CITY OF MERCED Planning & Permitting Division

STAFF REPORT: #12-20-Addendum AGENDA ITEM: 4.3

FROM: Kim Espinosa, PLANNING COMMISSION

Planning Manager MEETING DATE: Dec. 5, 2012

PREPARED BY: Julie Nelson, CITY COUNCIL

Associate Planner MEETING DATE: Jan. 17, 2012

SUBJECT:

General Plan Amendment #12-01 and Site Utilization Plan Revision #5 to Planned Development (P-D) #9, initiated by Golden Valley Engineering, applicant for L.J. Steiner, LLC, property owner. This application involves a change in the General Plan land use designation for Building #3 within Fahrens Park Plaza, located at the southeast corner of State Hwy. 59 and Buena Vista Drive, from "Business Park" (BP) to "Neighborhood Commercial" (CN), and a change in the Site Utilization Plan for Planned Development (P-D) #9 for Building #3 to allow those uses permitted in the C-N Zone (but excluding convenience markets, retail businesses of 20,000 square feet or less selling alcoholic beverages for offsite consumption, day care facilities for children, and tattoo parlors). *PUBLIC HEARING*

ACTION: PLANNING COMMISSION:

Recommendation to City Council

- 1) Environmental Review #12-23 (15162 Findings)
- 2) General Plan Amendment #12-01
- 3) Site Utilization Plan Revision #5 to Planned Development #9

CITY COUNCIL:

Approve/Disapprove/Modify

- 1) Environmental Review #12-23 (15162 Findings)
- 2) General Plan Amendment #12-01
- 3) Site Utilization Plan Revision #5 to Planned Development #9

SUMMARY

The Fahrens Park Plaza was constructed in 2007 at the southeast corner of North Highway 59 and Buena Vista Drive (Attachment A). The project was comprised of three buildings totaling 87,735 square feet to be used for a Business Park. Due to the economic downturn, the owner requested to change the General Plan designation for one of the buildings to Neighborhood Commercial to allow retail-type uses. Subsequently, the owner requested to change a second building to Neighborhood Commercial. Due to a shortage of parking, the third building could not be changed at that time.

When the Plaza was constructed, the southeast corner of the development was located in a Floodway as designated by the Federal Emergency Management Agency (FEMA). Therefore, the area was unable to be used in any way, including paving the area for additional parking. Recently, staff advised the property owner of a process in which they could obtain approval to use the area located in the Floodway. The property owner provided the required documentation and the City approved the use of this area for additional parking.

With the additional parking available, the applicant is requesting a General Plan Amendment and Site Utilization Plan Revision to change the designation for Building #3 from Business Park to Neighborhood Commercial (CN). The property owner is in negotiations with the County to locate some of their services in a portion of Building #3 (Attachment B). In order to allow this use, the General Plan Amendment and Site Utilization Plan Revision must be approved.

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend approval to the City Council of Environmental Review #12-23 (CEQA Guidelines Section 15162 Findings), General Plan Amendment #12-01, and Site Utilization Plan Revision #5 to P-D #9 (including the adoption of the amended Resolution at Attachment G), the Planning Commission should recommend approval subject to the following conditions and Mitigation Measures as modified below:

(Note: New language <u>underlined</u>, deleted language <u>strike through</u>.)

Modified Mitigation Measures

M-3: Parking needs to be accommodated for all land uses at Fahrens Park Plaza based on the formulas provided under the Merced Municipal Code Section 20.58. Until such time as parking can be provided (on site or off site), the Remainder of Building #3 (approximately 11,909 square feet) is to remain as General Commercial (C-G) / Light Industrial (I-L) where the use does not exceed the need for more than 4 parking spaces. The applicant will monitor each tenant improvement for required parking based on land use throughout the project's development and provide this information to the City with each tenant improvement. If it is found that there is a deficit in parking, tenant improvements will cease until such time as parking can be provided and approved by the City. [Note: Certain uses will increase the requirement for more parking (i.e., restaurant or food services, medical/non-medical offices, hair salon, or fitness gym, dry cleaners, etc.)].

Modified Conditions of Approval

*1) The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (elevations) -- Attachments 2 and 3 of Staff Report #09-05, except as modified by the conditions; and be constructed/designed as shown on Exhibit 3 (site plan) and Exhibit 4 (elevations) – Attachments B and C of Staff Report #11-13, except as modified and approved on October 19, 2011, and be constructed/designed as shown on Exhibit 5 (site plan) – Attachment B of Staff Report #12-20, except as modified and approved on December 5, 2012.

- 8) Allowed Land Uses are as follows: Building #1, and Building #2, and Building #3 is are allowed those uses permitted in the Neighborhood Commercial (C-N) Zone as defined in Merced Municipal Code (MMC) 20.22 (Attachment D of Staff Report #09-05) and Attachment D of Staff Report #11-13 respectively), but excluding convenience markets, retail businesses of 20,000 square feet or less selling alcoholic beverages for off-site consumption, day care facilities for children, and tattoo parlors. Conditional Use Permit approval would still be needed for any uses defined in MMC 20.22.050. Up to 10,000square-feet of Building #3 is allowed for one procedural medical use (dialysis center, or outpatient chemotherapy center, or equivalent that takes a minimum of three hours or more per patient visit, but specifically excluding medical and dental offices and clinics and/or medical, optical, and dental laboratories that involve patients and/or customers coming to and from the facility). All other uses for Buildings #2 and #3 shall be limited to principally permitted uses in the City's Light Industrial (I-L) and General Commercial (C-G) Zones as defined in MMC 20.34.020 and 20.28.020 respectively (Attachments E and F of Staff Report #09-05).; but shall be limited to a maximum of 4 employees for parking purposes (note: parking is based on 1 space for each 2 employees on the largest shift - estimated at 4 employees).
- Additional Parking Lot Trees are required at one tree for each six parking spaces. As such, with 271 307 355 parking spaces proposed, 45 51 59 parking lot trees are required. If parking spaces are provided as a result of eliminating roll-up doors, additional parking lot trees will be required accordingly.
- Prior to the issuance of a certificate of occupancy for any space within Building #3, the existing modular building located near the northeast corner of the site shall be removed.

PROJECT DESCRIPTION

The applicant is requesting the General Plan Amendment and Site Utilization Plan Revision to allow Neighborhood Commercial uses in Building #3 (Attachment B) located within the Fahrens Park Plaza. This building is 21,245 square feet. Currently, a dialysis center occupies 9,600 square feet of the building. The applicant is working with Merced County to occupy the remainder of the building.

Because general office uses such as that being proposed by Merced County are not allowed uses within a Business Park, the General Plan and Site Utilization Plan designations must be changed to a designation that would allow such a use. A Neighborhood Commercial (CN) designation would allow this use as well as retail uses. However, conditions are included that would prohibit convenience markets, day care facilities, tattoo parlors, and businesses of less than 20,000 square feet would not be allowed to sell alcoholic beverages for off-site consumption (Condition #8).

Surrounding		City Zoning	City General Plan Land	
Land	Existing Use of Land	Designation	Use Designation	
	Single family Desidential	P-D #9		
North	Single-family Residential (across Buena Vista Drive)	(Low Density	Low Density (LD)	
	(across Buena Vista Drive)	Residential)	<u> </u>	
South	Vacant; Floodway	P-D #9	Industrial (IND)	
South	vacant, Proodway	Industrial		
	Fahrens Park	R-1-6	Open Space – Park (OS-PK)	
East	ramens raik	(Low Density		
		Residential)		
West	Industrial (across State Hwy.	Merced	Business Park	
W EST	59)	County	Dusiness Falk	

BACKGROUND

The subject property was annexed to the City in 1970 as part of the larger "Fahrens Creek Annexation" which involved 576 acres bounded by Olive Avenue to the south, Highway 59 to the west, Yosemite Avenue (extended) to the north, and R Street to the east. The General Plan designation for the subject 7.5 acres was "Industrial" and the property was subsequently zoned as Planned Development #9 with a "Light Industrial" designation.

As part of the 1997 adoption of the *Merced Vision 2015 General Plan*, the land use designation for the subject site was changed to "Open Space-Park/Recreation Facility" (OS-PK) to allow for the future expansion of Fahrens Community Park.

On March 6, 2002, the Planning Commission recommended approval of General Plan Amendment #02-01 requesting to change the General Plan designation from "Open Space-Park/Recreation Facility" (OS-PK) to "Low Density Residential" (LD) for the subject site. This was as a result of the City's Recreation and Parks Commission and City staff determining that the site was no longer needed for expansion of the adjacent Fahrens Community Park and recommending approval of the change. Subsequently, the City Council approved General Plan Amendment #02-01 at their meeting of April 1, 2002.

On June 8, 2005, the Planning Commission recommended approval of General Plan Amendment #05-05 and Site Utilization Plan Revision #1 to Planned Development (P-D) #9 involving a change in the *Merced Vision 2015 General Plan* land use designation from Low Density (LD) Residential to Business Park (BP) and a change in the Site Utilization Plan for Planned Development (P-D) #9 from Low Density Residential to Business Park. Subsequently, the City Council approved the applications at their meeting of July 5, 2005.

The Planning Commission, on September 6, 2006, approved Conditional Use Permit (CUP) #1099 for the project, and CUP #1125 for a freestanding monument sign in August 2008. The Planning Commission approved CUP #1121 in May 2008 for a 2,309-square-foot tenant space for a Mexican Restaurant (Mariana's) with beer and wine and limited outdoor seating in Building #2.

Subsequently, a public hearing was held before the Planning Commission on January 21, 2009, for General Plan Amendment #08-04 and Site Utilization Plan Revision #2 to Planned Development (P-D) #9 requesting to modify the "Fahrens Park Plaza" Business Park to allow up to 40% "Limited Retail" while maintaining 60% Light Industrial/General Commercial Uses. After much discussion and one failed motion, the Planning Commission unanimously voted to refer this item back to Planning Staff for further discussion with the applicant and to bring it back to the Planning Commission at an unspecified date (applicant subsequently submitted a revised application).

In 2009, the Planning Commission and City Council approved General Plan Amendment #09-01/Site Utilization Revision #3 to Planned Development #9 for the applicant to modify the General Plan land use designation for Building #1 only from "Business Park" (BP) to "Neighborhood Commercial" (CN), and a change in the Site Utilization Plan for Planned Development (P-D) #9 for Building #1 to allow those uses permitted in the C-N Zone (but excluding convenience markets, retail businesses of 20,000 square feet or less selling alcoholic beverages for off-site consumption, day care facilities for children, and tattoo parlors). The approval also included Buildings #2 and #3, to allow up to approximately 10,000-square-feet of Building #3 for one procedural medical use (dialysis center, or outpatient chemotherapy center, or equivalent), with all other uses for Buildings #2 and #3 to be limited to principally permitted uses in the City's Light Industrial (I-L) and General Commercial (C-G) Zones as defined in MMC 20.34.020 and 20.28.020 respectively. Lastly, it allowed for a 15% reduction in parking for Building #1 and a 50% reduction in parking for the proposed dialysis center in Building #3.

The applicants requested to change the land use designation from Business Park (BP) to Neighborhood Commercial (C-N) for Buildings #2 and #3 in 2011. The Planning Commission approved the change for Building #2 only along with a 15% reduction in parking for Buildings #2 and #3 and to allow the remainder of Building #3 (approximately 11,909 square feet) to be used solely for the property owner's personal storage until parking could be accommodated. Additionally, the applicant received approval to allow "off-set parking" for Building #1 with Building #2 (due to Brenda's Athletics requiring an additional 10 parking spaces) through a joint use arrangement given the majority of the existing and proposed tenants in Building #2 would be closed after 5:00 p.m.

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

A) The applicant is requesting a change in the General Plan land use designation for Building #3 from "Business Park" (BP) to "Neighborhood Commercial" (CN), and a change in the Site Utilization Plan for Planned Development (P-D) #9 for Building #3 to allow those uses permitted in the C-N Zone (but excluding convenience markets, retail businesses of 20,000 square feet or less selling alcoholic beverages for off-site consumption, day care facilities for children, and tattoo parlors). If approved, the existing dialysis center and the proposed offices for Merced County would comply with the General Plan designation Neighborhood Commercial (CN). of

APPLICABLE GENERAL PLAN GOALS AND POLICIES:

Land Use Goal Area L-2: Economic & Business Development

GOALS

- Increased Employment Opportunities for the Citizens of Merced
- A Diverse and Balanced Merced Economy
- Preservation of the City's Economic Base

POLICIES AND IMPLEMENTING ACTIONS

- L.1.a: Promote balanced development which provides jobs, services and housing.
- L-2.1 Encourage further development of appropriate commercial and industrial uses throughout the City.
- **2.1.a** Designate adequate amounts of commercial and industrial land to serve the City's employment needs through 2015 and beyond.
- **2.1.b** Maintain an inventory of vacant commercial and industrial land and make this inventory available to the public and the development community.
- **2.1.d** Develop incentives as appropriate to encourage new commercial and industrial development.
- **2.1.f** Promote industrial development that offers full-time, non-seasonal employment.
- **L.2.3:** Promote the retention and expansion of existing industrial and commercial businesses.
- **L.2.5:** Maintain attractive industrial areas.
- L-2.7 Locate and design new commercial development to provide good access from adjacent neighborhoods and reduce congestion on major streets.
- **2.7.a** New retail commercial designations shall be located along arterials at their intersections with collector streets (at 1/4 mile or 1/2 mile locations) in new growth areas. These commercial areas should not be located at the intersections of two arterials.
- **2.7.b** Commercial centers shall be designed to provide direct vehicular and pedestrian access from surrounding neighborhoods. In no case shall trips which could be internal (from adjacent neighborhood to center) be forced onto an arterial.
- **2.7.c** The number of commercial driveways on major streets shall be minimized and located in areas where they will cause minimal conflicts with traffic flow on major streets and through intersections.

Land Use Proposal

B) The applicants feel that their current request for a Neighborhood Commercial (C-N) land use designation for Building #3 seems to be a natural end to the site's evolution through current market conditions. Because the property owner has been able to meet

the requirements for placing parking within a Floodway, they are able to provide the additional parking needed to accommodate Neighborhood Commercial uses within Building #3. The proposal to allow an office use in the remainder of Building #3 would be compatible with a Neighborhood Commercial use.

Traffic/Circulation

C) The project site is located on the southeast corner of Buena Vista Drive (Collector) and State Highway 59 (Major Arterial). Fahrens Park Plaza has no direct access to State Route 59 but has two driveways on Buena Vista Drive in the area east of State Route 59 as noted on the Site Plan (Attachment B). The applicant is requesting the project to allow principally and conditionally permitted Commercial Neighborhood (C-N) uses in Building #3 of Fahrens Park Plaza. [Note: Building #1 was approved for this land use designation in 2009 and Building #2 was approved for this use in 2011.]

In 2011, the applicant provided a traffic study and air quality/greenhouse gas study to evaluate the requested change to Neighborhood Commercial for Building #2. Based on this study, the additional traffic generated by changing Building #3 would not add a significant amount of traffic. Because the existing dialysis center was analyzed in the traffic study under existing conditions, staff is only analyzing the change to Neighborhood Commercial using the factor for General Office uses for the remaining 11,520 square feet of Building #3.

According to the *Institute of Traffic Engineers Trip Generation* (8th Edition) for "Peak Hour Trips (PHT) for adjacent street traffic, p.m. peak hour," the PHT's for the General Offices, are 17 trips. Average Daily Trips (ADT's) for General Offices using the weekday trip generation factor of 11.01 trips per 1,000 square feet are 127. Because this increase represents a relatively small amount of additional traffic and will not decrease the Level of Service (LOS) for the adjacent roads, no additional mitigation is required to accommodate the requested change.

Parking

D) Based on the previous approvals, the site contained enough parking to accommodate the existing uses on the site, but did not have enough parking to meet the parking requirements if Building #3 was changed to Neighborhood Commercial. Based on the most recent site plan and parking analysis (Attachment C), and considering the previous reductions given for parking requirements, sufficient parking is being provided to meet the requirements for a general office use in the remaining portion of Building #3. However, Condition #10 of Planning Commission Resolution #2949 states "if it is found that there is inadequate parking for the uses proposed, future tenants may be denied." In addition, Mitigation Measure #2 requires the applicant to monitor each tenant improvement for required parking based on land use through the project's development, and if it is found that there is a deficit in parking, tenant improvements will cease until such time as parking can be provided and approved by the City.

With the additional parking proposed at the southeast corner of the site, there will be a total of 355 parking spaces. Based on the previous reductions given for unused floor area, the 50% reduction given for the dialysis center, and the allowance to share parking between uses that are open between 8:00 a.m. and 5:00 p.m. and the businesses with longer business hours, there is sufficient parking to accommodate the requested change. Please refer to the parking analysis at Attachment C.

Building Design

E) There are no exterior changes being proposed to any of the buildings at this time.

Site Design

F) The subject site is an approximate 8.16-acre parcel located on the southeast corner of State Hwy. 59 and Buena Vista Drive. All infrastructure and utilities have been installed. The only change is to provide additional parking in the southeast corner of the site. There will be an additional 25 parking spaces added in this area.

Currently there is a modular trailer unit that is located near the northeast corner of the site. Staff has been working with the property owner to have this building removed. However, it still remains. Condition #17 will require this building be removed prior to the issuance of a certificate of occupancy for the remaining space in Building #3.

Neighborhood Impact/Interface

G) All the buildings on the site have been constructed. The only other construction that will be done is to construct the additional parking and interior tenant improvements. Therefore, the impacts caused by construction will be minimal.

There could be some impacts on the adjacent residential uses due to a slight increase in traffic. Because the proposal is for a general office use, the increase in traffic will most likely occur in the mornings and evenings as employees come and go. It is not anticipated that the office use will generate a large volume of traffic throughout the day.

Landscaping

H) Most of the landscaping for the site has been installed and is good condition. The property owner will be required to install additional parking lot trees to serve the new parking area (refer to modified Condition #14).

Previous Approvals

I) The applicant has received several approvals for this project modifying the specified uses. All previous approvals are still applicable unless modified by the approval for this request. The existing conditions of approval may be found in Planning Commission Resolution #2949 at Attachment D and the proposed modifications to that Resolution with this proposal can be found at Attachment G.

Floodway Issues

J) The southeast corner of this parcel is located with a floodway as designated by the Federal Emergency Management Agency (FEMA). The Merced Municipal Code Section 17.48.190 prohibits construction in a floodway unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge. The property owner contracted with James H. Nelson of Storm Water Consulting, Inc. to provide this certification. A copy of the letter from Mr. Nelson and supporting documentation including the required "No-Rise Certification" is found at Attachment E.

Environmental Clearance

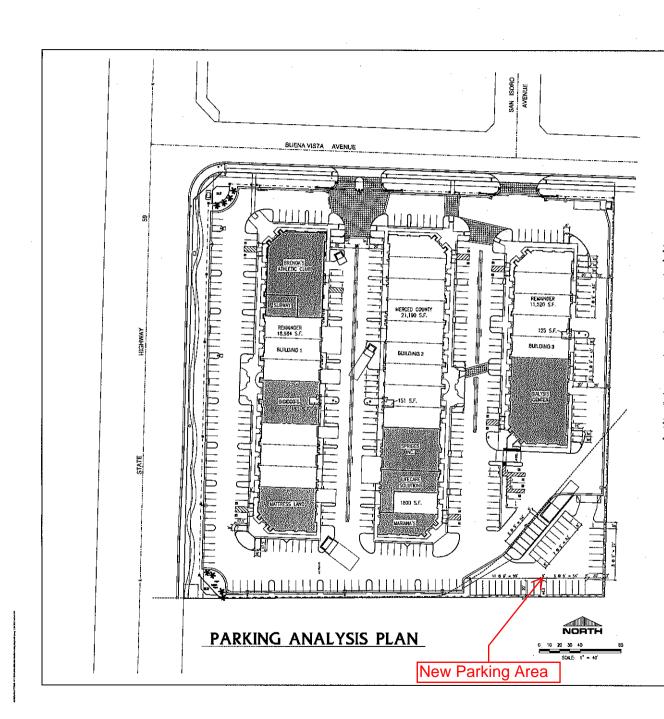
K) The Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and concluded that Environmental Review #12-23 is a second tier environmental document, based upon the City's determination that the proposed development remains consistent with the current general plan and provisions of CEQA Guidelines, Section 15162 (Mitigated Negative Declaration #11-19 adopted by the Merced City Council on December 5, 2011). A copy of the Section 15162 Findings can be found at Attachment F.

Attachments:

- A) Location Map
- B) Site Plan
- C) Parking Analysis
- D) Planning Commission Resolution #2949
- E) Flood Information
- F) CEQA Guidelines Section 15162 Findings
- G) Draft Planning Commission Resolution (Modified Resolution #2949)

Ref: $N: shared/planning/staffreport/SR\#12-20_Addendum$





ATTACHMENT B

Parking Analysis GPA #12-01 SUP Revision #5 to P-D #9 9-20-12

Building #1	Parking Req. Ratio	S.F.	# of seats	Req Pkg	15%reduction in s.f.	Total Req Spaces after Reduction
Brenda's	1:200 s.f.	8060		40	6851	34
Subway	1: 2.5 seats	1400	20	8	n/a	8
Dicicco's	1: 2.5 seats	4650	148	59	n/a	59
Mattress	1:300 s.f.	4657		16	3958	13
vacant	1:300 s.f.	14327		48	12178	41
Total		33094		171		155
Biulding #2						
Mariana	1:2.5. seats	2309	100	40	n/a	40
Life care	1:300 s.f.	3000		10	1332*	4
Spriggs	1:300 s.f.	4795		16	2612*	9
Merced County	1:250 s.f.	21190		85	18012	72
Vacant	1:300 s.f.	1800		7	1530	5
Total		33094		158		130
					*reduction given for	
					warehouse area	
Building #3						
Dialysis	1:200 s.f.	9600		48	3800*	24
Vacant	1:250 s.f.	11520		46	9792	39
Total		21120		94		63
					*50% reduction granted by Planning Commission	
Total Pkg Req.				423		349
Total Pkg Provided				355		355
Difference				-68		6

See Condition #12 from City Council Resolution #2011-75 on next page.

Parking Analysis
GPA #12-01 SUP Revision #5 to P-D #9
9-20-12

Excerpt from City Council Resolution #2011-75

A 15% reduction for parking space calculation for Building #1, Building #2, and the remainder of Building #3 (approximately 11,909 square feet), (excluding food services) per MMC 20.58.410, and a 50% reduction in parking for the proposed dialysis center in Building #3, and a joint use of parking facilities between businesses open from 8:00 a.m. = 5:00 p.m. (i.e., proposed offices in Bldg. #2) and uses with businesses having extended hours (Brenda Athletics, DiCicco's, etc.) are approved as proposed, contingent on City Council approval of the General Plan Amendment/Site Utilization Plan Revision.

CITY OF MERCED Planning Commission

Resolution #2949

Amended by PC on 10/19/2011 See page 3

WHEREAS, the Merced City Planning Commission at its regular meeting of April 8, 2009, held a public hearing and considered General Plan Amendment #09-01, and Site Utilization Plan Revision #3 to Planned **Development** (P-D) #9, initiated by Golden Valley Engineering & Surveying, applicant for L. J. Steiner, LLC, property owner. application involves a change in the Merced Vision 2015 General Plan land use designation for Building #1 only from "Business Park" (BP) to "Neighborhood Commercial" (CN), and a change in the Site Utilization Plan for Planned Development (P-D) #9 for Building #1 to allow those uses permitted in the C-N Zone (but excluding convenience markets, retail businesses of 20,000 square feet or less selling alcoholic beverages for offsite consumption, day care facilities for children, and tattoo parlors), and a Site Utilization Plan Revision for Buildings #2 and #3 to allow up to 10,000square-feet of Building #3 for one procedural medical use (dialysis center, or outpatient chemotherapy center, or equivalent that takes a minimum of three hours or more per patient visit, but specifically excluding medical and dental offices and clinics and/or medical and dental laboratories), with all other uses for Buildings #2 and #3 being principally-permitted uses in the City's Light Industrial/General Commercial Zones; and a request for a 15% reduction for parking space calculation for Building #1 (excluding food services), and a 50% reduction in parking for the proposed dialysis center in Building #3. The property is 7.93 acres and is generally located at the southeast corner of State Hwy. 59 and Buena Vista Drive within Planned Development (P-D) #9; also known as Assessor's Parcel No. 058-020-058; and.

WHEREAS, the Merced City Planning Commission concurs with Findings A through O of Staff Report #09-05; 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 Mitigated Negative Declaration regarding

ATTACHMENT D

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April 8, 2009/October 19, 2011

Environmental Review #09-03, and approval of General Plan Amendment #09-01 and Site Utilization Plan Revision #3 to Planned Development (P-D) #9, subject to the Conditions and Mitigation Measures set forth in Exhibit A attached hereto.

Upon motion by Commissioner <u>Cervantes</u>, seconded by Commissioner <u>Williams</u>, and carried by the following vote:

AYES: Commissioner(s) Shankland, Williams, Cervantes, and McCoy

NOES: Commissioner(s)Ward, Amey, and Chairman Acheson

ABSENT: Commissioner(s) None. ABSTAIN: Commissioner(s) None.

Adopted this 8th day of April 2009

Chairman, Planning Commission of the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions:GPA#09-01 & SUP REV#3 TO PD#9 Steiner

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April 8, 2009/October 19, 2011

October 19, 2011: At their regularly scheduled meeting of October 19, 2011, the Merced City Planning Commission considered General Plan Amendment #11-03 and Site Utilization Plan Revision #4 to Planned Development (P-D) #9.

WHEREAS, the Merced City Planning Commission concurs with Findings A through O of Staff Report #11-13; 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 Adoption of Environmental Review #11-19 (Mitigated Negative Declaration); and Approval of General Plan Amendment #11-03 and Site Utilization of Plan Revision #4 to Planned Development (P-D) #9, and Modification of Conditions #1, #3, #8, #11, #12, and #14 (Resolution #2949 for General Plan Amendment #09-01 and Site Utilization Plan Revision #3 to Planned Development [P-D] #9); and the addition of Mitigation Measures M-3 and M-4 as shown on Exhibit A.

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

AYES: Commissioners McCoy, Colby, Ward, Amey, and Chairperson

Cervantes

NOES: None

ABSENT: Commissioners Madayag and Acheson

ABSTAIN: None

Mitigation Measures and Conditions of Approval Planning Commission Resolution #2949 General Plan Amendment #09-01 and Site Utilization Plan Revision #3 to Planned Development #9

(New language <u>double-underlined</u>, deleted language strike through.)

Mitigation Measures

- M-1: The requested changes in allowable land uses on the Property may trigger Owner's payment of additional fees and/or assessments including, but not limited to, the City's Public Facilities Impact Fee and the Regional Transportation Impact Fee, based upon a change in use. The additional fees and/or assessments shall be calculated based upon the pro-rata difference in fees and/or assessments originally paid by Owner in 2006 for the light industrial use as compared to the then current applicable fees and/or assessments for the use(s) that are being proposed for each separate tenant unit or units on the Property. Whether there is a change of use in a specific tenant unit or units shall be determined by the City based upon (i) the specific use(s) proposed for the tenant unit(s); (ii) the specific building, plumbing, mechanical, or electrical permits, conditional use permits, or certificates of occupancy obtained for the tenant unit(s); (iii) the specific tenant improvements proposed for the tenant unit(s); and/or (iv) the business license obtained by the tenant for the tenant unit(s).
- M-2: The applicant will monitor each tenant improvement for required parking based on land use throughout the project's development, and if it is found that there is a deficit in parking, tenant improvements will cease until such time as parking can be provided and approved by the City.
- M-3: Parking needs to be accommodated for all land uses at Fahrens Park
 Plaza based on the formulas provided under the Merced Municipal
 Code Section 20.58. Until such time as parking can be provided (onsite or off-site), the Remainder of Building #3 (approximately 11,909
 square feet) is to remain as General Commercial (C-G) / Light
 Industrial (I-L) where the use does not exceed the need for more than
 4 parking spaces. The applicant will monitor each tenant
 improvement for required parking based on land use throughout the
 project's development and provide this information to the City with

EXHIBIT A of Planning Commission Resolution #2949 Page 1 of 6 each tenant improvement. If it is found that there is a deficit in parking, tenant improvements will cease until such time as parking can be provided and approved by the City. [Note: Certain uses will increase the requirement for more parking (i.e., restaurant or food services, medical/non-medical offices, hair salon, or fitness gym, dry cleaners, etc.)].

M-4 (MM AQ-1) The project shall implement the following measures, to the satisfaction of the City of Merced:

- Any new lighting installed or replaced as part of the project shall be energy efficient.
- <u>Any bathrooms or bathroom features installed or replaced as</u> part of the project shall utilize water efficient toilets and sinks.
- The project applicant shall ensure that the project is provided with recycling services. The applicant shall ensure that there is sufficient storage space onsite for recycling.

Conditions of Approval

- 1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (elevations) -- Attachments 2 and 3 of Staff Report #09-05, except as modified by the conditions; and be constructed/designed as shown on Exhibit 3 (site plan) and Exhibit 4 (elevations) Attachments B and C of Staff Report #11-13, except as modified and approved on October 19, 2011.
- 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 applicable conditions (unless modified by this Resolution) set forth in Planning Commission Resolution #2819 for General Plan Amendment #05-05 and Site Utilization Plan Revision #1 to Planned Development (P-D) #9; Planning Commission Resolution #2897 for Conditional Use Permit Application #1099; and Resolution #2942 for Conditional Use Permit #1125 (for signage): and Planning Commission Resolution #2949 for General Plan Amendment #09-01 and Site Utilization Plan Revision #3 to Planned Development (P-D) #9 (Attachment H of Staff Report #11-13) previously approved for this project.

EXHIBIT A of Planning Commission Resolution #2949 Page 2 of 6

- 4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
- Approval of the General Plan Amendment/Site Utilization Plan 5. *Revision* is subject to the applicants entering into a written (developer) agreement that they agree to all the conditions and shall pay all City, 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 (Attachment K of Staff Report #09-05).
- 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 Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), 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 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. Allowed Land Uses are as follows: Building #1 and Building #2 is are allowed those uses permitted in the Neighborhood Commercial (C-N) Zone as defined in Merced Municipal Code (MMC) 20.22 (Attachment D of Staff Report #09-05) and Attachment D of Staff Report #11-13 respectively, but excluding convenience markets, retail businesses of 20,000 square feet or less selling alcoholic beverages for off-site consumption, day care facilities for children, and tattoo parlors. Conditional Use Permit approval would still be needed for any uses defined in MMC 20.22.050. Up to 10,000-square-feet of Building #3 is allowed for one procedural medical use (dialysis center, or outpatient chemotherapy center, or equivalent that takes a minimum of three hours or more per patient visit, but specifically excluding medical and dental offices and clinics and/or medical, optical, and dental laboratories that involve patients and/or customers coming to and from the facility). All other uses for Buildings #2 and #3 shall be limited to principally permitted uses in the City's Light Industrial (I-L) and General Commercial (C-G) Zones as defined in MMC 20.34.020 and 20.28.020 respectively (Attachments E and F of Staff Report #09-05); but shall be limited to a maximum of 4 employees for parking purposes (note: parking is based on 1 space for each 2 employees on the largest shift – estimated at 4 employees).
- 9. If, in the future the owner/applicant requests land uses other than as specified in Condition #8 above (i.e., exceeding 40.52% retail, 10,000-square-feet of procedural medical use, etc.), further California Environmental Quality Act (CEQA) review is required including, but not limited to, traffic and air quality studies with possible improvements to Buena Vista Drive and State Hwy. 59.

EXHIBIT A of Planning Commission Resolution #2949 Page 4 of 6

- 10. The developer shall be responsible for providing a parking analysis that shows that adequate parking exists on-site for all users as part of subsequent building permit or business license applications. This could include the addition of parking spaces being provided where previous roll-up doors were located. If it is found that there is inadequate parking for the uses proposed, future tenants may be denied.
- 11. The applicant shall comply with the current 2007 California Codes including, but not limited to, exiting, access, fire sprinklers, parking, modification of exterior elevations where roll-up doors are affected, kitchen use (where applicable), etc. A landscape/sprinkler plan will also be required for the area around the tenant spaces as they are submitted for building permits.
- 12. A 15% reduction for parking space calculation for Building #1, Building #2, and the remainder of Building #3 (approximately 11,909 square feet), (excluding food services) per MMC 20.58.410, and a 50% reduction in parking for the proposed dialysis center in Building #3, and a joint use of parking facilities between businesses open from 8:00 a.m. 5:00 p.m. (i.e., proposed offices in Bldg. #2) and uses with businesses having extended hours (Brenda Athletics, DiCicco's, etc.) are approved as proposed, contingent on City Council approval of the General Plan Amendment/Site Utilization Plan Revision.
- 13. Access and circulation shall not be blocked by idling or parked vehicles waiting to drop off or pick up patients in connection with the medical procedural use in Building #3.
- 14. Additional Parking Lot Trees are required at one tree for each six parking spaces. As such, with 271 307 parking spaces proposed, 45 51 parking lot trees are required. If parking spaces are provided as a result of eliminating roll-up doors, additional parking lot trees will be required accordingly.
- 15. Signage shall be limited to that signage approved under Conditional Use Permit #1125 (Planning Commission Resolution #2942) and shall comply with all applicable provisions of the North Merced Sign Ordinance.

16.	All landscaping along the west side of Building #1 shall be installed within 6 months of this approval whether or not all tenant spaces have been filled.
n:shared:	planning:PC Resolutions:GPA#09-01 & SUP REV#3 to PD #9 Exhibit A



Phone: (916) 801-3962 Fax: (916) 933-4375

July 10, 2012

DRAFT

Mr. David Gonzalves
Director of Development Services
City of Merced
678 West 18th Street
Merced, CA 95340

Re: Fahrens Park Plaza – Floodway Analysis for Proposed Overflow Parking

SWC File No. 2012-18B

Dear David:

Storm Water Consulting, Inc. (SWC) has completed its technical analysis of the floodway area between Highway 59 and Buena Vista Drive and is submitting this letter/report to the City for consideration in support of allowing a paved overflow parking area to be located at the southeast corner Fahrens Park Plaza. Fahrens Park Plaza is an existing development project located at the southeast corner of Highway 59 and Buena Vista Drive. The proposed overflow parking area would be placed in the floodway as represented on official Flood Insurance Rate Maps (FIRMs) published by the Federal Emergency Management Agency (FEMA). The City's Flood Damage Prevention Ordinance and FEMA regulations allow the City to permit this use in a floodway as long as it can be demonstrated that the use will not create any rise in base flood (100-year flood) or floodway elevations. The technical analysis that we have performed satisfies this requirement and will be described in further detail in this letter/report.

Background

Several years ago, SWC was retained by O'Dell Engineering to prepare and submit a request for a Conditional Letter of Map Revision (CLOMR) for Fahrens Creek extending upstream from Highway 59 to a location about ½ mile north of Yosemite Avenue. The purpose for the CLOMR request was to analyze the impacts of several existing and proposed physical improvements and development activities on the floodplain and floodway conditions along Fahrens Creek. The goal was to obtain an official CLOMR from FEMA indicating that if the physical improvements were completed as proposed, FEMA would be willing to revise their FIRMs to reflect revised floodplain and floodway conditions as presented in the CLOMR request, subject to the receipt of as-built information and satisfaction of other technical and administrative requirements. Improvements analyzed included the following modifications to this reach of Fahrens Creek:

 Proposed construction of new bridge crossings of the creek at Buena Vista Drive and at R Street.

ATTACHMENT E

Mr. David Gonzalves, Director of Development Services, City of Merced Fahrens Park Plaza – Floodway Analysis for Proposed Overflow Parking (DRAFT) July 10, 2012 Page 2

- Existing construction of a bridge/culvert crossing of the creek at Yosemote Avenue.
- City construction of a system of bike paths and bridge crossings of the creek.
- Removal of an abandoned elevated railroad grade that was impeding flow north of Yosemite Avenue.
- Removal of an abandoned railroad grade and wood trestle bridge that was impeding flow east of Highway 59.
- Lowering the grade of areas adjacent to the creek to improve conveyance between the Yosemite Avenue and R Street bridges.
- Elevating of certain properties with fill to remove them from the floodplain, including all of the Fahrens Park Plaza property except the southeast corner which remains in the FEMA floodway.

The CLOMR request was signed by the City Engineer (as required by FEMA) and an official CLOMR was issued by FEMA on April 22, 2006 under Case No. 05-09-A384R.

During the following few years, all of the proposed physical improvements presented in the CLOMR request were completed by various parties. Upon completion of the physical improvements, SWC was retained to assemble and file a request for the acquisition of a Letter of Map Revision (LOMR) to FEMA for the purpose of officially revising the FEMA FIRMs to reflect the new conditions. The LOMR request was signed by the City Engineer (as required by FEMA) and an official LOMR was issued by FEMA on June 30, 2010 under Case No. 10-09-0548P. The LOMR had an effective date of November 15, 2010 to allow a mandated 90-day appeals period to pass prior to official adoption of the LOMR. In a letter to the City dated January 3, 2011, FEMA indicated that no valid requests for changes to the LOMR were received during the appeals period, confirmed that the LOMR became effective as of November 15, 2010 and directed the City to utilize the revised floodplain and floodway mapping information presented in the LOMR.

Fahrens Park Plaza – FEMA FIRM Status

After the CLOMR was issued by FEMA, portions of the Fahrens Park Plaza property that were previously in the floodway were elevated with fill and are now outside of the floodplain on maps included with the LOMR. The southeast corner of Fahrens Park Plaza was retained at grade and remains in the floodplain and floodway as represented in the CLOMR request and the official LOMR. The intent during the processing of the map revision requests through FEMA was to create a smooth and hydraulically efficient floodway alignment through this area, and filling of the southeast corner of Fahrens Park Plaza would have created a discontinuity in the floodway alignment.

Being located in the FEMA floodway, the southeast corner of Fahrens Park Plaza is subject to more rigorous restrictions with regard to allowable uses per the City's Flood Damage Prevention Ordinance and FEMA regulations. Both sources state that encroachments (including fill, new construction, substantial improvement, and other new

Mr. David Gonzalves, Director of Development Services, City of Merced Fahrens Park Plaza – Floodway Analysis for Proposed Overflow Parking (DRAFT) July 10, 2012 Page 3

development) are prohibited unless certification by a registered professional engineer is provided demonstrating that encroachments shall not result in <u>any</u> increase in flood levels during the occurrence of the base flood discharge. FEMA also recommends that a "norise" certification be provided by a registered professional engineer and retained on file at the City or County permitting an encroachment within a floodway.

Technical Analysis and "No-Rise" Certification

The LOMR assumed that the southeast corner of Fahrens Park Plaza has the same characteristics as adjacent areas within the floodway that have an irregular topography and coverage by weeds and grasses. These areas are assigned a roughness coefficient of n=0.050 in the hydraulic computer models that support the information on the FIRMs to reflect this ground condition. Replacing the weeds and grasses with a smooth paved surface will implicitly improve the floodway flow conveyance across the southeast corner of Fahrens Park Plaza when compared against the condition assumed in the FEMA hydraulic model. The area also currently has wrought iron fencing (with lots of space between vertical bars) and limited landscape buffering along its perimeter. Typically, paving would be assigned a roughness coefficient in the range of n=0.013 to n=0.016 which would represent a smooth surface for flow conveyance.

SWC performed a hydraulic analysis to model the proposed parking area and its impact on floodplain and floodway elevations. The model used a roughness coefficient of n=0.020 for the proposed use to account for the existing perimeter fencing and landscaping reducing the flow conveyance capability through the area to a minor degree. The effective FEMA hydraulic model (HEC-2 model) was utilized and modified at Cross-Section 8400 that passes through the southeast corner of Fahrens Park Plaza by changing the effective roughness coefficient of n=0.050 to n=0.020 in the HEC-2 model within Fahrens Park Plaza. The water surface elevations for the base flood and the floodway resulting from the overflow parking proposed land use were then compared against the water surface elevations from the effective FEMA hydraulic model. The proposed land use did not cause any rise in base flood or floodway elevations and produced a negligible lowering of the base flood elevations (0.01 feet) in the local area upstream of Fahrens Park Plaza. Hence, the proposed overflow parking use will not violate the City's Flood Damage Prevention Ordinance or FEMA regulations. However, the following assumptions were included in this conclusion and it is our recommendation that they be stipulated by the City as a part of allowing the proposed use:

- The overflow parking area will consist of paving and striping at existing grade.
 Landscape planters, curbs or other obstructions will not be allowed within the new parking area.
- The overflow parking will be used for vehicular parking only, for the daily and nightly use of tenants and customers. There will be no vehicular storage or storage of any other items that would obstruct flow allowed in this area.

Mr. David Gonzalves, Director of Development Services, City of Merced Fahrens Park Plaza – Floodway Analysis for Proposed Overflow Parking (DRAFT) July 10, 2012 Page 4

The City may also wish to consider adding a requirement for appropriate signage that would indicate that the overflow parking area is subject to flooding (though this would be a rare event and involve low depths and low flow velocities).

Supporting Documents

This letter/report includes the following documents for reference and to support the conclusions and recommendations provided:

- Site plan showing the proposed overflow parking area.
- "No-Rise" Certification for the proposed use within the floodway.
- Reduced copy of the topographic work map exhibit prepared with the prior LOMR request, showing the location and numbering of cross-sections used in hydraulic modeling.
- Effective FEMA HEC-2 hydraulic model of the base flood and floodway between Highway 59 and Buena Vista Drive.
- HEC-2 hydraulic model of the base flood and floodway between Highway 59 and Buena Vista Drive incorporating the proposed overflow parking area.
- Copy of LOMR issued by FEMA on June 30, 2010 under Case No. 10-09-0548P.

SWC hopes that this submittal provides you with sufficient information to allow the City to make a decision regarding the acceptability of allowing the placement of the proposed overflow parking area in the floodway. If you have any questions, please don't hesitate to call me at (916) 801-3962 or send me a message at inelson@stormwaterconsulting.com.

Thank you.

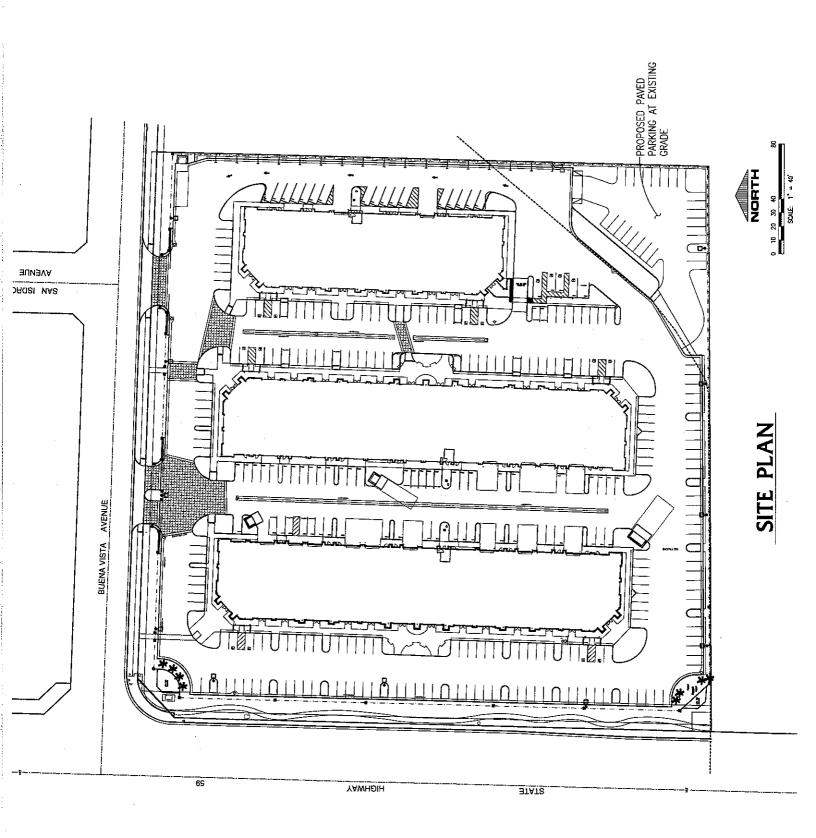
Sincerely,

STORM WATER CONSULTING, INC.

James H. Nelson, P.E. Principal

Cc: Kim Espinosa, Planning Manager Kenneth Rozell, Deputy City Attorney Julie Nelson, Planner Jim Xu, Golden Valley Engineering

Attachments



"NO-RISE" CERTIFICATION

Fahrens Park Plaza – Overflow Parking Area City of Merced, California

This is to certify that I am a duly qualified registered professional engineer licensed to practice in the State of California.

It is further to certify that the attached technical data supports the fact that the overflow parking area proposed within the designated floodway at the southeast corner of Fahrens Park Plaza will not impact the 100-year flood elevations, floodway elevations or floodway widths on Fahrens Creek/Black Rascal Creek at published cross-sections in the Flood Insurance Study for Merced County, California, and Incorporated Areas dated December 2, 2008 and will not impact the 100-year flood elevations, floodway elevations, or floodway widths at unpublished cross-sections in the vicinity of the proposed development.

Attached are the following documents that support my findings:

- Letter/report dated July 10, 2012.
- Site plan showing the proposed overflow parking area.
- Reduced copy of the topographic work map exhibit prepared with the prior LOMR request, showing the location and numbering of cross-sections used in hydraulic modeling.
- Effective FEMA HEC-2 hydraulic model of the base flood and floodway between Highway 59 and Buena Vista Drive.
- HEC-2 hydraulic model of the base flood and floodway between Highway 59 and Buena
 Vista Drive incorporating the proposed overflow parking area.
- Copy of LOMR issued by FEMA on June 30, 2010 under Case No. 10-09-0548P.

Date: July 10, 2012

By: Storm Water Consulting, Inc. James H. Nelson, P.E. Principal

Engineer's Seal to be Provided with Final Version

The California Environmental Quality Act (CEQA) Section 15162 Findings:

Application: General Plan Amendment #12-01 & Site Utilization Plan Revision #5 to Planned Development (P-D) #9

Assessor Parcel Number or Location: Assessor's Parcel Number (APN): 058-020-058 (Building #3).

Previous Initial Study/EIR Reference: This site was previously reviewed through Initial Studies #09-03 and #11-19, resulting in Mitigated Negative Declarations. Because the proposed changes to the project do not modify the buildings, and are proposing to change the use of Building #3 to the same uses allowed in Buildings #1 and #2, the impacts of the proposed change have already been substantially reviewed through the prior environmental reviews. The proposed change to Building #3 would allow an additional 21,245 square feet of floor area to be changed from Business Park to Neighborhood Commercial. Traffic impacts and air quality impacts caused by a change in use for the other buildings on the site have already been reviewed. The proposed change will not result in significant impacts that have not already been addressed and mitigation measures put into place. Therefore, the proposed change in use for Building #3 is considered minor. The project remains in conformance with the City's Merced Vision 2030 General Plan as long as the General Plan Amendment is approved.

Original Project Date: Mitigated Negative Declaration #09-05 adopted by the Merced City Council on May 18, 2009, and Mitigated Negative Declaration #11-19 adopted on December 5, 2011, by the Merced City Council.

Section A - Previous Studies

1. Substantial changes are proposed in the project that will require major revisions of the previous project EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects?

_Yes	No
	X

Comment/Finding: The proposed change would change the uses allowed in Building #3 from Light Industrial uses to Neighborhood Commercial uses. Neighborhood Commercial uses include retail establishments, restaurants, and service-type businesses. Although the change in use may result in more traffic generation to the site, based on the previous traffic study done for the site and the projected traffic generated by the proposed change, the streets serving this project will maintain an acceptable level of service (LOS D or better).

2. Substantial changes have occurred with respect to the circumstances under which the project is undertaken that will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects?

Yes	No
	X

Comment/Finding: There have been no changes in the circumstances under which the project is undertaken that would require major revisions in the previous Negative Declaration. There are no new significant environmental effects or substantial increases in the severity of previously identified environmental effects, and the area under consideration remains the same area previously evaluated. This proposed change will not generate any new construction of buildings on the site, but will add some parking to previously unpaved areas.

3. New information of substantial importance that was not known and could not have been know with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, has been revealed? (If "Yes" is checked, go to Section "B" below)

Yes

Comment/Finding: There is no new information of substantial importance that was not known and could not have been known with the reasonable diligence at the time the previous Mitigated Negative Declaration was adopted.

Section B - New Information

A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration.

Yes No N/A

B) Significant effects previously examined will be substantially more severe than shown in the previous EIR.

Yes No N/A

C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative.

Yes No

D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

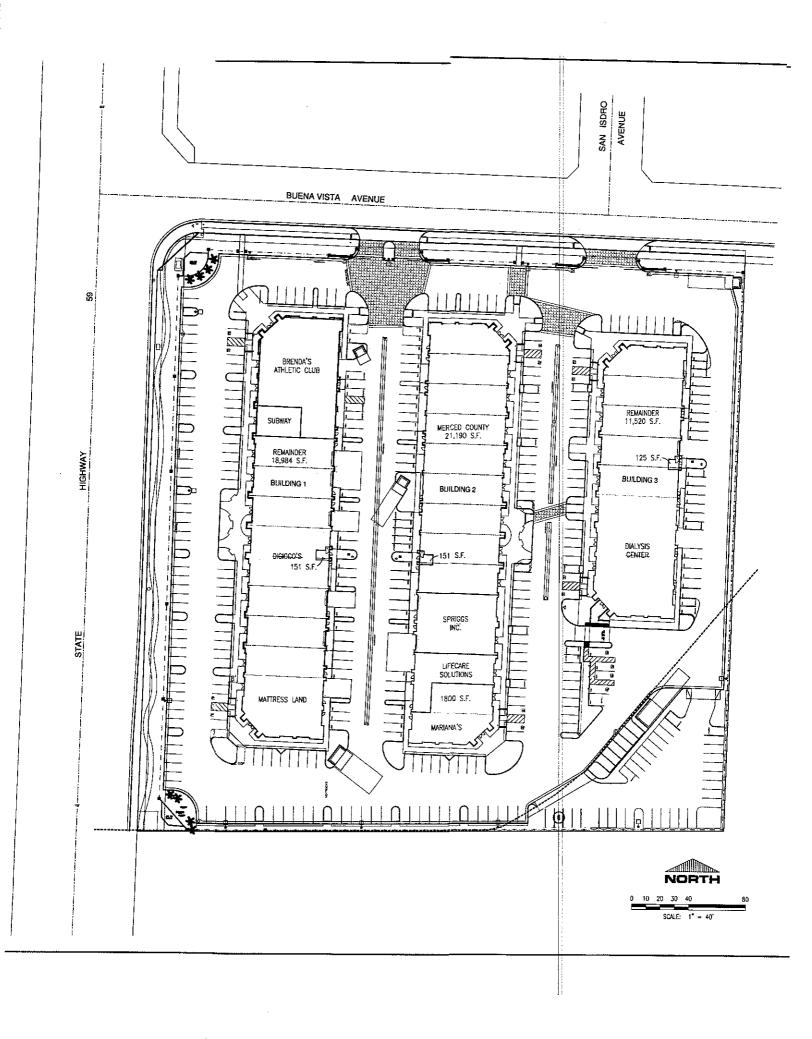
Yes

Comment/Finding: The project impacts that result from the proposed change will be minimal. All previously identified mitigation measures will be enforced with this proposed change including payment of Public Facility Impact Fees. Therefore, the resulting impacts are no greater than those previously analyzed and the previously imposed mitigation measures remain sufficient to address all impacts from this project.

On	ı the	basis	of this	evaluation,	in ac	cordance	with	the	requirements	of Section
15.	16 2 c	of the	CEOA	Guidelines	;				_	

	1. It is found that subsequent negative declaration will need to be prepared.
	2. It is found that an addendum Negative Declaration will need to be prepared.
	3. That a subsequent EIR will need to be prepared.
X	4. No further documentation is required.

Date: October 10, 2012 Prepared By:



CITY OF MERCED Planning Commission

Amended by PC on 12/5/2012 See pages 3-4

Resolution #2949

Amended by PC on 10/19/2011 See page 3

WHEREAS, the Merced City Planning Commission at its regular meeting of April 8, 2009, held a public hearing and considered General Plan Amendment #09-01, and Site Utilization Plan Revision #3 to Planned **Development** (P-D) #9, initiated by Golden Valley Engineering & Surveying, applicant for L. J. Steiner, LLC, property owner. application involves a change in the Merced Vision 2015 General Plan land use designation for Building #1 only from "Business Park" (BP) to "Neighborhood Commercial" (CN), and a change in the Site Utilization Plan for Planned Development (P-D) #9 for Building #1 to allow those uses permitted in the C-N Zone (but excluding convenience markets, retail businesses of 20,000 square feet or less selling alcoholic beverages for offsite consumption, day care facilities for children, and tattoo parlors), and a Site Utilization Plan Revision for Buildings #2 and #3 to allow up to 10,000square-feet of Building #3 for one procedural medical use (dialysis center, or outpatient chemotherapy center, or equivalent that takes a minimum of three hours or more per patient visit, but specifically excluding medical and dental offices and clinics and/or medical and dental laboratories), with all other uses for Buildings #2 and #3 being principally-permitted uses in the City's Light Industrial/General Commercial Zones; and a request for a 15% reduction for parking space calculation for Building #1 (excluding food services), and a 50% reduction in parking for the proposed dialysis center in Building #3. The property is 7.93 acres and is generally located at the southeast corner of State Hwy. 59 and Buena Vista Drive within Planned Development (P-D) #9; also known as Assessor's Parcel No. 058-020-058; and.

WHEREAS, the Merced City Planning Commission concurs with Findings A through O of Staff Report #09-05; 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 Mitigated Negative Declaration regarding

Page 2 of 4

April 8, 2009/October 19, 2011/December 5, 2012

Environmental Review #09-03, and approval of General Plan Amendment #09-01 and Site Utilization Plan Revision #3 to Planned Development (P-D) #9, subject to the Conditions and Mitigation Measures set forth in Exhibit A attached hereto.

Upon motion by Commissioner <u>Cervantes</u>, seconded by Commissioner <u>Williams</u>, and carried by the following vote:

AYES:

Commissioner(s) Shankland, Williams, Cervantes, and McCoy

NOES:

Commissioner(s) Ward, Amey, and Chairman Acheson

ABSENT: Commissioner(s) None. ABSTAIN: Commissioner(s) None.

Adopted this 8th day of April 2009

Chairman, Planning Commission of the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A - Conditions of Approval

n:shared:planning:PC Resolutions:GPA#09-01 & SUP REV#3 TO PD#9 Steiner

Page 3 of 4

April 8, 2009/October 19, 2011/December 5, 2012

October 19, 2011: At their regularly scheduled meeting of October 19, 2011, the Merced City Planning Commission considered General Plan Amendment #11-03 and Site Utilization Plan Revision #4 to Planned Development (P-D) #9.

WHEREAS, the Merced City Planning Commission concurs with Findings A through O of Staff Report #11-13; 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 Adoption of Environmental Review #11-19 (Mitigated Negative Declaration); and Approval of General Plan Amendment #11-03 and Site Utilization of Plan Revision #4 to Planned Development (P-D) #9, and Modification of Conditions #1, #3, #8, #11, #12, and #14 (Resolution #2949 for General Plan Amendment #09-01 and Site Utilization Plan Revision #3 to Planned Development [P-D] #9); and the addition of Mitigation Measures M-3 and M-4 as shown on Exhibit A.

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

AYES: Commissioners McCoy, Colby, Ward, Amey, and Chairperson

Cervantes

NOES: None

ABSENT: Commissioners Madayag and Acheson

ABSTAIN: None

<u>December 5, 2012:</u> At their regularly scheduled meeting of December 5, 2012, the Merced City Planning Commission considered General Plan Amendment #12-01 and Site Utilization Plan Revision #5 to Planned Development (P-D) #9.

WHEREAS, the Merced City Planning Commission concurs with Findings A through K of Staff Report #12-20 - Addendum; and,

NOW THEREFORE, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced

Page 4 of 4

April 8, 2009/October 19, 2011/December 5, 2012

City Planning Commission does resolve to hereby recommend to City Council that they find that the previous environmental review [Mitigated Negative Declaration for Environmental Review #11-19 for General Plan Amendment #11-03 and Site Utilization of Plan Revision #4 to Planned Development (P-D) #9] remains sufficient and no further documentation is required (Section 15162 Findings); and recommend approval of General Plan Amendment #12-01 and Site Utilization of Plan Revision #5 to Planned Development (P-D) #9, Modification of Conditions #1, #8, #14, the addition of Condition #17, and the Modification of Mitigation Measure M-3 as set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s) ABSTAIN: Commissioner (s)

Amended by PC on 10/19/2011

Mitigation Measures and Conditions of Approval Planning Commission Resolution #2949 General Plan Amendment #09-01 and Site Utilization Plan Revision #3 to Planned Development #9

(New language <u>double-underlined</u>, deleted language strike through.)

Mitigation Measures

- M-1: The requested changes in allowable land uses on the Property may trigger Owner's payment of additional fees and/or assessments including, but not limited to, the City's Public Facilities Impact Fee and the Regional Transportation Impact Fee, based upon a change in use. The additional fees and/or assessments shall be calculated based upon the pro-rata difference in fees and/or assessments originally paid by Owner in 2006 for the light industrial use as compared to the then current applicable fees and/or assessments for the use(s) that are being proposed for each separate tenant unit or units on the Property. Whether there is a change of use in a specific tenant unit or units shall be determined by the City based upon (i) the specific use(s) proposed for the tenant unit(s); (ii) the specific building, plumbing, mechanical, or electrical permits, conditional use permits, or certificates of occupancy obtained for the tenant unit(s); (iii) the specific tenant improvements proposed for the tenant unit(s); and/or (iv) the business license obtained by the tenant for the tenant unit(s).
- M-2: The applicant will monitor each tenant improvement for required parking based on land use throughout the project's development, and if it is found that there is a deficit in parking, tenant improvements will cease until such time as parking can be provided and approved by the City.
- Plaza based on the formulas provided under the Merced Municipal Code Section 20.58. Until such time as parking can be provided (on site or off-site), the Remainder of Building #3 (approximately 11,909 square feet) is to remain as General Commercial (C-G) / Light Industrial (I-L) where the use does not exceed the need for more than 4 parking spaces. The applicant will monitor each tenant improvement for required parking based on land use throughout the project's development and provide this information to the City with

Modified Mitigation Measure M-3 on page 6

> EXHIBIT A of Planning Commission Resolution #2949 Page 1 of 7

each tenant improvement. If it is found that there is a deficit in parking, tenant improvements will cease until such time as parking can be provided and approved by the City. [Note: Certain uses will increase the requirement for more parking (i.e., restaurant or food services, medical/non-medical offices, hair salon, or fitness gym, dry cleaners, etc.)].

M-4 (MM AQ-1) The project shall implement the following measures, to the satisfaction of the City of Merced:

- Any new lighting installed or replaced as part of the project shall be energy efficient.
- Any bathrooms or bathroom features installed or replaced as part of the project shall utilize water efficient toilets and sinks.
- The project applicant shall ensure that the project is provided with recycling services. The applicant shall ensure that there is sufficient storage space onsite for recycling.

Conditions of Approval

Modified Condition #1 on page 6

- The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (elevations) Attachments 2 and 3 of Staff Report #09-05, except as modified by the conditions; and be constructed/designed as shown on Exhibit 3 (site plan) and Exhibit 4 (elevations) Attachments B and C of Staff Report #11-13, except as modified and approved on October 19, 2011.
- 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 applicable conditions (unless modified by this Resolution) set forth in Planning Commission Resolution #2819 for General Plan Amendment #05-05 and Site Utilization Plan Revision #1 to Planned Development (P-D) #9; Planning Commission Resolution #2897 for Conditional Use Permit Application #1099; and Resolution #2942 for Conditional Use Permit #1125 (for signage): and Planning Commission Resolution #2949 for General Plan Amendment #09-01 and Site Utilization Plan Revision #3 to Planned Development (P-D) #9 (Attachment H of Staff Report #11-13) previously approved for this project.

EXHIBIT A of Planning Commission Resolution #2949 Page 2 of 7

- 4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
- Approval of the General Plan Amendment/Site Utilization Plan 5. *Revision* is subject to the applicants entering into a written (developer) agreement that they agree to all the conditions and shall pay all City, 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 (Attachment K of Staff Report #09-05).
- 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 Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), 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 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.
- Modified Condition #8 on pages 6-7
- Allowed Land Uses are as follows: Building #1 and Building #2 is are allowed those uses permitted in the Neighborhood Commercial (C-N) Zone as defined in Merced Municipal Code (MMC) 20.22 (Attachment D of Staff Report #09-05) and Attachment D of Staff Report #11-13 respectively, but excluding convenience markets, retail businesses of 20,000 square feet or less selling alcoholic beverages for off-site consumption, day care facilities for children, and tattoo parlors. Conditional Use Permit approval would still be needed for any uses defined in MMC 20.22.050. Up to 10,000-square-feet of Building #3 is allowed for one procedural medical use (dialysis center, or outpatient chemotherapy center, or equivalent that takes a minimum of three hours or more per patient visit, but specifically excluding medical and dental offices and clinics and/or medical, optical, and dental laboratories that involve patients and/or customers coming to and from the facility). All other uses for Buildings #2 and #3 shall be limited to principally permitted uses in the City's Light Industrial (I-L) and General Commercial (C-G) Zones as defined in MMC 20.34.020 and 20.28.020 respectively (Attachments E and F of Staff Report #09-05); but shall be limited to a maximum of 4 employees for parking purposes (note: parking is based on 1 space for each 2 employees on the largest shift – estimated at 4 employees).
- 9. If, in the future the owner/applicant requests land uses other than as specified in Condition #8 above (i.e., exceeding 40.52% retail, 10,000-square-feet of procedural medical use, etc.), further California Environmental Quality Act (CEQA) review is required including, but not limited to, traffic and air quality studies with possible improvements to Buena Vista Drive and State Hwy. 59.

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- 10. The developer shall be responsible for providing a parking analysis that shows that adequate parking exists on-site for all users as part of subsequent building permit or business license applications. This could include the addition of parking spaces being provided where previous roll-up doors were located. If it is found that there is inadequate parking for the uses proposed, future tenants may be denied.
- 11. The applicant shall comply with the current 2007 California Codes including, but not limited to, exiting, access, fire sprinklers, parking, modification of exterior elevations where roll-up doors are affected, kitchen use (where applicable), etc. A landscape/sprinkler plan will also be required for the area around the tenant spaces as they are submitted for building permits.
- 12. A 15% reduction for parking space calculation for Building #1, Building #2, and the remainder of Building #3 (approximately 11,909 square feet), (excluding food services) per MMC 20.58.410, and a 50% reduction in parking for the proposed dialysis center in Building #3, and a joint use of parking facilities between businesses open from 8:00 a.m. 5:00 p.m. (i.e., proposed offices in Bldg. #2) and uses with businesses having extended hours (Brenda Athletics, DiCicco's, etc.) are approved as proposed, contingent on City Council approval of the General Plan Amendment/Site Utilization Plan Revision.
- 13. Access and circulation shall not be blocked by idling or parked vehicles waiting to drop off or pick up patients in connection with the medical procedural use in Building #3.
- Additional Parking Lot Trees are required at one tree for each six parking spaces. As such, with 271 307 parking spaces proposed, 45 are required. If parking spaces are provided as a result of eliminating roll-up doors, additional parking lot trees will be required accordingly.
 - 15. Signage shall be limited to that signage approved under Conditional Use Permit #1125 (Planning Commission Resolution #2942) and shall comply with all applicable provisions of the North Merced Sign Ordinance.

16. All landscaping along the west side of Building #1 shall be installed within 6 months of this approval whether or not all tenant spaces have been filled.

n:shared:planning:PC Resolutions:GPA#09-01 & SUP REV#3 to PD #9 Exhibit A

As Modified by the Planning Commission on December 5, 2012

Modified Mitigation Measure

M-3: Parking needs to be accommodated for all land uses at Fahrens Park Plaza based on the formulas provided under the Merced Municipal Code Section 20.58. The applicant will monitor each tenant improvement for required parking based on land use throughout the project's development and provide this information to the City with each tenant improvement. If it is found that there is a deficit in parking, tenant improvements will cease until such time as parking can be provided and approved by the City. [Note: Certain uses will increase the requirement for more parking (i.e., restaurant or food services, medical/non-medical offices, hair salon, or fitness gym, dry cleaners, etc.)].

Modified Conditions of Approval

- 1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (elevations) -- Attachments 2 and 3 of Staff Report #09-05, except as modified by the conditions; and be constructed/designed as shown on Exhibit 3 (site plan) and Exhibit 4 (elevations) – Attachments B and C of Staff Report #11-13, except as on modified and approved October 19. 2011. constructed/designed as shown on Exhibit 5 (site plan) – Attachment B of Staff Report #12-20, except as modified and approved on December 5, 2012.
- 8. Allowed Land Uses are as follows: Building #1, Building #2, and Building #3 are allowed those uses permitted in the Neighborhood Commercial (C-N) Zone as defined in Merced Municipal Code (MMC) 20.22 (Attachment D of Staff Report #09-05) and Attachment D of Staff Report #11-13 respectively), but excluding convenience markets, retail businesses of 20,000 square feet or less selling alcoholic beverages for off-site consumption, day care facilities for children, and tattoo parlors. Conditional Use Permit approval would

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- still be needed for any uses defined in MMC 20.22.050. Up to 10,000-square-feet of Building #3 is allowed for one procedural medical use (dialysis center, or outpatient chemotherapy center, or equivalent that takes a minimum of three hours or more per patient visit, but specifically excluding medical and dental offices and clinics and/or medical, optical, and dental laboratories that involve patients and/or customers coming to and from the facility).
- 14. Additional Parking Lot Trees are required at one tree for each six parking spaces. As such, with 355 parking spaces proposed, 59 parking lot trees are required. If parking spaces are provided as a result of eliminating roll-up doors, additional parking lot trees will be required accordingly.

New Condition of Approval

17. Prior to the issuance of a certificate of occupancy for any space within Building #3, the existing modular building located near the northeast corner of the site shall be removed.