

August 7, 2013

VIA FEDERAL EXPRESS

Fresno County Regional Transportation Mitigation Fee Agency  
Council of Fresno County Governments  
2035 Tulare Street, Suite 201  
Fresno, CA 93721

**Re: Notice of Appeal of Application of Regional Transportation Mitigation Fee  
to Walmart Neighborhood Market at 6855 N. Willow Avenue, Fresno, CA**

Dear Board Members:

This office represents Wal-Mart Stores, Inc. ("Walmart") in connection with the development of the above-referenced Walmart Neighborhood Market ("Project"). This letter shall serve as formal notice pursuant to California Government Code Section 66020 of Walmart's appeal of the application of the Regional Transportation Mitigation Fee ("RTMF") to the Project, on the basis that it is exempt from the RTMF.

After unsuccessful attempts to dispute the applicability of the RTMF, the \$69,516.80 fee was paid under protest by RMC Constructors on behalf of Walmart on May 21, 2013, as evidenced by the attached Record of Payment. (**Exhibit "1"**). This letter sets forth the factual and legal bases for appeal.

**1. Project Background**

On June 15, 2005, the City of Fresno approved Vesting Tentative Parcel Map No. 2005-04 and Conditional Use Permit ("CUP") No. C-05-045 to develop a 70,980 square-foot retail shopping center, consisting of two separate phases of development on approximately 8.09 acres of property at the southwest corner of Willow and Herndon Avenues. (**Exhibit "2"**). The anchor tenants were to be a Walgreen's drug store and a prospective supermarket (which has since been developed as the Walmart Neighborhood Market). Parcel Map 2005-04 was recorded on December 21, 2005. (Fresno County Document No. 2005-0297989 in Book 65 of Parcel Maps, pages 57 & 58, **Exhibit "3"**).

The original developer, Fresno Herndon Development, LLC, promptly commenced work on the first phase of the Project containing the Walgreen's drug store, thus vesting these entitlements.

Walmart purchased the Project property in 2012, in reliance upon the prior land use entitlements secured by the developer. No further discretionary approvals were required from the City of Fresno to complete the Walmart Neighborhood Market building, because the supermarket building had already been approved in 2005 by CUP No. C-05-045. This approval had not lapsed or expired, since the majority of the shopping center had already been constructed, and was approved to be developed in phases. Walmart was only required to obtain ministerial building permits for completion of the Walmart Neighborhood Market. No additional square footage was constructed beyond what was approved by CUP No. C-05-045.

Parcel Map 2005-04 did not expire, and developer completed all of the work required by the applicable Subdivision Improvement Agreement, which specifically referenced the creation of a commercial planned development under CUP No. C-05-045. (**Exhibit "4"**). The completion of this work is evidenced by a Notice of Completion which was issued by the City of Fresno on October 9, 2012. (**Exhibit "5"**).

**2. The Project is Exempt from RTMF Pursuant to Resolution No. 2009-01.**

Vesting maps serve to "lock in" all applicable ordinances, fees, etc. which existed at the time of approval.<sup>1</sup> Even if the Parcel Map in question were not a vesting map, it would still be exempt under the express language of the RTMF. The RTMF was authorized by Resolution No. 2009-01, and became effective on January 1, 2010. Section 4.F of Resolution No. 2009-01 states: "Tentative maps approved prior to January 1, 2010 shall also be exempt from the RTMF, unless they require discretionary approvals after that date, in which case the RTMF shall apply." (**Exhibit "6"**).

Here, however, no further discretionary approvals were required for development of the Walmart Neighborhood Market component of the Project, because the CUP for the grocery store and associated Vesting Tentative Parcel Map had already been approved in 2005. Accordingly, the Project should be exempt from the RTMF in its entirety, and the payment made on May 21, 2013 must be refunded.<sup>2</sup>

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<sup>1</sup> Cal. Govt. Code § 66498.1; *Bright Development v. City of Tracy* (1993) 20 Cal. App. 4th 783.

<sup>2</sup> *Kaufman & Broad Central Valley, Inc. v. City of Modesto* (1994) 25 Cal. App. 4th 1577.

3. The Project Was Already Required to Mitigate All Traffic Impacts.

Application of the RTMF to the Project would also potentially result in duplicative and excessive costs, as a result of the significant off-site traffic improvements and fees which were already required pursuant to the 2005 project approvals. In addition to pavement striping and the installation of a new traffic signal on Willow Avenue, the developer was required to pay the following:

- a) Pay project's proportionate share of planned improvements to the Herndon / Chestnut (\$8,408) and Herndon / Willow (\$5,478) intersections associated with the widening of Herndon Avenue to three travel lanes in each direction (total mitigation fee of \$13,886).
- b) Pay project's proportionate share (23%) of the modification of the Willow / Bullard intersection traffic control signalization to allow for a permissive left-turn phase with third car left-turn detection.
- c) Pay project Traffic Signal Mitigation Impact Fee at the time of building permit issuance for each phase of development based upon calculated vehicle trips per day for each proposed use (fee is calculated by average daily trips multiplied by \$41.47 per trip).<sup>3</sup>

(See **Exhibit "4"**, Exh. A.2; **Exhibit "2"**, p. 6; **Exhibit "7"** at p. 4-5).

Furthermore, the Project's traffic impacts were analyzed in a traffic study, which utilized then-current Council of Fresno County Governments regional travel models. (**Exhibit "2"**, p. 5-6). The traffic study resulted in the identification of the above requirements, which were incorporated into the Project site design and conditions of approval. (**Exhibit "2"**, p. 5-6).

Thus, not only is the Project exempt from the RTMF by the express terms of Resolution No. 2009-01, but the Project's local and *regional* traffic impacts were also adequately analyzed and accounted for through the payment of other fees and construction of certain off-site improvements.

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<sup>3</sup> According to an April 26, 2005 City of Fresno Public Works Department memorandum, this total fee was estimated at \$400,020.00; see **Exhibit "8"**.

We understand that the purpose of the RTMF is to mitigate impacts to the State highway system. In consultation with Caltrans, the City also undertook detailed analysis in 2005 which determined: 1) that the Project would not have any significant impacts to freeway interchanges; and 2) that even if the Project did result in impacts to freeway ramp intersections, there was no legally permissible fee mechanism in place at that time by which the City could collect fees to mitigate impacts on roadways that were not under its jurisdiction. (**Exhibit "2"**, p. 6-7). The Council of Fresno County Governments was provided with copies of this correspondence. (**Exhibit "9"**).

This City documentation clearly shows that, *at the time of the Project approvals*, there was no fee mechanism such as the RTMF in place, and the June 15, 2005 staff report to the Planning Commission explained that any such fee program was still in its earliest planning stages at that time:

"Along with other cities and Fresno County, the City of Fresno has partnered with the Fresno County Council of Governments and Caltrans on a regional study of state highway facility capacity and measures needed to preserve and improve capacity of those facilities...In addition to a proportionate share study, a mechanism would be needed for the City to collect traffic impact fees and either hold those funds or deliver them to a separate agency for improvements to facilities the City does not control or maintain. The City has offered to cooperate with Caltrans in developing such a mechanism, including using the model used by the City for collecting fees for FMFCD and/or entering into a Joint Powers Authority or an MOU. Staff representatives of the City of Fresno and Caltrans continue to conference in order to identify a mutually agreeable strategy to implement a fair and equitable traffic impact fee for state highway facilities." (**Exhibit "2"**, p. 7).

Accordingly, neither developer nor any of their predecessors such as Walmart had any actual or constructive notice that the RTMF may apply to the Project in the future, particularly in light of the fact that a vesting tentative map was approved for the Project.

4. Conclusion.

Based on the foregoing, the application of the RTMF in this case lacks the constitutionally-mandated “reasonable relationship” between the fee and the Project.<sup>4</sup> The Project approvals were vested in 2005, and Resolution No. 2009-01 makes clear that, *in the absence of any further discretionary approvals*, the Project is exempt from payment of the RTMF. In addition, the Project was already required to pay more than \$400,000 in traffic mitigation fees and install off-site traffic improvements, which fully mitigated any traffic impacts caused by the Project.

To now require payment of an additional \$69,516.80, eight years after the Project was approved and became fully vested in 2005 (nearly five years prior to the effective date of the RTMF) would be unjust, and is precisely the sort of risk that the vesting tentative map process is intended to avoid: “The private sector should be able to rely upon an approved vesting tentative map prior to expending resources and incurring liabilities without the risk of having the project frustrated by subsequent action by the approving local agency ....”<sup>5</sup> Consistent with this purpose, “it follows that a developer is entitled to actual or constructive notice of the ordinances, policies, and standards with which it will be expected to comply. Quite obviously one cannot rely on what one does not know or cannot reasonably discover.”<sup>6</sup>

A greater degree of certainty and assurance in the development process is critical to the economic recovery of Fresno County and the State as a whole. In light of the recent recession, many developers were forced to extend their approvals for several years and delay completion of projects until the necessary investment and market conditions made it feasible to move forward. Improper and inconsistent application of the RTMF to such projects will undoubtedly have a chilling effect upon economic recovery in Fresno County, and will negatively impact each of the Council of Fresno County Governments’ member agencies.

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<sup>4</sup> Cal. Govt. Code § 66001; *Ehrlich v. Culver City* (1996) 12 Cal. 4th 854.

<sup>5</sup> Cal. Govt. Code § 66498.9 (b); *Kaufman & Broad Central Valley, supra* at 1588.

<sup>6</sup> *Bright Development v. City of Tracy* (1993) 20 Cal. App. 4th 783, 798-799.

Fresno County Regional Transportation Mitigation Fee Agency  
Council of Fresno County Governments  
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For these reasons, we respectfully request that (1) the appeal be granted; (2) the Project be deemed exempt from the RTMF; and (3) that the \$69,516.80 fee payment made on May 21, 2013 be refunded in its entirety to Walmart.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Tracy M. Owens', written in a cursive style.

Tracy M. Owens, for  
GRESHAM SAVAGE  
NOLAN & TILDEN,  
A Professional Corporation

TMO:  
Enclosure  
cc:

RECORD OF PAYMENT OF REGIONAL TRANSPORTATION MITIGATION FEE

REGIONAL TRANSPORTATION MITIGATION FEE JOINT POWERS AGENCY

2035 Tulare Street, Suite 201, Fresno, CA 93721

(559) 233-4148, ext. 200 www.fresnocog.org

APPLICANT

Name: CONTRACT SERVICE

Contact Person: SCOTT SCHEM

Address: 7543 N. WILSON AVE SUITE 107

FRESNO CA 93711

Telephone Number: 559-447-3119

PROJECT

Job Site Address 6965 N WILSON AVE

Tract Number \_\_\_\_\_

Lot/Parcel Number \_\_\_\_\_

Building Permit Number 12-1153

Building Permit Issued 12-7-12

DATE

Final Map Recorded 12-21-05

DATE

Parcel Map, Tentative Map filed, Deemed Complete by Agency

DATE

Regional Transportation Mitigation Fee

Single Family Dwelling		dwelling unit @ \$1,727/DU	\$
Multi-Family Dwelling		dwelling units @ \$1,212/DU	\$
Public School / Education		Exempt from RTMF	
Government		Exempt from RTMF	
Commercial/Retail	35,455	square feet @ \$1.96	\$69,491.80
Commercial/Office/Service		square feet @ \$1.23	\$
Light Industrial		square feet @ \$0.49	\$
Heavy Industrial		square feet @ \$0.10	\$
Other Non-Residential		square feet @ \$0.42	\$
Total Fee Due (subtotal)			\$69,491.80
Handling Fee			\$ 25.00
Total Amount Due			\$69,516.80

Check# 96108

[Signature] 12/2/12  
Applicant Date

[Signature] 12-7-12 City of Fresno  
Representative of Permit Issuing Agency Date Issuing Agency

DISPOSITION OF RTMF

RTMF Joint Powers Agency certifies that the above fees have been PAID IN FULL

RTMF Joint Powers Agency certifies that the above project is EXEMPT from the requirement to pay the RTMF because \_\_\_\_\_

[Signature]  
Representative of the RTMF JPA

5/21/13  
Date

Note: The fees shown are those in effect as of January 1, 2012. Fees are subject to change. The amounts due will be based on the fees in effect on the day the fee is paid.

This form must be validated by the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency and returned to the Permit Issuing Agency prior to final inspection or certificate of occupancy.

## NOTICE OF THE RIGHT TO APPEAL

You have the right to appeal the application of the RTMF to the Board of the RTMF Joint Powers Agency if you feel that the RTMF is being applied incorrectly. The procedure to file an appeal is:

- 1) The Applicant must first tender any required payment in full or provide satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition (Gov. Code § 66020(a)(1)). The JPA shall determine if the requirement under Gov. Code § 66020(a)(1) has been satisfied.
- 2) The applicant then submits a letter to the JPA stating that payment was tendered or shall be tendered under protest along with the reasons they believe that the fee as calculated by JPA staff is not justified, and the amount of fee the applicant believes to be correct. This letter must be accompanied by a copy of the Record of Payment. The appeal must be filed within 90 days after the imposition of the fee (Gov. Code § 66020 (d)(1)). Failure to file a timely appeal will preclude a subsequent lawsuit.
- 3) If the appeal is based on some document other than the Record of Payment, such as a document issued by a local jurisdiction indicating the starting date of vesting rights or a document showing earlier payments for which the applicant wants credit, then copies of this document must be included in the additional documentation mentioned in the previous bullet point. The Applicant has the option to submit additional documentation to support their appeal.

The Applicant must submit at their own expense twenty-two copies of each supporting document they want considered. The copies are for the use of the JPA and will not be returned to the applicant.

- 4) If the appeal is based on a technical issue related to traffic or trip generation then the Applicant must submit a technical analysis for consideration by the JPA. The Applicant is responsible for the cost of this analysis.
- 5) The RTMF-JPA will act on appeals during the open portion of a Board meeting within 180 days of receipt of the written appeal. The Applicant will have a chance to speak on behalf of their request and to answer questions. Based on its consideration of the appeal, the Board may choose to set the RTMF for the Applicant's project at the amount stated in the appeal, the amount recommended by Staff based on the RTMF as generally applied, or some other amount deemed appropriate based on the information presented in the Appeal.

If you challenge the applicability or amount of the RTMF in court, you may be limited to raising only those issues you or someone else raised at the public hearing described above or in written correspondence delivered to the JPA at, or prior to, the public hearing.



Date	Invoice	Desc	Fresno Council of Governments Amount	Deductions	Net
5-21-13	130521		69516.80	.00	69516.80

5-21-13 96108 69516.80 .00 69516.80

WARNING: The face of this document has a colored background. This paper contains an artificial watermark and other security features.



CONSTRUCTORS  
5045 EAST MCKINLEY AVENUE  
FRESNO, CA 93727

Drawn on  
Union Bank  
1-800-238-4488 unionbank.com  
16-49-8/1220

96108

NO.

96108

Pay: \*\*\*\*\*Sixty-nine thousand five hundred sixteen dollars and 80 cents  
DATE AMOUNT

PAY TO THE  
ORDER OF

5-21-13 \$\*\*\*\*\*69,516.80

Fresno Council of Governments  
2035 Tulare Street, Suite 201  
Fresno, CA 93721

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REPORT THE PLANNING COMMISSION

GENDA ITEM NO. VII-A  
COMMISSION MEETING 06.15.05

June 15, 2005

FROM: STAFF, Planning Division  
Planning and Development Department

APPROVED BY  
  
DEPARTMENT DIRECTOR

SUBJECT: CONSIDERATION OF CONDITIONAL USE PERMIT APPLICATION  
NO. C-05-45 AND ENVIRONMENTAL FINDING FOR ENVIRONMENTAL  
ASSESSMENT NO. C-05-45/TPM NO. 2005-04

EXECUTIVE SUMMARY

Conditional Use Permit Application No. C-05-45 requests approval to develop a 70,980 square-foot retail shopping center incorporating two phases of development on 8.09 acres of property located on the southwest corner of the intersection of East Herndon and North Willow Avenues. Phase I comprises 29,980 square feet of retail building area (three buildings) and Phase II comprises 41,000 square feet of retail building area (two buildings). The anchor tenant for the retail space will be a Walgreens drug store. Additionally, there will be a drive through fast food restaurant, and other retail businesses generally found in neighborhood shopping centers. The site, consistent with the neighborhood commercial planned land use designation depicted in the 2025 General Plan, is zoned C-1/EA/cz (*Neighborhood Shopping Center District/Expressway Area Overlay District/with conditions of zoning*). Staff is recommending conditional approval of the project.

PROJECT INFORMATION

PROJECT	Request to develop a retail shopping center incorporating two phases of development on 8.09 acres of property. Phase I consists of 29,980 square feet of building area (three buildings) comprising retail, drug store, and drive through restaurant uses. Phase II consists of 41,000 square feet of retail building area (two buildings).
APPLICANT	John Peruzzi / Peruzzi Architects (Applicant/Agent) Silver Creek Properties
LOCATION	Southwest corner of the intersection of East Herndon and North Willow Avenues. <b>(Council District 6, Councilmember Duncan)</b>
SITE SIZE	15.95 Acres
LAND USE	Existing - Vacant Proposed - Neighborhood Shopping Center
ZONING	SPLIT - C-1/EA/cz ( <i>Neighborhood Shopping Center District / Expressway Area Overlay District / with conditions of zoning</i> ) R-P/cz ( <i>Residential and Professional Office District / with conditions of zoning</i> )

PLAN DESIGNATION AND CONSISTENCY The existing C-1/EA/cz and R-P/cz zone districts are consistent with the 2025 Fresno General Plan land use designation of the site for neighborhood commercial and office planned land uses

ENVIRONMENTAL FINDING Finding of Conformity to the 2025 Fresno General Plan Master Environmental Impact Report (MEIR No. 10130) dated April 28, 2005

PLAN COMMITTEE RECOMMENDATION N/A

STAFF RECOMMENDATION      Recommend conditional approval of Conditional Use Permit  
 Application No. C-05-45

**BORDERING PROPERTY INFORMATION**

	Planned Land Use	Existing Zoning	Existing Land Use
<b>North</b>	Commercial/Business Park	<b>AE-5/UGM</b> Exclusive Five Acre Agricultural/Urban Growth Management	Vacant
<b>South</b>	Commercial Office & Medium Density Residential	<b>R-P/cz &amp; R-1</b> <i>Residential and Professional Office &amp; Single Family Residential</i>	Vacant & Single Family Residences
<b>East</b>	City of Clovis	<b>City of Clovis</b>	Vacant & Single Family Residences
<b>West</b>	Medium Density Residential	<b>R-1</b> <i>Single Family Residential</i>	Single Family Residences

**ENVIRONMENTAL FINDING**

The initial study prepared for Environmental Assessment No. C-05-45/TPM No. 2005-04 considered potential environmental impacts associated with the subject conditional use permit and vesting tentative parcel map. The study indicates that the project, if approved, would conform to the land use designation and land use policies of the 2025 Fresno General Plan and is within the scope of the Master Environmental Impact Report No. 10130. Therefore, staff has issued a Finding of Conformity to the 2025 Fresno General Plan Master Environmental Impact Report (MEIR No. 10130) dated April 28, 2005, which incorporates a MEIR Mitigation Monitoring Checklist. This environmental finding was properly published on April 27, 2005, with no comments received to date.

**BACKGROUND / ANALYSIS**

Conditional Use Permit No. C-05-45 proposes the development of 70,980 square feet of retail commercial development on the northernmost 8.09 acres of the subject site located on the southwest corner of the intersection of East Herndon and North Willow Avenues. The project will consist of five different single story buildings ranging in size from 3,500 to 30,000 square feet. The anchor tenant for the commercial center will be a Walgreens drug store and prospective supermarket. In addition, several smaller retail spaces will be available to prospective tenants. While tenants have yet to be determined, typical retail commercial businesses are anticipated which are generally found in other C-1 neighborhood shopping center zone districts targeted to serve the needs of the neighborhoods surrounding the project. The proposed buildings are generally located on the perimeter of the site with the parking centrally located and buffered by surrounding landscaping.

It is important to note that the Phase III portion of the subject proposal has not yet been designed and is not included within the scope of Conditional Use Permit Application No. C-05-45. Phase III, as depicted on Exhibit A, comprises approximately 3.18 acres of property currently zoned R-P (*Residential and Professional Office District*). Development of Phase III will be integrated with Phase I and II through a unified vehicle access and parking area. Staff has also been advised that a conceptual development plan is being prepared for the southernmost 4.71 acres of the subject site, which will comprise integrated office uses.

The applicant has also filed Vesting Tentative Parcel Map No. 2005-04, which proposes to subdivide the subject site into a six-lot subdivision to facilitate development of the shopping center.

### *Parking*

According to Section 12-217.5-I of the Fresno Municipal Code (FMC), the general requirement for off-street parking spaces and areas shall be two square feet of parking area for each square foot of floor area. When calculated for the proposed project this requirement translates into 384 parking stalls required. According to Exhibit A, the application meets this requirement by providing 405 parking spaces for the C-1 portion of the site. The applicant is proposing one restaurant and has informed staff that a potential supermarket may be included within the shopping center as well, which require additional parking pursuant to Section 12-306-I of the FMC. In accordance with the requirements of Sections 12-217.5-I and 12-306-I of the FMC the maximum number of parking spaces that may be required for the proposed project is 481 stalls.

Although the number of parking stalls provided by the subject proposal is less than the maximum number of stalls which may be required by the FMC based upon prospective uses, staff has determined that the application is proposing adequate parking. Furthermore, staff has determined that the proposal provides facilities necessary for the most efficient use of the C-1 zoned portion of the subject site, and cannot justify requiring additional parking given that the subject proposal complies with the general off-street parking requirement of the C-1 zone district as stipulated by Section 12-217.5-I of the FMC.

In order to alleviate concerns regarding grocery cart collection, staff is recommending that the applicant install corrals throughout the parking lot. In addition, staff is recommending that the applicant construct the corrals with six (6) inch high curbs, which will protect the shopping carts, and corrals from abuse.

### *Pedestrian Circulation*

Given that the applicant is proposing to develop various types of uses on the same site, the project will contain interior pathways that will provide pedestrian circulation between the proposed buildings. The project will also contain arcades along the principal elevations of proposed retail shops, contributing to the buildings' contemporary character and complementary design standards to be applied throughout the center.

### *Drive-Through Facilities*

According to Exhibit A, the applicant is proposing to develop a fast food restaurant on the southeast corner of the commercially zoned portion of the subject site that includes a drive-through service window. A Walgreens drug store is proposed on the northeast corner of the subject site, which also includes a drive-through customer service window. According to Section 12-306-N-7.2 of the Fresno Municipal Code, all drive-through facilities are required to obtain a conditional use permit, provide adequate waiting areas and ingress and egress to such areas, and implement operational measures to minimize the time necessary to serve drive-through customers and to preserve air quality. Accordingly, staff is recommending approval subject to compliance with the regulations established by the San Joaquin Valley Air Pollution Control District and approval by the Public Works Department, Traffic Division. Furthermore, in accordance with Department policies staff recommends as a condition of approval the requirement for a minimum of two parking stalls to be designated for the exclusive use of drive-through window customers awaiting delivery of orders and that no more than one drive-through be allowed per street frontage.

### *Conditions of Zoning*

The approximate northern one-half of the subject site is zoned C-1/EA/cz, while the approximate southern one-half of the subject site is zoned R-P/cz. Both zone districts were established by Rezone No. R-93-21, which was approved by City Council on November 02, 1993.

During the rezone process, neighboring property owners stressed their concerns over future development of the subject property. In order to accommodate their concerns, staff recommended the following conditions:

- a. The site plan review or conditional use permit for the project area shall be subject to a public hearing before the Planning Commission.
- b. Notices for this public hearing shall be mailed to all property owners in a 350 foot radius of the project area and to the signatories of the petition related to neighborhood concerns of R-90-36.
- c. Access to and from the project area from East Fremont Avenue shall be prohibited.
- d. A seven-foot solid masonry wall between the subject property and the residential properties to the west and south shall be required. Said wall is also to include a landscape cover on its east and north sides to prevent graffiti.

In order to discuss any additional concerns, staff, along with the applicant held noticed neighborhood meetings to discuss the modified site. Staff has incorporated the neighbors' concerns into the conditions of approval.

### **Land Use Plans and Policies**

The approximate northern one-half of the subject property is currently designated by the 2025 Fresno General Plan for neighborhood commercial uses and the approximate southern one-half of the subject property is currently designated for commercial office uses. Uses permitted under the C-1 (*Neighborhood Shopping Center*) zone district are consistent with the neighborhood commercial designation for the northern portion of the subject property. The commercial office designation for the southern portion of the property is generally consistent with the uses permitted under the R-P (*Residential and Professional Office*) zone district.

The proposed project meets a number of the objectives and policies for commercial development in the 2025 Fresno General Plan. The general plan encourages commercial uses, which provide the neighborhood with goods and services while minimizing travel distances, and adverse impacts (Objective C-12). As stated above, the project is specifically designed to provide services that would meet the needs of the immediate neighborhood in which it is located.

General plan policy (C-12-a) for commercial development requires that all commercial land uses are developed and maintained in a manner complementary to and compatible with adjacent residential land uses, to minimize interface problems with the surrounding environment, and to be compatible with public facilities and services. The project is bounded on its north and east sides by two major streets. Adjacent residential neighborhoods bound the site to the west and south of the project. As noted above, conditions of zoning on the subject property stipulate that a seven-foot high solid masonry wall between the subject property and the residential properties to the west and south shall be required and covered with landscaping to prevent graffiti. Said wall will be permitted (with a minor deviation

entitlement) to be constructed to a maximum height of seven feet eight inches (7'-8") and may be constructed to a maximum height of eight (8) feet upon submittal and approval of a variance application.

All loading and storage areas will be screened from view of adjoining residential property by a combination of ten (10) feet of dense landscape planting and the solid masonry wall. Loading zones will also be required to be depressed with a second solid masonry wall constructed immediately adjacent to the loading zone and extending to a height of no less than three (3) feet above trucks making deliveries. Section 12-306-L-h of the FMC requires that where a loading area is located less than 100 feet from an adjacent residential district or is not within a completely enclosed area, loading shall be done only between the hours of 8:00 a.m. and 6:00 p.m. This section of the FMC will be implemented through the conditions of approval for Conditional Use Permit Application No. C-05-45.

Within an area 100 feet wide abutting property zoned or planned for residential use, exterior area lighting for parking areas, carports, garages, access drives, and loading areas for the proposed commercial uses will be shielded to prevent line of sight visibility of the light source from abutting residential property. Roof-mounted and detached mechanical equipment for the proposed commercial uses will be screened from view and acoustically baffled to prevent the noise level rating for the equipment from exceeding 55Ldn measured at the nearest property line and all storage will be required to be within an enclosed structure and outdoor storage expressly prohibited.

Staff has determined that with the aforementioned conditions, additional screening and noise attenuating methods have been designed to adequately protect adjoining residential property.

General plan policy (C-12-d) for commercial development encourages planning for the appropriate location, size, and distribution of neighborhood and community commercial uses to implement the planned urban form, promote the stability and identity of neighborhood and community areas, and allow efficient access without compromising the operational effectiveness of planned major streets. The general plan further provides that neighborhoods should be anchored by commercial centers with a mix of uses that meet the area's need to achieve activity centers that create a sense of place. Retail commercial goods and services shall be provided in planned unified shopping centers, carefully designed small-scale commercial centers, and in neighborhood-oriented stores.

The applicant has made a proposal for the subject site that will include moderately sized retail uses and specialty shops, which will be targeted to serve the needs of the neighborhood surrounding the project. The proposed project, in conjunction with prospective office development on the site, will serve as a neighborhood activity center for the surrounding community.

### **Sidewalks and Streets**

The applicant will be required to install permanent paving, paving transition, concrete curb, gutter, sidewalk, wheel chair ramps, and driveway approaches to City Standard Specifications within all street frontages indicated.

Right-of-way adjacent to East Herndon Avenue will be landscaped with a wrought iron fence to deter pedestrian access from the north side of the subject property.

### **Circulation Element Plan Policies and Major Street System Traffic Capacity**

The site is served by West Herndon and North Willow Avenues. West Herndon Avenue is designated by the general plan circulation element as an expressway with three travel lanes in either direction, a medium island, dual left-turn lanes at intersections when fully constructed. The regional travel model maintained by the Council of Fresno County Governments (COG) projects that approximately 77,000

daily vehicle trips (VTD) will utilize this segment of Herndon in the year 2025. While the City of Fresno's desired traffic level of service (LOS) is D (moderate congestion) this level of demand will result in an LOS of F (highly congested) condition in the year 2025.

North Willow Avenue is designated by the general plan circulation element as a super-arterial street with six travel lanes in either direction, a median island and dual left-turn lanes at appropriate intersection when fully constructed. The COG travel model projects that approximately 42,400 VTD will utilize this segment of Willow Avenue in the year 2025 with an LOS of D.

A traffic impact study (TIS) was prepared by TJKM Transportation Consultants to examine appropriate major street improvements and site design measures to address traffic congestion as required by MEIR No. 10130 mitigation measures. This study was prepared in consultation with the City of Fresno's Public Works Department Engineering Division and has been reviewed and approved by the Traffic Engineering Section. This review has resulted in the identification of appropriate project requirements, which have been incorporated into the project site design and conditions of approval.

The traffic study evaluated the LOS of six major street intersections and examined the function of three driveway entrances in order to identify appropriate project related improvements within the scope of the traffic mitigation measures established by MEIR No. 10130. The traffic study estimated that the proposed commercial development of the C-1 zoned portion of the subject property would generate 354 a.m. peak hour vehicle trips and 643 p.m. peak hour vehicle trips (Trip Generation, 7<sup>th</sup> Edition by ITE). Of these total vehicle trips, the first phase of the proposed commercial development (gross building area of 30,000 square feet) is projected to generate 244 a.m. peak hour trips and 284 p.m. peak hour vehicle trips.

The project TIS indicates that two of the study intersections (Herndon / Chestnut and Herndon / Cedar) function at an LOS of F in the year 2008 with, and without, the proposed project. A third study intersection (Willow / Bullard) can be improved from an LOS of E to an LOS of D with modification of the existing traffic control signalization. The Public Works Department has recommended the following project traffic improvement requirements:

- a. Pay project's proportionate share of planned improvements to the Herndon / Chestnut (\$8,408) and Herndon / Willow (\$5,478) intersections associated with the widening of Herndon Avenue to three travel lanes in each direction.
- b. Pay project's proportionate share of the modification of the Willow / Bullard intersection traffic control signalization to allow for a permissive left-turn phase with third car left-turn detection.
- c. Pay project Traffic Signal Mitigation Impact Fee at the time of building permit issuance for each phase of development based upon calculated vehicle trips per day for each proposed use (fee is calculated by average daily trips multiplied by \$41.47 per trip)

#### **State Department of Transportation (Caltrans)**

Caltrans District 6 has written project responses, dated March 28, May 17, and June 03, 2005, indicating concerns regarding the analysis of peak hour vehicle trips associated with the proposed commercial development and potential impacts upon the Freeway 168 interchanges at Herndon, Bullard and Shaw Avenues. The comment letters further state that Caltrans has previously noted that the west-bound freeway access ramp from east-bound Herndon Avenue may need to be widened by one lane to

a two lane ramp entrance and the east-bound off-ramps at Bullard and Shaw Avenues also widened by one lane.

It should be noted that TJKM Transportation Consultants, preparers of the TIS noted earlier, have responded to the aforementioned Caltrans District 6 memoranda with written correspondence, dated May 11 and May 26, which indicate that none of the ramp intersections of State Route 168 with Herndon, Bullard and Shaw Avenue show a need for mitigation using LOS E as the criterion for state highways in the Fresno Area and that no contributions are necessary for improvements at these interchanges as a result of the proposed project.

Staff has considered Caltrans comments in evaluating the proposed project and determined that this project does not create any impacts, including cumulative impacts that were not identified in MEIR No. 10130. City staff notes that potential cumulative traffic impacts of full buildout of the 2025 Fresno General Plan were analyzed in MEIR No. 10130. Caltrans has not specified a project to increase the access ramp capacity at Freeway 168 and Herndon Avenue nor a proportionate fee for mitigation for this project.

Although the City has met its legal obligations for addressing impacts to the state highway system for purposes of CEQA, the City has not ruled out working with Caltrans to obtain fees for the state highway system for projects such as this one. At this time, the City does not have a legally permissible means for collecting fees for such a purpose. A legally permissible means for collecting impact fees under the Mitigation Fee Act (California Government Code §§ 60000, et seq.), among other things, would require a capital improvement plan, a nexus/rough proportionality study that demonstrated a property owner/developer's proportionate share of costs to those capital improvements, and an accounting system for using funds collected.

Along with other cities and Fresno County, the City of Fresno has partnered with the Fresno County Council of Governments and Caltrans on a regional study of state highway facility capacity and measures needed to preserve and improve capacity of those facilities. A Partnership in Planning grant has been obtained to complete a regional freeway deficiency study for the greater Fresno-Clovis-Madera Metropolitan area. This study focuses on facilities projected to be most impacted by projected increases in traffic, identification of the sources and patterns of vehicle traffic within the greater metropolitan area and the improvements that would be necessary to provide adequate vehicular capacity. Findings from this study may allow proportionate traffic impact fees to be implemented by cities and counties in the study area, upon adoption by the respective jurisdictions.

In addition to a proportionate share study, a mechanism would be needed for the City to collect traffic impact fees and either hold those funds or deliver them to a separate agency for improvements to facilities the City does not control or maintain. The City has offered to cooperate with Caltrans in developing such a mechanism, including using the model used by the City for collecting fees for FMFCD and/or entering into a Joint Powers Authority or an MOU. Staff representatives of the City of Fresno and Caltrans continue to conference in order to identify a mutually agreeable strategy to implement a fair and equitable traffic impact fee for state highway facilities.

**FINDINGS PER FRESNO MUNICIPAL CODE SECTION 12-405-A-2**

- a. *All applicable provisions of this Code are complied with and the site of the proposed use is adequate in size and shape to accommodate said use, and accommodate all yards, spaces, walls and fences, parking, loading, recycling areas, landscaping, and other required features; and,*



Finding a:	The proposed commercial shopping center will be required to provide adequate landscaping, parking (including stalls for the handicapped), fences, trash enclosures, street trees, etc. Staff is recommending approval subject to compliance with the conditions of project approval.
<i>b. The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use; and,</i>	
Finding b:	The Public Works Department, Traffic Division has indicated that the traffic generated from the proposed project can be accommodated by the existing circulation network with the provided traffic improvement requirements.
<i>c. The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located.</i>	
Finding c:	Upon completion of review of comments received by affected parties regarding the proposed project and based upon information contained within the project application, the Planning and Development Department has determined that the proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located. The project will be required to improve adjacent major streets, and comply with all conditions of zoning on the subject property as well as all applicable provisions of the Fresno Municipal Code and policies of the 2025 Fresno General Plan to mitigate adverse impacts to the surrounding residential community.

**CONCLUSION / RECOMMENDATION**

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the 2025 Fresno General Plan, and the Hoover Community Plan; its compatibility with surrounding existing or proposed uses; and, its conformity to the 2025 Fresno General Plan Master Environmental Impact Report (MEIR No. 10130). These factors have been evaluated as described above and by the accompanying environmental assessment. Upon consideration of this evaluation, it can be concluded that the proposed Conditional Use Permit Application No. C-05-45 is appropriate for the project site.

1. APPROVE the environmental finding of Environmental Assessment No. C-05-45/TPM No. 2005-04 dated April 28, 2005, that the project proposal conforms to the provisions of the 2025 Fresno General Plan Master Environmental Impact Report (MEIR No. 10130).
2. APPROVE Conditional Use Permit Application No. C-05-045 subject to compliance with the Conditions of Approval dated June 15, 2005.

Attachments: Vicinity Map  
 2005 Aerial Photograph  
 Site Plan/Elevations  
 Environmental Assessment No. C-05-45/TPM No. 2005-04, Finding of Conformity to the 2025 Fresno General Plan Master Environmental Impact Report (MEIR No. 10130) dated April 28, 2005  
 Conditions of Approval





#7

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When Recorded Mail To:

City Clerk  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721-3603



FRESNO County Recorder  
Robert C. Werner  
**DOC- 2005-0297991**

Acct 1-Financial Title Company (C)  
Wednesday, DEC 21, 2005 08:00:00  
Titl Pd. \$0.00 Nbr-0002048667  
RGR/R7/2-17

NO FEE - GOVERNMENT CODE 6103  
and 27383

City of Fresno  
Public Works Department  
P.W. File No. 5494-2005-04

Schedule B  
Section \_\_\_\_\_  
Exception   7  

**SUBDIVISION AGREEMENT  
PARCEL MAP NO. 2005-04**

THIS AGREEMENT is made this 15<sup>TH</sup> day of DECEMBER, 2005, by and between the City of Fresno, a Municipal Corporation, hereinafter referred to as "City," and, Fresno Herndon Development, LLC, an Indiana Limited Liability Company, hereinafter referred to as "Subdivider" without regard for number or gender.

#### RECITALS

A. The Subdivider has filed with the City, a Parcel Map which proposes the subdivision of land owned by Subdivider, situated in the City of Fresno, County of Fresno, State of California, dividing the real property more particularly described as follows:

Parcels A through F, inclusive, of Parcel Map No. 2005-04 as recorded in Book 105 of Parcel Maps at Page(s) 57 + 58, Fresno County Records.

B. The City requires, as a condition precedent to the acceptance and approval of said Parcel Map, the approval of an amendment to Conditional Use Permit No. C-05-045 to create a commercial planned development; the dedication of streets, highways, public places and easements as are delineated on the Parcel Map, and deems such dedications as necessary for the public use; and, requires the construction of improvements of the streets delineated on the Parcel Map.

C. Section 12-1206 of the Fresno Municipal Code requires the Subdivider to either construct or enter into an Agreement whereby Subdivider agrees to perform and complete the work and improvements required as Conditions of Approval for Vesting Tentative Parcel Map No. 05-04 dated July 19, 2005 issued by the City and any amendments thereto (hereinafter referred to as Conditions of Approval and incorporated into this agreement by this reference), in consideration of the approval of the Parcel Map for recording.

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**AGREEMENT**

In consideration of the approval of said Parcel Map for filing and recording as provided and required by law, it is mutually agreed and understood by and between the Subdivider and City, and the Subdivider and City do hereby mutually agree as follows:

1. The Subdivider shall perform the work and improvements at the time a permit or other grant of approval for development of the parcel is issued by the City or before one (1) year of the date of this agreement, whichever occurs first, unless prior to this date of performance an extension of time is approved by the Public Works Director.

2. Prior to the commencement of the work, the Subdivider shall submit engineered construction plans to the City Engineer for review and approval. The cost to prepare and process such plans, and the inspection of such work, shall be the responsibility of the Subdivider. The work shall be performed and inspected under a Street Work Permit issued by the Public Works Department pursuant to such approved construction plans.

3. All of the work and improvements and materials shall be performed, installed, and provided in accordance with the 2002 Edition of the City of Fresno Standard Specifications and Drawings (City Council Resolution No. 70-36 and Resolution No. 84-361) and any amendments thereto, hereinafter referred to as the "Public Works Standards," which are incorporated herein as though set forth in full. All of said work and improvements shall also comply with the requirements of Chapter 12, Articles 10 and 12 of the Fresno Municipal Code. In situations where there are no Public Works Standards for an item of work, it is agreed that such work shall be performed in accordance with the standards and specifications of the State of California, Department of Transportation as determined by the City Engineer.

4. The work and improvements are stipulated in the Conditions of Approval and include the following:

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- a. All utility systems shall be installed underground. Subdivider's attention is directed to the installation of street lights in accordance with Resolution No. 78-522. The Subdivider shall construct a complete underground street light system as approved by the City Engineer prior to final acceptance of the parcel map. Height, type, spacing, etc., of standards and luminaries shall be in accordance with Resolution No. 78-522 and shall be approved by the City Engineer.
  - b. Water main extensions and services shall be provided in accordance with applicable provisions of Chapter 14, Article 1 of the Fresno Municipal Code and all applicable charges shall apply.
  - c. Sanitary sewer extensions and services shall be provided in accordance with applicable provisions of Chapter 9, Article 5 of the Fresno Municipal Code and all applicable charges shall apply.
  - d. Lot drainage shall be in accordance with Section 13-120.3315 of the Fresno Municipal Code.
  - e. Set all landmarks, monuments and lot corners required to locate land divisions shown on the Parcel Map.
  - f. The improvements are more particularly itemized in Exhibit A, attached hereto and made a part of this Agreement.
5. Prior to the approval of the Parcel Map by the City, the Subdivider shall furnish to the City the following securities in the amounts itemized in said Exhibit A. Bonds shall be by one or more duly authorized corporate sureties subject to the approval of the City and on forms furnished by the City.
- a. **PERFORMANCE SECURITY.** Total amount to equal 100% of the Final Cost Estimate to be conditioned upon the faithful performance of this agreement.
    - i. 95% of the Final Cost Estimate shall be in the form of a bond or irrevocable instrument of credit; and
    - ii. 5% of the Final Cost Estimate shall be in cash or a certificate of deposit.
  - b. **PAYMENT SECURITY.** Total amount to equal 50% of the Final Cost Estimate to secure payment to all contractors and subcontractors performing work on said improvements and all persons furnishing labor, materials, or equipment to them for said improvements. Payment Security shall be in the form of a bond or irrevocable instrument of credit.

6. Prior to the approval of the Parcel Map by the City, the Subdivider shall pay to the City and/or execute a covenant to defer certain impact fees due which are eligible to be deferred pursuant to FMC Section 12-4.604, the total fees and charges due as a condition of Parcel Map approval. The total fees and charges are more particularly itemized in Exhibit B, attached hereto and made a part of this Agreement.

7. Upon acceptance of the required work by the City Engineer, a warranty security shall be furnished to or retained by City in the minimum amount identified in said Exhibit A, for guarantee and warranty of the work for a period of one (1) year following acceptance against any defective work or labor done or defective materials furnished. In accordance with Section 12-1016 of the Fresno Municipal Code, said warranty security shall be in the form of cash or a certificate of deposit. The warranty security shall be returned to the Subdivider, less any amount required to be used for fulfillment of the warranty one (1) year after final acceptance of the subdivision improvement.

8. The Subdivider and his contractor and subcontractors shall pay for any materials, provisions, provender, and other supplies or terms used in, upon, for, or about the performance of the work contracted to be done and for any work or labor thereon of any kind and for amounts due under the Unemployment Insurance Act of the State of California with respect to such work or labor and shall file with City pursuant to Section 3800 of the Labor Code a Certificate of Workers Compensation and shall maintain a valid policy of Workers Compensation Insurance for the duration of the period of construction.

9. The City shall not be liable to the Subdivider or to any other person, firm or corporation whatsoever, for any injury or damage that may result to any person or property by or from any cause whatsoever in, on or about the subdivision of said land covered by this Agreement.





or any part thereof. The Subdivider hereby releases and agrees to indemnify, defend and save the City harmless from and against any and all personal injuries to and deaths of persons and property damage, and all claims demands, costs, loss, damage, and liability, howsoever same may be caused, resulting directly or indirectly from the performance of any or all work and improvements to be done in and upon the street rights-of-way in the subdivision or upon the premises adjacent thereto pursuant to this Agreement, and also from all injuries to and deaths of persons, and all claims, demands, costs, liability, loss, damage, howsoever caused, either directly or indirectly made or suffered by the Subdivider, or his agents, employees and subcontractors, in connection with the work and improvements required by this Agreement. The Subdivider further agrees that the use for any purpose and by any person of any of the streets, work or improvements specified in or required by this Agreement or the Parcel Map, shall be at the sole and exclusive risk of the Subdivider at all times prior to the final acceptance of the work and improvements by the City.

10. Initial compaction and soil tests of street, sewer, and other work within the public right-of-way shall be ordered by and paid for by City. Sewer and utility trench tests shall be taken in varying locations and depths as required by the City Engineer. Compaction tests failing to meet City's requirements shall be recorded by City from the same testing laboratory. Billing for the required retests shall be made directly to the Subdivider or his agent for payment. Compaction test for water facilities installed by City shall be paid for by City.

11. Subdivider shall comply with the provisions of the prevailing Building, Plumbing, Mechanical, Electrical and Zoning Codes and any other Codes of the City.

12. It shall be the responsibility of the Subdivider to coordinate all work done by his contractors and subcontractors, such as scheduling the sequence of operations and the determination of liability if one operation delays another. In no case shall representatives of the City be placed in the position of making decisions that are the responsibility of the Subdivider. It

shall further be the responsibility of the Subdivider to give the City Engineer written notice not less than two (2) working days in advance of the actual date on which work is to be started. Failure on the part of the Subdivider to notify the City Engineer may cause delay for which the Subdivider shall be solely responsible.

13. Whenever the Subdivider varies the period during which work is carried on each day, he shall give due notice to the City Engineer so that proper inspection may be provided. Any work done in the absence of the City Engineer will be subject to rejection. The inspection of the work shall not relieve the Subdivider of any of his obligations to fulfill the Agreement as prescribed. Defective work shall be made good and unsuitable materials may be rejected, notwithstanding the fact that such defective work and unsuitable materials have been previously overlooked by the City Engineer and accepted.

14. Any damage to the sewer system, concrete work, or street paving that occurs after installation shall be made good to the satisfaction of the City Engineer by the Subdivider before bonds are released or final acceptance of the work and improvements.

15. Adequate dust control shall be maintained by the Subdivider on all streets within and without the subdivision on which work is required to be done under this Agreement from the time work is first commenced until the paving of the streets are completed. "Adequate dust control" as used herein shall mean the sprinkling of the streets with water or the laying of a dust coat of oil thereon with sufficient frequency to prevent the scattering of dust by wind or the activity of vehicles and equipment onto any street area or private property adjacent to the subdivision. Whenever in the opinion of the City Engineer adequate dust control is not being maintained on any street or streets as required by this paragraph, the City Engineer shall give notice to the Subdivider to comply with the provisions of this paragraph forthwith. Such notice may be personally served upon the Subdivider or, if the Subdivider is not an individual, upon any person who has signed this agreement on behalf of the Subdivider or, at the election of the City Engineer, such notice may be

mailed to the Subdivider at his address on file with the City Engineer. If within 24 hours after such personal service of such notice or within 48 hours after the mailing thereof as herein provided, the Subdivider shall not have commenced to maintain adequate dust control or shall at any time thereafter fail to maintain adequate dust control, the City Engineer may, without further notice of any kind, cause any such street or streets to be sprinkled or oiled, as he may deem advisable to eliminate the scattering of dust, by equipment and personnel of City or by contract as the City Engineer shall determine, and the Subdivider agrees to pay to City forthwith, upon receipt of billing therefor, the entire cost to City of such sprinkling or oiling. When the surfacing on any existing street is disturbed, this surfacing shall be replaced with temporary or permanent surfacing within 14 calendar days, and the roadway shall be maintained in a safe and passable condition at all times between the commencement and final completion, and adequate dust control shall be maintained during these operations.

16. The Subdivider shall install all street improvements in accordance with Section 12-1206 of the Municipal Code of the City of Fresno, the Public Works Standards, and the approved construction plans.

17. Concrete curbs and gutters, the sanitary sewer system and house connections, together with water mains, gas mains, and their respective service connections, shall be completed in the streets and alleys before starting the street and alley surfacing.

18. Time is of the essence of this Agreement. The provisions contained in this Agreement are intended by the parties to run with the land, and the same shall bind and inure to the benefit of the parties hereto, their heirs, successors in interest, and assigns.

19. No assignment of this Agreement or of any duty or obligation of performance hereunder shall be made in whole or in part by the Subdivider without the written consent of the City.

\*\*\*\*\*

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The parties have executed this Agreement on the day and year first above written.

**CITY OF FRESNO,**  
a Municipal Corporation

DAVID D. HEALEY, Director  
Public Works Department

By: Michael T. Kirn  
Michael T. Kirn, Assistant Director

**SUBDIVIDER**

Fresno Herndon Development, LLC, an  
Indiana Limited Liability Company.

By: John Urbahns  
John Urbahns, Managing Member

Subdivider's Mailing Address:

280 E. 96<sup>th</sup> Street, Suite 250  
Indianapolis, IN 46240

APPROVED AS TO FORM:

HILDA CANTÚ MONTOY  
City Attorney

By: Hilda Cantú Montoy  
Deputy

(Attach Notary Acknowledgments)

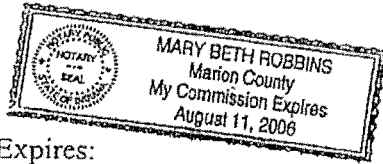
City of Fresno Mailing Address:

Public Works Director  
Public Works Department  
2600 Fresno Street.  
Fresno, CA 93721-3615

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION     )

On November 21, 2005, before me, MARY BETH ROBBINS, a Notary Public, personally appeared John B. Urbahns, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity as a Member of Fresno Herndon Development, LLC, an Indiana limited liability company, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



*Mary Beth Robbins*  
\_\_\_\_\_  
Notary Public - Signature

My Commission Expires: \_\_\_\_\_

My County of Residence: \_\_\_\_\_

**CLERK'S CERTIFICATION**

*STATE OF CALIFORNIA*           )  
*COUNTY OF FRESNO*           )  
*CITY OF FRESNO*               )

On **December 15, 2005**, before me, **Erika Leyva**, Deputy City Clerk, personally appeared **Michael T. Kirn, Assistant Public Works Director**, known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument(s) the person(s), or the entity upon behalf of the City of Fresno of which the person(s) acted, executed the instrument.

*WITNESS* my hand and official City Seal.

*REBECCA E. KLISCH*  
*CITY CLERK*

By *Erika Leyva*  
Deputy

SUBORDINATION

The undersigned as holder of the beneficial interest in and under that certain Deed of Trust recorded on 02/28/2005 at 3:31 p.m., in the office of the Fresno County Recorder as Document No. 20050045727 of which the Deed of Trust in, by and between: Fresno Herndon Development, LLC as Trustor, Jeffrey R. Rush, Esq., as Trustee, and U.S. Bank National Association, as Beneficiary, hereby expressly subordinates said Deed of Trust and its beneficial interest thereto to the foregoing Subdivision Agreement for Parcel Map No. 2005-04.

DATED: 12/15/05

**BENEFICIARY**  
U.S. BANK NATIONAL ASSOCIATION

BY: James E. Niestradt

BY: \_\_\_\_\_

(Beneficiary to print/type Name and Title;  
and attach Notary Acknowledgment)

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STATE OF OHIO )  
 ) SS:  
COUNTY OF Hamilton )

On November 22, 2005, before me, Tammy S. Monnin, a Notary Public, personally appeared James E. Nierstadt, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity as a Senior Vice President, U.S. Bank National Association, a national banking association, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



TAMMY S. MONNIN  
Notary Public, State of Ohio  
My Commission Expires  
October 13, 2008

Tammy S. Monnin  
Notary Public - Signature

My Commission Expires: Oct 13, 2008

My County of Residence: Hamilton



# EXHIBIT A.1 Parcel Map Agreement No. 2005-04

## A. ESTIMATE OF DESCRIPTION AND COST OF THE WORK AND IMPROVEMENTS

DESCRIPTION	ESTIMATED QUANTITY	UNIT	ESTIMATED UNIT COST	UNIT	EXTENSION
Street Lights (Type **)	0	Each	\$0.00	/Each	\$0.00
Street Lights (Type **)	0	Each	\$0.00	/Each	\$0.00
Sewer Housebranch	0	Each	\$0.00	/Each	\$0.00
Sewer Main Extension (***)	0	Lin Ft	\$0.00	/Lin Ft	\$0.00
Water Main Extension (***)	0	Lin Ft	\$0.00	/Lin Ft	\$0.00
Concrete Curb & Gutter	0	Lin Ft	\$0.00	/Lin Ft	\$0.00
Concrete Sidewalk/Approach	0	Sq Ft	\$0.00	/Sq Ft	\$0.00
Permanent Pavement	0	Sq Ft	\$0.00	/Sq Ft	\$0.00
SUB-TOTAL (see EXHIBIT A.2)					\$406,125.00
10% CONTINGENCY*					\$41,000.00
FINAL COST ESTIMATE*					\$447,000.00

\* Amounts rounded to nearest \$1000

The work and improvements, quantities and costs are estimates. The actual extent of the work and improvements shall be established by the construction plans approved by the City Engineer.

## B. IMPROVEMENT SECURITY REQUIREMENTS (due with parcel map agreement)

\*\* Amounts rounded to nearest \$100

### Performance Security (100% of Final Cost Estimate)\*\*

95% of amount shall be in the form of a bond by duly authorized corporate sureties or irrevocable letter of credit

\$424,700

5% of amount shall be in cash or a Certificate of Deposit

\$22,400

### Payment Security (50% of Final Cost Estimate)\*\*

100% of amount shall be in the form of a bond by duly authorized corporate sureties or irrevocable letter of credit

\$223,500

## C. WARRANTY SECURITY (due as condition of acceptance of the work)\*\*

5% of first \$50,000 of the Final Cost Estimate	\$2,500
3% of next \$50,000	\$1,500
1% of next \$400,000	\$3,500
0.5% of amount over \$500,000	\$0
Minimum Amount	\$7,500

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**WILLOW/HERNDON SHOPPING CENTER**  
**Preliminary Engineer's Construction Cost Estimate**  
**PM 2005-04 EXHIBIT A.2**  
**October 14, 2005**

Item	Description	Estimated Quantity	Unit	Unit Estimate	Extension
<b>OFFSITE IMPROVEMENTS</b>					
1	Clearing and Grubbing/Demoliton	1	LS @	\$ 5,000.00 =	\$ 5,000.00
2	Earthwork and Grading	1	LS @	\$ 5,000.00 =	\$ 5,000.00
3	Concrete Curb and Gutter	570	LF @	\$ 15.00 =	\$ 8,550.00
4	Concrete Handicap Ramp	620	SF @	\$ 8.00 =	\$ 4,960.00
5	Concrete Sidewalk	6530	SF @	\$ 5.50 =	\$ 35,915.00
6	Concrete Curb	1125	LF @	\$ 12.00 =	\$ 13,500.00
7	Concrete Valley Gutter	915	SF @	\$ 7.00 =	\$ 6,405.00
8	Aggregate Baserock	200	TON @	\$ 25.00 =	\$ 5,000.00
9	Asphalt Concrete	100	TON @	\$ 45.00 =	\$ 4,500.00
10	Striping and Markings	1	LS @	\$ 2,000.00 =	\$ 2,000.00
11	Street Lights (Type E-1)	2	EA @	\$ 3,000.00 =	\$ 6,000.00
12	Traffic Signal	1	LS @	\$ 200,000.00 =	\$ 200,000.00
13	7' Concrete Block Wall	1072	LF @	\$ 60.00 =	\$ 64,320.00
	<b>Total Improvements</b>				<b>\$ 356,150.00</b>

**OTHER REQUIRED ONSITE IMPROVEMENTS**

1	<b>Sewer System</b>				
2	Sewer Main	1400	LF @	\$ 15.00 =	\$ 21,000.00
	Sewer Services to each parcel	5	EA @	\$ 500.00 =	\$ 2,500.00
3	Sewer Manholes	7	EA @	\$ 1,500.00 =	\$ 10,500.00
4	Sewer Connection	1	EA @	\$ 750.00 =	\$ 750.00
5	<b>Water System</b>				
6	4" Domestic Water Main	1425	LF @	\$ 7.00 =	\$ 9,975.00
	Water Services	5	EA @	\$ 750.00 =	\$ 3,750.00
7	Water Main Connection	1	LS @	\$ 750.00 =	\$ 750.00
8	Detector Check Valve	1	LS @	\$ 750.00 =	\$ 750.00

**Total Other Required Improvements**

**\$ 49,975.00**

**Total Required Improvements**

**\$ 406,125.00**

# EXHIBIT B Parcel Map Agreement No. 2005-04

		EXTENSION	NET AMOUNT DUE
<b>A. MISCELLANEOUS FEES &amp; CHARGES</b>			
<b>1. STREET TREES</b>			
<input type="text" value="0"/>	Commercial (5-gallon) Street Trees	@ <input type="text" value="\$30.00"/> per Tree	<input type="text" value="na"/> (A1)
(A1) Street Tree Inspection fees will be payable at the time of development of each parcel unless otherwise determined by Public Works.			
<b>2. STREET RIGHTS OF WAY ACQUISITION/CONSTRUCTION CHARGE per FMC 11-226(f)(6)</b>			
<input type="text" value="Lump Sum"/>	Charge as established by Public Works Director	<input type="text" value="na"/>	<input type="text" value="na"/>
<b>3. IRRIGATION PIPELINE (one-time maintenance fee)</b>			
<input type="text" value="0"/>	Lineal Feet	@ <input type="text" value="\$5.00"/> per LF	<input type="text" value="na"/>
<b>4. MONUMENT CHECK FEE</b>			
<input type="text" value="6"/>	Lot & Outlots	@ <input type="text" value="\$30.00"/> per Lot (Min \$200)	<input type="text" value="\$200.00"/>

## B. IMPACT FEES, CONSTRUCTION CREDITS & FEES TO BE DEFERRED

<input type="text" value="19.9700"/>	Gross Acres
<input type="text" value="15.9500"/>	Adjusted Gross Acres (AG Ac); excludes Area of Arterial & Collector Streets
<input type="text" value="C-1/EACz, R-P/cz"/>	Zoning
<input type="text" value="no"/>	Input "ugm" if within the Urban Growth Management Area or "no"

<b>1. LOCAL DRAINAGE FEES</b>			
<input type="text" value="CL"/>	FMFCD Drainage Area		
<input type="text" value="0.8763"/>	Acres per FMFCD	@ <input type="text" value="\$4,700"/> per Acre	<input type="text" value="\$4,119.00"/>
(Street Right-of-Way, Parcels A & B zoned R-P)			
<input type="text" value="CL"/>	FMFCD Drainage Area		
<input type="text" value="1.4816"/>	Acres per FMFCD	@ <input type="text" value="\$4,980"/> per Acre	<input type="text" value="\$7,378.00"/>
(Street Right-of-Way, Parcels C, D, E, & F zoned C-1)			
Local Drainage Fee			<input type="text" value="\$11,497.00"/>
(B1) All or portion of fee obligation satisfied pursuant to FMFCD agreement.			<input type="text" value="\$0.00"/> (B1)

**2. SEWER CONNECTION CHARGES**

Sewer Connection Charges for Parcels D & E to be paid thru Building Permit Applications #05-6182, #05-6183. Parcels A, B, C, & F due at time of Development.

(a) Wastewater Facilities Charge

Upon occupancy of the project, the subdivider shall pay the appropriate sewer facility charge pursuant to the Simple Tiered Equity Program (STEP) as determined by the Department of Public Utilities, Wastewater Division, Environmental Services Section (559-621-5153)

**3. WATER CONNECTION CHARGES**

Water Connection Charges for Parcels D & E to be paid thru Building Permit Applications #05-6182, #05-6183. Parcels A, B, C, & F due at time of Development.

**4. URBAN GROWTH MANAGEMENT (UGM) FEES & CONSTRUCTION CREDITS**

Not in Urban Growth Management (UGM) service area.

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# EXHIBIT B Parcel Map Agreement No. 2005-04

	EXTENSION	NET AMOUNT DUE
<b>5. NON-URBAN GROWTH MANAGEMENT (UGM) IMPACT FEES &amp; CONSTRUCTION CREDITS</b>		
<b>(a) TRAFFIC SIGNAL CHARGE</b>		
0.0000 Sq. Ft. of building space (non-residential) @ \$0.00 per Sq. Ft.	\$0.00	\$0.00 (B4)
Less Estimated Traffic Signal Charge Construction Credits	\$0.00	
Traffic Signal Charge (B4) To be paid at time of development	\$0.00	\$0.00

**(b) POLICE SUBSTATION FEE** *Informational Only This Fee Due With Issuance of Building Permits*  
 Northeast Fresno Service Area

19.9700 NON - Residential @ \$373.00 per Gr Acre

Total Impact Fees & Charges	\$11,497.00	\$0.00
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Note: EXTENSION total includes net results of construction credits

**SUMMARY**

TOTAL (A) MISCELLANEOUS FEES & CHARGES	\$200.00
TOTAL (B) IMPACT FEES & CHARGES	\$0.00
<b>TOTAL SUBDIVISION FEES and CHARGES DUE WITH AGREEMENT (cash)</b>	<b>\$200.00</b>

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Recording Requested By:

City of Fresno  
No Fee-Govt. Code Sections  
6103 and 27383

When Recorded Mail To:

City Clerk  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721-3623



FRESNO County Recorder  
Paul Dictos, C.P.A.  
**DOC- 2012-0145824**  
Tuesday, OCT 09, 2012 09 50 38  
Ttl Pd \$0.00 Nbr-0003757560  
CRR/R2/1-2

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN THAT:

1. The City of Fresno, a municipal corporation, 2600 Fresno Street, Fresno, California, is owner (of an easement) in fee the property hereinafter described.
2. Said City of Fresno conditioned a work of improvement on the property hereinafter described which was accepted on October 5, 2012,
3. The name of the original developer conditioned for the work of improvement was Fresno Herndon Development, LLC
4. The property on which the work of improvement was accepted is located in the City of Fresno, Fresno County, California, and is described as follows:

Parcel Map 2005-04 SW Corner Willow and Herndon

5. The name of the surety on the contractor's Labor and Material Bond is **Bond Safeguard Bond #5020221**

Date: 10/9/12

City of Fresno  
By: Efren Bañuelos  
Efren Bañuelos  
Asst. Public Works Director

VERIFICATION

I, the undersigned, declare that I am the Public Works Director of the City of Fresno, California and that I have read the foregoing notice and know the contents thereof and that the same is true to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct

Executed at Fresno, California, this 9 day of October 2012.

CITY OF FRESNO, a municipal corporation

By Efren Bañuelos  
Efren Bañuelos  
Asst. Public Works Director

**CLERK'S CERTIFICATION**

State of California     )  
County of Fresno     )

On October 9, 2012 before me, Sherrie L. Badertscher, Deputy City Clerk, personally appeared, Efren Banuelos, Asst Public Works Director, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

*I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct*

WITNESS my hand and official seal

YVONNE SPENCE, CMC  
City Clerk, City of Fresno

By *Sherrie L. Badertscher*  
Deputy

Ⓢ



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RESOLUTION NO. 2009-01

A RESOLUTION OF  
THE FRESNO COUNTY REGIONAL TRANSPORTATION MITIGATION FEE AGENCY  
AUTHORIZING PARTICIPATION IN THE COUNCIL OF FRESNO COUNTY GOVERNMENTS  
REGIONAL TRANSPORTATION MITIGATION FEE PROGRAM

The Board of Directors of the Fresno County Regional Transportation Mitigation Fee Agency (the "Board") ordain as follows:

**Section 1: Title**

This Resolution shall be known as the "Fresno County Regional Transportation Mitigation Fee Resolution of 2009" (the "Resolution").

**Section 2: Findings**

A. This Resolution establishes the "Fresno County Regional Transportation Mitigation Fee" (the "RTMF") as directed by the "Fresno County Transportation, Safety, Road Repair Measure" approved by the voters of Fresno County on November 7, 2006 (the "Measure 'C' Extension").

B. Pursuant to the authority of California Government Code, section 6500, et seq., the Joint Exercise of Powers Act, the County of Fresno (the "County") and the incorporated cities situated in Fresno County (the "Cities") established the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency (the "Agency") to jointly exercise the powers of the Cities and County pursuant to the Mitigation Fee Act to enact, adopt, establish, implement, impose, collect, and administer the RTMF to mitigate the regional transportation impacts of new development in the jurisdictional boundaries of the Cities and County.

C. The Council of Fresno County Governments ("FCOG") is a joint powers agency consisting of the Cities and the County. As Member Agencies of FCOG, the Cities and the County participated in the preparation of a certain "Fresno County Regional Transportation Mitigation Nexus Study", dated February, 2009 (the "RTMF Nexus Study") prepared pursuant to California Government Code, Section 66000 et seq., the Mitigation Fee Act.

D. Consistent with the findings made in the RTMF Nexus Study, the Board has been informed and advised, and hereby finds, that future development within the Cities and the County will result in traffic volumes exceeding the capacity of certain facilities on the freeway and regional arterial highway network (referred to as the "network") as it presently exists.

E. Consistent with the findings made in the RTMF Nexus Study, the Board has been further informed and advised, and hereby finds, that if the capacity of the network is not enlarged, the result will be additional traffic congestion in the Cities and the County, with unacceptable Levels of Service on facilities throughout the Cities and the County by 2030.

F. The Board has been further advised, and so finds that existing and known future funding sources will be inadequate to provide necessary improvements to the network, resulting in an unacceptably high level of traffic congestion within and around the Cities and the County.

G. The Board has reviewed the RTMF Nexus Study, and hereby finds that future development within the Cities and the County will adversely affect the network, and that unless such development contributes its fair share of the cost of improving the network, the network will operate at unacceptable Levels of Service.

H. The Board further finds and determines that there is a reasonable and rational relationship between the use of the RTMF and the type of development projects on which the fees are imposed because the fees will be used to construct the transportation improvements that are necessary for the safety, health and welfare of the residential and non-residential users of the development projects on which the RTMF will be levied.

I. The Board finds and determines that there is a reasonable and rational relationship between the need for the improvements to the network and the type of development projects on which the RTMF is imposed because it will be necessary for the residential and non-residential users of such projects to have access to the network. Such development will benefit from the network improvements and the cumulative impact of such development will be mitigated in part by the payment of the RTMF.

J. The Board further finds that the cost estimates set forth in the RTMF Nexus Study are reasonable cost estimates for constructing the facilities that comprise the network; and that RTMF program revenues to be generated by new development will not exceed the total fair share of these costs.

K. The fees collected pursuant to this Resolution shall be used to help pay for the construction and acquisition of the network improvements identified in the RTMF Nexus Study. The need for the improvements is related to new development because such development results in additional traffic thus creating the demand for the improvements.

L. By notice duly given and published, the Board set the time and place for a public hearing on the RTMF Nexus Study and the fee proposed thereunder, and at least ten days prior to the hearing, the Agency made the RTMF Nexus Study available to the public.

M. At the time and place set for the hearing, the Board duly considered that data and information provided by the public relative to the cost of the services for which the fees are proposed and all other comments, whether written or oral, submitted prior to the conclusion of the hearing.

N. The Board finds that the RTMF Nexus Study proposes a fair and equitable method for distributing a portion of the unfunded costs of improvements to the network.

O. The Board hereby adopts the RTMF Nexus Study, which Study is attached hereto as Exhibit "A", and incorporates it herein as though set forth in full.

### **Section 3: Definitions**

For the purpose of this Resolution, the following words, terms and phrases shall have the following meanings:

- A. **"Single Family Dwelling Unit (market-rate)"** means a detached building designed primarily for residential use by a single family and containing at least one (1) kitchen.
- B. **"Single Family Dwelling Unit (affordable)"** means each building meeting the definition of Single Family Dwelling that is affordable to persons with 80% of Fresno County median income or less annually. The definition for median income and affordable housing is as provided annually by the U. S. Housing & Urban Development Agency (HUD) to the Cities and the County.
- C. **"Multi-Family Dwelling Unit (market-rate)"** means each unit used by one (1) family and containing but one (1) kitchen, which is designed primarily for residential occupancy, in a building containing more than one such unit.
- D. **"Multi-Family Dwelling Unit (affordable)"** means each building meeting the definition of Multi-Family Dwelling that is affordable to persons with 80% of Fresno County median income or less annually. The definition for median income and affordable housing is as provided annually by the U. S. Housing & Urban Development Agency (HUD) to the Cities and the County.



- E. **“Education Development”** means any development project that is predominately dedicated to conducting regular academic instruction at preschool, kindergarten, elementary, secondary and collegiate levels, and including graduate schools, universities, non-profit research institutions and religious institutions. This definition applies only to public or non-profit institutions and does not include schools, academies or institutes, incorporated or otherwise which operate for a profit, nor does it include commercial or trade schools.
- F. **“Government Development”** means any development project that is predominately dedicated to the provision of administrative, clerical, law enforcement, public safety, taxation and governance services by public institutions with legislative, executive or judicial authority.
- G. **“Commercial/Office/Service Development”** means any development project that is predominately dedicated to business activities associated with professional, administrative or clerical services, and typically consist of corporate offices, financial institutions, legal and medical offices.
- H. **“Commercial/Retail Development”** means any development project that is predominately dedicated to selling goods, wares or merchandise directly to the ultimate consumer.
- I. **“Light Industrial”** means any development project employing fewer than 500 people that is predominately dedicated to processing of small articles such as printing, assembly of data processing equipment, and other similar types of enterprise.
- J. **“Heavy Industrial”** means any development project that is predominately dedicated to the manufacture, fabrication, processing reduction or destruction of any article, substance or commodity, or any other treatment thereof in such a manner as to change the form, character, or appearance thereof, and including storage elevators, truck storage yards, warehouses, wholesale storage and other similar types of enterprise.
- K. **“Other Non-Residential”** means any development project that is predominately non-residential and does not meet any of the definitions of Education Development, Government Development, Commercial/Office/Service Development, Commercial/ Retail Development, Light Industrial, or Heavy Industrial.
- L. **“Development”** means any work or improvement that requires a building permit or development approval but shall not include any work or improvement for offsite construction or improvements to be dedicated to public use as a condition of a development entitlement.
- M. **“New Development”** means any development on vacant land or additions or expansions on existing development wherein square footage of the development, in the case of non-residential use, or the number of dwelling units, in the case of residential use, is increased, or where the use is changed. It shall not include remodels or reuse wherein the number of dwelling units or overall square footage is not increased or the use has not changed.
- N. **“Actual Construction Costs”** mean, for the purpose of imposing a fee adjustment pursuant to Section 4, Paragraph C, any actual and estimated costs of the network improvements, including, but not limited to, debt service, lease payments and construction and acquisition costs.

#### **Section 4: Establishment of the Regional Transportation Mitigation Fee**

A. **Fee.** All new development in the Cities and the County shall be responsible for paying the RTMF unless otherwise exempted by this Resolution.

B. **Fee Calculation.** The fees shall be assessed according to the RTMF fee provided in the Regional Mitigation Fee Schedule and the methodology set forth in the Fee Calculation Handbook adopted on September 24, 2009, as amended from time to time. The following shall be observed for purposes of calculating the fee:

- i. For residential projects, the fee rate utilized shall be computed on a per-dwelling unit basis.
- ii. For non-residential projects, the fee rate utilized shall be based on a per-square-foot of the building or structure identified in the building permit as determined by the highest and best use based on the underlying zoning approved for the site.
- iii. Pursuant to California Government Code, Section 66005.1, the RTMF shall be applied at a reduced rate for those developments meeting the criteria set forth in the Section. The fee reduction shall follow whatever guidelines are established by the State of California for administration of this section of the California Government Code. Pursuant to California Government Code, Section 66005.1(e), this fee reduction shall take effect on January 1, 2011.

C. **Fee Adjustment.** By amendment to the Regional Transportation Mitigation Fee Schedule, consistent with the requirements of the Mitigation Fee Act (Government Code Sections 66000, et seq.), the fees shall be increased or decreased to reflect changes in Actual Construction Costs every five years, and shall be adjusted annually in a manner consistent with that prescribed in Appendix D of the Final 2006 Measure "C" Extension Expenditure Plan. The adjustment of the fees may also reflect changes in the facilities required to be constructed, in estimated revenues received pursuant to this Resolution, as well as the availability or lack thereof of other funds with which to construct the network.

D. **Purpose.** The purpose of the RTMF is to augment funding for those certain improvements to the network as identified in the RTMF Nexus Study, Exhibit "A".

E. **Applicability.** The RTMF shall apply to all new development within the Cities and the County effective January 1, 2010, unless otherwise exempt hereunder.

F. **Exemptions.** Education developments and government developments shall be exempt from the RTMF. Tentative maps approved prior to January 1, 2010 shall also be exempt from the RTMF, unless they require discretionary approvals after that date, in which case the RTMF shall apply.

G. **Credit.** Network improvements may be credited toward the RTMF in accordance with the following:

- i. **Exaction Credits:** If a developer constructs improvements identified on the network as a condition of development approval to mitigate a direct impact of the development, the developer shall receive credit for all costs associated with the improvement based on the estimated cost share attributable to new development as identified in the RTMF Nexus Study. Fresno County Transportation Authority ("FCTA") staff must pre-approve any credit agreements that deviate from the standard FCTA approved format.
- ii. **Other Credits:** In special circumstances, when a developer constructs off-site improvements such as an interchange, bridge, or railroad grade separation, credits shall be determined by FCTA and the Agency, in consultation with the developer. All such credits must have prior written approval from FCTA.
- iii. The amount of the development fee credit shall not exceed the maximum amount determined by the most current estimated cost share attributable to new development as prescribed in the RTMF Nexus Study or actual costs, whichever is less.

## **Section 5: Reimbursements**

Should the developer construct network improvements in excess of the RTMF fee obligation, the developer shall be reimbursed based on reasonable actual costs. Reimbursements shall be enacted through a three party agreement including the developer, FCTA, and the Agency, contingent on funds being available. In all cases, however, reimbursements under such special agreements must coincide with construction of the transportation improvements as scheduled in the most current Measure "C" Implementation Plan adopted by FCTA.

## **Section 6: Procedures for the Levy, Collection and Disposition of Fees**

A. **Authority of the Board.** The Board, or the Board's designee, is hereby authorized to levy and collect the RTMF and make all determinations required by this Resolution.

B. **Payment.** Payment of the fees shall be as follows:

- i. The fees shall be paid no later than the time a certificate of occupancy is issued for the Development pursuant to Agency policy.
- ii. The amount of the fee to be paid shall be the fee amount in effect at the time that payment is made under this Resolution
- iii. If all or part of any development project is sold prior to payment of the fee, the property shall continue to be subject to the requirement for payment of the fee, accordingly, the fees shall run with the land.
- iv. Applicants shall pay a processing fee of twenty-five dollars per application that shall be used to help cover the cost to the Agency of administering the RTMF program. This fee shall be paid at the same time as the RTMF fee.

C. **Disposition of Fees.** All fees collected hereunder shall be transmitted to the Executive Director of FCTA within ninety days for deposit, investment, accounting and expenditure in accordance with the provisions of this Resolution and the Mitigation Fee Act.

D. **Appeals.** Appeals shall be filed with FCTA in accordance with the administrative procedures established by FCTA. Appealable issues shall be the application of the fee, application of credits, application of reimbursement, and application of exemption. Appeals may also be made that the fee level for development of unique types of land uses be evaluated on an individual basis. Such unique projects and specific evaluation shall be paid for by the project applicant and performed by Fresno COG or its designee.

E. **Reports to FCTA.** The Board, or the Board's designee, shall prepare and deliver to the Executive Director of FCTA, periodic reports as will be established under the RTMF administrative handbook.

## **Section 7: Severability**

If any one or more of the terms, provisions or sections of this Resolution shall to any extent be judged invalid, unenforceable and/or voidable for any reason whatsoever by a court of competent jurisdiction, then each and all of the remaining terms, provisions and sections of this Resolution shall not be affected thereby and shall be valid and enforceable.

## **Section 8: Term**

Unless otherwise amended, the term of this Resolution shall coincide with the term of the Measure "C" Extension.

**Section 9: Judicial Review**

In accordance with State law, any judicial action or proceeding to attack, review, set aside, void or annul this Resolution shall be commenced within 90 days of the date of adoption of this Resolution.

**Section 10: Effective Date**

This Resolution shall become effective January 1, 2010.

By: \_\_\_\_\_

Chairman, Board of Directors

ATTEST:

\_\_\_\_\_  
Secretary to the Board

By: \_\_\_\_\_

**Regional Transportation Mitigation Fee Schedule**

<b>Land Use Category</b>	<b>2010</b>	<b>2011</b>	<b>2012 and thereafter</b>
<b>Residential Developments (\$/dwelling unit)</b>			
Single-Family Dwelling (market-rate)	\$1,200	\$1,450	\$1,727
Single-Family Dwelling (affordable)	\$600	\$725	\$864
Multi-Family Dwelling (market-rate)	\$843	\$1,018	\$1,212
Multi-Family Dwelling (affordable)	\$421	\$509	\$606
<b>Non-Residential Developments (\$/sq.ft.)</b>			
Education	exempt	exempt	exempt
Government	exempt	exempt	exempt
Commercial/Retail	\$1.36	\$1.65	\$1.96
Commercial/Office/Service	\$0.85	\$1.03	\$1.23
Light Industrial	\$0.34	\$0.41	\$0.49
Heavy Industrial	\$0.07	\$0.09	\$0.10
Other Non-Residential	\$0.29	\$0.35	\$0.42

CITY OF FRESNO  
PLANNING AND DEVELOPMENT DEPARTMENT

CONDITIONS OF APPROVAL  
JUNE 15, 2005

CONDITIONAL USE PERMIT APPLICATION NO. C-05-045

**PART A - PROJECT INFORMATION**

1. Assessor's Parcel No: 410-030-55
2. Zone Map No: 1753
3. Job Address: 6891 North Willow Avenue
4. Street Location: Located on the southwest corner of the intersection of East Herndon and North Willow Avenues. **(Council District 6, Councilmember Duncan)**
5. Existing Zoning Split - C-1/EA/cz (*Neighborhood Shopping Center District/Expressway Area Overlay District/conditions of zoning*)  
R-P/cz (*Residential and Professional Office District/conditions of zoning*)
6. Planned Land Use: Neighborhood Commercial  
Commercial Office
7. Plan Areas: Hoover Community Plan
8. Project Description: Requests authorization to develop a 70,980 square-foot retail shopping center incorporating two phases of development on 8.09 acres of property zoned C-1/EA/cz (*Neighborhood Shopping Center District/Expressway Area Overlay District/with conditions of zoning*). Phase I comprises 29,980 square feet of retail building area (three buildings) and Phase II comprises 41,000 square feet of retail building area (two buildings).

**PART B - GENERAL CONDITIONS AND REQUIREMENTS**

The Planning and Development Director on May 18, 2005, approved the special permit application subject to the enclosed list of conditions and Exhibit(s) "A," "B," "E1," "E2," "E3," & "L1 dated February 04, 2005.

The Planning and Development Department staff has prepared an initial study and environmental

checklist and evaluated the requested conditional use permit in accordance with the land use and environmental policies and provisions of the 2025 Fresno General Plan and the related Master Environmental Impact Report (MEIR No. 10130). The study indicates that the project, if approved, would conform to the land use designation and land use policies of the 2025 Fresno General Plan and is within the scope of the Master Environmental Impact Report No. 10130. Therefore, staff has issued a Finding of Conformity to the 2025 Fresno General Plan Master Environmental Impact Report (MEIR No. 10130) dated April 28, 2005, which incorporates a MEIR Mitigation Monitoring Checklist. This environmental finding was properly published on April 27, 2005, with no comments received to date.

**IMPORTANT: PLEASE READ CAREFULLY**

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

Discretionary conditions of approval are listed in the last section of this list of conditions under the heading "Part F - Miscellaneous" and may be appealed. All code requirements, however, are mandatory and may only be modified by variance, provided the findings pursuant to Fresno Municipal Code Section 12-405.A can be made.

Approval of this special permit shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development including, but not limited to, the following:

1. All existing and proposed improvements including but not limited to buildings and structures, signs and their uses, trees, walls, driveways, outdoor storage, and open land use areas on the subject property and all of the preceding which are located on adjoining property and may encroach on the subject property;
2. All public and private easements, rights-of-way and any actual or potential prescriptive easements or uses of the subject property; and,
3. Existing and proposed grade differentials between the subject property and adjoining property zoned or planned for residential use.

Approval of this special permit may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this special permit, the Zoning Ordinance, and all Public Works Standards and Specifications. The Planning and Development Department shall not assume responsibility for any deletions or omissions resulting from the special permit review process or for additions or alterations to construction plan not specifically submitted and reviewed and approved pursuant to this special permit or subsequent amendments or revisions. (Include this note on the site plan.)

No uses of land, buildings, or structures other than those specifically approved pursuant to this site plan shall be permitted. (Include this note on the site plan.)

Transfer all red line notes, etc., shown on the original site plan exhibit to the final site plan. CORRECTIONS SHALL INCLUDE ALL THOSE LISTED IN THIS DOCUMENT AND THOSE LISTED IN THE CORRECTION LIST PROVIDED BY THE PLAN CHECK PROCESS.

The exercise of rights granted by this special permit must be commenced by May 18, 2009 (four years from the date of Director approval). There is no exception.

**To complete the back-check process for building permit relative to planning and zoning issues, submit eight copies of this corrected, final site plan, together with six copies of the elevations, landscape, and irrigation plans, and any required covenants and/or studies or analyses to the Planning Division, Current Planning Section, for final review and approval, ten days before applying for building permits.**

Copies of this final approved site plan, elevations, landscape, and irrigation plans stamped by the Planning Division must be substituted for unstamped copies of same in each of the four sets of construction plans submitted for plan check prior to issuance of building permits. The final approved site plan must also include all corrections identified in the plan check process.

Be advised that on-site inspections will not be authorized unless the final stamped approved site plan, elevations, landscape, and irrigation plans are included in the plan check file copy.

**Please contact Will Tackett at (559) 621-8063 to schedule an appointment for final sign-off for building permits following your receipt and substitution of the four copies of the stamped, corrected, approved exhibits in the plan check sets.**

#### NOTICE TO PROJECT APPLICANT

In accordance with the provisions of Government Code Section 66020(d)(1), the imposition of fees, dedication, reservations or exactions for this project are subject to protest by the project applicant at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservation or exactions imposed on the development project.

This notice does not apply to those fees, dedications, reservations or exactions which were previously imposed and duly noticed; or, where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

#### **PART C - PUBLIC IMPROVEMENT REQUIREMENTS**

The following requirements are based on city records and the accuracy of the existing and proposed on-site and off-site conditions depicted on the exhibits submitted. Requirements not addressed due to omission or misrepresentation of information, for which this review process is dependent, will be imposed whenever such conditions are disclosed.



Questions relating to dedications, street improvements or off-street parking lot geometrics may be directed to David Padilla at (559) 621-8798 or Greg Jenness at (559) 621-8812 of the Public Works Department, Engineering Division.

## 1. STREET ENCROACHMENT PERMITS, DEDICATIONS AND VACATIONS

- a) Exhibit "A" is required to include all street furniture, e.g.: public utility poles and boxes, guy wires, signs, fire hydrants, bus stop benches, mail boxes, news stands, trash receptacles, tree wells, etc., within the existing and proposed public rights of way.
  - A minimum 4 foot wide path of travel is required along the public sidewalk on all frontages of the property as required by Title 24 of the California Administration Code. An on-site pedestrian easement may be required if Title 24 requirements cannot be met within the existing public rights of way.
- b) ENCROACHMENT PERMITS. The construction of any overhead, surface or sub-surface private structures and appurtenances extending within the public rights-of-way is prohibited unless an encroachment permit is approved by the City Engineer. For encroachment permit information, contact the Public Works Department, Engineering Services Division, Special Districts/ Projects and Right of Way Section, (559) 621-8693. Encroachment permits must be approved prior to issuance of building permits.
- c) DEDICATIONS. The following dedication requirements must be satisfied prior to the issuance of building permits:
  - There are no dedications required at this time.
- d) VACATIONS. The following vacation requirements must be satisfied prior to issuance of building permits:
  - Vacate excessive right-of-way at locations noted on Exhibit A.

## 2. STREET IMPROVEMENTS

- a) All improvements shall be constructed in accordance with the Standard Specifications and Standard Drawings of the City of Fresno, Public Works Department or street construction plans required and approved by the City Engineer. The performance of any work within the public street rights-of-way (including pedestrian, water and sewer utility easements) requires a Street Work Permit issued by the Public Works Department, Engineering Services Division at (559) 621-8693, prior to commencement of the work. All required street improvements must be completed and accepted by the City prior to occupancy.
- b) The property shall be improved in accordance with the provisions of FMC Section 11-208. All public street improvements shall be constructed in accordance with the Standard Specifications of the City of Fresno, Public Works Department and the engineered street construction plans required and approved by the City Engineer. The final corrected exhibit (Exhibit A) shall incorporate all required dedications, parking lot

geometrics and improvements required as conditions of approval for development.

- c) Sign and mark southbound Willow Avenue from Herndon to the southerly limits of the project with the following lane geometry:
  - i) Two 11' wide through lanes
  - ii) 5' bike lane
  - iii) 10' right turn lane at the northerly two driveways
- d) Install permanent paving, paving transition, concrete curb, gutter, sidewalk and driveway approaches, street tree wells and irrigation, bike paths, bus bays, right turn lanes, etc. as determined by the City Engineer on all street frontages. Wheelchair ramps shall be installed at all curb returns. Additional requirements are noted on Exhibit A.
- e) Existing concrete improvements to remain in place shall be repaired if damaged and/or off grade as determined by the Public Works Department, Construction Management Division (559) 621-5500. Such repairs must be completed prior to final occupancy.
- f) Install a ten (10) foot monolithic concrete sidewalk adjacent to the existing bus bay as shown on Exhibit A.
- g) Driveway approaches less than 8' in depth (refer to Public Works Department Standard Drawing No.s P-2 and P-3 for details) require the installation of a concrete pedestrian walkway behind the driveway approaches to provide a 4' wide clear path. Asphalt concrete paving per Public Works Standard Drawing No. P-34 may be substituted for concrete. A pedestrian easement is required for the path area located outside the public street easement.
- h) Install streetlights, on East Herndon Avenue to Expressway Standards, served underground. The Public Works Department Engineering Division, (559) 621-8800, must approve street lighting plans prior to street light installation. Plans shall be prepared by a registered Civil Engineer.
- i) Install street tree well(s) and irrigation system. Verify locations of required street tree well(s) in the public right-of-way area with the Department of Public Works (Nancy Morrison) at (559) 621-8690 and identify the required wells on the final corrected exhibit (Exhibit A).
- j) Underground all existing off-site overhead utilities within the limits of this site/map as per FMC Section 12-1011 and Resolution No. 78-522/88-229.
- k) Submit the following as a single package to the Public Works Department Engineering Division, Plan Check and GIS Mapping Section, (559) 621-8682, for review and approval, prior to issuance of building and street work permits: Street Improvement Plans, Signing and Striping Plans, Street Lighting Plans and Landscape and Irrigation Plans.

3. WATER AND SEWER SERVICE REQUIREMENTS AND CONNECTION CHARGES

- a) SANITARY SEWER REQUIREMENTS. Sewer Connection Charges are due and shall be paid for the Project:

Sewer connection charges will be calculated based upon fee rates imposed upon Vesting Tentative Parcel Map No. 2005-04.

- b) Separate sewer house branches are required for each lot.

Upon connection of this Project to the City Sewer System the owner shall be subject to payment of Sewer Facility charges per Fresno Municipal Code Section 9-505.1 and 9-505.2. Sewer Facility Charges consist of two components, a Wastewater Facilities Charge and Trunk Sewer Charge where applicable.

Sewer Facility Charges are collected after occupancy on a bi-monthly basis over time based on metered (water or sewer affluent) usage. The developer may contact the Department of Public Utilities (559) 621-8554 to receive an estimated cost of the Sewer Facility Charges applicable to the project (based on a constant sewer discharge and loading (Biochemical Oxygen Demand [BOD] and Total Suspended Solids [TSS] levels anticipated) at the current rates in effect, at that time, per Fresno's Master Fee Resolution. The developer shall provide data regarding estimated sewer discharge rates [flow] and loading [BOD/TSS levels] required for calculating the estimated charges.

The project developer should contact Wastewater Management Division/Environmental Services (559) 621-5100 regarding conditions of service for special users.

- c) WATER REQUIREMENTS. Water Connection Charges are due and shall be paid for the Project.

Water connection charges will be calculated based upon fee rates imposed upon Vesting Tentative Parcel Map No. 2005-04.

- d) Water facilities are available to provide service to the site subject to the following requirements:

- Separate water services with meter boxes shall be provided to each lot.

4. OFF-STREET PARKING FACILITIES AND GEOMETRICS

- a) Off-Street (on-site) parking facilities and geometrics shall conform to the City of Fresno, Public Works Department, Parking Manual Standard Specifications, P-41, P-42 and P-43, and requirements as noted on Exhibit A.

- b) Provide parking space needs, circulation, access, directional signs (e.g. Entrance, Exit, Right Turn Only, One-Way, etc. signs) as noted on Exhibit A.

5. SURVEY MONUMENTS AND PARCEL CONFIGURATION

- a) Existing survey monuments shall be preserved and if disturbed, shall be reset by a registered civil engineer or a licensed land surveyor. (Include this note on the site plan.)

**PART D - PLANNING/ZONING REQUIREMENTS**

1) PLANNING

- a) Development is subject to the following plans and policies:
- i) C-1/EA/cz, *Neighborhood Shopping Center District (Section 12-222 of the Fresno Municipal Code) / Expressway Area Overlay District (Section 12-244 of the Fresno Municipal Code) / conditions of zoning*
  - ii) Hoover Community Plan
  - iii) 2025 Fresno General Plan

2) BUILDING HEIGHT

- a) The maximum proposed building height of 33 feet is approved in accordance with Section 12-216.5-D-2 of the FMC.

3) BUILDING SETBACK, OPEN SPACES AND LANDSCAPING

- a) Provide the following minimum building setbacks:
- i) 30 feet along East Herndon Avenue (*Section 12-244.4-E-3 of the FMC*)
  - ii) 10 feet along North Willow Avenue (*Section 12-217.5-E-3 of the FMC*)
  - iii) 10 feet along the west property line (*Section 12-217.5-E-3 of the FMC*)
- a) Provide the following minimum landscaped areas:
- i) 10 feet along East Herndon Avenue (*Section 12-217.5-E-1 of the FMC*)
    - Landscape Right-of-Way adjacent to East Herndon Avenue
  - ii) 10 feet along North Willow Avenue (*Section 12-217.5-E-1 of the FMC*)
  - iii) 10 feet along the west property line (*Section 12-306-N-24-g(3) of the FMC*)
- b) No structures of any kind (including signs, car ramps used to display vehicles, etc.) may be installed or maintained within the above-landscaped areas. No exposed utility boxes, transformers, meters, piping (excepting the backflow prevention device), etc., are allowed to be located in the landscape areas or setbacks or on the street frontages of the buildings. All transformers, etc., shall be shown on the site plan. The backflow device shall be screened by landscaping or such other means as may be approved. (Include this note on the site plan.)
- c) Off-street parking areas shall be landscaped to provide fifty percent shading within fifteen years of planting or;

Provide a minimum of 192 medium sized trees on-site (in addition to street trees required) per the following:

Provide one medium size tree (30-60 feet at maturity) for every two parking spaces (*Section 12-306-N-24-g-3 of the FMC*).

- NOTE: Two small trees (15-30 feet at maturity) shall be counted as one medium-sized tree.

384 parking spaces required = 192 medium sized trees.

- d) Trees shall be maintained in good health. Trees may not be trimmed or pruned to reduce the natural height or overall crown of the tree, except as necessary for the health of the tree and public safety; or as may otherwise be approved by the Planning and Development Department. (Include this note on the site plan.)
- e) All vegetation shall be maintained free of physical damage or injury from lack of water, excess chemical fertilizer or other toxic chemical, blight, or disease, and any such vegetation which shows signs of such damage or injury at any time shall be replaced by the same, similar, or substitute vegetation of a size, form, and character, which will be comparable at full growth.
- f) Landscaping shall be kept free from weeds and undesirable grasses.
- g) Submit six copies of landscaping and irrigation plans prepared by a landscape professional, showing the number and types of trees, to the Planning Division. These plans must be reviewed and approved prior to obtaining building permits.
- h) Landscaping must be in place before issuance of the certificate of occupancy. A Hold on Occupancy shall be placed on the proposed development until such time that landscaping has been approved and verified for proper installation by the Planning Division. (Include this note on the site and landscape plans.)

#### 4) SPACE BETWEEN BUILDINGS

- a) Not Applicable.

#### 5) LOT COVERAGE

- a) The 70,980 square feet of building area proposed comprises 20 percent of the 8.09 acres of the subject site zoned for neighborhood commercial uses. The proposed lot coverage is less than the maximum 33 percent lot coverage allowed by the C-1 zone district.

#### 6) FENCES, HEDGES, AND WALLS

- a) A minimum seven (7) foot solid masonry wall between the subject property and the residential properties to the west is required. Said wall may be constructed to a maximum seven (7) feet eight (8) inches in height and is to include a landscape cover on its east side to prevent graffiti.

- b) A four (4) foot wrought iron fence is to be constructed on the north property line.
- c) Temporary fences to secure projects under construction are allowed. Any temporary fence shall be adequately secured and constructed to prevent overturning due to wind, vandalism, and/or casual contact by the general public. The construction shall be performed in such a manner as to minimize any potential safety hazard, which may occur as a result of improper fence installation or damage to the fence.
- d) Clearly depict any proposed/existing fences on Exhibit A. Note that all proposed/existing fences must comply with all policies, ordinances, regulations, etc. of the City of Fresno, Planning and Development Department.
- e) Only those fences as shown on the site plan shall be reviewed for approval.
- f) Submit a rendering depicting the fence height, color, location etc. for review and approval.
- g) All future fences, bollards, etc. shall be reviewed and approved prior to installation by the City of Fresno, Planning and Development Department. (Include this note on the site plan.)

7) OFF-STREET PARKING

- a) Provide a minimum of 400 parking spaces on-site.

In accordance with Section 12-222.5-I-1 of the FMC, provide at least two (2) square feet of off-street parking area for each one (1) square foot of floor area of the proposed development.

*67,480 square feet of retail building area = 134,960 square feet of parking area*

*134,960 square feet of parking area / 370 square feet per stall = 365 parking stalls.*

In accordance with Section 12-306-I-2.2-f of the FMC, provide at least one (1) parking space for each 100 square feet of floor area for establishments for the sale and consumption on the premises of food and beverages, having four thousand square feet or less of gross floor area.

*3,500 square feet of proposed restaurant area = 35 parking stalls*

*365 parking stalls + 35 parking stalls = 400 total parking stalls.*

- b) Provide a minimum of nine (9) handicapped parking spaces (per State of California Building Code). Each handicapped parking stall shall be of a width providing at least 17 feet of usable space. Refer to the "Development Requirements for Handicapped Accessibility" of above-mentioned code pertaining to van accessible parking spaces.

•NOTE: The above number of handicap parking spaces is included in the total number of required parking spaces for the subject property. Therefore, the total number of required parking spaces remains to be a minimum of 400 parking spaces.

- c) All handicapped stalls shall be located to allow the shortest path of travel to the building entrance. The stalls shall be marked with the international symbol of spaces and a warning that vehicles in violation of Section 10-1017 of the Municipal Code shall be towed away. The international symbol and tow-away warning shall be posted conspicuously on seven-foot poles. (Include this note on the site plan.)
- d) All handicapped parking stalls shall be placed adjacent to facility access ramps or in strategic areas where the handicapped shall not have to wheel or walk behind parked vehicles while traveling to or from handicapped parking stalls and ramps. (Include this note on the site plan.)
- e) Provide a minimum ten (10) bicycle parking spaces per Section 12-306-I-2.1-C of the Fresno Municipal Code. Spaces shall be provided in accordance with Section 12-306-I-5d of the Code. Bicycle parking spaces shall each consist of one slot in a bike rack. They shall be grouped in racks, which allow four feet of clearance on all sides. There shall be adequate space between rack slots to park, lock, and remove bicycles. Bicycle parking spaces and the required four-foot clearance shall be protected from motor vehicle encroachment by means of fixed barriers not less than six inches or more than three in height. Bicycle parking spaces shall not encroach into pedestrian ways, landscaped areas, or other required open spaces, and shall be located proximal to structures. Bicycle stalls may be located indoors. (Depict bicycle stalls on Exhibit A.)
- f) Lighting where provided to illuminate parking, sales or display areas shall be hooded and so arranged and controlled so as not to cause a nuisance either to highway traffic or to the living environment. The amount of light shall be provided according to the standards of the Department of Public Works. (Include this note on the site plan.)
- g) No parking area or parking space which is provided for the purpose of complying with the provisions of the zoning ordinance shall hereafter be relinquished, reduced or altered in any manner below the requirement established herein, unless equivalent facilities are provided elsewhere, the location of which is approved by the Planning and Development Department.

8) ACCESS

- a) There shall be adequate vehicular and pedestrian access from a dedicated and improved street, service road, or alley.
- b) Vehicular and/or pedestrian access shall remain clear at all times.
- c) Provide vehicular and/or pedestrian access as noted on Exhibit A. Handicap access will be clearly delineated.

9) OUTDOOR ADVERTISING

- a) Signs, other than directional signs, if applicable, are not approved for installation as part of this special permit. Submit for a separate Master Sign Program or Sign Review Application. Applications and requirements for submittal are available at the Planning Division's Public

Front Counter. (Include this note on the site plan).

10) LOADING SPACES

- a) Loading docks/zones located along the west portion of the subject property adjacent to residentially zoned property shall be depressed and shall include screening, masonry, walls extending a minimum height of three (3) feet above truck/trailer heights.
- b) Where loading areas are located adjacent to residential districts loading shall be done only between the hours of 8:00 a.m. and 6:00 p.m.; unless the loading area is located not less than 100 feet from such district or is completely enclosed.
- c) Per Section 12-306-L of the Fresno Municipal Code, loading space requirements will apply when a use involves pick-up and delivery of materials (other than normal solid waste collections) from trucks and tractor-trailers weighing more than two tons. Should trucks exceeding two tons not be utilized in the operation of the proposed business, a letter must be submitted to the Planning Division stating such.

**PART E - CITY AND OTHER SERVICES**

TRANSPORTATION/TRAFFIC PLANNING REQUIREMENTS

- a. Comply with the requirements of the attached Public Works memorandums, dated March 22, 2005 and any requirements on Exhibit A.
- b. Comply with the mitigation measures identified within the attached Public Works memorandum, dated April 26, 2005.
- c. Comply with the requirements of the attached Public Works memorandum, dated May 13, 2005.
- d. TRAFFIC IMPACT STUDY. The following Review Fees are due and shall be paid prior to the issuance of building permits:
  - Review fee of the TIS;           \$1,008.00
  - Re-review of the TIS;           \$144.00

SOLID WASTE COLLECTION

- e. Comply with all of the requirements of the attached Solid Waste Management memorandum dated February 14, 2005.

FIRE PROTECTION REQUIREMENTS

- f. Comply with all of the requirements of the attached Fire Department memorandum dated February 14, 2005.



#### POLICE PROTECTION REQUIREMENTS

- g. There are no Police Department Requirements at this time..

#### PUBLIC WORKS - STREET TREES REQUIREMENTS

- h. Comply with the street tree requirements in the attached Public Works memorandum, dated February 14, 2005.

Fresno Municipal Code requires 1 street tree per 60 linear feet of street frontage. Provide street trees per the following:

- Provide a minimum of 9 street trees within the right of way on East Herndon Avenue.
- Provide a minimum of 20 street trees within the right of way on North Willow Avenue.

This requirement may be met by planting street trees on private property. The Department of Public Works may approve a request for waiver of street tree requirements if the applicant agrees to plant a minimum of one tree per 60 linear feet of street frontage within ten feet of the back of the sidewalk.

The following administrative/plan check fees are due prior to issuance of building permits:

- Street tree landscape plan review fee of \$56.00.
  - Street tree inspection total fee of \$870.00 (29 trees @ \$30.00/tree).
- i. Trees planted in the right of way shall be located with the following minimum setbacks. The following spacing standards shall be included as a note on the landscape plan:
- 30 feet from street corners for visibility & 15' from driveways, stop signs, alleys, light poles and power poles.
  - 10 feet from fire hydrants & 8' from sewer lines.
  - 5 feet from building overhangs, and 2' from adjacent concrete and adjoining property lines.
  - 3 feet from gas, electric, and water lines, and roof drains.

#### FLOOD CONTROL REQUIREMENTS

- j. Comply with the attached Fresno Metropolitan Flood Control District memorandum, dated February 23, 2005.

#### STATE DEPARTMENT OF TRANSPORTATION (CALTRANS)

- k. Attached for your records and consideration are the Caltrans memorandums, dated February 16, March 02, March 28, 2005, May 17, 2005, & June 03, 2005.

#### PUBLIC UTILITIES REQUIREMENTS

- l. Comply with all of the requirements of the attached Public Utilities memorandum, dated

February 24, 2005.

HEALTH PROTECTION REQUIREMENTS

- m. Comply with all of the requirements of the attached County of Fresno Department of Health memorandum, dated February 17, 2005.

SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT

- n. Comply with the attached San Joaquin Valley Air Pollution Control District memorandum, dated February 22, 2005.

SCHOOL FEES

- o. School fees must be paid prior to issuance of building permits. (Contact Clovis Unified School District.) Provide proof of payment (or no fee required) prior to issuance of building permits.

**PART F - MISCELLANEOUS**

Approval of this site plan is contingent upon the submittal of corrected site plans showing all existing/proposed on-site conditions as reflected on all exhibits and the following:

- 1) Include a color and material schedule on the site plan, as well as on the elevations, for the exterior of all buildings and structures (photographs may be submitted for drawings).
- 2) Clearly identify all condensing units, air conditioning and heating units on the site and elevation plans.
- 3) Roof-mounted and detached mechanical equipment for commercial and office uses shall be screened from view and acoustically baffled to prevent the noise level rating for the equipment from exceeding 55 Ldn measured at the nearest property line. (Include this note on the site plan.)
- 4) Outdoor storage of materials is prohibited. All materials shall be stored within a completely enclosed building, unless approved by the Planning and Development Department.
- 5) Within an area 100 feet wide abutting property zoned or planned for residential use, exterior area lighting for parking areas, access drives, and loading areas for commercial uses shall be shielded to prevent line of sight visibility of the light source from abutting property zoned or planned for residential use.
- 6) Install shopping cart corrals throughout the parking lot as needed for cart collection. In addition, construct the corrals with six (6) inch high curbs to protect the shopping carts, and corrals from abuse.
- 7) An operational statement for drive-through restaurant services shall be submitted and approved

by the Planning and Development Department prior to occupancy.

A minimum of two (2) parking stalls shall be designated for the exclusive use of drive-through window customers awaiting delivery of orders.

- 8) If archaeological and/or animal fossil material is encountered during project surveying, grading, excavating, or construction, work shall stop immediately.
- 9) If there are suspected human remains, the Fresno County Coroner shall be immediately contacted. If the remains or other archaeological material is possibly Native American in origin, the Native American Heritage Commission (Phone: 916/653-4082) shall be immediately contacted, and the California Archaeological Inventory/Southern San Joaquin Valley Information Center (Phone: 805/644-2289) shall be contacted to obtain a referral list of recognized archaeologists. An archaeological assessment shall be conducted for the project, the site shall be formally recorded, and recommendations made to the City as to any further site investigation or site avoidance/preservation.
- 10) If animal fossils are uncovered, the Museum of Paleontology, U.C. Berkeley shall be contacted to obtain a referral list of recognized paleontologists. A paleontologist shall conduct an assessment and, if the paleontologist determines the material to be significant, it shall be preserved.

**All discretionary conditions of approval will ultimately be deemed mandatory unless appealed in writing to the Planning and Development Department Director within 15 days.**



City Hall 559-621-8800  
2600 Fresno Street, Rm. 4064  
Fresno, CA 93721-3623  
[www.fresno.gov](http://www.fresno.gov)



Public Works Department  
David Healey, Director

April 26, 2005

TJKM Transportation Consultant  
Gary Kruger, P.E.  
5960 Inglewood Drive, Suite 100  
Pleasanton, CA 94588-8535

**SUBJECT: RESPONSE TO TRAFFIC IMPACT STUDY (TIS) FOR THE RETAIL SHOPPING CENTER AT THE SOUTHWEST CORNER OF WILLOW AND HERNDON AVENUE**

We reviewed the Traffic Impact Study (TIS) for the proposed shopping center with a gross leasable area of 105,480 square feet (ITE Land Use Code 820). Based on the ITE Trip Generation manual, this project will generate 9,646 daily trips, 814 AM and 1157 PM peak hour trips.

Proposed mitigation measures by the traffic consultant are as follows:

1. Phase I 2006-
  - a. The intersection of Herndon at Chestnut Avenue is to convert the eastbound right turn lane into a shared through and right-turn lane.
  - b. The intersection of Bullard at Willow Avenue is to use permissive left-turn phases for the eastbound and westbound directions (or third car left turn detection).
2. Phase II (Phase I + II) 2008-
  - a. The intersection of Bullard at Willow Avenue is to use permissive left-turn phases for all directions (or third car left turn detection).
3. Phase I and II (Future 2025)-
  - a. The intersections of Herndon at Willow, Chestnut, Cedar, and Millbrook should use quadrant-style design.
  - b. The intersection of Bullard at Willow Avenue should use median island U-turns.
4. The intersection of Willow at Driveway 2 meets peak hour warrants and is assumed to be signalized with the first phase of the project.

The City has the following comments to the above mentioned "proposed" mitigation measures:

In response to number 1.a.; the developer/owner shall pay it's fair share cost for the "Herndon Avenue Widening from Cedar to Willow Avenue Project" using the Caltrans Equitable Share Formula. The City of Fresno has established a geometric layout and cost estimate for the improvements of the intersection of Herndon at Chestnut and Herndon at Willow Avenue. The cost is estimated to be \$85,553 and \$53,703, respectively. Based on this the equitable fair share percentage, the impact is 9.8% and 10.2%, respectively, which results in the amount of \$8,408 and \$5,478, respectively, for a total mitigation fee of \$13,862. This was based on the following formula:

Calculations for Herndon at Chestnut Avenue:

$$\text{EquitableShare} = \left( \frac{223}{7450 - 5181} \right) = .098 \Rightarrow 9.8\%$$

Calculations for Herndon at Willow Avenue:

$$\text{EquitableShare} = \left( \frac{468}{9821 - 5216} \right) = .102 \Rightarrow 10.2\%$$

$$P = \left( \frac{p}{f - e} \right)$$

Where,

P=Fair share percentage

p=The higher of the AM or PM Peak hour project trips without General Plan Amendment (G.P.A.)

f=Total 2025 corresponding future peak hour traffic without project.

e=Existing traffic.

In response to numbers 1.b and 2.a.; the City will consider changing the current phasing plan to go from protected left-turn phasing to a permissive left-turn phase with third car left-turn detection. The traffic consultant shall prepare an engineer's estimate for the necessary modifications to the signal to accommodate the above mitigation measure. In addition the fair share percentage shall be derived and this project will be responsible for the payment there of. See response to 1.a for the fair share formula.

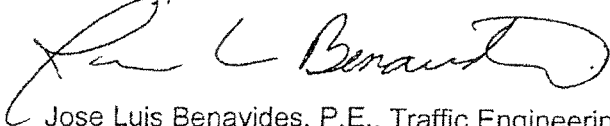
In response to number 3.a. and 3.b., current City of Fresno Policy is not to prohibit left turns at major intersections, with this in mind, what will the 2025 with Project LOS be? Please provide an addendum reflecting this concern.

In response to number 4 for the intersection of Willow Avenue at Project Driveway 2; The City would allow a signal to be installed at this location, should the City of Clovis concur. All costs associated with proposed signal at this specific location shall not be eligible for signal fee credits or reimbursements from the City of Fresno. If the intersection is signalized, it shall be to City of Fresno Standards, complete with left turn phasing, actuation and signal pre-emption.

This project shall pay its Traffic Signal Mitigation Impact Fee at the time of building permit based on the trip generation rate(s) as set forth in the latest edition of the ITE Generation Manual. The fee amount is 9,646 (ADTs) x 41.47 (fee rate as shown in the Master Fee Schedule) = \$400,020.00

If you have any further questions regarding this matter, please contact David Padilla at (559) 621-8798 or [David.Padilla@fresno.gov](mailto:David.Padilla@fresno.gov).

Sincerely,



Jose Luis Benavides, P.E., Traffic Engineering Manager  
Public Works Department, Engineering Services

C: Traffic Engineering Reading File  
Lynn Bowness, City of Fresno



**Transportation  
Consultants**

Project Number: 032-221, Task 6

Mr. Will Tackett  
City of Fresno Development Department  
2600 Fresno Street  
Fresno, CA 93721

Subject: Response to Caltrans Letter of May 17, 2005, their file 2131-IGR/CEQA

Dear Mr. Tackett:

TJKM is in receipt of the May 17, 2005 letter to you from Moses Stites, Office of Transportation Planning, District 6 Caltrans. Copies of this response have also been sent to the officials copied in the Caltrans letter.

Regardless of the criteria in the *Interchange Deficiency Study*, the fact is that none of the ramp intersections of SR 168 with Herndon Avenue, Bullard Avenue and Shaw Avenue show a need for mitigation using LOS E as the criterion for state highways in the Fresno Area. Even using LOS D, there is no need for mitigation with the project through 2025.

The basis for assessing a fair and equitable share for mitigation at these interchanges would be that traffic growth is anticipated to result in significant, adverse impacts to levels of service at some future year, in this case either 2008 or 2025. The criterion for these assessments is the same as with the description of impacts in the traffic impact study, LOS D (city streets), or LOS E (state highways). Please note in my May 11, 2005 letter to Caltrans, that none of the interchanges, even in 2025 with the proposed project will experience unacceptable levels of service. By definition no fair and equitable share for mitigation is required at these interchanges.

No contributions are necessary for improvements to Caltrans interchanges on SR 168 at Herndon, Bullard and Shaw as a result of the proposed project.

Very truly yours,

Gary E. Kruger, P.E.  
Principal Associate



- Cc: Mr. John Wright, Director of Planning and Development, City of Clovis
- Mr. Kevin Brodie, Asst. City Engineer, City of Clovis
- Ms. Barbara Goodwin, Executive Director, Council of Fresno County Governments
- Mr. Jose Benavides, Traffic Engineering Manager, City of Fresno
- Mr. Rick DelCarlo, SilverCreek Properties, Project Proponent

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**Transportation  
Consultants**

Project Number: 032-221

May 11, 2005

Moses Stites  
District 6 Office of Transportation Planning  
California Department of Transportation  
1352 West Olive Avenue  
P.O. Box 12616  
Fresno, CA 93778-2616

Re: Response to Your File Number 2131-1GR/CEQA, Traffic Impact Study of Proposed Commercial Development on Southwest Corner of Herndon Avenue and Willow Avenue in Fresno, California

Dear Mr. Stites:

TJKM has prepared this letter as a formal response to your letter of March 28, 2005. You commented that several issues had not been addressed in the traffic impact study. The final version of April 26, 2005 has again not addressed your concerns. The difference between earlier versions and the April 26<sup>th</sup> version is essentially the location of the signalized driveway on Willow Avenue. The signalized access is currently proposed for the third driveway to the south of Herndon, approximately 1,200 feet south.

The missing information you mentioned includes:

- Trip generation and distribution of Phase 3 of the project
- No project trip trace, especially as project trips are estimated to impact three Caltrans interchanges: SR 168 at Herndon, at Bullard, and at Shaw.

This information is provided in this letter. We assume that this response may offset any future need to revise the current report. This letter provides complementary information to that in the report, and should be considered as part of the traffic impact study for the project.

*Phasing of the Project:*

The basis for the confusion is due to the information in Figure 2 on page 5 of the traffic impact study. The figure shows three phases, totaling 491,144 square feet of land (11.28 acres) with development of 105,480 square feet of gross leased area (GLA). An additional 205,354 square feet of land (4.71 acres) is shown as undeveloped, and is to be sold. Because that portion of the property has not been sold to a developer, no specific uses have been identified. It should be noted that the Council of Fresno County Governments countywide model includes a generalized land use for this land, and it is assumed developed by 2025, but not currently.

Moses Stites

May 11, 2005

2

Table 4 on page 15, "Trip Generation of the Proposed Project" shows the entire 105,480 square feet GLA being developed in only two phases. The City of Fresno defined the scope of the traffic impact study to address the immediate, near-term traffic impacts of "Phase 1" which consists of only 29,980 square feet on the northern portion of the property. The developer intends to develop the entire site by approximately 2008, and it was determined to limit the scenarios of the traffic study by combining the developer's Phases 2 and 3 as a combined scenario. Unfortunately, TJKM then defined the combined phases as "Phase 2," where clearly, this scenario includes all proposed development.

In summary, the traffic impact study includes all proposed development in the 2008 scenario.

*Trip Trace of Project Trips at Caltrans Interchanges:*

Attached to this letter are the trip traces to SR 168 interchanges with Herndon Avenue, Bullard Avenue and Shaw Avenue. Counts were made at these intersections in another study, the *Fresno-Madera Interchange Deficiency Study* in 2004 within a few months of counts for the traffic impact study for the commercial development proposal at Herndon and Willow. TJKM used similar techniques in adjusting the 2004 model output to 2008 by including the approved trips, plus a factoring process on the 2004 model output. Then, trips specific to the development project were manually added to the correct approaches and movements at each of the ramp intersections at the interchanges for 2008. The forecasts to 2025 theoretically include the project, but again, the specific trip traces to these interchanges were manually added to the 2025 forecasts at each of the interchanges of interest.

Table 1 on the next page shows the results of the level of service analysis for each of the scenarios. The trip traces from the model are attached to this letter. Note should be made that in all instances, TJKM optimizes timing at intersections including existing conditions. This is done to avoid the simple manipulation of signal timing to "mitigate" project impacts. With optimized timing to start from, true project impacts are more easily identified, and true mitigation can be planned. However, when TJKM determines that major changes in lane configurations or signal phase sequences (typically requiring changes in signal heads, controllers, interconnect, etc.) would serve to significantly improve levels of service, such changes are considered as mitigation. Changes in green times for approaches or movements, or changes in cycle lengths are not considered mitigation. Because of this policy in completing traffic impact statements, at times the perception that traffic operations do not match observed conditions is correct. At several of the interchanges, namely Shaw Avenue and SR 168, changes in signal operation could improve levels of service from existing conditions.

The interchanges of SR 168 at both Bullard and Shaw Avenues have been identified as potentially congested locations in 2025 in the *Interchange Deficiency Study* mentioned earlier. However, the congestion is not anticipated at the ramp intersections, but rather at nearby intersections in Clovis and Fresno. Future congestion at these nearby intersections could queue traffic through the ramp intersections during portions of the day.

Table 2 shows the contribution of project traffic to the growth in traffic at these interchanges from 2004 to 2008. However, in the *Interchange Deficiency Study* now almost completed, we have not found any improvements that are needed at these interchanges through 2025 with or without the project. This means there is no need for a fair and equitable share contribution for improvements at these interchanges.



**Table 1: Level of Service at SR 168 Interchanges**

Scenario	Intersection and Scenario	Year	A.M. Peak Hour		P.M. Peak Hour	
			Delay (sec/veh)	LOS	Delay (sec/veh)	LOS
Baseline*	Herndon/168 WB Off Ramp	2006	5.5	A	11.3	B
Baseline*	Herndon/168 EB Off Ramp	2006	8.4	A	14.6	B
Baseline*	Bullard/168 WB Off Ramp	2006	5.3	A	7.0	A
Baseline*	Bullard/168 EB Off Ramp	2006	6.2	A	13.0	B
Baseline*	Shaw/168 WB Off Ramp	2008	16.8	B	7.2	A
Baseline*	Shaw/168 EB Off Ramp	2006	10.1	B	20.9	C
Phase 2 Project	Herndon/168 WB Off Ramp	2008	5.6	A	9.9	A
Phase 2 Project	Herndon/168 EB Off Ramp	2008	8.4	A	13.2	B
Phase 2 Project	Bullard/168 WB Off Ramp	2008	5.3	A	7.0	A
Phase 2 Project	Bullard/168 EB Off Ramp	2008	6.3	A	13.1	B
Phase 2 Project	Shaw/168 WB Off Ramp	2008	11.5	B	8.0	A
Phase 2 Project	Shaw/168 EB Off Ramp	2008	25.2	C	30.3	C
Cumulative w/Project	Herndon/168 WB Off Ramp	2025	8.2	A	3.1	A
Cumulative w/Project	Herndon/168 EB Off Ramp	2025	14.6	B	29.4	C
Cumulative w/Project	Bullard/168 WB Off Ramp	2025	8.7	A	8.9	A
Cumulative w/Project	Bullard/168 EB Off Ramp	2025	8.7	A	14.7	B
Cumulative w/Project	Shaw/168 WB Off Ramp	2025	15.4	B	9.9	A
Cumulative w/Project	Shaw/168 EB Off Ramp	2025	33.8	C	36.5	D

\* Baseline includes 2005 traffic plus all approved trips in Clovis and Fresno

**Table 2: Project Trips as Share of Growth at 168 Interchanges**

Intersection	Total Entering Traffic		Increase	Project Trips	Project Fair Share
	2005 Existing	2008 with Phase 2			
	a.m. + p.m. Peak	a.m. + p.m. Peak		a.m. + p.m. Peak	
WB 168/Herndon	6538	8605	2067	94	4.5%
EB 168/Herndon	6587	8470	1883	49	2.6%
WB 168/Bullard	3977	4648	671	90	13.4%
EB 168/Bullard	4734	5466	732	30	4.1%
WB 168/Shaw	7369	10453	3084	7	0.2%
EB 168/Shaw	8280	9381	1101	45	4.1%

As can be seen in the above tables, the project trips do contribute a significant proportion of new trips at SR 168 and Bullard, but because there is ample capacity at the interchange ramps, no mitigation is required. At both SR 168 at Herndon and SR 168 and Shaw, project trips contribute no noticeable impacts above entering traffic without the project.

Moscs Sites

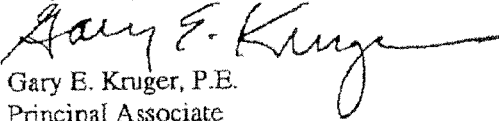
May 11, 2005

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Please call me at (559) 325-7530 should you have further questions about this analysis.

Because this letter will become part of the public record on this project, I have also sent copies to the City of Clovis, the Council of Fresno County Governments, and the City of Fresno for incorporation into the project application before the Fresno Planning Commission.

Very truly yours,



Gary E. Kruger, P.E.  
Principal Associate

Cc: Barbara Goodwin, COFCG  
John Wright, City of Clovis  
David Padilla, City of Fresno Traffic Engineering  
Will Tackett, City of Fresno Development Department

Attachments: Project Trip Traces, SR 168 Interchanges