CITY OF MERCED
Planning Commission

MINUTES

Merced City Council Chambers
Wednesday, November 9, 2011

Chairperson CERVANTES called the meeting to order at 7:00 p.m., followed by a moment of silence and the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Carole McCoy, Kimberly Madayag, Travis Colby, Mary Ward, Dwight Amey, Bob Acheson, and Chairperson Richard Cervantes

Commissioners Absent: None

Staff Present: Planning Manager Espinosa, Planner Nelson, Deputy City Attorney Rozell, and Recording Secretary Lane

1. APPROVAL OF AGENDA

M/S WARD-ACHESON, and carried by unanimous voice vote, to approve the Agenda as submitted.

2. MINUTES

M/S WARD-MCCOY, and carried by unanimous voice vote, to approve the Minutes of October 19, 2011, as submitted.

3. COMMUNICATIONS

None.

4. **ITEMS**

4.1 Conditional Use Permit #1162, initiated by Colin Downs, applicant for Mark and Suzanne Cauwels, property owners. This application involves a request to allow a wrestling club for kids to locate within a portion of an existing building located within a Light Industrial (I-L) zone at 2142 Wardrobe Avenue.

Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #11-16.

Public testimony was opened at 7:06 p.m.

Speakers from the Audience in Favor:

COLIN DOWNS, the applicant, Merced
XOCHITL MORALES, Merced

No one spoke in opposition to the project.

Public testimony was completed at 7:14 p.m.

M/S WARD-COLBY, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #11-30, and approve Conditional Use Permit #1162, subject to the Findings and eleven (11) Conditions set forth in Staff Report #11-16 (RESOLUTION #2994):

AYES: Commissioners McCoy, Madayag, Colby, Ward, Amey, Acheson, and Chairperson Cervantes
NOES: None
ABSENT: None
ABSTAIN: None

4.2 General Plan Amendment #11-05 and Site Utilization Plan (SUP) Revision #1 to Planned Development (P-D) #72, initiated by Fremming, Parson and Pecchenino, applicant for

Della Wathen, property owner. This application involves a request to allow an exception to General Plan Policies 1.3.j and 1.3.k dealing with the placement of driveways near major intersections to allow a driveway on Yosemite Avenue. Site Utilization Plan (SUP) Revision #1 to Planned Development (P-D) #72 would allow a change in the land use designation along the eastern portion of the parcel (generally located at the northeast corner of G Street and Yosemite Avenue) from "drainage basin" to "commercial office" to allow the addition of four additional office buildings ranging in size from 5,760 square feet to 6,720 square feet, and to relocate the drainage basin to a 3.53-acre parcel (generally located between the future Sandpiper Avenue and Mansionette Drive) and to change the land use designation for this parcel from High-Medium Density (HMD) Residential to "drainage basin." The SUP Revision also includes the addition of a 6,000 square-foot office building along the southern property line of the parcel (generally located at the northeast corner of G Street and Yosemite Avenue) and the increase in floor area for two office buildings from 4,800 square feet each to 6,720 square feet and 7,200 square feet respectively.

Planner NELSON reviewed the report on this item. She noted an email from Michael Belluomini that was provided to the Commission prior to the meeting. For further information, refer to Staff Report #11-17.

Public testimony was opened at 7:37 p.m.

Speakers from the Audience in Favor:

DIRK POESCHEL, representing Della Wathen, the applicant, Fresno
ROBERT TYLER, Merced
WALTER LOPES, Merced

No one spoke in opposition to the project.

Public testimony was completed at 7:51 p.m.

M/S WARD-COLBY, and carried by the following vote, to recommend to City Council adoption of a Negative Declaration regarding Environmental Review #11-25, and approval of General Plan Amendment #11-05 and Site Utilization Plan Revision #1 to Planned Development #72, subject to the Findings and twenty-six (26) Conditions set forth in Staff Report #11-17 (RESOLUTION #2995):

AYES: Commissioners McCoy, Madayag, Colby, Ward, Amey, Acheson, and Chairperson Cervantes
NOES: None
ABSENT: None
ABSTAIN: None

4.3 General Plan Amendment #11-04, Zone Change #413, Establishment of Planned Development (P-D) #73, and Site Utilization Plan Revision #2 To Residential Planned Development (RP-D) #63, initiated by Golden Valley Engineering, applicant for Bellevue Ranch Paseo, LLC, property owner. This application involves a request to change the General Plan designation from Low-Medium Density Residential (LMD) to Neighborhood Commercial (CN), a Zone Change from Residential Planned Development (RP-D) #63 to Planned Development (P-D) #73, and the establishment of Planned Development (P-D) #73 for the western half of the development previously known as the Paseo subdivision to allow a 39,400 square foot retail center at the northeast corner of Barclay Way and Bellevue Road. The request also involves a Site Utilization Plan Revision to Residential Planned Development (RP-D) #63 to allow a change from single-family detached dwelling units to zero-lot line single-family homes at a density of 8.5 dwelling units per acre, generally located at the northwest corner of G Street and Bellevue Road.

Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #11-18.

Public testimony was opened at 8:11 p.m.

Speaker from the Audience in Favor:

DUANE ANDREWS, Golden Valley Engineering, representing the applicant, Merced

Speaker from the Audience (Neutral):

ROBERT TYLER, Merced

No one spoke in opposition to the project.

Public testimony was completed at 8:14 p.m.

Commissioner COLBY stated that he was hesitant to cast an affirmative vote for this project. He voted yes on basic principles of ensuring that businesses can come into this community, can do business the way they see fit, and in a way that works best for the community. At the same time, he had a lot of concerns about the project. He felt that this was a poor design and would need to be redesigned to be functional.

M/S WARD-ACHESON, and carried by the following vote, to recommend to City Council adoption of a Negative Declaration regarding Environmental Review #11-22; and approval of General Plan Amendment #11-04, Zone Change #413, Planned Development #73, and Site Utilization Plan Revision #2 to Residential Planned Development #63, subject to the Findings and thirty-two (32) Conditions set forth in Staff Report #11-18 (RESOLUTION #2996):

AYES: Commissioners McCoy, Madayag, Colby, Ward, Amey, Acheson, and Chairperson Cervantes
NOES: None
ABSENT: None
ABSTAIN: None

4.4 Cancellation of November 23 and December 21, 2011, Planning Commission Meetings due to the Holidays

M/S WARD-MCCOY, and carried by unanimous voice vote, to cancel the Planning Commission Meetings of November 23 and December 21, 2011.

5. INFORMATION ITEMS

5.1 Calendar of Meetings/Events

There was no discussion regarding the calendar of meetings/events.

6. ADJOURNMENT

There being no further business, Chairperson CERVANTES adjourned the meeting at 8:18 p.m.

Respectfully submitted,

KIM ESPINOSA, Secretary
Merced City Planning Commission

APPROVED:

RICHARD CERVANTES, Chairperson
Merced City Planning Commission

n:shared:Planning:PCMINUTE:Minutes 2011:M11-09-2011

CITY OF MERCED
Planning Commission

Resolution #2994

WHEREAS, the Merced City Planning Commission at its regular meeting of November 9, 2011, held a public hearing and considered **Conditional Use Permit #1162,** initiated by Colin Downs, applicant for Mark and Suzanne Cauwels, property owners. This application involves a request to allow a wrestling club for kids to locate within a portion of an existing building located within a Light Industrial (I-L) zone at 2142 Wardrobe Avenue; also known as Assessor's Parcel No. 059-410-025; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through H of Staff Report #11-16; and,

WHEREAS, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #11-30, and approve Conditional Use Permit #1162, subject to the Conditions set forth in Exhibit A attached hereto.

Upon motion by Commissioner Ward, seconded by Commissioner Colby, and carried by the following vote:

AYES: Commissioners McCoy, Madayag, Colby, Ward, Amey, Acheson, and Chairperson Cervantes
NOES: None
ABSENT: None
ABSTAIN: None

Adopted this 9th day of November 2011

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:
Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions:CUP#1162 Wrestling Club for Kids

Conditions of Approval
Planning Commission Resolution #2994
Conditional Use Permit #1162

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (floor plan) - Attachments C and D of Staff Report #11-16, except as modified by the conditions.
2. All conditions contained in Resolution #1249 ("Standard Conditional Use Permit Conditions") shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. The Project shall comply with the conditions set forth in Site Plan Review Resolution #106 and Site Plan Review Resolution #119 previously approved for this site.
5. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
6. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant

shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

7. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

8. The number of people occupying the practice area shall be limited by the California Building and Fire Codes based on floor area, exits, and other factors as determined by each code.

9. The applicant shall abide by all relevant regulations and provisions set forth in the Sign Ordinance for any signage on the building. All temporary signing shall be approved by Planning staff.

10. Sufficient lighting shall be provided on the building and in the parking area to provide a safe environment for all patrons as they are coming and going from the building.

11. Competitions/tournaments with outside teams or participants who are not students of the school are not allowed. If in the future, the owner wants to host this type of activity, all required building and fire codes and parking requirements shall be met. Any such change would be subject to Site Plan Review or referral to the Planning Commission.

n:shared:planning:PC Resolutions:CUP#1162 Exhibit A

CITY OF MERCED
Planning Commission

Resolution #2995

WHEREAS, the Merced City Planning Commission at its regular meeting of November 9, 2011, held a public hearing and considered **General Plan Amendment #11-05 and Site Utilization Plan (SUP) Revision #1 to Planned Development (P-D) #72**, initiated by Fremming, Parson and Pecchenino, applicant for Della Wathen, property owner. This application involves a request to allow an exception to General Plan Policies 1.3.j and 1.3.k dealing with the placement of driveways near major intersections to allow a driveway on Yosemite Avenue. Site Utilization Plan (SUP) Revision #1 to Planned Development (P-D) #72 would allow a change in the land use designation along the eastern portion of the parcel (generally located at the northeast corner of G Street and Yosemite Avenue) from "drainage basin" to "commercial office" to allow the addition of four additional office buildings ranging in size from 5,760 square feet to 6,720 square feet, and to relocate the drainage basin to a 3.53-acre parcel (generally located between the future Sandpiper Avenue and Mansionette Drive) and to change the land use designation for this parcel from High-Medium Density (HMD) Residential to "drainage basin." The SUP Revision also includes the addition of a 6,000 square-foot office building along the southern property line of the parcel (generally located at the northeast corner of G Street and Yosemite Avenue) and the increase in floor area for two office buildings from 4,800 square feet each to 6,720 square feet and 7,200 square feet respectively; also known as Assessor's Parcel Numbers 231-040-004 and 231-040-020; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through P of Staff Report #11-17; and,

WHEREAS, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Negative Declaration regarding Environmental Review #11-25, and approval of General Plan Amendment #11-05 and Site Utilization Plan Revision #1 to Planned Development #72, subject to the Conditions set forth in Exhibit A attached hereto.

Upon motion by Commissioner Ward, seconded by Commissioner Colby, and carried by the following vote:

AYES: Commissioners McCoy, Madayag, Colby, Ward, Amey, Acheson, and Chairperson Cervantes
NOES: None
ABSENT: None
ABSTAIN: None

Adopted this 9th day of November 2011

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:
Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions:GPA#11-05-SUP REV#1 TO PD#72 Wathen

Conditions of Approval
Planning Commission Resolution #2995
General Plan Amendment #11-05
Site Utilization Plan Revision #1 to Planned Development #72

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (elevations), -- Attachments B and F of Staff Report #11-17, except as modified by the conditions.

2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.

3. The Project shall comply with the conditions set forth in Planning Commission Resolution #2974 and City Council Resolution #2010-73 for General Plan Amendment #10-02 previously approved for this project and Ordinance #2358 for the Establishment of Planned Development #72.

4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.

5. Approval of the General Plan Amendment and Site Utilization Plan Revision is subject to the applicant's entering into a written (developer) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.

6. In accordance with Merced Municipal Code Section 20.42.130, this project(s) will be constructed according to the following development schedule (this schedule includes the previously approved project):

Building Type	Sq. Ft.	Commence Construction	Complete Construction
Hotel			
84-unit Hotel	24,000	Year 4	12 months
Office			
Building A*	6,000	Year 2	9 months
Building B-1	7,400	Year 3	9 months
Building B-2	2,540	Year 2	9 months
Building B-2 (food & beverage)	2,500	Year 2	9 months
Building C	5,760	Year 6	9 months
Building D	6,000	Year 6	9 months
Building E*	6,720	Year 5	9 months
Building F*	6,720	Year 5	9 months
Building G*	6,720	Year 6	9 months
Building H*	7,200	Year 6	9 months
Restaurant			
Family Style	5,883	Year 3	9 months
Bank			
Bank with drive up window	4,536	Year 2	9 months
Pharmacy			
Pharmacy with drive up window	17,340	Year 1	9 months

*new buildings approved with this proposal

On each anniversary of the approval of this application, an updated development schedule shall be submitted to the Planning Division.

7. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore,

developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

8. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

9. Community Facilities District (CFD) formation is required for annual operating costs for storm drainage, public landscaping within City rights-of-way, street trees, and street lights. CFD procedures shall be initiated before final permit approval. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.

10. Conditional Use Permits for all future development on the site, including the offices, the restaurant, the bank, and the hotel, are required for all phases.

11. The project shall comply with all mitigation measures outlined in Planning Commission Resolution #2974 and City Council Resolution #2010-73.

12. The location of the driveway on Yosemite Avenue shall be approved as shown on Exhibit 1 (site plan). The driveway shall be right-in/right-out only.

13. The project shall comply with all development standards for Planned Development (P-D) #72. The design and materials palette previously approved for this site shall apply to the additional five buildings. There shall be no variance from the design features for special brands or tenants. Corporate designs may be implemented as long as it is in keeping with the overall design of the project. Any design variations shall be approved by staff or subject to referral to the Planning Commission.

14. The drainage basin shall maintain the capacity necessary to serve the existing area it currently serves as well as the added capacity from all phases of this new project. The developer shall submit calculations demonstrating this prior to any building permits being issued for any phase of construction or for the relocation of the drainage basin (whichever comes first).

15. The developer shall provide a land use diagram of the approved site plan showing all designated uses, approximate size of all buildings, parking, etc. This map will become the "Official" map for Planned Development #72. One "hard copy" map (36" x 24") and an electronic copy compatible with the City's Geographic Information System (GIS) shall be provided.

16. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department access.

17. All signing shall comply with the previously approved sign program for this site and the North Merced Sign Ordinance.

18. The City reserves the right to periodically review the operation of the driveway on Yosemite Avenue. If problems arise (i.e., excessive traffic accidents or traffic delays, etc.), this approval may be subject to review and modification or revocation by the City of Merced after a duly noticed public hearing.

19. The drainage basin shall be designed to allow a small open-space development on the western 0.71-acres of Assessor's Parcel Number (APN) 231-040-020. This area shall be landscaped with ground cover and trees. Details on the design shall be worked out with staff prior to construction. This area shall be open to the public and all maintenance costs shall be included with the formation of the Community Facilities District.

20. A wrought-iron fence shall be installed on the three exterior sides (south, east, and west) of the drainage basin with a minimum 15-foot-wide landscape area provided. Details for the landscape area shall be worked out with staff during the plan review of the drainage basin. A minimum 6-foot-high block wall shall be constructed along the northern property line. In no case shall a gap be left between the existing residential fences and the new fencing around the basin. All proper approvals from the homeowners shall be obtained prior to making any modifications to their fences.

21. Access to the basin shall be from Mansionette Drive. Access shall be provided per City Standards.

22. The approval of the five additional office buildings includes all principally permitted uses within a Commercial Office (C-O) zone. All uses identified as "conditional uses" within a C-O zone may be allowed subject to Planning Commission approval.

23. The developer shall work with the City's Refuse Department to appropriately place all refuse containers. Approval of these locations shall be included at the Conditional Use Permit stage.

24. All buildings shall incorporate energy efficient features into the design and construction. LEED certification is not required. However, implementing features of LEED certified building is strongly encouraged.

25. Truck loading facilities and trash refuse enclosures shall not be allowed along public street rights-of-way. Details to be addressed at the conditional use permit stage.

26. Timing for the construction of the developer's share of the new road between the future Police Station and the proposed drainage basin shall be determined in consultation with the City Engineer and Director of Development Services prior to construction of the drainage basin or within two months from the date of approval, whichever comes sooner.

n:shared:planning:PC Resolutions:GPA#11-05/SUP REV#1 TO PD#72 Exhibit A

CITY OF MERCED
Planning Commission

Resolution #2996

WHEREAS, the Merced City Planning Commission at its regular meeting of November 9, 2011, held a public hearing and considered **General Plan Amendment #11-04, Zone Change #413, Establishment of Planned Development (P-D) #73, and Site Utilization Plan Revision #2 To Residential Planned Development (RP-D) #63**, initiated by Golden Valley Engineering, applicant for Bellevue Ranch Paseo, LLC, property owner. This application involves a request to change the General Plan designation from Low-Medium Density Residential (LMD) to Neighborhood Commercial (CN), a Zone Change from Residential Planned Development (RP-D) #63 to Planned Development (P-D) #73, and the establishment of Planned Development (P-D) #73 for the western half of the development previously known as the Paseo subdivision to allow a 39,400 square foot retail center at the northeast corner of Barclay Way and Bellevue Road. The request also involves a Site Utilization Plan Revision to Residential Planned Development (RP-D) #63 to allow a change from single-family detached dwelling units to zero-lot line single-family homes at a density of 8.5 dwelling units per acre, generally located at the northwest corner of G Street and Bellevue Road; also known as Assessor's Parcel Numbers 170-010-001 to -039, 170-021-001 to -034, 170-022-001 to -003, 170-023-001 to -008, 170-024-001 to -012, 170-030-001 to -028, 170-041-001 to -003, 170-042-001 to -007, 170-043-001 to -007, and 170-044-001 to -037; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through M of Staff Report #11-18; and,

WHEREAS, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Negative Declaration regarding Environmental Review #11-22, and approval of General Plan Amendment #11-04, Zone Change #413, Planned Development Establishment #73, and Site Utilization Plan Revision #2 to Residential Planned Development #63, subject to the Conditions set forth in Exhibit A attached hereto.

Upon motion by Commissioner Ward, seconded by Commissioner Acheson, and carried by the following vote:

AYES: Commissioners McCoy, Madayag, Colby, Ward, Amey, Acheson, and Chairperson Cervantes
NOES: None
ABSENT: None
ABSTAIN: None

Adopted this 9th day of November 2011

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:
Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions:GPA#11-04/ZC#413/PD EST#73/SUP REV#2 TO RPD#63 BR Paseo

Conditions of Approval
Planning Commission Resolution #2996
General Plan Amendment #11-04
Zone Change #413
Planned Development Establishment #73
Site Utilization Plan Revision #2 to Residential Planned Development #63

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (elevations) -- Attachments B, C, and D of Staff Report #11-18, except as modified by the conditions.

2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.

3. The Project shall comply with the conditions set forth in Planning Commission Resolution #2885 and City Council Resolution #2006-83 for General Plan Amendment #06-04, City of Merced Ordinance #2227 for Zone Change #395 and the Establishment of Residential Planned Development (RP-D) #63, and Planning Commission Resolution #2896 for Conditional Use Permit #1096, and Tentative Subdivision Map #1294, previously approved for this project.

4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.

5. Approval of the General Plan Amendment, Zone Change, Planned Development Establishment, and Site Utilization Plan Revision are subject to the applicant's entering into a written (developer) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.

6. In accordance with Merced Municipal Code Section 20.42.130, the developer shall submit a development schedule for this project indicating the date construction is anticipated to start and the length of time expected to complete each phase. This schedule shall be submitted within three months of the final approval.

7. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

8. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

9. Community Facilities District (CFD) formation is required for annual operating costs for storm drainage, any landscaping within City of Merced rights-of-way, street trees, and street lights. CFD procedures shall be initiated before final permit approval. Developer/Owner shall

submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.

10. The developer shall provide a land use diagram of the approved site plan showing all designated uses, approximate size of all buildings, parking, etc. This map will become the "Official" map for Planned Development #73. One "hard copy" map (36" x 24") and an electronic copy compatible with the City's Geographic Information System (GIS) shall be provided. An additional map (both "hard copy" and electronic) meeting the above criteria shall be provided to show the changes made to Residential Planned Development (RP-D) #63.

11. The developer shall work with the City's Refuse Department to appropriately place all refuse containers. Approval of these locations shall be included at the Conditional Use Permit stage.

12. The developer shall work with the City's Refuse Department to insure proper pick up of landscape waste (green container waste) is removed. If the previous agreement approved for the residential units is determined to be sufficient, this agreement may remain in force.

13. Appropriate turning radii shall be provided within the parking areas and streets to allow for Fire Department access.

14. All signing shall be in compliance with the North Merced Sign Ordinance and Chapter 20.22.020 (Signs within a C-N Zone).

15. Prior to building permit issuance for any buildings in the commercial portion of the development, the developer shall submit an application for a lot merger to combine the individual lots into lots suitable for the commercial development.

16. Parking lot trees shall be installed to provide a 50 percent shade cover in the parking lot area. However, this may not be achieved by installing less than the minimum number of trees at a ratio of at least one tree for each six parking spaces.

17. Parking lot lighting shall be shielded or oriented in a way that does not allow "spill-over" onto adjacent lots and shall be in compliance with the California Energy Code requirements.

18. The approval of Planned Development #73 includes allowing all permitted uses within a Neighborhood Commercial (C-N) zone and all conditional uses of the C-N zone with the exception of the following:

    - Convenience Market with Gasoline Sales
    - Auto Service Station
    - Drive-in or Drive-through Restaurants
    - Carwash

19. The developer shall install a right-hand turn lane at the intersection of Bellevue Road and G Street. This lane shall be installed per City Standards. The developer shall work with the City Engineer on the design.

20. The developer shall work with Merced County Transit (operators of "The Bus") and the UC Merced Transportation Service (operator of the "CatTracks" transit service) to determine an appropriate location for a transit stop. The developer shall be responsible for the installation of the transit stop in compliance with all applicable standards.

21. It is highly encouraged that the transit shelter be constructed using the same high-quality materials as used within the development.

22. The commercial portion of this project shall comply with the Development Standards established for Planned Development (P-D) #73 and the residential portion shall comply with the Development Standards for Residential Planned Development (RP-D) #63.

23. A minimum 6-foot-high concrete block wall shall be constructed between the parking lot on the north side of Portico Drive and the adjacent residential uses. Dense landscaping shall be provided on both sides of the wall. This landscaping shall be sufficient to prevent graffiti being painted on the wall or the wall shall be treated to allow easy removal of graffiti.

24. Dense landscaping sufficient to shield the residential uses from vehicle headlights shall be installed on the east side and along the north side (east of the driveway entrance on Portico Drive) of the parking lot between Mosaic and Countryside Avenues.

25. Landscaping shall be provided around the commercial buildings in keeping with the approved elevations. Detailed landscape plans shall be submitted at the Conditional Use Permit stage.

26. Conditional Use Permit (CUP) approval shall be required prior to the construction of the commercial buildings. Site Plan Review (or CUP at the discretion of the Director of Development Services) shall be required prior to the construction of the dwelling units to insure compliance with all approved design standards.

27. All buildings shall be constructed in accordance with Exhibits 1, 2, and 3 (Attachments B, C, and D of Staff Report #11-18). All construction shall be of high-quality materials and the color palette shall be approved at the Conditional Use Permit Stage.

28. No fraternity or sorority houses shall be allowed within Planned Development (P-D) #73 or Residential Planned Development (RP-D) #63.

29. Bicycle racks shall be installed for the commercial portion of the development. The number of bicycle racks provided is encouraged to be equal to 10 percent of the number of vehicle spaces, but, at a minimum, shall be equal to 5 percent of the vehicle spaces.

30. Any outdoor seating areas shall comply with all ADA requirements.

31. Any outdoor furniture, umbrellas, etc., shall not contain advertising. Any advertising done in such a manner shall be counted toward the overall sign allowance for each tenant.

32. Sufficient lighting shall be provided for the outdoor gathering areas (i.e. the pagoda and fountain area) to maintain a safe environment. However, the lighting shall be oriented so as not to interfere with traffic.

n:shared:planning:PC Resolutions:GPA#11-04/ZC#413/PD EST#73/SUP REV#2 TO RPD#63 Exhibit A