the Planning Commission consider the information in this report, as well as testimony in the public hearing, and approve Conditional Use Permit 2016-39 and Site Plan Review 2016-59 subject to the findings and conditions of approval outlined in this report.

### **PLANNING COMMISSION ACTION**

The Planning Commission will be acting on the request for Conditional Use Permit 2016-39 and Site Plan Review 2016-59, 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 Conditional Use Permit 2016-39 and Site Plan Review 2016-59, based on and subject to the findings and conditions of approval:

Findings

- This project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA) guidelines, Section 15304 (Minor Alterations to Land).
- An outdoor vehicular storage area 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.
- As conditioned, the development will be compatible with surrounding properties.
- As conditioned, the establishment, maintenance or operation of the use will not be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or general welfare of the city. The use is deemed to be a compatible use that is consistent with the zoning for the site.

**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 these use permits.
2. The applicant’s failure to utilize any of the use permits within one year following the date of this approval shall render the conditional use permits null and void unless a written request for extension has been submitted to and approved by the Planning Commission.
3. Conditional Use Permit 2016-39 may be made null and void without any additional public notice or hearing at any time upon both the benefactors of the use permits and owners of the property voluntarily submitting to the City a written request to permanently extinguish the conditional use permit.
4. Conditional Use Permit 2016-39 and Site Plan Review 2016-59 shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If at any time, the use is determined by Staff to be in violation of the conditions, Staff may schedule a public hearing before the Planning Commission within 45 days of the violation to revoke the permits or modify the conditions of approval.
5. Site Plan Review 2016-59 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).

6. 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 Site Plan Review 2016-59.
7. It shall be the responsibility of the property owner and management to ensure that any required permits, inspections and approvals from any regulatory agency shall be obtained from the concerned agency prior to establishment of the use.

### **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 prior to occupancy.
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 the permit stage and confirmed at final inspection.

### **Engineering Department**

#### General

10. Nuisance onsite lighting shall be redirected as requested by the City Engineer within 48 hours of notification.
11. Improvements within the City right-of-way require an encroachment permit from the Engineering Division.

#### Streets

12. The property owner shall pay in full reimbursements due to adjacent development for previously constructed street improvements along the Tozer Street frontage. Total amount due is \$13,007.98. Payment shall be made prior to issuance of an encroachment permit or by April 3, 2017, whichever comes sooner.
13. Storey Road shall be reconstructed to complete the southerly half of a collector street section along the project parcel frontage in accordance with City standards. This shall include installation of travel lanes, curb, gutter, non-contiguous sidewalk, park strip, streetlights, and fire hydrants. All improvements shall be installed in their ultimate location. A pavement transition with appropriate signing and striping shall be provided with the improvements to the south. The installation of said improvements may be deferred through a Deferral Agreement approved by the City Engineer. The applicant may either enter into a Deferral Agreement that requires construction of the aforementioned improvements within ten (10) years of execution of agreement, at such time when improvements are to be constructed by the adjacent development immediately to the north, or through a City-initiated project, whichever comes sooner.

#### Water

14. Existing water service connection shall be upgraded to include an Automatic Meter Reading (AMR) water meter per City standards.

## **Fire Department**

15. A minimum of twenty (20') foot fire access roadway shall be maintained throughout all current and future construction of structures, including the outdoor vehicular storage area. The applicant shall submit a revised site plan that shall reflect the required fire access roadways, which shall be approved by the Fire Marshal.

## **Planning Department**

### General

16. All conditions applicable to approval of Conditional Use Permit 2004-29, Conditional Use Permit 2005-26 and Conditional Use Permit 2007-13 shall remain effective and are not revised in any way by this approval, except as modified herein.
17. Vandalism and graffiti shall be corrected per the Madera Municipal Code.
18. The applicant shall operate in a manner that does not generate noise, odor, blight or vibration that adversely affects any adjacent properties.
19. 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.
20. The applicant shall comply with all federal, state and local laws. Material violation of any of those laws concerning the use will be cause for revocation of these permits.

### Outdoor Vehicular Storage Area

21. Conditional Use Permit 2016-39 allows for an 18,900 square foot outdoor vehicular storage area in conjunction with the Stormax ministorage facility. The location of the vehicular storage area shall be consistent with the approved site plan as part of Site Plan Review 2016-59.
22. The outdoor vehicular storage area shall require an all-weathered ground cover to be approved by the Planning Manager.
23. All vehicles shall be removed off the site at such time as construction of Phase 3 is complete.

### Landscaping

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

### Parking

25. On-site parking shall be provided at all times in conformance with the Municipal Code. Further expansion of the use or additional or accessory uses may require the provision of additional parking spaces in compliance with City standards prior to establishment of the use. All required parking shall be permanently maintained with all parking spaces to be shown on plans submitted for building permits.

### Signage

26. All signage is required to have an approved Sign Permit issued by the Planning Department per Madera Municipal Code Chapter 10-6.

Walls and Fences

27. Construction of the seven (7') foot masonry block wall shall be completed across the entire northern property line by July 3, 2017.

**(OR)**

Motion 2: Move to continue the application for Conditional Use Permit 2016-39 and Site Plan Review 2016-59 to the March 14, 2017 Planning Commission hearing, based on and subject to the following (specify):

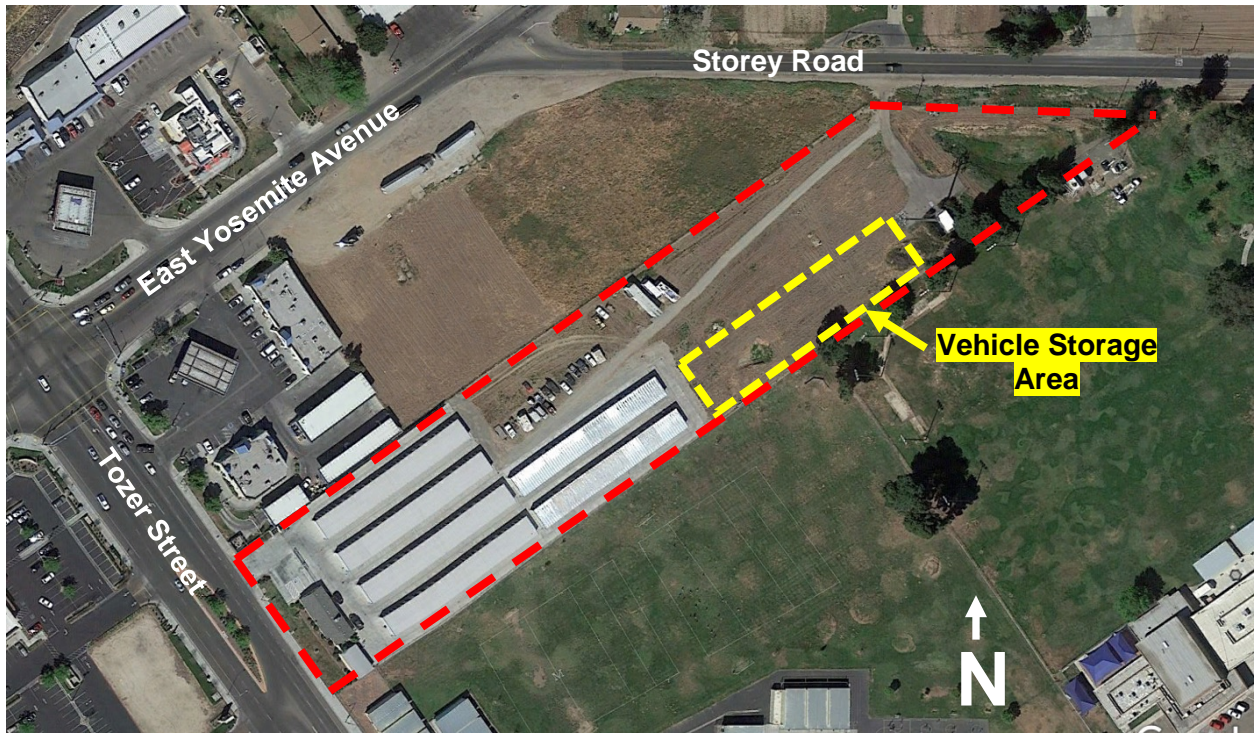
**(OR)**

Motion 3: Move to deny the application for Conditional Use Permits 2016-39 and Site Plan Review 2016-59 based on and subject to the following findings (specify)

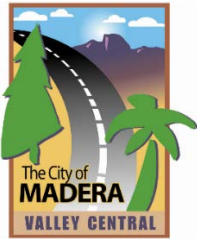
**ATTACHMENTS**

Aerial Photo  
Site Plan

# Aerial Photo







CITY OF MADERA  
PLANNING COMMISSION

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

**Staff Report: Quality Children's Services (Daycare)  
CUP 2017-01, SPR 2017-01 & Environmental Determination  
Item #2 – February 13, 2017**

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**PROPOSAL:** An application for a conditional use permit and site plan review to allow for the establishment of a commercial daycare facility.

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<b>APPLICANT:</b>	Quality Children's Services	<b>OWNER:</b>	Church of the Living God
<b>ADDRESS:</b>	333 Stinson Avenue	<b>APN:</b>	011-234-017, 011-234-018, 011-234-019
<b>APPLICATION:</b>	CUP 2017-01 and SPR 2017-01	<b>CEQA:</b>	Categorical Exemption

---

**LOCATION:** The property is located on the east side of Stinson Avenue, approximately 500 feet north of the intersection of Stinson Avenue and South A Street.

**STREET ACCESS:** The site has access to Stinson Avenue.

**PARCEL SIZE:** Approximately 0.15 acres.

**GENERAL PLAN DESIGNATION:** LD (Low-Density Residential)

**ZONING DISTRICT:** R1 (Low-Density Residential)

---

**SITE CHARACTERISTICS:** The site is surrounded by a low-density residential neighborhood.

**ENVIRONMENTAL REVIEW:** The project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA) guidelines, Section 15303 (New Construction or Conversion of Small Structures).

---

**SUMMARY:** Quality Children's Services proposes to establish a commercial daycare facility within a former church. The applicant is currently in the process of purchasing the property. Prior to closing escrow and purchase of the property, the applicant has requested to secure a conditional use permit to allow for the commercial daycare center prior to submitting plans for the site plan review. This happens on rare occasions when applicants want assurance that their use would be allowed prior to purchasing the property. The applicant will be required to complete site plan review if the Planning Commission approves the conditional use permit.

## **APPLICABLE CODES AND PROCEDURES**

MMC § 10-3.505 R; Conditional Uses; Commission Approval  
MMC § 10-3.405 Uses  
MMC § 10-3.1301 Use Permits  
MMC § 10-3.4.0102 Site Plan Review Applicability

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**

Conditional Use Permit 1978-08 allowed for The Church of the Living God to replace the existing structure with a new church structure. Since then, no other entitlements have been approved for the site. The Church of the Living God closed its doors in June of 2016.

## **ANALYSIS**

### Operations

Quality Children's Services proposes to establish their commercial daycare facility in the former Church of the Living God. The church property would be converted into a commercial daycare facility that would include two (2) classrooms and one (1) multi-purpose room. The hours of operation would be from as early as 6:00 a.m. until as late as 5:30 p.m., Monday through Friday. The maximum number of children that would attend the commercial daycare facility each day would be twenty-four (24) children between the ages of three (3) and five (5) years old. Quality Children's Services specifies their services are for low-income children and families, preparing the children for kindergarten.

### Use Compatibility

Daycare facilities in the City of Madera are typically incorporated within a residential neighborhood. The applicant's daycare facility has residential properties surrounding it within one-thousand (1,000') feet in every direction. The structure was previously a church, able to accommodate non-residential assembly-type uses. The daycare facility would provide education and safety to young children in preparation of kindergarten. Thus, the daycare facility would not be detrimental the health, safety, peace, morals, comfort and general welfare of persons residing in the neighborhood, but instead would provide valuable services to residents of the neighborhood and their children.

### Site Plan Review Requirement

As a component of the use permit process, a site plan review is required per the Madera Municipal Code. Quality Children's Services requested to secure the use permit to allow for the commercial daycare facility on the property prior to completing the site plan review process. Staff is not opposed to the applicant's request, but the applicant will be required to submit for site plan review in a timely fashion if the Planning Commission approves the request for the conditional use permit.



### Aesthetics

This site has not completed site plan review for an extended period of time. Aesthetic issues on the site include landscaping, building elevations and a refresh of the parking field. Aesthetics will be fully addressed during the required site plan review application process.

### Parking

The City's parking standards for a commercial daycare facility require one parking stall for each employee. The applicant proposes to have ten (10) employees with potential to add two (2) future employees. This equates to a parking requirement of at least ten (10) parking stalls, including a minimum of one (1) handicapped parking stall. Parking will be fully addressed during the required site plan review application process.

The 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 commercial daycare facility is not specifically addressed in the vision or action plans, the overall project does indirectly support **Strategy 338** – *Ensure safe and affordable childcare is available to all Maderan families.*

## **RECOMMENDATION**

The information presented in this report supports conditional approval of the conditional use permit request. It is recommended that the Planning Commission consider the information in this report, as well as testimony in the public hearing, and approve Conditional Use Permit 2017-01 and Site Plan Review 2017-01 subject to the findings and conditions of approval outlined in this report.

## **PLANNING COMMISSION ACTION**

The Planning Commission will be acting on the request for Conditional Use Permit 2017-01 and Site Plan Review 2017-01, 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 Conditional Use Permit 2017-01 and Site Plan Review 2017-01, based on and subject to the findings and conditions of approval:

### Findings

- This project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA) guidelines, Section 15303 (New Construction or Conversion of Small Structures).
- The establishment of a commercial daycare facility is consistent with the purposes of the LD (Low-Density Residential) General Plan designation and the R1 (Low-Density

Residential) Zone District which provide for the use, subject to the issuance of a conditional use permit.

- As conditioned, the development will be compatible with surrounding properties.
- As conditioned, the establishment, maintenance or operation of the use will not be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or general welfare of the city. The use is deemed to be a compatible use that is consistent with the zoning for the site.

## **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 these use permits.
2. The applicant's failure to utilize any of the use permits within one year following the date of this approval shall render the conditional use permits null and void unless a written request for extension has been submitted to and approved by the Planning Commission.
3. Conditional Use Permit 2017-01 may be made null and void without any additional public notice or hearing at any time upon both the benefactors of the use permits and owners of the property voluntarily submitting to the City a written request to permanently extinguish the conditional use permit.
4. Conditional Use Permit 2017-01 and Site Plan Review 2017-01 shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If at any time, the use is determined by Staff to be in violation of the conditions, Staff may schedule a public hearing before the Planning Commission within 45 days of the violation to revoke the permits or modify the conditions of approval.
5. Site Plan Review 2017-01 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).
6. 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 Site Plan Review 2017-01.
7. It shall be the responsibility of the property owner and management to ensure that any required permits, inspections and approvals from any regulatory agency shall be obtained from the concerned agency prior to establishment of the use.

### **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 prior to occupancy.

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 the permit stage and confirmed at final inspection.

## **Engineering Department**

### General

10. Nuisance onsite lighting shall be redirected as requested by the City Engineer within 48 hours of notification.
11. The developer shall pay all required fees for completion of project. Fees due may include, but shall not be limited to the following; encroachment permit processing and improvement inspection fees.
12. Improvements within the City right-of-way requires an encroachment permit from the Engineering Division.

### Streets

13. Existing sewer service connection shall be upgraded to include a backflow prevention device per City standards.

### Water

14. Existing water service connection shall be upgraded to include a backflow prevention device per City standards.

## **Fire Department**

15. A building permit is required for all alterations to the building.
16. One 2A10BC-rated fire extinguisher is required which shall be mounted in a visible and accessible location.
17. The change of use/occupancy requires compliance with all currently adopted 2016 California codes.
18. The means of egress shall be improved to comply with the current code requirements.
19. During the building permit plan review stage, the applicant will need to make clear whether the rooms are daycare or classrooms. This is not the same under the code in terms of mandatory requirements.
20. A fire alarm system shall be required.
21. If the structure is less than ten (10') feet from the property line, exposure protection shall be required if it is Type 5B construction.
22. A key box shall be required.

## **Planning Department**

### General

23. Vandalism and graffiti shall be corrected per the Madera Municipal Code.

24. The applicant shall operate in a manner that does not generate noise, odor, blight or vibration that adversely affects any adjacent properties.
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 owned by the property owner. Outdoor storage of goods or materials shall not be allowed.
26. The applicant shall comply with all federal, state and local laws. Material violation of any of those laws concerning the use will be cause for revocation of these permits.

#### Operations

27. Conditional Use Permit 2017-01 allows for the establishment of a commercial daycare facility within a 2,818 square foot structure. The commercial daycare facility proposes two (2) classrooms and one (1) multi-purpose room within the structure.

#### Site Plan

28. The applicant and property owner shall complete the Site Plan Review process prior to expiration of Conditional Use Permit 2017-01. All potential on- and off-site improvements, as part of the Site Plan Review, shall be completed prior to occupancy of the structure and issuance of a business license.

#### Landscaping

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

#### Parking

30. On-site parking shall be provided at all times in conformance with the Municipal Code. Further expansion of the use or additional or accessory uses may require the provision of additional parking spaces in compliance with City standards prior to establishment of the use. All required parking shall be permanently maintained with all parking spaces to be shown on plans submitted for building permits.

#### Signage

31. All signage is required to have an approved Sign Permit issued by the Planning Department per Madera Municipal Code Chapter 10-6.

**(OR)**

Motion 2: Move to continue the application for Conditional Use Permits 2017-01 and Site Plan Review 2017-01 to the March 14, 2017 Planning Commission hearing, based on and subject to the following (specify):

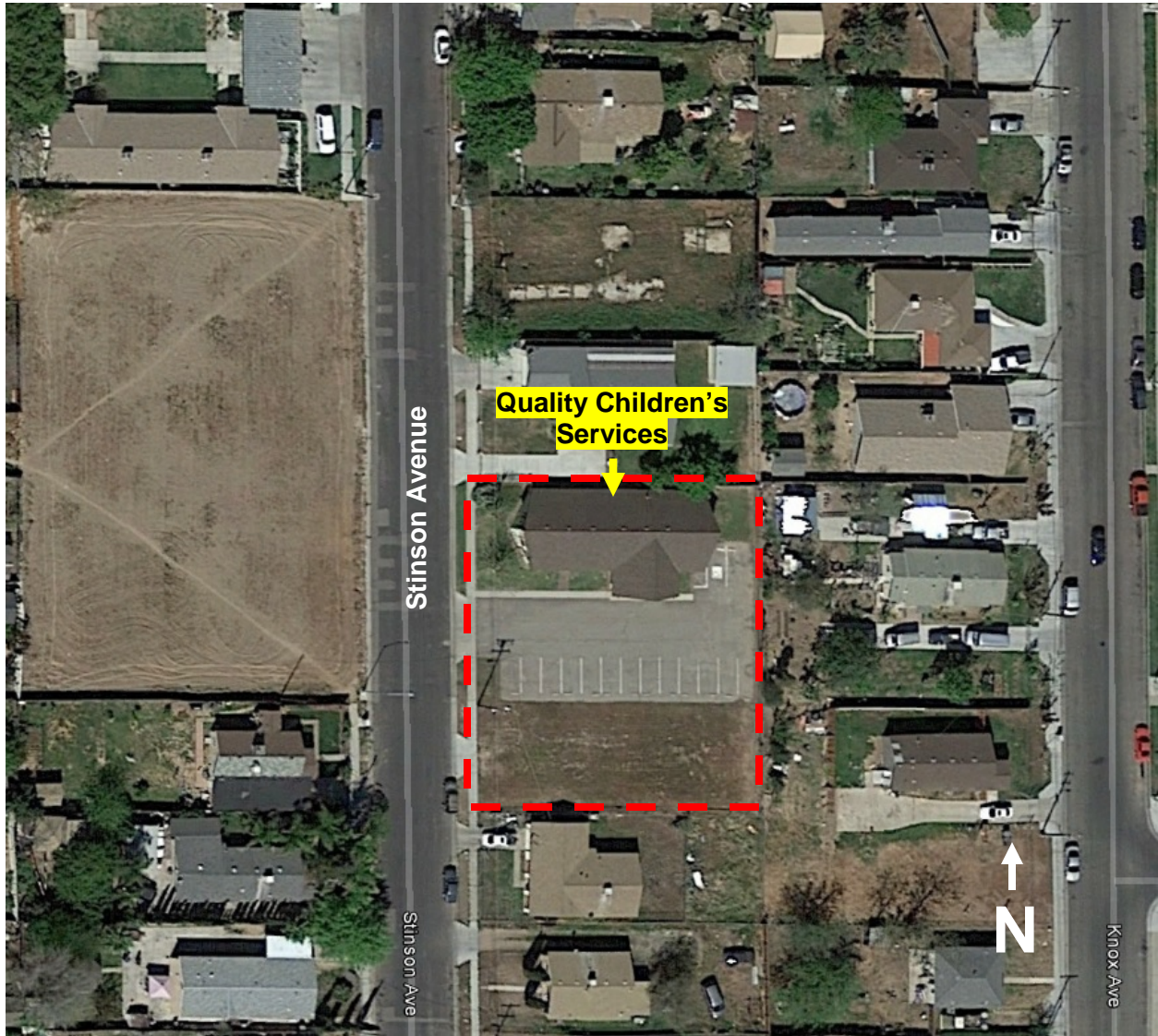
**(OR)**

Motion 3: Move to deny the application for Conditional Use Permits 2017-01 and Site Plan Review 2017-01 based on and subject to the following findings (specify)

## **ATTACHMENTS**

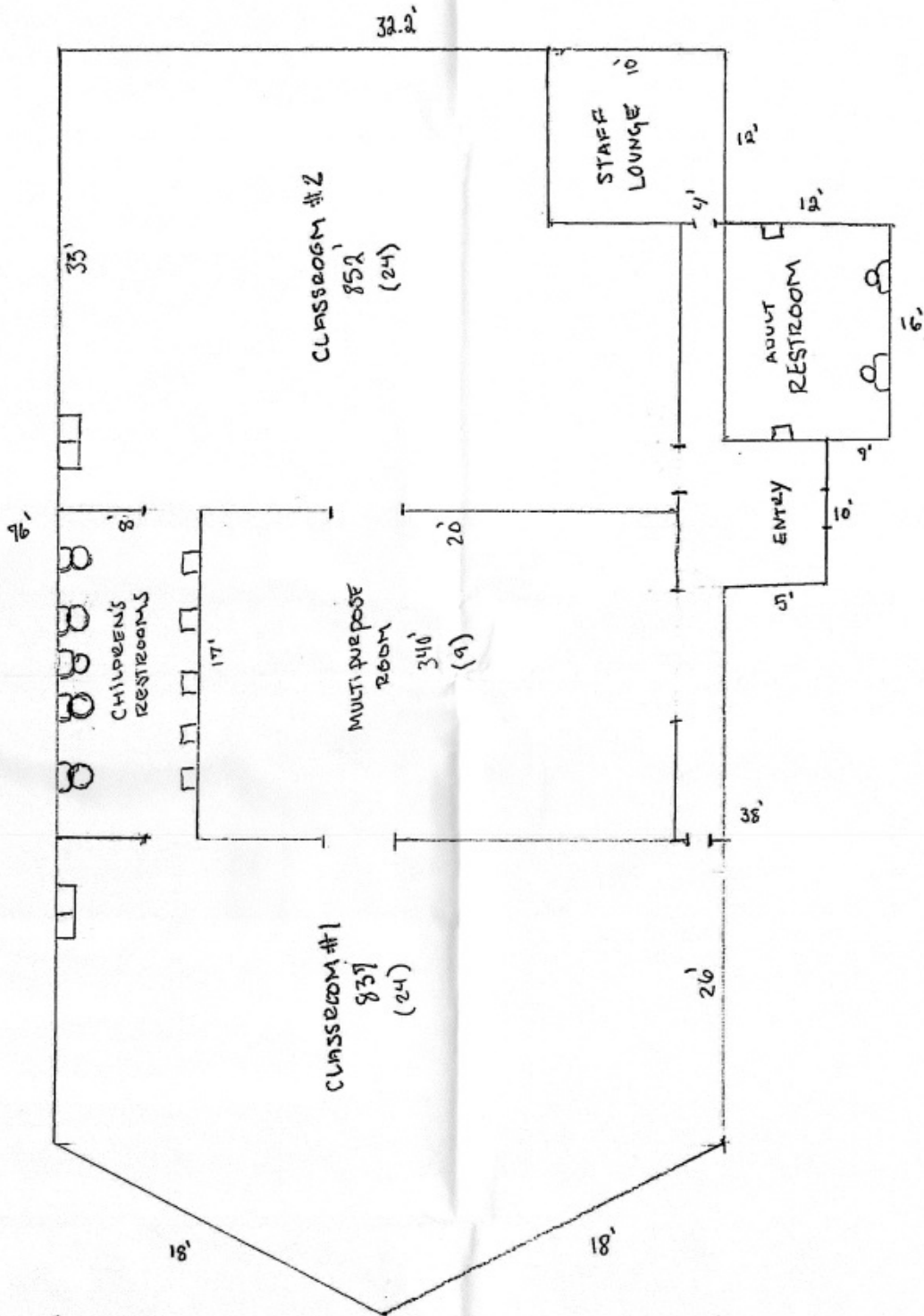
Aerial Photo  
Floor Plan

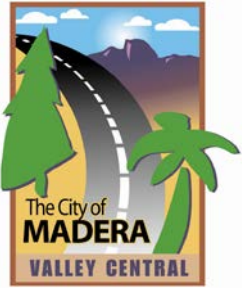
# Aerial Photo



# Floor Plan

PROPOSED PLAN/LAYOUT (Architect Sketch to be provided later at time of permits.)





CITY OF MADERA  
PLANNING COMMISSION

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

**Staff Report: H.O. Tire and Wheel Repair  
CUP 2017-02, SPR 2017-03 & Categorical Exemption  
Item #3 - February 13, 2017**

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**PROPOSAL:** An application for a conditional use permit and site plan review to allow for the establishment of a tire and wheel repair business in the I (Industrial) Zone District.

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<b>APPLICANT:</b>	Dolovic Lopez	<b>OWNER:</b>	David & Patricia Berry
<b>ADDRESS:</b>	421 Noble Street	<b>APN:</b>	012-402-006
<b>APPLICATION:</b>	CUP 2017-02 & SPR 2017-03	<b>CEQA:</b>	Categorical Exemption

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**LOCATION:** The project site is located on the east side of Noble Street, approximately 400 feet south of its intersection with Maple Street.

**STREET ACCESS:** The site has access to Noble Street.

**PARCEL SIZE:** One parcel encompassing approximately 2.28 acres

**GENERAL PLAN DESIGNATION:** I (Industrial)

**ZONING DISTRICT:** I (Industrial)

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**SITE CHARACTERISTICS:** The project site is developed with two industrial warehouse structures encompassing approximately 9,600 square feet each. The Span Industrial Park is located immediately west, across Noble Street. A municipal storm water retention basin is located to the east. Industrial warehouses are located to the south. Existing nonconforming residential homes are located to the north on industrially zoned property. The project site was formerly used by an agricultural supply company.

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

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**SUMMARY:** H.O. Tire and Wheel Repair proposes to locate in a 7,200 square foot section of an existing industrial warehouse structure. Although a use permit is required for automotive repair establishments in the I (Industrial) Zone District, the use could be made compatible with the surrounding mix of uses and would be consistent with the purpose and intent of the Zoning Ordinance.



## **APPLICABLE CODES AND PROCEDURES**

MMC § 10-3.1001 Industrial Zones

MMC § 10-3.1207(D)(2) Parking, General Regulations and Conditions

MMC § 10-3.4.0102 Site Plan Review Applicability

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 property was originally developed as part of Site Plan Review 2001-01.

## **ANALYSIS**

### Background

The City's General Plan indicates that land designated as I (Industrial) is appropriate for development of light and heavy industrial activities. The City's Zoning Ordinance also allows for a variety of industrial activities in the I (Industrial) Zone District, but also provides for other uses, including a tire and automotive repair establishment, subject to the approval of a conditional use permit by the Planning Commission.

### Operations

The applicant wishes to establish a tire and wheel repair business within a 7,200 square foot section of an existing industrial warehouse structure. The business would primarily entail the sale and installation of automotive tires and wheels. Tire and wheel repair would also be offered, along with wheel alignments and suspension parts installation and repair. Hours of operation would be from as early as 8:00 a.m. until as late as 7:00 p.m., seven days per week. The applicant anticipates serving from between ten and thirty vehicles daily, with as many as four employees. Tire and wheel inventory would be stored within the interior of the lease space. All work would occur within the structure.

### Parking

The property was originally developed as part of Site Plan Review 2001-01, which noted that "the site plan as submitted does not have sufficient parking to meet basic service commercial or industrial requirements, with one space required for each 400 square feet of gross floor area, plus one space for each two employees." A revised site plan was required which ultimately provided the absolute minimum number of parking stalls. Later, a non-permitted fenced outdoor storage enclosure was constructed that reduced the available parking by seven stalls. The proposed tire and auto repair business is required to provide twenty (20) parking stalls. With the removal of the non-permitted gated and fenced outdoor storage area, the project site is developed with the absolute minimum number of parking stalls. It is recommended that the non-permitted gate and

fence be removed and the outdoor storage area be rehabilitated back into the seven required parking stalls.

### Site Improvements

The utilization of the space for automotive tire and wheel repair does come with certain limitations. The structure may accommodate an automotive business without triggering the installation of fire sprinklers and alarm systems as long as no commercial vehicles are worked on as a component of the business. If the applicant desires to provide services to commercial vehicles, extensive fire suppression improvements will be required. Conditions of approval restrict the applicant to working only on personal vehicles. No work on commercial vehicles is allowed without the installation of all required fire suppression equipment.

Engineering Department conditions of approval require the installation of an Automatic Meter Read (AMR) water meter. Additionally, consistent with other already approved use permits in proximity to the project site, sidewalk must be installed along the project frontage with Noble Street. A hardship waiver may be submitted for consideration. All conditions of approval must be satisfied in advance of building occupancy and issuance of a business license.

The proposed conditional use permits and site plan review were reviewed by various City Departments and outside agencies. The responses and recommendations have been incorporated into the recommended conditions of approval included in this report.

### **CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

Though approval of an allowance for a tire and wheel repair business 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 approval of the conditional use permit and site plan review request, subject to the recommended conditions of approval. It is recommended that the Planning Commission consider the information in this report, as well as testimony in the public hearing, and approve Conditional Use Permit 2017-02 and Site Plan Review 2017-03 subject to the findings and conditions of approval.

### **PLANNING COMMISSION ACTION**

The Planning Commission will be acting on the use permit and site plan review request.

Motion 1: Move to approve Conditional Use Permit 2017-02 and Site Plan Review 2017-03, based on and subject to the following findings and conditions of approval:

### Findings

- This project is categorically exempt under Section 15301, Existing Facilities, of the California Environmental Quality Act (CEQA).
- A tire and wheel repair business is consistent with the purposes of the I (Industrial) General Plan land use designation and the I (Industrial) Zone District which provide for the use, subject to the issuance of a conditional use permit.

- As proposed, there is adequate parking and site features to allow for the tire and wheel repair business.
- As conditioned, the tire and wheel repair business 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. 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.
3. Conditional Use Permit 2017-02 may be made null and void without any additional public notice or hearing at any time upon both the benefactors of the use permit and owners of the property voluntarily submitting to the City a written request to permanently extinguish the conditional use permit.
4. Conditional Use Permit 2017-02 will expire and be rendered null and void if the use is discontinued for a twelve month period unless a written request for extension has been submitted to and approved by the Planning Commission.
5. Site Plan Review 2017-03 will expire one year from date of issuance, unless positive action is taken on the project as provided in the Municipal Code or required action is taken to extend the approval before expiration date. (Municipal Code Section 10-3.4.0114, Lapse of Site Plan Approval)
6. Conditional Use Permit 2017-02 and Site Plan Review 2017-03 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.
7. The site or building plans submitted for any building permit applications shall reflect changes required by the herein listed conditions of approval. Any deviation from the approved plan or any condition contained herein shall require, at a minimum, prior written request by the applicant and approval by the Planning Manager.
8. 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 Site Plan Review 2017-03.

9. It shall be the responsibility of the property owner and management to ensure that any required permits, inspections and approvals from any regulatory agency shall be obtained from the concerned agency prior to establishment of the use.

### **Building Department**

10. Building permits are required for any tenant improvements. The uses of all rooms and activity areas shall be identified on any plans submitted for issuance of building permits.
11. Current State of California and federal handicap requirements shall apply to the entire site and all structures and parking thereon. Compliance shall be checked at the permit stage and confirmed at final inspection.

### **Engineering Department**

#### General

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

#### Water

16. Existing water service connection shall be upgraded to include an Automatic Meter Reading water meter per City standards.

#### Streets

17. The developer shall construct ADA accessible concrete sidewalks along the entire project parcel frontage (driveway to driveway) on Noble Street per City standards. If the applicant believes that a hardship waiver is applicable based on the cost of this improvement in relation to overall project costs, a request for wavier may be submitted for consideration and an ultimate determination by the City.

### **Fire Department**

18. A building permit is required for all alterations of the building, including electrical work, mechanical lifts, installation of fire sprinklers, egress doors, etc.
19. Three (3) 2A10BC-rated fire extinguishers are required.
20. A fire rated separation between the proposed use and the adjoining use may be required.
21. If the space is used to repair commercial vehicles, fire sprinklers are required. If the fire sprinklers are required, a fire sprinkler monitoring alarm system is also required. For the purposes of compliance with this condition of approval, the 2016 California Fire Code defines "commercial motor vehicle" as:

A motor vehicle used to transport passengers or property where the motor vehicle:

1. Has a gross vehicle weight rating of 10,000 pounds or more; or
2. Is designed to transport 16 or more passengers, including the driver.

22. Based upon the common path of travel distance depicted in the plans, a second means of egress is required.
23. Exit signs and emergency lighting are required.
24. A key box is required if not already existing. If existing, new keys are required if the structure is re-keyed.

### **Planning Department**

25. The applicant shall operate in a manner that does not generate noise, odor, blight or vibration that adversely affects any adjacent properties.
26. Vandalism and graffiti shall be corrected per the Madera Municipal Code.
27. 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.
28. Hours of operation shall be from as early as 8:00 a.m. until as late as 7:00 p.m. Employees may be present from as early as 6:00 a.m. until as late as 8:00 p.m.
29. Except as noted herein, all on- and off-site improvements shall be made prior to the occupancy of the structure and issuance of a business license.

### Landscaping

30. The property owner shall maintain all landscaping in a healthy and well-manicured appearance. 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. A three (3") inch layer of mulch shall be installed in all non-turf planting areas, consistent with the State of California Model Water Efficient Landscape Ordinance.

### Signage

32. All signage shall be in compliance with the Madera Sign Ordinance at all times. All signage is required to have an approved Sign Permit issued by the Planning Department per MMC §10-6.

### Approved Automotive Activities

33. Conditional Use Permit 2017-02 allows for the following automotive services:
  - Sale and installation of tires and wheels
  - Tire and wheel balancing and alignments
  - Lube, oil and filter services
  - Brake services
  - Installation of shocks and struts
  - Spark plug and spark plug wire replacements

- General maintenance inspections

No services shall be performed on commercial vehicles without the authorization of the Fire Marshall.

34. No other automotive services, repairs, and/or installations are allowed on the project site without the approval of a separate conditional use permit.
35. All automotive services shall occur inside of the structure.
36. Outdoor storage of goods and/or materials shall not be allowed.
37. Overnight parking of vehicles shall only occur within the interior of the building.
38. No washing or detailing of vehicles shall occur as a component of the business.

#### Parking

39. The parking requirements of the use shall be provided at the following ratio(s): one (1) stall per each 400 square feet of gross floor space, plus one (1) stall per each two (2) employees. The business suite encompasses approximately 7,200 square feet of gross square footage. A minimum of twenty (20) parking stalls are required.
40. The existing non-permitted gated and fenced outdoor storage area located in front of the structure shall be removed and the outdoor storage area shall be rehabilitated back into required parking stalls. This condition shall be satisfied prior to occupancy of the structure and approval of a business license.
41. All parking and loading areas to be located outside of the structure shall be marked and striped to City standards: Perpendicular (90 degree) parking spaces shall measure a minimum of 9' wide by 19' deep (including up to a 2' maximum bumper overhang into landscaped area). Minimum backing/ maneuvering/drive aisle space is twenty-six (26') feet. 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 Department.

**(OR)**

Motion 2: Move to continue the application for Conditional Use Permit 2017-02 and Site Plan Review 2017-03 to the March 14, 2017 Planning Commission hearing for the following reasons: (specify)

**(OR)**

Motion 3: Move to deny the application for Conditional Use Permit 2017-02 and Site Plan Review 2017-03, based on and subject to the following findings: (specify)

#### **ATTACHMENTS**

Aerial Photo  
Site Photos

Aerial Photo



## Site Photos



The site in September 2015, with Cal-Pacific Supply in operation.



The site in January, 2017.



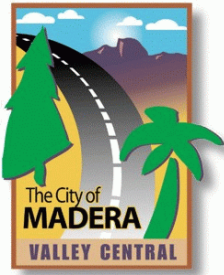


The site in January, 2017.

[Return to Agenda](#)

## **TSM 2016-02 – Sunrise Estates**

Staff has requested this item be continued to the March 14, 2017 regular Planning Commission meeting.



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 #5 – February 13, 2017**

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**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.).

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<b>APPLICANT:</b>	Zelman Madera LLC	<b>OWNER:</b>	Zelman Madera LLC
<b>ADDRESS:</b>	Avenue 17/SR 99	<b>APN:</b>	013-240-001
<b>APPLICATION:</b>	Development Agreement Annual Review	<b>CEQA:</b>	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)

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**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.

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**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**

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

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

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

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

### **CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

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

### **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, 2016.

### 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, 2016.

### **(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, 2016.

### 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, 2016

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

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

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

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

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

WHEREAS, the Planning Commission held a public hearing on this matter on February 13, 2017 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, 2016 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, 2016.
3. This resolution is effective immediately upon adoption.

\* \* \* \* \*

Passed and adopted by the Planning Commission of the City of Madera this 13<sup>th</sup> day of February, 2017, 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**

	<b>Description</b>	<b>Timing of Compliance</b>
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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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 "I" attached hereto.

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

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

(4) Zoning changes

(5) Grading and building permits

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



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
<u>Exhibit "C"</u>	Under Development Agreement
<u>Exhibit "D"</u>	Maximum Reimbursement Schedule
<u>Exhibit "E"</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 prescribed 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 prescribed by applicable City codes, ordinances, and regulations.

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

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

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

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

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

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

(6) City 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 31<sup>st</sup> 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 31A(2) above.

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

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

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

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

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

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

With a copy to:

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

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

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

And

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

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

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

DATED: August 1, 2007

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 ) ss.  
COUNTY OF Los Angeles }

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)

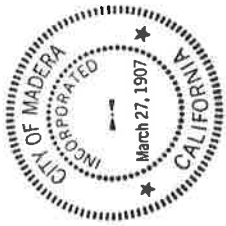


City of Madera  
205 West Fourth Street  
Madera, CA 93637  
(559) 661-5405

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

**Signer's Name:**

**Title:** Mayor, City of Madera

**Title:**

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

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

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

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

APN: 038-040-005

EXHIBIT "A"

749576.206.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"**

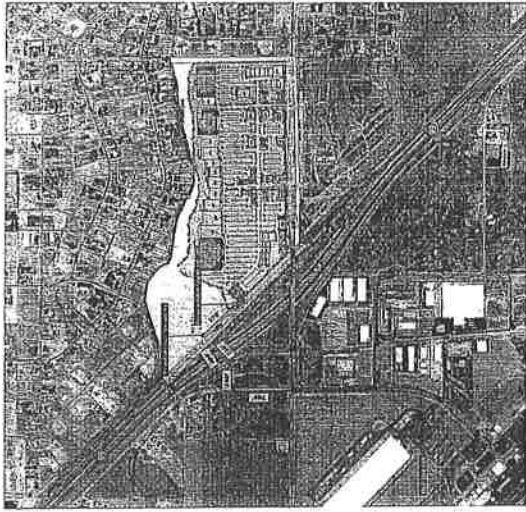
**MAXIMUM REIMBURSEMENT SCHEDULE**

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] 18" Conduit  
 [Symbol] 12" Mainline  
 [Symbol] Proposed Main Line

**MADERA TOWN CENTER**  
 CROSS CONNECTION STUDY - MADERA, CA



EXHIBIT "D"

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

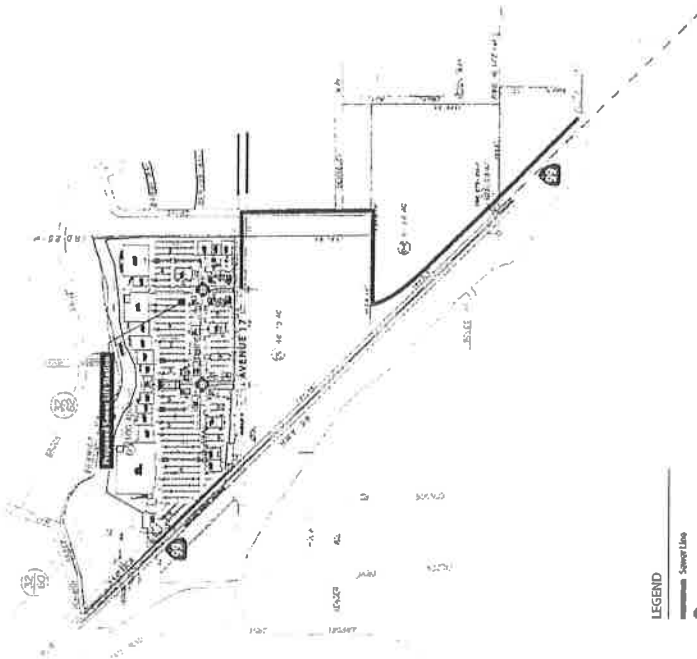
EXHIBIT "C"

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**

PROJECT LOCATION: Madera, California  
 PROJECT NO.: 2014-01  
 DATE: 08/14/14  
 DRAWN BY: J. B. BROWN  
 CHECKED BY: J. B. BROWN  
 APPROVED BY: J. B. BROWN

749376.201A  
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

749376.201A  
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 28°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-

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29369-2387-24-07/mg/mg

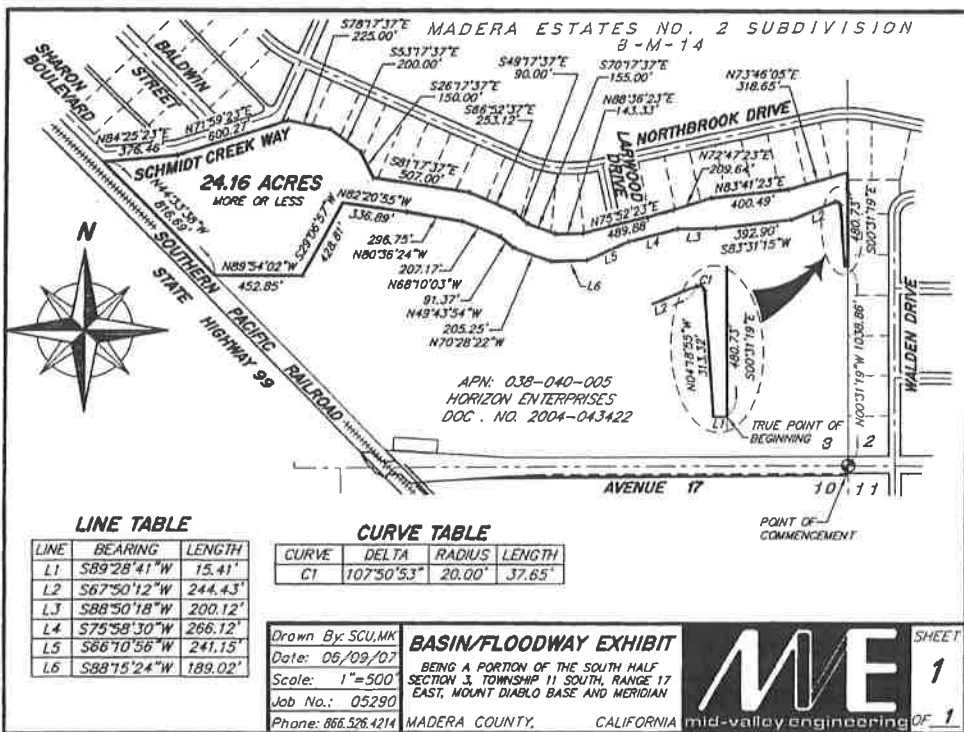


EXHIBIT "G"  
-3-

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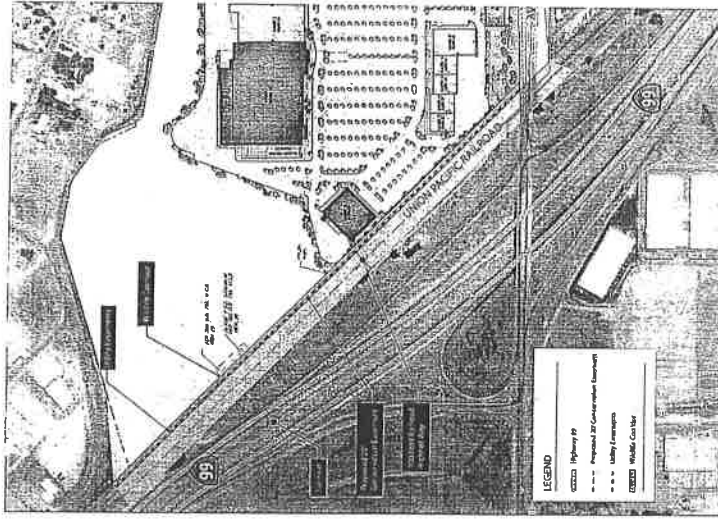
**EXHIBIT "I"**

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

Impact Fee Category	Phase I Square feet	Unit Cost	Extension
<b>(I) IMPACT FEES CREDITED</b>			
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
<b>SUBTOTAL, IMPACT FEE CREDITS</b>			<b>\$1,868,832.00</b>
<b>(II) IMPACT FEES PAID</b>			
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
<b>SUBTOTAL, IMPACT FEES PAID</b>			<b>\$436,023.00</b>
<b>TOTAL IMPACT FEES</b>			<b>\$2,304,855.00</b>

**EXHIBIT "J"**

**20-FOOT WILDLIFE CORRIDOR**



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

ME  
Madera Environmental Services, Inc. 1100 West Highway 99, Suite 100, Madera, CA 93694  
Telephone: (559) 661-1100 Fax: (559) 661-1101  
www.madeservices.com