



PLANNING COMMISSION

*Ranjeet Jhutti, Chair
Robert S. Wallis, Vice-Chair
Francisco Mendoza-Gonzalez, Commissioner
Steve Bassi, Commissioner
Adanan Bath, Commissioner
Jason Roth, Alternate Commissioner
Wapinder Kang, Alternate Commissioner*

**LIVINGSTON PLANNING COMMISSION
REGULAR MEETING AGENDA
TUESDAY, MAY 14, 2019 7:00 P.M.
CITY COUNCIL CHAMBERS, 1416 "C" STREET, LIVINGSTON**

Members of the public are advised that all pagers, cellular telephones and any other communication devices be put on vibrate mode or turned off during the Planning Commission meeting.

Call to Order: 7:00 PM

Roll Call – Chairperson/Commissioners

Pledge of Allegiance

Item No. 1 – Introduction of New Member

- a. Introduction of Newly Appointed Alternate Commissioner Wapinder Kang.

Item No. 2 – Election of Officers

- a. Election of New Chair and Vice-Chair for 2019.

Item No. 3 – Public Comment

- a. Members of the Audience – At this time, any person may comment on any item that is **NOT** on the Agenda. **PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.** While the Planning Commission encourages participation from the audience, no more than five (5) minutes are allowed per discussion item. Topics not considered urgency matters may be referred to City Staff and/or placed on the next agenda for consideration and/or action by the Planning Commission.

Item No. 4 – Public Hearings

- a. Site Plan and Design Review 2019-01, Nukul K. Bassi. Applicant proposes to convert an existing car wash into a restaurant, with seating and exterior order/pick-up window. The 1,250 sq. ft. building is located at the existing Brothers Food Mart site, 690 Hammatt Avenue, Livingston, CA, APN#: 023-070-011. This property is zoned C-3, Highway Service Commercial, and has a General Plan designation of HC, Highway Commercial. The proposed restaurant will be called Los Gordos Mexican Restaurant.

- b. Modification of Condition within Planning Commission Resolution 2018-02, Approving the Gallo Tentative Subdivision Map 2017-01, and Recommending to the City Council Approval of the 4th Amendment to the Gallo Development Agreement. This request is to modify item number 16 which requires the subdivider to construct, or cause to be constructed, a perimeter CMU – block wall on B Street and Robin Avenue along the subdivision street frontages and substitute a newly worded item number 16 to require, as part of a subsequently required Site Plan and Design Review Approval, the owner/developer of a lot on B Street and/or Robin Avenue, to construct, or cause to be constructed, a perimeter CMU – block wall as part of the development of each individual lot or lots.

Item No. 5 – Discussion Items

- a. Changing the Planning Commission Meeting Time from 7:00 p.m. to 6:00 p.m. (Continued from 4/9/19 Regular Meeting).
- b. Other Discussion Items
- Determining When Alternate Commissioners Can Vote

Item No. 6 – Adjournment to the regular meeting on June 11, 2019.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Community Development Department at (209) 394-8041, Ext. 112. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Members of the public who have questions regarding any agenda item may comment on that item before and during consideration of that item when called upon by the Planning Commission Chair.

All actions of the Livingston Planning Commission can be appealed to the Livingston City Council by filing an appeal, in writing and paying the appropriate fees, with the City Clerk.

Agenda Item #: 4a.
Meeting Date: May 14, 2019
Report Date: May 8, 2019

**CITY OF LIVINGSTON PLANNING COMMISSION
STAFF REPORT**

CITY FILE NUMBER: Conversion of car wash into a restaurant at Brothers Food Mart site, Site Plan/Design Review 2019-01.

OWNER/APPLICANT: Nukul Bassi
690 Hammatt Avenue
Livingston, CA 95334

PROJECT LOCATION: At the southeast corner of Walnut Avenue and Hammatt Avenue, APN#: 023-070-011. The property is currently developed in commercial uses.

PROPOSED ACTION: Adopt Resolution 2019-___, recommending approval by the City Council of the site plan and design review of the conversion of an existing car wash into a restaurant.

PREPARED BY: Randy Hatch, Contract City Planner

LOCATION CHARACTERISTICS:

Property Size: 1.0 Acre
Existing Land Use: Gas Station and Food Mart
1999 General Plan Designation: Highway Commercial (HC)
Zoning: Highway Service Commercial (C-3)
Street Access: Walnut Avenue and Hammatt Avenue

ADJACENT ZONING AND LAND USE:

North: Across Walnut Avenue, C-3, undeveloped land.
South: C-3, undeveloped land.
East: M-1, various industrial buildings in the Industrial Drive area.
West: Across Hammatt Avenue, C-3, undeveloped land.

PROJECT DESCRIPTION:

The owner and applicant is proposing to convert an existing car wash into a restaurant and add new landscaping adjacent to the new restaurant. The proposed restaurant will be called Los Gordos Mexican Restaurant. The existing 1,250 sq. ft. car wash building will have the drive through car wash area converted into a kitchen and the dining area. The dining area is approximately 308 sq. ft. in size. The kitchen will be approximately 322 sq. ft. with an adjacent roughly 172 sq. ft. utility / prep area. Two existing restrooms will remain as well as an interior storage area. The entrance will be on the west side of

the building via a glass storefront door with side windows. On the east side will be a utility door providing access to the utility / kitchen. Also on the east side is a walk-up window for pass thru service for takeout orders. The dumpster is located about 24 feet east of the takeout window. The building itself is a single store flat roof structure approximately 13 ft. high with a 2-foot wide parapet feature, all finished in stucco. The elevation submitted as part of the application shows space for signage on the east, north, and west elevations.

The existing site is developed with the gas station and food mart with paving and 16 parking spaces. The existing gas station and food mart requires 8 parking spaces. The proposed restaurant with a 308 square foot dining / customer area requires 6 parking spaces (1 per 50 sq. ft.). This calculates to a total of 14 parking spaces needed for all the uses on the property; 16 parking spaces are provided exceeding Code requirements.

Access to the new restaurant will be provided via the adjacent streets, Hammatt and Walnut Avenues through the existing curb cuts / driveways. The new restaurant will connect to existing water, wastewater, storm drain, electrical, gas and communication utilities that are located onsite.

A roughly 650 square foot landscape area will be provided on the east side of the restaurant. A preliminary landscape plan is provided and shows heavy planting of rockrose and abelia shrubs with a ground cover. These are drought tolerant landscape materials and are on the City's list of suggested shrubs.

The buildings proposed to be constructed are low slung composed of a stucco finish with parapet style trim band along the roof line. The proposed restaurant will match the existing gas station / food mart in terms of finish materials and colors; therefore, the stucco will be white with the parapet roof band green.

The Planning Commission is the recommending body for a Site Plan / Design Review with the City Council being the approving body. Therefore, this proposal must go before both bodies.

ENVIRONMENTAL REVIEW:

The conversion of the existing car wash building to a restaurant is a "Project" subject to review under the California Environmental Quality Act (CEQA). This Project qualifies for a Categorical Exemption under two provisions; Class 3 – conversion of a small structure with only minor modifications; and Class 32 infill development within the City Limits consistent with the General Plan and Zoning Ordinance, provided by all utilities and City services, no more than 5 acres in size on land with no value as habitat for endangered, rare, or threatened species – the site is a developed urban site. Further, this development would be a minor additional use on the property with no significant effects relating to traffic, noise, air, or water quality.

ANALYSIS:

The property is properly General Planned and Zoned for such a use. The proposed use, as proposed and conditioned, meets the development standards in the City's Zoning and Development Codes. The use meets the height, setback, and lot coverage requirements. As noted in the Project description above, the development provides 16 parking spaces exceeding the City's parking requirements for a gas station with food mart and restaurant.

The preliminary landscape plan submitted shows shrubs and ground cover to be used for this Project. Staff review of the plant materials verifies that the proposed plants are drought tolerant and consistent with the City list of recommended plant materials. Potential sign areas proposed comply with City standards and will be reviewed and approved administratively. Exterior lighting is not addressed leading

staff to recommend a condition of approval to require lighting to be shielded and focused on the building and parking areas. The City has a Design Guide applicable to all new development. Staff has compared the proposed new building's design and colors, as described above, with the Design Guide. The overall design of the new building appears to be consistent with the Design Guide in terms of being compatible in scale with the surrounding area and providing visual interest.

RECOMMENDATION:

Staff is of the opinion that the proposed use is consistent with City rules and standards and will provide additional dining resources for the area and additional jobs. The recommended conditions of approval allow staff to administratively review and approve the landscaping, lighting, and signage as these elements of the Project are detailed during the construction phase of the Project. Staff recommends the Planning Commission adopt Resolution 2019-__, recommending approval by the City Council of Site Plan and Design Review 2019-01, based on the Findings and Conditions of Approval contained in the attached resolution.

ATTACHMENTS:

- 1. Resolution 2019-____
 Exhibit "A", Conditions of Approval
- 2. Project Location and Zoning Map
- 3. Proposed Site Plan, Floor Plan, and Landscape Plan
- 4. Proposed Exterior Elevations

RESOLUTION 2019-__

**RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF LIVINGSTON RECOMMENDING TO THE CITY COUNCIL
APPROVAL OF THE SITE PLAN AND DESIGN REVIEW 2019-01 FOR
CONVERSION OF A CAR WASH INTO A RESTAURANT AT THE
BROTHERS FOOD MART SITE, 690 HAMMATT AVENUE, LIVINGSTON, CA**

WHEREAS, pursuant to Livingston Municipal Code (“LMC”) Section 5-6-7, Nukul Bassi, applicant and owner, has applied for a Site Plan and Design Review approval to convert a car wash into a restaurant at 690 Hammatt Avenue, in the City of Livingston, CA; and

WHEREAS, the site is zoned C-3 (Highway Service Commercial), and has a General Plan designation of Highway Commercial according to the official zoning map of the City of Livingston and the 1999 Livingston General Plan; and

WHEREAS, LMC Section 5-6-7 requires the approval of a Site Plan and Design Review for new uses and conversion of structures within the C-3 district to assure compatibility, harmony in appearance in neighborhoods, reduction of negative impacts of nonaesthetic development, and orderly development of the community; and

WHEREAS, a public hearing for the proposed project has been properly noticed by posting, a newspaper ad and a mailing to adjacent properties within 300 feet of the site; and

WHEREAS, the proposed project is categorically exempt from the California Environmental Quality Act (“CEQA”) under Section 15303 New Construction or Conversion of Small Facilities and Section 15332 In-Fill Development Projects and a Notice of Exemption will be filed with the Merced County Clerk within five (5) days of project approval; and

WHEREAS, Staff has reviewed the project with reference to the 1999 General Plan, the Zoning Ordinance (specifically Sections 5-6-7 “C” thru “E”) and the adopted Livingston Design Guidelines; and finds that, based on the evidence documented within the associated staff report and proceedings of the public hearing, the proposed use, its site plan and design, is consistent with the General Plan, complies with the Zoning Ordinance in that the site plan and design meets the zoning standard and requirements (including those specifically referenced above), and meets the intent and guidance of the Livingston Design Guidelines.

NOW, THEREFORE, BE IT RESOLVED that the Livingston Planning Commission hereby adopts Resolution 2019-__, recommending City Council approval of the Site Plan and Design of the subject new development.

BE IT FURTHER RESOLVED that the Conditions of Approval within Planning Commission Resolution 2019-__, Exhibit A, are hereby approved.

The foregoing resolution was introduced and moved for adoption on May 14, 2019, by _____, and being duly seconded by _____, was passed by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

Chair,

Secretary of the Planning Commission,
RANDY HATCH

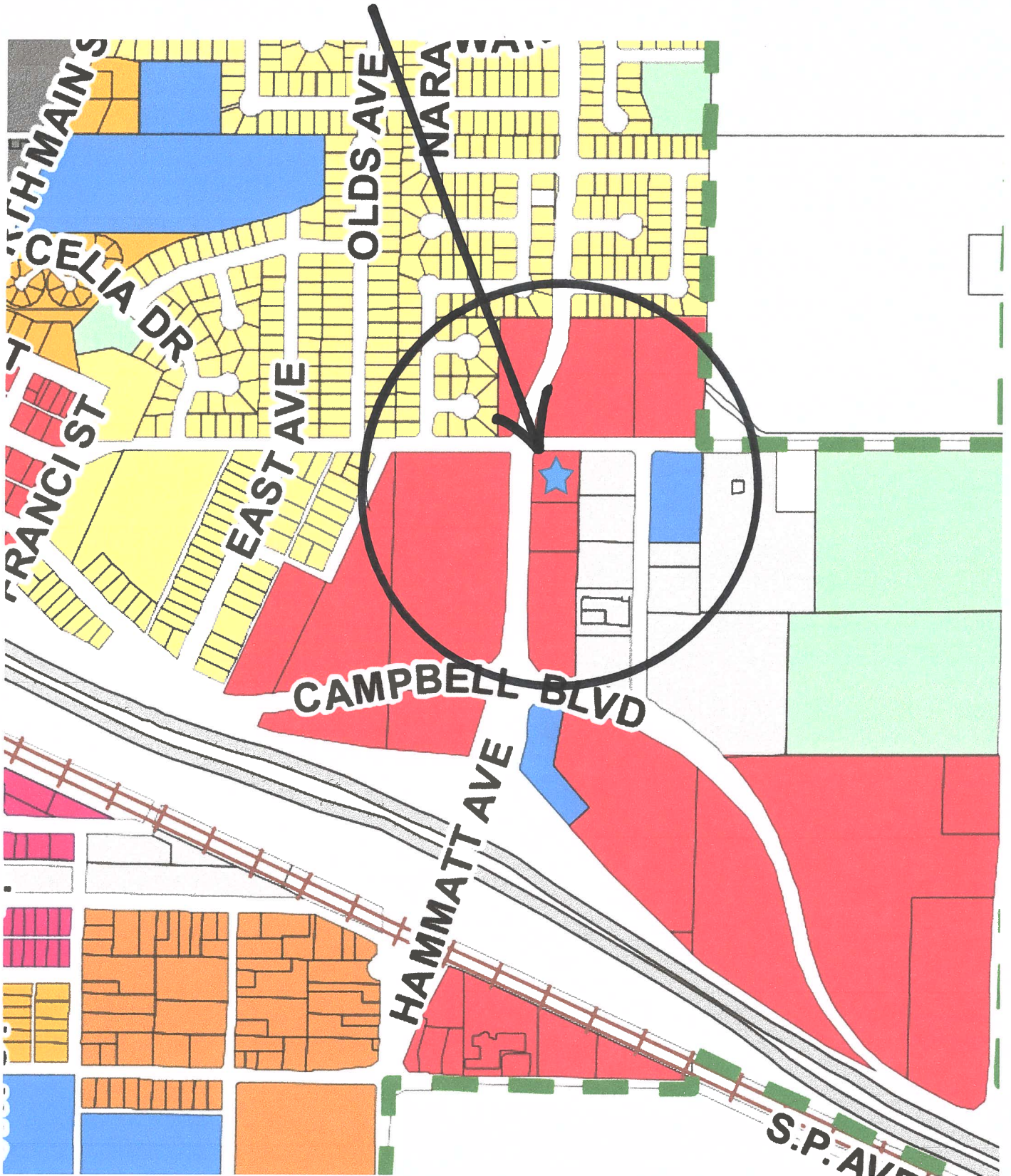
Exhibit A
Conditions of Approval

1. The Developer shall comply with all federal, state and local laws, policies, standards and requirements applicable to this use and obtain a building permit and all other permits applicable to this use and shall pay all fees and exactions applicable to such a use; and
2. The Developer shall submit improvement plans for site modifications including, but not limited to, ADA accessibility, utilities, hardscape, storm drainage, landscaping and irrigation, site lighting, and erosion control; and
3. The Developer shall comply with all requirements of the Merced County Fire Department; and
4. The Developer shall obtain any needed grading and encroachment permits for the project paying the permit fees, plan check and inspection fees, and furnish improvement securities pursuant to the City's improvement standards, municipal code, and ordinances; and
5. The Developer shall pay all applicable development impact fees for Municipal Facilities, Police, Fire Protection, Streets and Bridges, Water, Domestic Wastewater, Storm Drainage, and Parks; and
6. The Developer shall submit any improvement plans to conform to the latest edition of the City of Livingston Improvement Standards and all applicable state, federal, and local laws and regulations; and
7. Unless exempt, the Developer shall prepare a Storm Water Pollution Prevention Plan (SWPPP) pursuant to the California Water Control Board Order No. 2009-0009-DWQ, NPDES No. CA 000002 or Erosion and Sediment Control Plan (ESCP) pursuant to the City of Livingston's MS4 Phase II Permit for construction activities. Prepare an Erosion Control Plan for storm water and construction BMPs; and
8. Unless exempt, the developer shall prepare a Dust Control Plan (DCP) and file the Plan with the San Joaquin Valley Air Pollution Control District for construction activities pursuant to Regulation VIII (Rules 8011-8081); and
9. The Developer shall prepare and provide any needed public utility easements and provide all utility services as required by the City Engineer including meters, backflow preventers, post indicator valves, floor drains and provide grease interceptors for non-sanitary or floor drain discharges; and
10. Unless exempt, the Developer shall prepare and provide volumetric sizing calculations, low impact development (LID) measures operation and maintenance plan (O&M), and statement of responsibility agreement for storm water management in accordance with the City of Livingston's Post-Construction Standards Plan and pursuant to the City's Phase II MS4 Permit requirements; and
11. The Developer shall repair any damage to City facilities such as curb, gutter, sidewalk, streets and alleys caused by construction; and

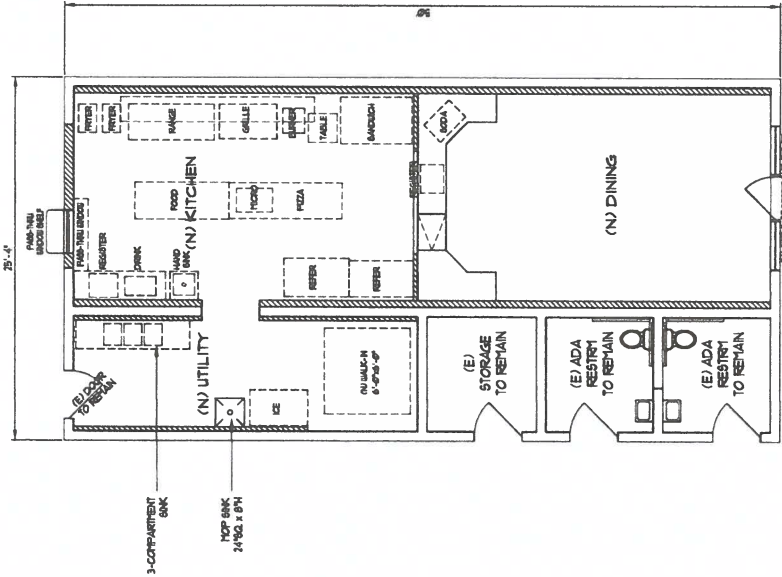
12. The Developer shall provide ADA accessible path of travel to the building in conformance with the City of Livingston Improvement Standards, City Engineer requirements, and all other applicable regulations; and
13. The Developer shall indemnify, defend and hold harmless the City and its officials, officers, employees, agents, and consultants from any and all legal or administrative actions or other proceedings challenging this approval or any subsequent approval associated with this project; and
14. The development of the site shall be consistent with approved plans, elevations, and colors. Minor variations from approved plans, elevations, and colors may be allowed at the review and approval of City staff; and
15. The developer and/or operator shall submit all exterior signs and/or logos for City staff review and approval consistent with the City's signage regulations for both wall signs and pole signs; and
16. The developer shall submit landscape plans for City staff review and approval specifying plant selection, size and irrigation prior to installation; and
17. Any exterior lighting shall be submitted for City staff review and approval. Such lighting shall be directed to areas on the subject property itself and shall avoid shining toward adjacent properties; and
18. The Developer shall comply with all requirements of PG&E as it relates to the conversion of the car wash to a restaurant; and
19. The Developer and/or operator shall keep the site free from trash and debris and shall maintain the premises in a clean and orderly manner.

Bassi Site Plan and Design Review 2019-01

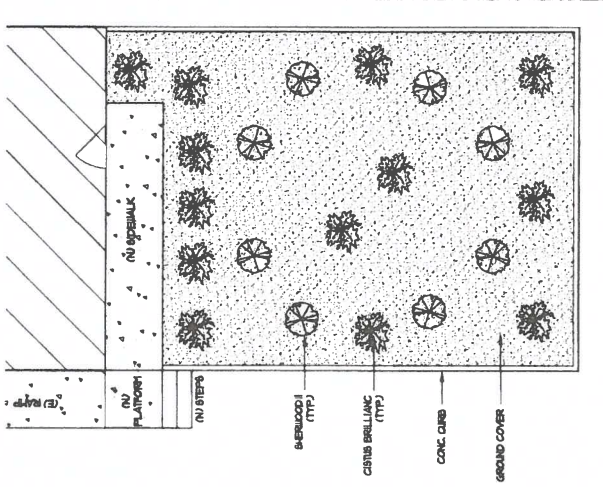
Zoning: C-3, Highway Service Commercial



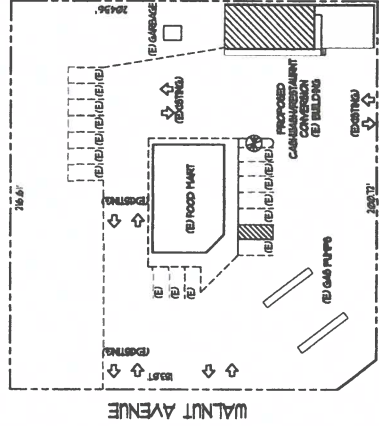
Project
BROTHER'S FOOD MART
690 HAMMETT AVE.
LIVINGSTON, CA 95334
((CARWASH/RESTAURANT
CONVERSION))



FLOOR PLAN
 SCALE: 1/4" = 1'-0"



HAMMETT AVE.
LANDSCAPING PLAN
 SCALE: 1/4" = 1'-0"



SITE PLAN
 SCALE: 1/32" = 1'-0"

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PLANNING



023-070-011

PROJECT FOR: BROTHER'S FOOD MART
 690 HAMMETT AVE
 LIVINGSTON, CA

JOB NO.	1
DATE: MARCH 2019	
SCALE: NOTED	
DRAWN BY: RAR	
CHECKED BY: RAR	
SHEET	1

Drafting design
 377 W. 2nd STREET, MENLO PARK, CA
 TEL: (650) 321-5174
 E-MAIL: ronald@draftingdesign.com
 - Residential - Design - Manufacturing -

Designer: *Ralph Rowland*

REVISION	DATE

D drafting
designs

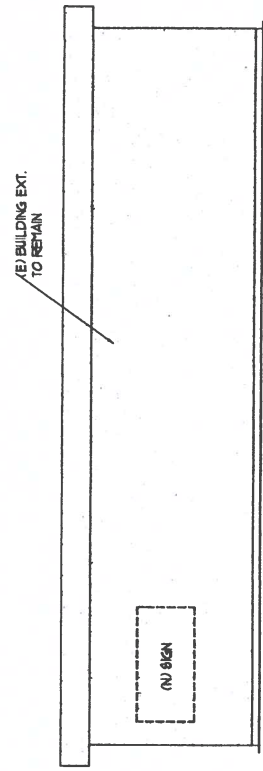
377 W. 2nd STREET, REDDEN, CA
Tel: (925) 831-3074
E-mail: info@draftingsdesigns.com
- Residential - Design - Remodeling -

Designer: *Ralph Savendy*

REVISION	DATE

PROJECT FOR: BROTHERS FOOD MART
690 HAMMETT AVE
LIVINGSTON, CA
023-070-011

JOB NO.	
DATE: MARCH 2019	
SCALE: NOTED	
DRAWN BY: RAR	
CHECKED BY: RAR	
SHEET	2

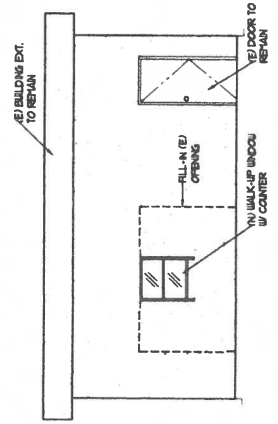
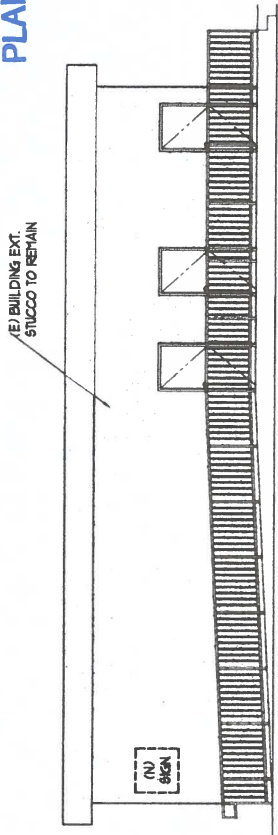


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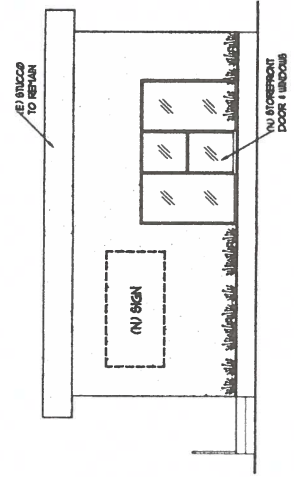
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MAR 20 2019

PLANNING



REAR
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Agenda Item #: 4b.
Meeting Date: **May 14, 2019**
Report Date: May 8, 2019

CITY OF LIVINGSTON PLANNING COMMISSION STAFF REPORT

CITY FILE NUMBER: Gallo Commercial Center, Phase 2, Tentative Subdivision Map 2017-01, Modify Condition of Approval #16.

OWNER/APPLICANT: JEG Livingston Ranches LLC
P O Box 775
Atwater, CA 95301

PROJECT LOCATION: 15.9 acres located northeast of the intersection of Robin Avenue and B Street, APN #: 022-010-015. The property is currently vacant with an existing drainage basin located at the south end of the property secured with a six-foot chain link fence with wood slats.

PROPOSED ACTION: Adopt Resolution 2018-____, modifying Condition of Approval #16 of the approved Tentative Subdivision Map; and adopt Resolution 2019-____, recommending approval by the City Council of the Fourth Amendment to Development Agreement between the City of Livingstone and JEG Livingston Ranches LLC.

PREPARED BY: Randy Hatch, Contract City Planner

LOCATION CHARACTERISTICS:

Property Size: 15.9 Acres
Existing Land Use: Vacant with a drainage basin to the south near B Street that serves the subject site and the commercial area (Livingston Commons) located to the west.
1999 General Plan Designation: Highway Commercial (HC)
Zoning: Highway Service Commercial (C-3)
Street Access: Future extension of Joseph Gallo Drive connecting to Winton Parkway and Robin Avenue

ADJACENT ZONING AND LAND USE:

- North: Across a Merced Irrigation District (MID) irrigation pipe, vacant land zoned M-2, General Industrial.
- South: Across “B” Street, a single-family home and vacant land zoned C-2, Community Commercial.
- East: The TA (Travel Center of America) truck fueling and service business with eating places, retail, and repair services zoned C-3, Highway Service Commercial.
- West: Across Robin Ave, agricultural land outside the City within the jurisdiction of Merced County.

PROJECT DESCRIPTION AND ANALYSIS:

The proposal is to modify Condition of Approval Number 16 of an approved Tentative Subdivision Map. The applicant, Joseph Gallo Farms, has received Planning Commission approval to divide the 15.9-acre property into 9 parcels varying from .96 to 2.0 acres in size and 1 remainder parcel currently and proposed to continue to be used as a drainage basin for the project and the commercial area to the east. The existing Joseph Gallo Drive is to continue west providing access to the property linking it to Winton Parkway on the east and Robin Avenue on the west. Two new streets are to provide access to the proposed parcels with Del Rio Avenue to the north and Bella Vista Court to the south. Full improvements of streets, curbs and gutters, sidewalks, sewer lines, and drainage are provided to all parcels. The nine parcels vary in size from 2 lots at 0.96 acre in size with one at 2.0 acre being the largest. The balances of the 6 remaining parcels are roughly 1 acre in size. As noted, the remainder parcel is used as a drainage basin and is 2.01 acres in size. The varying sizes allow for varying users which could include a wide variety of commercial activities and uses appropriate to highway locations as envisioned by the zoning designation.

No specific uses are proposed at this time. This subdivision creates an inventory of finished lots available for future development. It is desirable for the City to contain a selection of finished lots available for development to be able to take advantage of economic development opportunities. The City Municipal Code requires the future uses to obtain a Site Plan and Design Review approval first from the Planning Commission and then the City Council.

The current Condition of Approval number 16 states, “Subdivider shall construct or shall cause the construction of a perimeter CMU-block wall on “B” Street and Robin Avenue along the subdivision street frontages. The proposed block wall shall match existing perimeter walls or meet City standards per the City Engineer and City Planner. The construction of the perimeter wall shall be required for project or development of individual parcels.” The Third Amendment to the Development Agreement between the City of Livingston and JEG Livingston Ranches LLC was also approved at the time of Tentative Subdivision Map approval. The Third Amendment extended the term of the original Development Agreement 10 years from the approval date of the Third Amendment. It established the list of development fees the Project is subject to and in what manner those fees may increase over time. It established the reimbursement credit amount due to the developer and clarified when the deed for well 15 would be executed. It established the standards and conditions applicable to the Project and further defined that the Project incorporated conditions of Project approval and environmental mitigations as part of the Project. This last feature incorporated Condition of Approval number 16 into the Third Amendment to the Development Agreement.

Because of the Condition requiring CMU block wall, this wall (or a bond for the wall) must be constructed and in place before the Tentative Map can be finalized and the lots legally created and available for sale. Gallo is requesting a modification of this Condition so it would be required at the time the lot is developed.

As noted above, the City Code requires the end user of the lot(s) to obtain a Site Plan Design Review approval prior to obtaining a building permit or any other authorization to use the lot in the course of business. Gallo is requesting that during the Site Plan / Design Review approval is the time to require the construction of the CMU block wall and that Condition of Approval 16 and the Third Amendment to the Development Agreement be modified to reflect this.

The Planning Commission is the approval body for a Tentative Subdivision Map and any modifications thereto and makes recommendation on the Fourth Amendment to the Development Agreement to the City Council with the Council being the final approving body. Therefore, this Project goes before both bodies.

ENVIRONMENTAL REVIEW:

Modification of a Condition of Approval for an approved Tentative Map and approval of a Fourth Amendment to the Gallo Development Agreement is a “project” subject to review under the California Environmental Quality Act (CEQA). The original Tentative Map application and the original Third Amendment to the Development Agreement was the subject of an Initial Study prepared by an environmental consultant hired by Gallo. Gallo representatives prepared an Initial Study which reviewed the “project” per the standards and criteria of CEQA and determined whether the “project” would result in any significant environmental effects. The applicant prepared these documents, and they were reviewed in detail by City staff and, after City editing, represented the independent analysis and judgment of the City. These documents were circulated to various City departments, other agencies and organizations, and the State Clearinghouse, and made available for public review and comment for 39 days (more than the 30 days listed in the State CEQA Guidelines) starting July 19, 2017, through August 25, 2017. All this was done in compliance with CEQA rules and procedures. A Mitigated Negative Declaration was adopted and approved by the City. The modification of the timing of the construction of the CMU block wall is minor in nature and has no effect on any impacts of the Project or mitigation measures adopted for the Project. All mitigation measures are still being implemented and will occur before any development on the lots takes place. Therefore, this proposed modification is within the scope of the approved Mitigated Negative Declaration. No further environmental review and analysis are needed.

RECOMMENDATION:

Staff is of the opinion that the proposed modification of Condition of Approval 16 and corresponding Fourth Amendment to the Gallo Development Agreement is minor in nature and has no objections to this request. Allowing for this modification makes finalizing the lots easier and quicker moving this whole project forward. Developing this vacant land and adding expanded commercial uses provide services to the community, those traveling on State Route 99, and promotes additional jobs in the City. Staff feels the subdivision, as proposed and as conditioned with the modification, complies with all the requirements and standards applicable.

Staff recommends the Planning Commission adopt two separate resolutions: Resolution 2019-__, adopting the modification of Condition of Approval 16 keeping all other Conditions of Approval the same; and Resolution 2019-__, recommending approval by the City Council of the Fourth Amendment to the Development Agreement between the City of Livingston and JEG Livingston Ranches LLC, based on the Findings and Conditions of Approval contained in the attached resolution.

ATTACHMENTS:

1. Resolution 2019-___, Modifying Condition of Approval No. 16
2. Resolution 2019-___, Recommending to the City Council Approval of the Fourth Amendment to DA
Exhibit A – Fourth Amendment to Development Agreement
3. Project Location and Zoning Map
4. Tentative Subdivision Map

RESOLUTION 2019-__

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LIVINGSTON
MODIFYING CONDITION OF APPROVAL NUMBER 16 OF THE APPROVED
GALLO TENTATIVE SUBDIVISION MAP 2017-01**

WHEREAS, pursuant to Livingston Municipal Code (“LMC”) sections 6-6, JEG Livingston Ranches LLC, applicant and owner, has applied to modify Condition of Approval Number 16 of the approved Tentative Subdivision Map to create nine (9) parcels with a remainder on 15.9 acres located northeast of the intersection of Robin Avenue and “B” Street, (APN 022-010-015), in the City of Livingston; and

WHEREAS, the site is zoned C-3 (Highway Services Commercial), and has a General Plan designation of Highway Commercial according to the official zoning map of the City of Livingston and the 1999 Livingston General Plan; and

WHEREAS, a public hearing for the proposed project has been properly noticed by posting a newspaper ad and a mailing to adjacent properties within three hundred (300) feet of the site; and

WHEREAS, Staff has reviewed the requested modification of Condition of Approval Number 16 with reference to the 1999 General Plan, and the LMC (specifically Sections 6-6) and finds that, based on the evidence documented within the associated Staff Report and proceedings of the public hearing, the proposed modification of Condition of Approval Number 16 is consistent with the General Plan, complies with the Zoning Ordinance and all other relevant City regulations and standards; and

WHEREAS, the City Council on February 13, 2018, approved a Mitigated Negative Declaration for the Gallo Commercial Center, Phase 2, Tentative Subdivision Map, and Third Amendment to the Development Agreement between the City of Livingston and JEG Livingston Ranches LLC, and determined the Project will not have a significant effect on the environment. The modification of the timing of construction of the CMU block wall is minor and has no effect on any impact of the Project or mitigation measures adopted for the Project. All mitigation measures are still being implemented and will occur before any development on the lots takes place. Therefore, this proposed modification is within the scope of the approved Mitigated Negative Declaration. No further environmental review and analysis is needed; and

WHEREAS, the Planning Commission has reviewed and considered any and all comments on modifying Condition of Approval Number 16 made at the public hearing.

NOW, THEREFORE, BE IT RESOLVED that the Livingston Planning Commission hereby adopts Resolution 2019-__, modifying Condition of Approval Number 16 of the approved Gallo Tentative Subdivision Map 2017-01.

BE IT FURTHER RESOLVED that the Livingston Planning Commission hereby modifies Condition of Approval Number 16 as follows:

16. The ultimate builder(s) of the parcels located on “B” Street and Robin Avenue shall construct a perimeter CMU block wall on “B” Street and Robin Avenue along the subdivision street frontages. The proposed block wall shall match existing perimeter walls or meet City standards per the City Engineer and City Planner. The construction of the perimeter wall shall be required for the project or development of individual parcels and shall be imposed at the Site Plan / Design Review stage.

The foregoing resolution was introduced and moved for adoption on May 14, 2019, by _____, and being duly seconded by _____, was passed _____, by the following roll call vote:

AYES:
NOES:
ABSENT:

ATTEST:

Chair,

Secretary of the Planning Commission,
RANDY HATCH

RESOLUTION 2019-__

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LIVINGSTON
RECOMMENDING TO THE CITY COUNCIL APPROVAL OF THE FOURTH AMENDMENT
TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LIVINGSTON AND
JEG LIVINGSTON RANCHES LLC**

WHEREAS, in order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864, et seq., of the Government Code (“**Development Agreement Statute**”), authorizing the City, and any person having a legal or equitable interest in the real property, to enter into a development agreement and establish certain development rights in the property, which is the subject of the development project application. Pursuant to Government Code section 65868, development agreements may be amended by mutual assent of the parties; and

WHEREAS, on December 1, 1997, the City of Livingston (“**City**”) and Joseph Gallo (“**Gallo**”), as the developer of real property located within the City, entered into a Development Agreement regarding certain real property (“**1997 Development Agreement**”); and

WHEREAS, Gallo has developed the subject property (“**1997 Property**”), pursuant to the 1997 Development Agreement; and

WHEREAS, JEG Livingston Ranches LLC, a California limited liability company (“**Developer**”) assumed all rights and responsibilities under the 1997 Development Agreement from Gallo; and

WHEREAS, on April 19, 2005, the 1997 Development Agreement was amended (“**First Amendment**”) to add an additional project and specific conditions relating to the fees applicable to the new project; and

WHEREAS, on June 6, 2006, the 1997 Development Agreement was amended a second time (“**Second Amendment**”) to revise the terms and conditions affecting only the project described in both the First and Second Amendments.

WHEREAS, on June 5, 2018, the 1997 Development Agreement was amended a third time (“**Third Amendment**”) to remove property within the project that was no longer bound by or subject to the 1997 Development Agreement or its amendments, and rescinding the First and Second Amendments to the 1997 Development Agreement. The Third Amendment also added new property within the project description of the 1997 Development Agreement and conditioned the new property to several other requirements.

WHEREAS, after entering into the Third Amendment, the Developer and the City engaged in discussions regarding the new requirements. The Developer asked the City for changes to the conditions, clarifying the requirement to construct a perimeter CMU-block wall on “B” Street and Robin Avenue along the subdivision street frontages. The Developer also requested flexibility in deadlines for certain conditions of approval. This Fourth Amendment clarifies the condition and adds additional flexibility.

WHEREAS, on May 14, 2019, the Planning Commission held a duly noticed public hearing to consider the proposed Fourth Amendment to the Development Agreement, received a report from City Staff, heard public comment and other oral and written evidence.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. Based on all of the evidence in the record, the Planning Commission finds:
 - A. That the Fourth Amendment to the Development Agreement, as implemented through the enacting ordinance, is consistent with the goals, objectives, and policies of the City's General Plan;
 - B. That the Fourth Amendment to the Development Agreement, as implemented through the enacting ordinance, is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;
 - C. That the Fourth Amendment to the Development Agreement, as implemented through the enacting ordinance, will not be detrimental to the public health, safety, or welfare of the community;
 - D. That the Fourth Amendment to the Development Agreement, as implemented through the enacting ordinance, will promote the public convenience, general welfare, and good land use practices, and is in the best interest of the community;
 - E. That the Fourth Amendment to the Development Agreement, as implemented through the enacting ordinance, will not adversely affect the orderly development of property or the preservation of property values;
 - F. That the Fourth Amendment to the Development Agreement, as implemented through the enacting ordinance, will promote and encourage the development of the land by providing a greater degree of flexibility and requisite certainty; and
 - G. That the City Council on February 13, 2018, approved a Mitigated Negative Declaration for the Gallo Commercial Center, Phase 2, Tentative Subdivision Map and Third Amendment to the Development Agreement between the City and Developer, and determined the Project will not have a significant effect on the environment. The modification of the timing of construction of the CMU block wall, and addition of flexibility regarding timing for certain improvements or portions of improvements, is minor in nature and has no effect on any impacts of the Project or mitigation measures adopted for the Project. All mitigation measures are still being implemented and will occur before any development on the lots takes place. Therefore, these proposed modifications are within the scope of the approved Mitigated Negative Declaration. No further environmental review and analysis is needed.
2. The Planning Commission recommends to the City Council approval of the Fourth Amendment to the Development Agreement and its enacting ordinance as shown in Exhibits "A."

The foregoing resolution was introduced and moved for adoption on May 14, 2019, by _____, and being duly seconded by _____, was passed by the following roll call vote:

AYES:
NOES:
ABSENT:

ATTEST:

Chair,

Secretary of the Planning Commission,
RANDY HATCH

OFFICIAL BUSINESS
Document entitled to free recording
Government Code Section 6103

RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:

City of Livingston
1416 C Street
Livingston, CA 95334
Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF LIVINGSTON AND
JEG LIVINGSTON RANCHES, LLC**

This Fourth Amendment to the Development Agreement (this **"Fourth Amendment"**), is made and entered into on the ____ day of _____, 2019, by and between the City of Livingston, a California municipal corporation ("**City**"), and JEG Livingston Ranches, LLC, a California limited liability company ("**Developer**"). City and Developer are hereinafter collectively referred to as the "**Parties**," and singularly as a "**Party**."

RECITALS

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864, et seq., of the Government Code (the "Development Agreement Statute"), authorizing a city, and any person having a legal or equitable interest in real property, to enter into a Development Agreement and establish certain development rights in the property, which is the subject of the development project application. Pursuant to Government Code section 65868, Development Agreements may be amended by mutual assent of the parties.

B. On December 1, 1997, the City and Joseph Gallo (hereinafter "**Gallo**"), as the developer of real property located within the City of Livingston, entered into a Development Agreement regarding certain real property (the "**1997 Development Agreement**"). Gallo has developed the subject property ("**1997 Property**"), pursuant to the 1997 Development Agreement.

C. Developer assumed all rights and responsibilities under the 1997 Development Agreement from Gallo.

D. On April 19, 2005, the 1997 Development Agreement was amended (the "**First Amendment**") to add an additional project and specific conditions relating to the fees applicable to the new project.

E. On June 6, 2006, the 1997 Development Agreement was amended a second time (“**Second Amendment**”) to revise the terms and conditions affecting only the project described in both the First and Second Amendment.

F. On _____, the 1997 Development Agreement was amended a third time (“**Third Amendment**”) to remove property within the project that was no longer bound by or subject to the 1997 Development Agreement or its amendments and rescinding the First and Second Amendments to the 1997 Development Agreement. The Third Amendment also added new property within the project description of the 1997 Development Agreement and conditioned the new property to several other requirements.

G. After entering into the Third Amendment, the Developer and the City engaged in discussions regarding the new requirements. The Developer asked the City for some changes to the conditions, clarifying the requirement to construct a perimeter CMU-block wall on “B” Street and Robin Avenue along the subdivision street frontages. The Developer also requested flexibility in deadlines for certain conditions of approval. This Fourth Amendment clarifies the condition and adds additional flexibility.

H. On _____, 2019, at a duly-noticed public hearing, the City’s Planning Commission considered the Fourth Amendment. Following due consideration, the Planning Commission recommended to the City Council approval of the Fourth Amendment to the Development Agreement.

I. On February 13, 2018, the City Council approved a Mitigated Negative Declaration for the Gallo Commercial Center, Phase2, Tentative Subdivision Map and Third Amendment to the Development Agreement between the City of Livingston and JEG Livingston Ranches, LLC and determined the Project will not have a significant effect on the environment. The modification of the timing of construction of the CMU block wall is minor in nature and has no effect on any impacts of the Project or mitigation measures adopted for the Project. All mitigation measures are still being implemented and will occur before any development on the lots takes place. Therefore, this proposed modification is within the scope of the approved Mitigated Negative Declaration. No further environmental review and analysis is needed

J. On _____, 2019, the City Council, as the legislative body for purposes of Development Agreement approval, held a properly noticed public hearing pursuant to Government Code section 65867 regarding the Fourth Amendment and its environmental document and considered all comments received in writing and all testimony received at the public hearing.

AGREEMENT

1. **Incorporation of Recitals.** Recitals A through J are hereby incorporated herein, including the documents referenced in the Recitals.

2. **Amendments to the Standards and Conditions Imposed by the Third Amendment.** Section VIII(E), titled "2017 STANDARDS AND CONDITIONS," of the 1997 Development Agreement, which was added by the Third Amendment. Section VIII(E)(16) is amended to clarify that the obligation to construct a perimeter CMU-block on "B" Street and Robin Avenue along the subdivision street frontages is the responsibility of the ultimate builder of the parcels located on "B" Street and Robin Avenue along the subdivision street frontages. Section VIII(E)(16) is amended to read as follows:

"(16) The ultimate builder(s) of the parcels located on "B" Street and Robin Avenue shall construct a perimeter CMU-block wall on "B" Street and Robin Avenue along the subdivision street frontages. The proposed block wall shall match existing perimeter walls or meet City standards per the City Engineer and City Planner. The construction of the perimeter wall shall be required for project or development of individual parcels and shall be imposed at the Site Plan/Design Review stage."

3. **Flexibility Regarding Timing for Certain Improvements or Portions of Improvements.** The City Manager shall have the discretion to defer the required improvements, or portions thereof, under the following Sections of the 1997 Development Agreement: Sections VIII(E)(19), (20), (23), (24), and (32). The conditions covered under these Sections are attached hereto as **Exhibit A**. Timing for the improvements under these Sections will be at the discretion of the City Manager. All other standards and conditions under Section VIII(E) shall remain in full force and effect as required under the Third Amendment.

4. **All Other Terms in Force.** Except as amended by this Fourth Amendment, all terms and conditions of the 1997 Development Agreement and the Third Amendment remain in full force and effect.

5. **Recording.** Within ten (10) days after the Effective Date, City shall record this Fourth Amendment with the Merced County Recorder's Office.

6. **Counterparts.** The Parties may execute this Fourth Amendment in counterparts, each of which will be considered an original, but all of which will constitute the same instrument.

7. **Entire Agreement.** The 1997 Development Agreement, the Third Amendment, and this Fourth Amendment set forth the Parties' entire understanding regarding the matters set forth above. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those matters (whether written, oral, express, or implied) and may be modified only by another written agreement signed by all Parties. This Fourth Amendment will control if any conflict arises between it, the 1997 Development Agreement, and the Third Amendment.

IN WITNESS WHEREOF, the City of Livingston, a municipal corporation, has authorized the execution of this Fourth Amendment in duplicate by its City Manager and attested to by its City Clerk under the authority of Ordinance No. _____, adopted by the Council of the City on the ____ day of _____, 2019, and Developer has caused this Fourth Amendment to be executed.

“CITY”

“DEVELOPER”

CITY OF LIVINGSTON,
a municipal corporation

JEG LIVINGSTON RANCHES, LLC,
a California limited liability company

By: _____

By: _____

Name: Jose A. Ramirez

Name: _____

Its: City Manager

Its: _____

ATTEST:

Antonio Silva, City Clerk

APPROVED AS TO FORM:

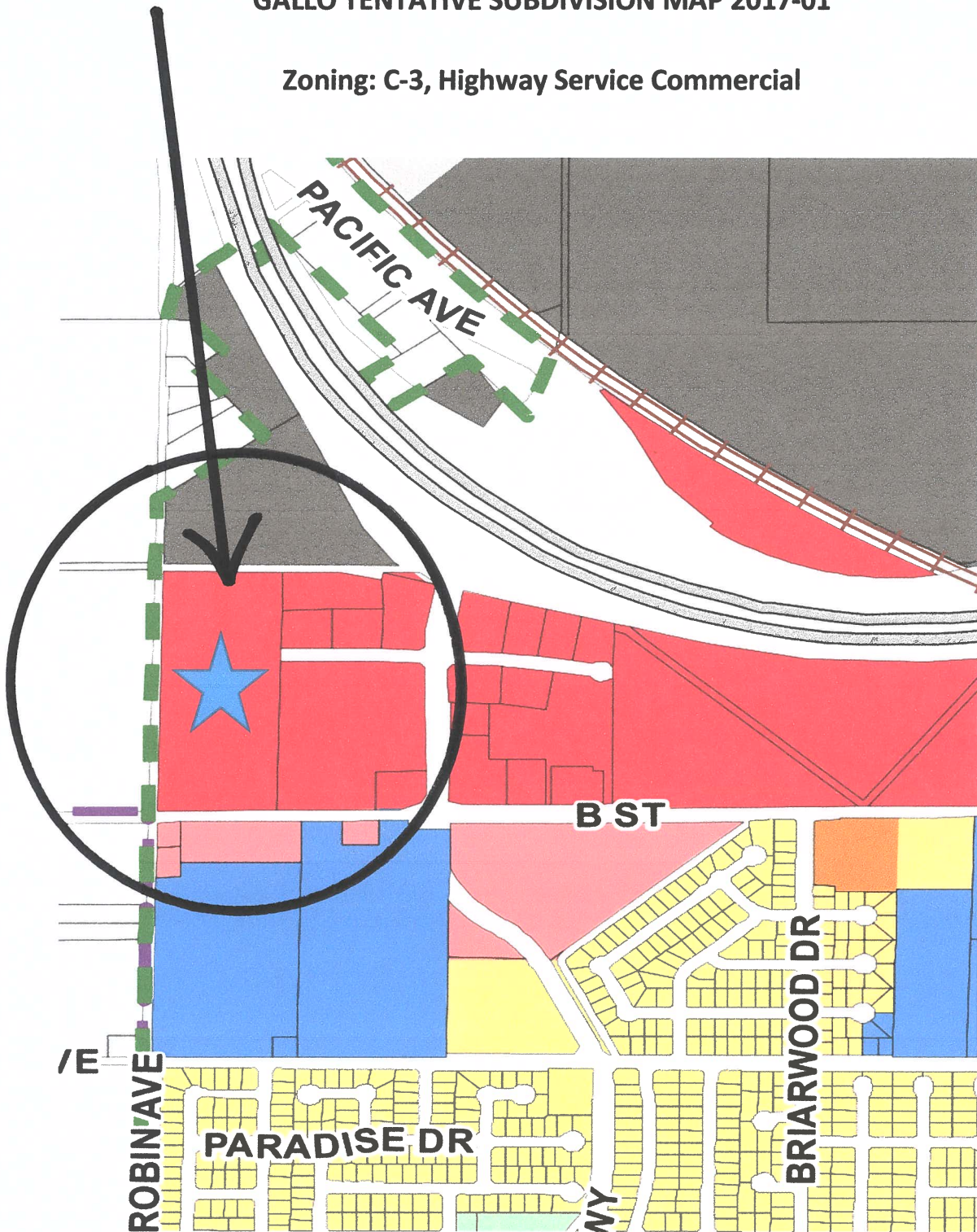
Jose M. Sanchez, City Attorney

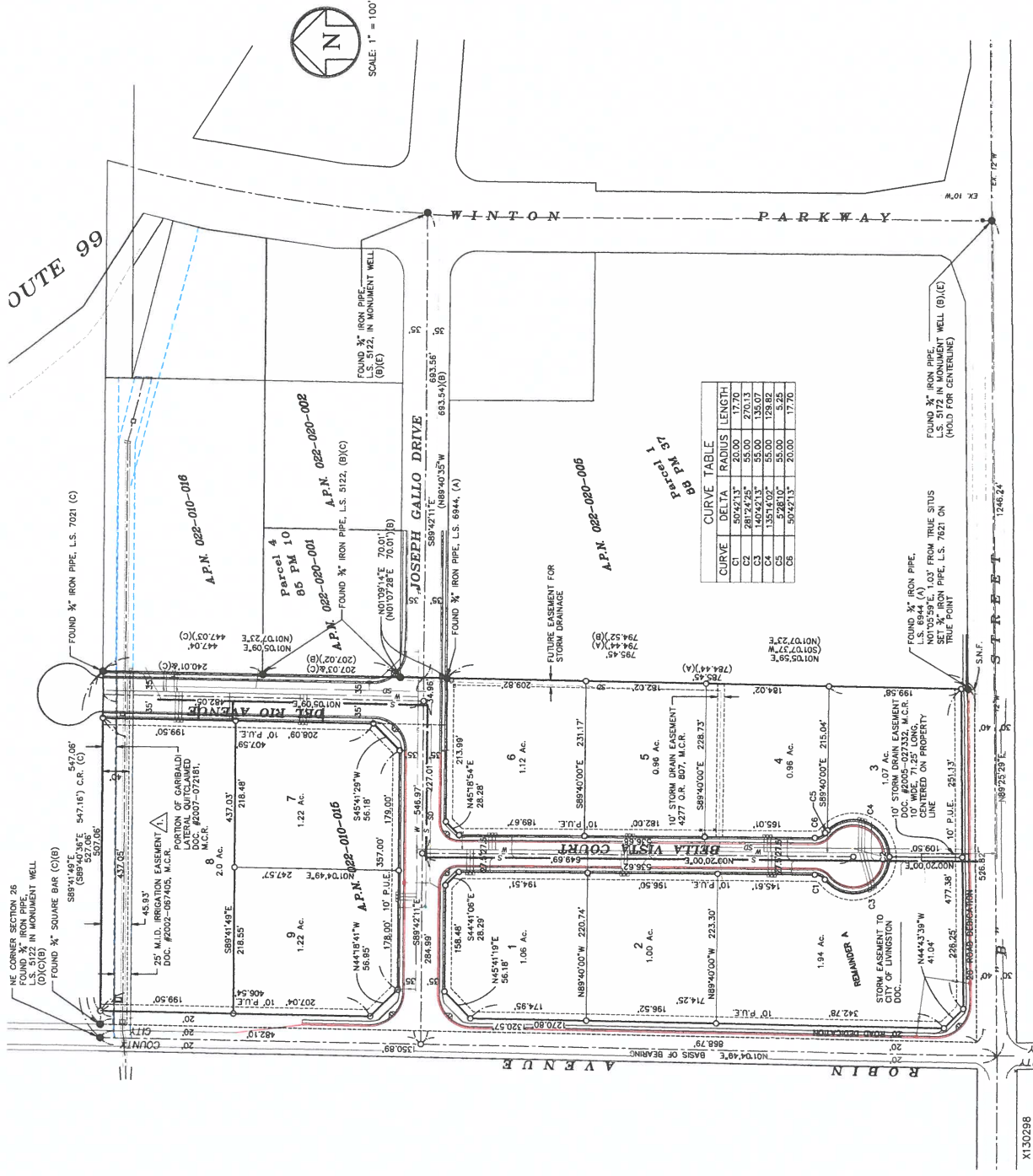
Exhibit A: Standards and Conditions

3214616.6

**MODIFICATION OF CONDITION OF APPROVAL NUMBER 16 OF THE APPROVED
GALLO TENTATIVE SUBDIVISION MAP 2017-01**

Zoning: C-3, Highway Service Commercial





- LEGEND**
- MONUMENT FOUND 3/4" IRON PIPE W/ L.S. 6484 TAG UNLESS SHOWN OTHERWISE.
 - MONUMENT FOUND 3/4" I.D. IRON PIPE TAGGED WITH L.S. 7821.
 - 284.11 ALL MEASUREMENTS ARE IN FEET AND DECIMAL FRACTIONS THEREOF.
 - (A) REFERENCE DATA
 - M. C. R. MERCED COUNTY RECORDS
 - BOUNDARY LINE



BASIS OF BEARING
 THE BEARING OF N010449°E ALONG THE CENTERLINE OF ROBIN AVENUE IS THE BASIS OF BEARING FOR MICHAEL GALLO AS RECORDED IN 41 R.S. 19, M.C.R. IS THE BASIS FOR ALL BEARINGS SHOWN ON THIS MAP.

REFERENCES
 (A) PARCEL MAP FOR MICHAEL D. GALLO, RECORDED IN 88 P.M. 37, M.C.R.
 (B) PARCEL MAP FOR JOSEPH E. GALLO, RECORDED IN 85 P.M. 10, M.C.R. (OR CALCULATED THEREFROM)

KEYNOTE
 △ NO EASEMENT AREA TO COMPLY WITH CONSTRUCTION AGREEMENT, NO BUILDINGS OR PERMANENT STRUCTURES, PARKING AND LANDSCAPE ALLOWED.

TENTATIVE MAP
 FOR
 JOSEPH GALLO

THE JOSEPH E. GALLO WINTON PARKWAY COMMERCIAL CENTER, PHASE 2
 SECTION T-65, R-17E, W.D.B. & M.
 MERCED COUNTY, CALIFORNIA



CURVE	DELTA	RADIUS	LENGTH
C1	90°52'13"	20.00	17.70
C2	144°42'13"	55.00	135.07
C3	144°42'13"	55.00	135.07
C4	135°14'02"	55.00	129.82
C5	52°28'10"	55.00	5.25
C6	90°52'13"	20.00	17.70

X130298

CHAPTER 2

PLANNING COMMISSION

SECTION:

- 2-2-1: Commission Created
- 2-2-2: Membership And Terms Of Office
- 2-2-3: Removal Of Members And Vacancies
- 2-2-4: Meetings
- 2-2-5: Planning Commission Duties And Responsibilities
- 2-2-6: Adoption Of Rules

2-2-1: **COMMISSION CREATED:** Pursuant to the provisions of chapter 3 title 7 of the California Government Code, there is established a planning agency which shall be known as the Livingston planning commission. (Ord. 562, 11-20-2007)

2-2-2: **MEMBERSHIP AND TERMS OF OFFICE:**

- (A) Membership And Compensation: The planning commission shall consist of five (5) members and ^{two} ~~one~~ alternates appointed by majority vote of the city council. The alternate member may participate, but may not vote on an item before the planning commission unless a planning commissioner is absent or is disqualified due to an expressed conflict of interest. All members shall be qualified electors of the city. The compensation of the planning commission shall be established by resolution of the city council. (Ord. 580, 2-17-2009)
- (B) Terms: Terms of office of the members of the planning commission are for a period of four (4) years or until their successors are appointed and such terms are staggered with terms of one member of the planning commission expiring each year, except that every fourth year the terms of two (2) members expire. Terms expire December 31 of each year.

- (C) Chairperson And Vice Chairperson: The planning commission shall rotate the positions of chair and vice chairperson among the appointed members. Officers hold offices for one year, or until their successors are appointed. Terms expire on December 31 of each year. (Ord. 562, 11-20-2007)

2-2-3: REMOVAL OF MEMBERS AND VACANCIES:

- (A) Removal By Commission: Any member of the commission may be removed from the commission prior to the expiration of term by majority vote of the city council. Vacancies on the planning commission from whatever cause shall be filled by the city council for the unexpired term.
- (B) Resignation Of Members: A member of the commission may resign from the commission by filing a written statement with the city clerk stating he or she resigns from the commission. Upon filing the written statement with the city clerk, the resignation shall become effective at the time of the filing and said member shall cease to be a member of said commission and a vacancy shall then exist. (Ord. 562, 11-20-2007)
- (C) Absence With/Without Cause: Any commissioner's seat shall automatically be deemed vacant for failing to attend any three (3) meetings in any twelve (12) month period, unless the absence is the result of illness or family emergency, or removal of the commissioner from office would otherwise be prohibited by law. In the event that a commissioner is unable to attend a meeting due to illness or family emergency, the commissioner shall inform the city manager or the community development director at the earliest opportunity before the meeting in order for the absence to be excused. The commission shall immediately inform the city council of such vacancy. Vacancies on the planning commission from whatever cause shall be filled by the city council for the unexpired term. (Ord. 579, 2-17-2009)

2-2-4:

MEETINGS:

- (A) Regular Meetings: The regular meetings of the planning commission shall be held on the second Tuesday of each month at the hour of seven o'clock (7:00) P.M. If at any time a regular meeting falls on a holiday, the regular meeting shall be held on the next business day. The regular meeting shall be held at city hall, 1416 C Street, Livingston, California. Three (3) members constitute a quorum. At

least three (3) members must approve any action or recommendation to the city council regarding rezonings, amendments to the general plan or zoning title, conditional use permits, tentative parcel and subdivision maps and variances from ordinances as may be acted upon by the planning commission.

- (B) Special Meetings: Special meetings of the commission may be called at any time by the chairperson or by any three (3) or more members of the commission upon written personal notice to be given all members of the commission. If personal notice cannot be given, written notice must be hand delivered to the last known address to such members at least twenty four (24) hours prior to the meeting, unless the notice requirement is waived, in writing, by the member. (Ord. 562, 11-20-2007)

2-2-5: **PLANNING COMMISSION DUTIES AND RESPONSIBILITIES:**

- (A) The city planning commission shall perform the duties and shall have all rights, powers and privileges specified and provided by state law or by city ordinance or city council resolution.
- (B) The city planning commission shall also act in an advisory capacity to the city council on land use and development issues. (Ord. 562, 11-20-2007)

2-2-6: **ADOPTION OF RULES:** The planning commission adopts rules for the transaction of business and keeps a public record of its transactions, resolutions, findings and determinations. (Ord. 562, 11-20-2007)