

**CITY OF MODESTO
PLANNING COMMISSION AGENDA
MONDAY, DECEMBER 7, 2009 – 7:00 PM
BASEMENT CHAMBERS
1010 TENTH STREET – MODESTO, CA**

I. ROLL CALL

II. APPROVAL OF MINUTES

Minutes of the regular meeting of November 16, 2009.

III. CONFLICT OF INTEREST DECLARATION

Commissioners and staff may now declare conflicts of interest for the purpose of determining if a quorum will be present to act on each item in the order shown on the agenda.

IV. CONSENT AND JOINT PUBLIC HEARING ITEMS

None.

V. PUBLIC HEARINGS

Item A RZN-09-001 – An application to rezone a 0.51 acre parcel from Low Density Residential Zone (R-1) to Medium-Density Residential Zone (R-2), property located on the west side of Carver Road south of Standiford Avenue; submitted by Robert Braden Consulting

Contact Info: Rita Doscher, 577-5267, rdoscher@modestogov.com

Item B PDA-06-009 and DEV-09-003 – An amendment to Planned Development Zone, P-D(540), to allow a revised development schedule and revised development plan for a 109,900 square-foot retail center and an amendment to the Development Agreement for P-D(540), property located on the north side of Pelandale Avenue, east of Chapman Road; submitted by John J. Johannson

Contact Info: David Wage, 577-5267, dwage@modestogov.com

VI. OTHER BUSINESS

Item C CODE-09-002: Neighborhood Compatibility Code Amendment Feedback

Contact Info: Paul Liu, 577-5267, pliu@modestogov.com

Item D Appointments – Chair, Vice-Chair, and Committee Assignments

VII. ORAL COMMUNICATIONS

These matters may be presented by interested persons in the audience, staff or Commissioners (see Notice at end of agenda cover). Under State law, Commissioners may respond to matters being presented under this item only as follows:

- (a) Briefly respond to statements made or questions raised;
- (b) Ask a question for clarification;
- (c) Provide a reference to staff or other resources for factual information;
- (d) Request staff to report back at a subsequent meeting;
- (e) Finally, a Commissioner, or the Commission itself, may take action to direct staff to place a matter of business on a future agenda.

VIII. MATTERS TOO LATE FOR THE AGENDA

These may be presented by members of the Planning Commission and staff, upon determination by a majority vote that an emergency exists, as defined by State law, or by a 2/3 vote that: 1) there is a need to take immediate action, and 2) that the need for action came to the City's attention after the agenda was posted.

IX. ADJOURNMENT

Copies of the agenda are on file at the Stanislaus Library Reference Room, 1500 I Street, Modesto, and in the office of the Planning Division, Third Floor, 1010 Tenth Street, Modesto, CA. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Commission Secretary at 209.577.5267. Assistive listening devices are available upon request to the Planning Commission Secretary. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Notice: Persons who wish to speak to the Planning Commission regarding any item on the printed agenda, including oral communications, are encouraged to sign in on a form provided at the meeting. The purpose of this list is to have your name and address should we need to contact you or provide additional information to you. Signing this form is optional to speakers.

Posted pursuant to Government Code Section 54954.2 on _____

by _____ on the bulletin board at Tenth Street Place.

**CITY OF MODESTO
PLANNING COMMISSION
STAFF REPORT**

TO: Chairperson Berglund and Members of the Planning Commission

PREPARED BY: Rita Doscher, Associate Planner
Contact Info: 577-5267 rdoscher@modestogov.com

REVIEWED BY: Steve Mitchell, Principal Planner

APPROVED BY: Patrick Kelly, Planning Manager

DATE: October 23, 2009

SUBJECT: RZN-09-001 – An application to rezone a 0.51 acre parcel from Low Density Residential Zone (R-1) to Medium-Density Residential Zone (R-2), property located on the west side of Carver Road south of Standiford Avenue; submitted by Robert Braden Consulting

RECOMMENDATION

That the Planning Commission adopt the attached resolution recommending to the City Council approval of the proposed rezoning of property located at 3401 Carver Road from R-1 (Low Density Residential) to R-2 (Medium Density Residential).

BACKGROUND

The subject property is located on the west side of Carver Road south of Standiford Avenue, and is currently zoned Low Density Residential (R-1). The parcel was annexed into the City of Modesto and zoned R-1 as part of the Standiford-Carver #2 Annexation in 1980. The site has three existing dwelling units, two of which were built without zoning approval or building permits, two garages, and two storage units. There is no curb, gutter or sidewalk along the site frontage.

The parcel abuts existing (R-1) single-family residences to the west; P-D(549) with Stanislaus County Affordable Housing apartments and P-D(562) with townhouse apartments to the south; P-D(451) with commercial and professional offices to the north; and (R-2) Medium-Density apartments and P-D(450) with residential condominiums to the east.

On September 23, 2009, Robert Braden Consulting on behalf of TLB Investments submitted an application to rezone the parcel from R-1 to R-2 Zone.

PROJECT DESCRIPTION

The rezone from R-1 to R-2 is intended as the initial step in bringing the subject site into conformance with City codes and compatibility with the surrounding uses and zones, as the parcel is surrounded on three sides by existing apartments, condominiums, and an existing commercial development. The R-1 Zone allows one single-family dwelling unit with a second unit of no more than 640 square feet. The R-2 Zone would allow approximately 7 units on the 0.51 acre parcel. The applicant is currently working with the Building Safety Division regarding Code violations on the illegal conversion of two of the existing structures on site, which are

being used as habitable space. To remedy the situation in part, the applicant seeks to rezone the property from R-1 to R-2 to accommodate the number of units, and any future development on the property would require subsequent staff level approval through the Building Safety Division.

ISSUES

Future Development Requirements

Notification of the proposed rezoning was referred to City departments and outside agencies for review. Land Development Engineering issues related to this project will be addressed at the time of building permit submittal and approval for the two structures converted to habitable space, which includes: water and sewer calculations to be submitted to show that the existing size of the water service can accommodate the usage demand for water, and the existing sewer lateral is sized adequately to accept discharge generated from all three dwellings; a future 10 foot dedication of street right of way on the Carver Road frontage; and the installation of street improvements on Carver Road along the east property line.

REASONS FOR RECOMMENDATION

As noted above, the site is surrounded on three sides by multi-family and commercial development. Therefore, in addition to helping to bring the property into conformance with City codes, a rezoning to R-2 would result in a more consistent and logical zoning pattern on this section of Carver Road.

GENERAL PLAN CONSISTENCY

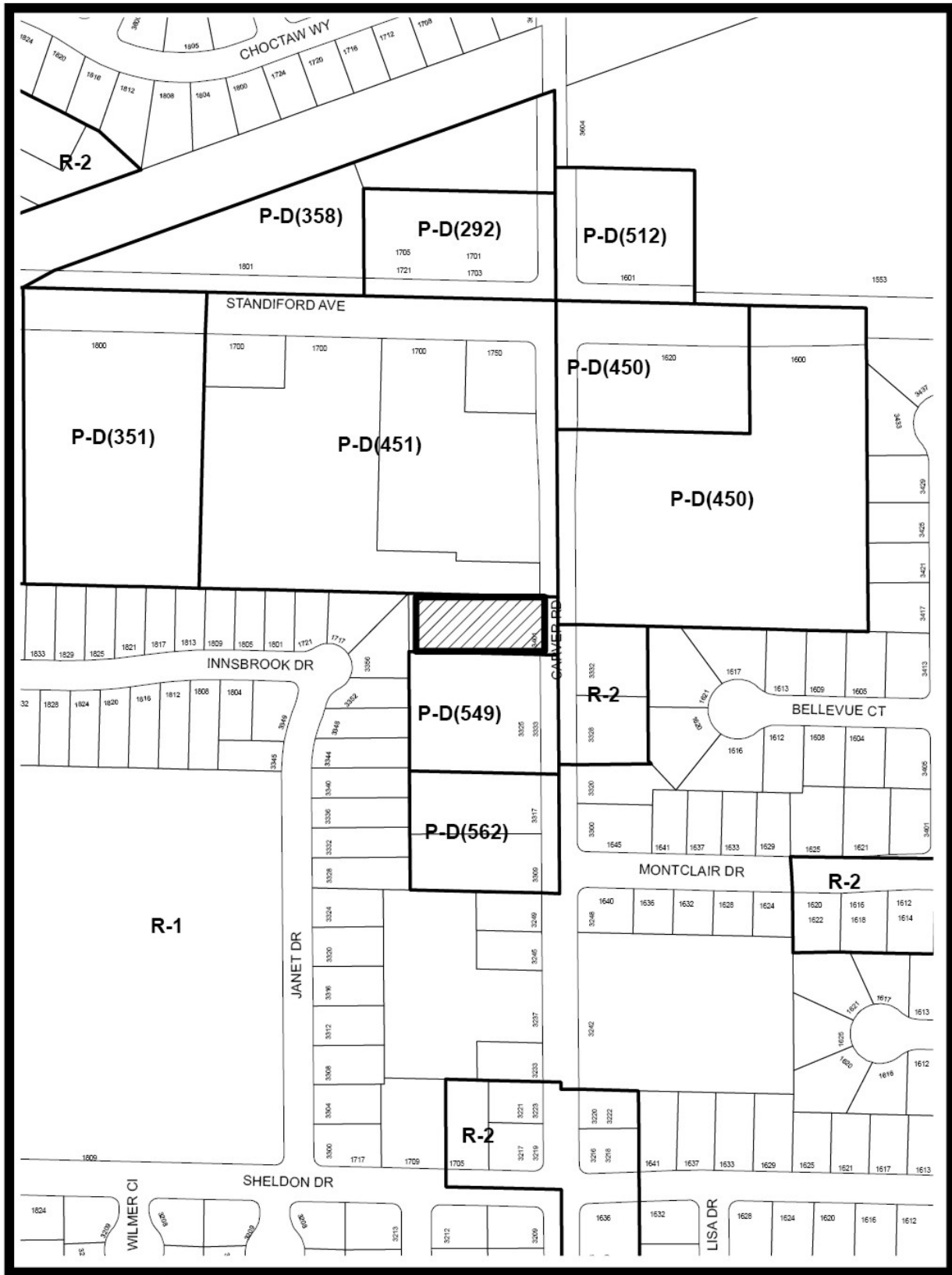
The General Plan Land Use Designation for the subject property is R "Residential", which allows for the Medium Density Residential. The proposed rezoning from R-1 to R-2 Zone is thus in conformance with the General Plan.

ENVIRONMENTAL ASSESSMENT

Staff has prepared an Initial Study, Environmental Assessment No. EA/C&ED 2009-28 (Attachment 3), which concludes that the proposed Rezone is within the scope of the General Plan Master Environmental Impact Report (SCH No. 2007072023) and that pursuant to Section 21157.1(b) of CEQA, no new environmental review is required.

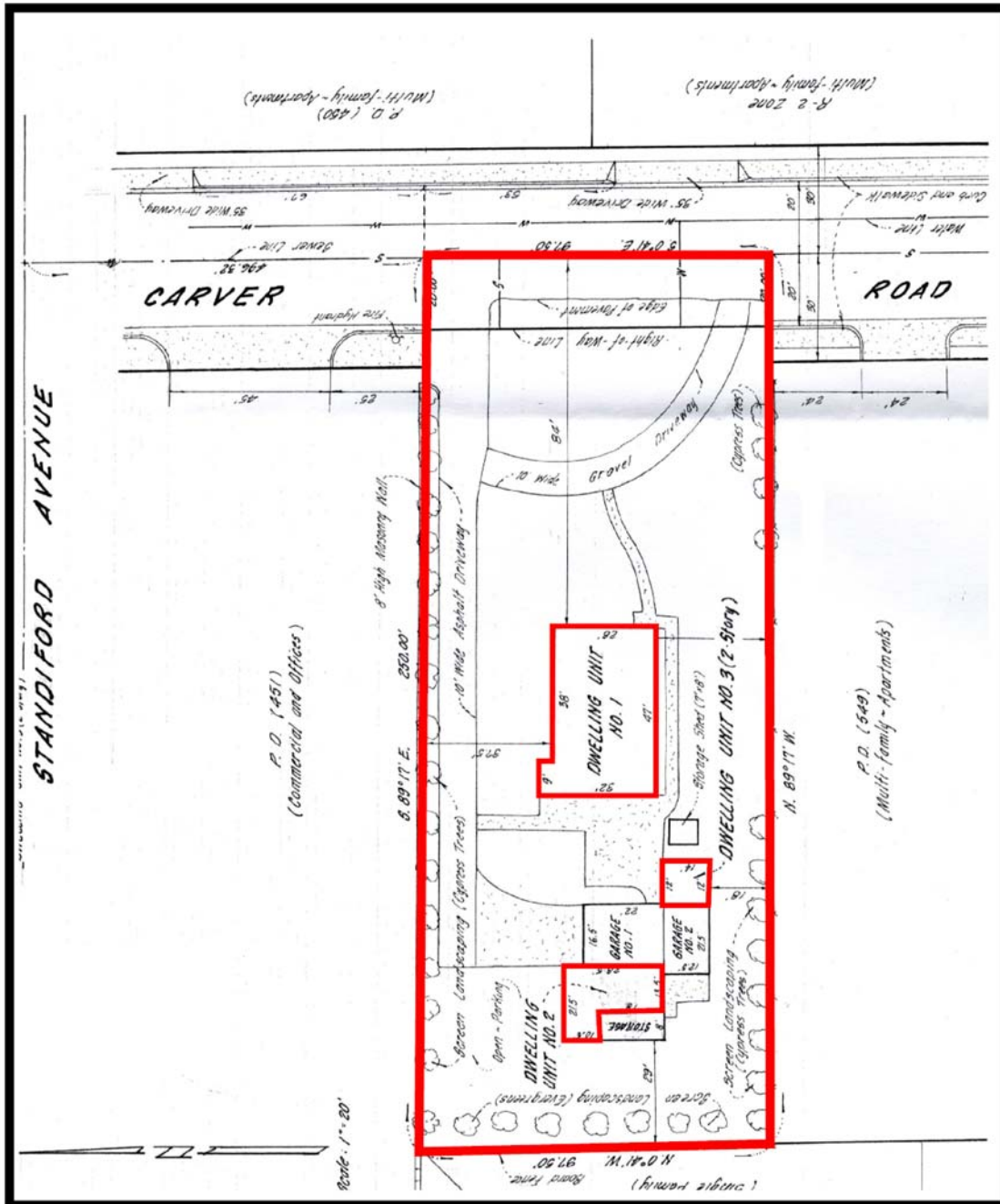
ATTACHMENTS (included with Commissioners' packets only)

1. Robert Braden Consulting – Project Explanation – October 23, 2009
2. Draft Planning Commission Resolution – December 7, 2009
3. Initial Study EA/C&ED No. 2009-28
4. Financial Interest Disclosure Form
5. Large-Format Map(s)



AREA MAP OF PROPOSED REZONING
R-1 TO R-2





EXISTING DEVELOPMENT
 (INFORMATION ONLY)
 LARGE FORMAT DRAWING TO BE INCLUDED IN COMMISSIONER'S PACKAGE

PLANNING COMMISSION
RESOLUTION NO. 2009-XX



A RESOLUTION RECOMMENDING TO THE CITY COUNCIL AN AMENDMENT TO SECTION 7-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL (R-1) TO MEDIUM DENSITY RESIDENTIAL ZONE (R-2) PROPERTY LOCATED ON THE WEST SIDE OF CARVER ROAD SOUTH OF STANDIFORD AVENUE (TLB INVESTMENTS)

WHEREAS, a verified application for an amendment to Section 7-3-9 of the Zoning Map was filed by Robert Braden Consulting on behalf of TLB Investments on September 23, 2009 to reclassify from Low Density Residential Zone (R-1) to Medium Density Residential Zone (R-2), property located on the west side of Carver Road south of Standiford Avenue in the City of Modesto, described as follows:

R-1 to R-2

Real property in the City of Modesto, County of Stanislaus, State of California, described as follows:

That portion of the South half of the North 15.04 chains of the East 13.52 chains of Lot 1 of the KNAPP TRACT in the Northeast quarter of the Southwest quarter of Section 7, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, particularly described as follows:

Beginning at a point on the east line of said Lot 1, said point being on the center line of Carver Road and bearing South 0 Degrees 41' East 593.8 feet from the Northeast corner of said Lot 1; running thence North 89 Degrees 17' West 250 feet along the North boundary of the land conveyed to V.S. Price and Lula O. Price, his wife, and V.S. Price Jr., on the 3rd day of December 1946, which Deed is recorded in the office of the County recorder of Stanislaus County, California, as Instrument No. 33926; thence North 0 Degrees 41' West 97 feet 6 inches, more or less, to the North line of the said South half of the North 15.04 chains of the East 13.52 chains of Lot 1 of the said KNAPP TRACT, thence South 89 Degrees 17' East 250 feet to the East line of said Lot 1, thence South 0 Degrees 41' East 97 feet 6 inches, more or less, to the point of beginning.

APN: 054-051-001

WHEREAS, a public hearing was held by the Planning Commission on December 7, 2009 in the Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the Planning Commission certifies it has received and reviewed the Initial Study, Environmental Assessment No. EA/C&ED 2009-28, which concluded that the project is within the scope of the General Plan Master EIR (SCH No. 2007072023) and that pursuant to Section 21157.1 of the Public Resources Code, no new environmental review is required.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission that it hereby finds and determines as follows:

1. The requested rezoning is required by public convenience or necessity and will result in an orderly planned use of resources for the following reasons:
 - a. The proposed Medium Density Residential Zone amendment will be compatible with the surrounding land uses, because the property is surrounded by R-2 and commercial zoning.
 - b. The proposed rezoning is consistent with the Modesto Urban Area General Plan because the Medium Density Residential Zone is consistent with the General Plan Residential Designation of the site.
2. The type of project is described in Chapter II of the Modesto Urban Area General Plan Master EIR (MEIR).
3. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the project or otherwise made conditions of approval of the project.
4. An Initial Study was prepared by the City of Modesto that analyzed whether the proposed subsequent project may cause any significant effect on the environment that was not examined in the MEIR and it has been determined that the project was described in the MEIR as being within the scope of the MEIR.
5. Based on the Initial Study, the City of Modesto finds and determines:
 - a. The proposed subsequent project will have no additional significant effect as defined in CEQA Section 21158 that was not identified in the MEIR.
 - b. No new or additional mitigation measures or alternatives are required.
6. The Initial Study, Environmental Assessment No. EA/C&ED 2009-28, provides the substantial evidence to support finding numbers 2-5 noted above.

BE IT FURTHER RESOLVED by the Planning Commission that it recommends to the City Council that the application of TLB Investments to amend Section 7-3-9 of the Zoning Map to reclassify the property described above from Low Density Residential (R-1) Zone, to Medium Density Residential Zone (R-2), be approved.

BE IT FURTHER RESOLVED by the Planning Commission that the property owner and developer shall, at their sole expense, defend, indemnify and hold harmless the City of Modesto, its agents, officers, directors, and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorneys' fees and costs, by reason of, or arising out of, this development approval. The obligation to defend, indemnify and hold harmless shall include but is not limited to any action to arbitrate, attack, review, set aside, void or annul this development approval on any grounds whatsoever. The City of Modesto shall

promptly notify the developer of any such claim, action, or proceeding and shall cooperate fully in the defense.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on December 7, 2009, by _____, who moved its adoption, which motion was seconded by _____, and carried by the following vote:

Ayes:

Noes:

Absent:

BY ORDER OF THE PLANNING COMMISSION OF THE CITY OF MODESTO.

Patrick Kelly, Secretary

**CITY OF MODESTO
PLANNING COMMISSION
STAFF REPORT**

TO: Chairperson Berglund and Members of the Planning Commission

PREPARED BY: David Wage, Associate Planner
Contact Info: 577-5267, dwage@modestogov.com

REVIEWED BY: Steve Mitchell, Principal Planner

APPROVED BY: Patrick Kelly, Planning Manager

DATE: November 2, 2009

SUBJECT: PDA-06-009 and DEV-09-003 – An amendment to Planned Development Zone, P-D(540), to allow a revised development schedule and revised development plan for a 109,900 square-foot retail center and an amendment to the Development Agreement for P-D(540), property located on the north side of Pelandale Avenue, east of Chapman Road; submitted by John J. Johannson.

RECOMMENDATION

That the Planning Commission adopt the attached resolution approving a revised development schedule and a revised development plan for P-D(540) and a separate resolution recommending to the Council approval of an amendment to the Development Agreement for P-D(540).

BACKGROUND

The 9.65 acre property is designated as Regional Commercial in the General Plan and it is located within the Kiernan Business Park Specific Plan. The property is located on the northeast corner of Pelandale and Chapman at 3537 Pelandale Avenue. On December 16, 1999, the City Council adopted Resolution No. 99-626, approving a development plan for P-D(540) consisting of an 80,000 square-foot, 3200 seat, movie-theater-complex. The Council also approved a Development Agreement for P-D(540), which remains in effect until May 30, 2011. In September of 2006, the applicant submitted an application for a revised development plan that included general retail buildings in lieu of a theatre. At the applicants request, the application was placed on hold pending the resolution of issues related to P-D(537), located south of P-D(540). In June of 2009, the applicant reactivated the project with the submittal of a new development plan and an application for a revised development schedule. The applicant has also submitted an application to amend the Development Agreement for P-D(540). No development has occurred on the property to date.

PROJECT DESCRIPTION

The proposed project would amend the development plan for P-D(540) from an 80,000 square-foot theatre, to a commercial development that includes a 94,000 square-foot building and two 7,500 square-foot pad buildings. The project is required to provide 367 parking spaces based on the general commercial standard of one space for every 300 square-feet of building area.

The project will provide a total of 590 spaces. Screen landscaping will be required along the eastern property line, which is consistent with the requirement for P-D(537) to the south.

The applicant has also requested a revised development schedule for P-D(540) and an amendment to the Development Agreement for P-D(540) granting an additional ten years. If the requests are approved, the applicant would have until May 17, 2021 to begin construction.

REASONS FOR RECOMMENDATION

The proposed amendment to P-D(540) is consistent with the Regional Commercial General Plan Designation, which calls for the provision of large-scale commercial areas and regional retail commercial uses serving the needs of the entire region. Therefore, staff recommends that the Planning Commission approve the amendment to P-D(540) and the amendment to the P-D(540) Development Agreement, subject to the findings and conditions in the attached resolutions.

ISSUES

Building Elevations

The applicant has provided conceptual building elevations for the main building, noting that tenants have not yet been identified and it may be necessary to make minor changes to accommodate a specific tenant. The conceptual elevations provided by the applicant are from the main building on P-D(537) located to the south of the subject property. The City's Commercial and Industrial Guidelines (Guidelines) encourage new development to be compatible and consistent with adjacent development by giving consideration to design theme, building scale, setbacks, massing, colors, textures, materials, and building articulation. To ensure the final elevations are consistent with the Guidelines as well as the adjacent commercial development to the south, the applicant will be required to provide elevations for review and approval by the Community and Economic Development Director, prior to issuance of a building permit. This issue is addressed by Condition of Approval No. 5.

Infrastructure and Development Fees

The Development Agreement for P-D(540) does not vest the project against current fees. If and when development should occur on the subject property, the current fees will be paid, including current CFF fees, resulting in both projects contributing their fair share cost to the traffic mitigation measures identified as conditions of approval from previous entitlements. As previously indicated, the property has remained vacant; however, much of the street and stormwater improvements required for the site have already been constructed. These improvements were constructed when the adjacent commercial properties to the west (which are part of P-D(537)) were developed. Staff supports the time extension request based on the applicant's construction of existing improvements and limited vesting status.

Length of Time Extension

The applicant has requested a revised development schedule and DA amendment that would grant the project a ten-year time extension. It has been Staff's practice to recommend the Commission grant development schedules and time extensions in increments of a maximum of two years to ensure projects do not become stale with respect to the project design and City Standards. However, staff is willing to support the applicant's request based on the scale of the project, the applicant's installation of existing improvements, limited vesting status (described above), and the overall downturn in the economy.

Access Easement

The P-D(540) development plan for a theatre, approved in 1999, included a condition of approval for an access easement along the northern property line. The easement would connect the property to the east of P-D(540) to Chapman Rd. The easement has not been recorded and remains only a condition of approval because both P-D(540) and the property to the east have yet to develop. The revised plan does not include the easement and the applicant is requesting the easement not be included as a condition of approval on their revised plan. The easement was originally required to provide a secondary access for truck traffic when the property to the east redevelops. Since the property to the east is designed to redevelop as Professional Office, and a primary access easement connecting the property to the east to Chapman Rd. has been provided on P-D(537), located immediately south of the subject development, staff does not oppose the applicant's request to not include a condition for an access easement along the northern property line.

GENERAL PLAN CONSISTENCY

The proposed project is located in an area designated on the Modesto Urban Area General Plan Land Use Diagram as Regional Commercial (RC). The proposed commercial land uses are consistent with this land use designation and therefore, the project is consistent with the General Plan.

ZONING CONFORMANCE

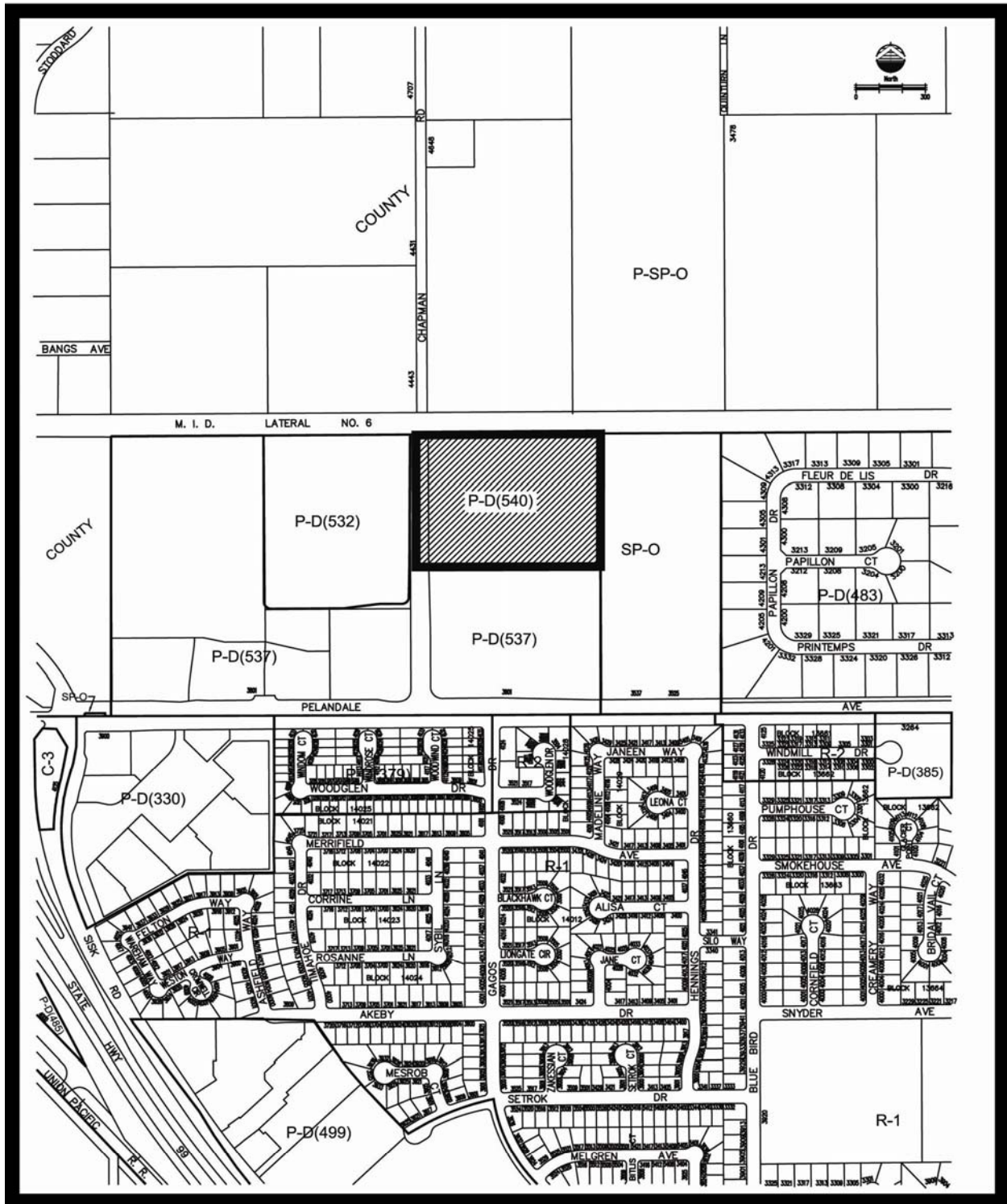
Ordinance No. 3164 – C.S. approving P-D(540) includes a use list that allows Commercial uses as allowed in the Highway Commercial (C-3) Zone. Proposed project to allow retail buildings and uses is consistent with existing zoning.

ENVIRONMENTAL ASSESSMENT

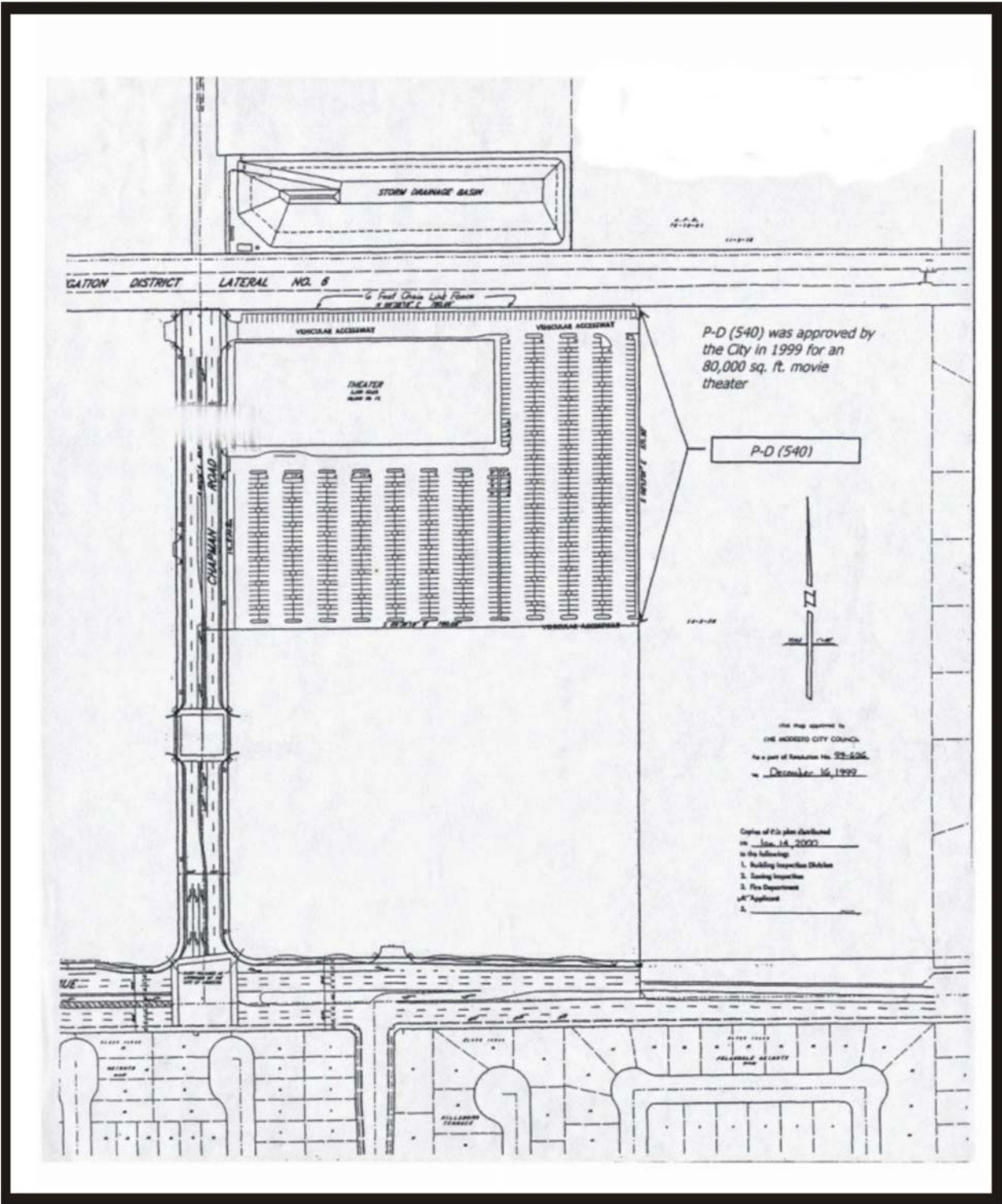
Staff has prepared an Initial Study, Environmental Checklist No. EA/C&ED 2009-27, (Attachment No. 4), which concludes that the proposed amendment to P-D(540) and amendment to the Development Agreement for P-D(540) is within the scope of the General Plan Master EIR (SCH No. 2007072023), and that pursuant to Section 21157.1(b) of CEQA, no new environmental review is required.

ATTACHMENTS (included with Commissioners' packets only)

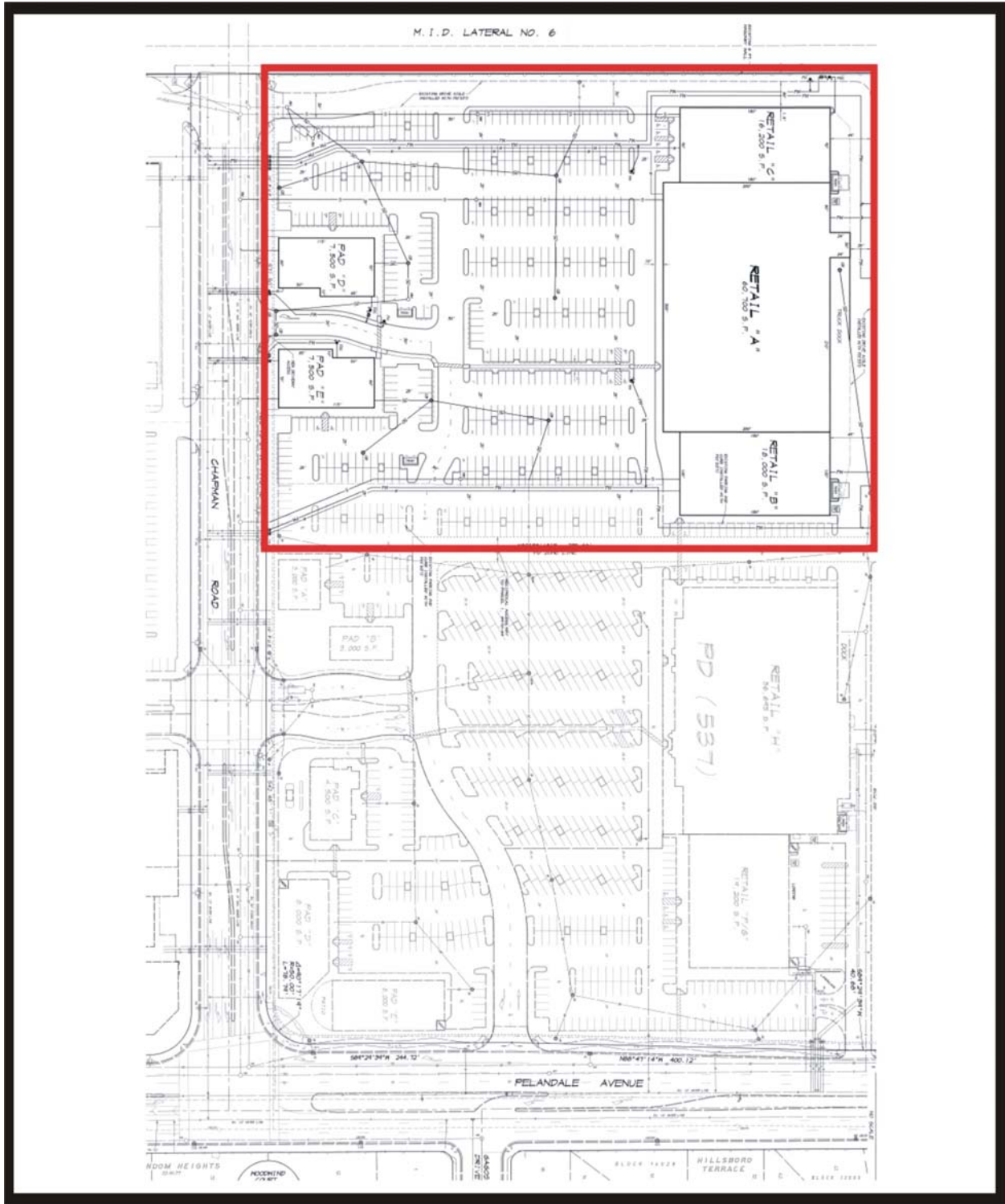
1. Draft Planning Commission Resolution Amendment to P-D(540)- December 7, 2009
2. Draft Planning Commission Resolution Amendment to P-D(540) Development Agreement– December 7, 2009
3. First Amendment to the Development Agreement By and Between the City of Modesto and Costa Limited Partners, A California Limited Partnership
4. Initial Study, Environmental Checklist No. EA/C&ED 2009-27
5. Financial Interest Disclosure Form
6. Large-Format Map(s)



AREA MAP FOR AMENDMENT TO P-D(540), AND AN
 AMENDMENT TO P-D(540) DEVELOPMENT AGREEMENT
 PDA-06-009
 3537 PELANDALE AVENUE



PREVIOUS SITE PLAN OF P-D(540)
 PDA-06-009
 3537 PELANDALE AVENUE



REVISED SITE PLAN OF P-D(540)
 PDA-06-009
 3537 PELANDALE AVENUE



PLANNING COMMISSION
RESOLUTION NO. 2009-XX

A RESOLUTION APPROVING AN AMENDMENT TO P-D(540), PROPERTY LOCATED AT THE NORTHEAST CORNER OF PELANDALE AVENUE AND CHAPMAN ROAD (JOHN JOHANNSON)

WHEREAS, the City Council, by Ordinance No. 3164-C.S. effective January 4, 2000, rezoned from Specific Plan Overlay, SP-O to P-D(540) for a movie theatre complex on the property located at the northeast corner of Pelandale Avenue and Chapman Road; and

WHEREAS, December 14, 1999, City Council Resolution No. 99-626, approved the development plans, the conditions of approval and the development schedule for the project; and

WHEREAS, on March 3, 2004, the property owner, Pelandale Development LLC, requested a revised development schedule to allow completion of build out of P-D(540) to be extended to May 2007; and

WHEREAS, on May 17, 2004, the Planning Commission, by Resolution 2004-26, approved a time extension for P-D(540) which specifies construction to be completed in one phase and revised the schedule as follows:

“For all remaining development, construction to begin by May 17, 2005, and to be completed prior to May 17, 2007”; and

WHEREAS, on April 6, 2005, the property owner, Pelandale Development LLC, requested a second revised development schedule to allow completion of build out of P-D(540) to be extended to 2009; and

WHEREAS, on October 17, 2005, the Planning Commission, by Resolution 2005-41, approved a time extension for P-D(540) which specifies construction to be completed in one phase and revised the schedule as follows:

“For all remaining development, construction to begin by May 17, 2007, and to be completed prior to May 17, 2009”; and

WHEREAS, on September 28, 2006, a verified application for an amendment to P-D(540) was filed by Pelandale Development LLC to allow a revised development plan that includes an 110,000 square-foot commercial development; and

WHEREAS, on June 4, 2007, the property owner, Pelandale Development LLC, requested a third revised development schedule to allow completion of build out of P-D(540) to be extended to May 2011; and

WHEREAS, on September 10, 2007, the Planning Commission, by Resolution 2007-38, approved a time extension for P-D(540) which specifies construction to be completed in one phase and revised the schedule as follows:

“The entire construction program for P-D(540) shall be accomplished in one phase, construction to begin on or before May 17, 2009, and completion to be not later than May 17, 2011”; and

WHEREAS, on June 29, 2009, the property owner, Pelandale Development LLC, requested a fourth revised development schedule to allow completion of build out of P-D(540) to be extended to May 17, 2021; and

WHEREAS, a public hearing was held by the Planning Commission on December 7, 2009, in the Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the Planning Commission certifies it has received and reviewed the Initial Study, Environmental Assessment No. EA/C&ED 2009-27, which concluded that the project is within the scope of the General Plan Master EIR (SCH# 2007072023) and that pursuant to Section 21157.1 of the Public Resources Code, no new environmental review is required.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission that it hereby finds and determines that amendment of P-D(540), as proposed, is required by public necessity, convenience, and general welfare for the following reasons:

1. That amendment of P-D(540), as proposed, is required by public necessity, convenience, and general welfare for the following reasons:
 - a. P-D(540) is consistent with the Modesto Urban Area General Plan. The General Plan designates this area as "RC" (Regional-Commercial), and the amendment to allow a 109,900 square foot commercial development will be consistent with the General Plan land use and intensity.
 - b. The conditions of approval will ensure that the proposed project is compatible with the adjacent residential uses.
2. The type of project is described in Chapter II of the Master Urban Area General Plan Master EIR (MEIR).
3. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the project or otherwise made Conditions of Approval of the project.
4. An Initial Study was prepared by the City of Modesto that analyzed whether the proposed subsequent project may cause any significant effect on the environment that was not examined in the MEIR, and it has been determined that the project was described in the MEIR as being within the scope of the MEIR.
5. Based on the Initial Study, the City of Modesto finds and determines:
 - a. The proposed subsequent project will have no additional significant effect as defined in CEQA Section 21158 beyond that which was identified in the MEIR.
 - b. No new or additional mitigation measures or alternatives are required.

6. The Initial Study, Environmental Assessment No. EA/C&ED 2009-27, provides the substantial evidence to support findings 2-5, noted above.

BE IT FURTHER RESOLVED by the Planning Commission that it hereby approves the Planning Development Amendment for P-D(540), to allow a 109,900-square-foot commercial development property located on the north side of Pelandale Avenue, east of Chapman Road, subject to the following conditions:

GENERAL CONDITIONS

1. All development shall conform to the plot plan titled "P-D(540) Revised Site Plan", stamped approved by the Planning Commission on December 7, 2009.
2. The property owner and developer shall, at their sole expense, defend, indemnify and hold harmless the City of Modesto, its agents, officers, directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorney's fees and costs, by reason of, or arising out of, this development approval. The obligation to defend, indemnify and hold harmless shall include but is not limited to any action to arbitrate, attack, review, set aside, void or annul this development approval on any grounds whatsoever. The City of Modesto shall promptly notify the developer of any such claim, action, or proceeding and shall cooperate fully in the defense.
3. The Capital Facilities Fees payable at the time of the issuance of a building permit for any construction in this parcel map shall be based on the rates in effect at time of issuance of the building permit.
4. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris, and all exposed wall surfaces shall be kept free of graffiti.

PLANNING

5. Prior to issuance of a building permit for buildings "Retail A, Retail B, Retail C, Pad D and Pad E", the applicant shall submit building elevations for review and approval by the Community and Economic Development Director or designee. Said elevations shall be reviewed to ensure sufficient building articulation, a design theme and high quality building materials complimentary to surrounding commercial development and overall consistency with the City's Commercial and Industrial Guidelines.
6. Prior to occupancy of the first building, the applicant shall install a 6-foot-high decorative masonry wall with a cap treatment along the north property line, to the satisfaction of the Community and Economic Development Director or designee.
7. All building drainage gutters, down spouts, vents, etc. located on exterior walls, shall be completely concealed from public view or shall be architecturally compatible (decorative) with the exterior building design

and color to the satisfaction of the Director of Community and Economic Development.

8. Prior to issuance of a building permit, the applicant shall submit a section drawing for approval, showing how all rooftop equipment is to be screened from view (including dimensions, materials, colors, etc.) to the satisfaction of the Director of Community and Economic Development or designee.
9. Prior to Certificate of Occupancy of any structure, all ground mounted utility structures such as transformers and HVAC equipment shall be located out of view from a public street to the satisfaction of the Director of Community and Economic Development or designee. Equipment shall be placed underground or adequately screened.
10. Prior to issuance of a building permit, trash enclosures shall be designed using building materials, colors and finishes which are consistent or compatible with those used in the major buildings of the development, as approved by the Community and Economic Development Director or designee.
11. Outdoor storage shall only be permitted within those areas shown on the approved site plan. Areas designated for off-street parking, loading, circulation and maneuvering shall not be used for the outdoor storage of materials or equipment.
12. Prior to the issuance of a building permit, the applicant shall submit a cross-section drawing demonstrating how all loading docks on the east side of buildings "Retail A, B and C" shall be adequately screened from Pelandale Ave. and adjacent properties to the satisfaction of the Community and Economic Development Director or Designee.
13. Prior to issuance of a building permit for any building that includes a drive-through; the applicant shall submit a cross-section drawing for approval, showing how the drive-through is proposed to be screened to the satisfaction of the Community and Economic Development Director or designee. All drive-thru facilities shall be screened from Pelandale Ave. and Chapman Rd. with landscaped hedge and/or low walls integrated with the form and materials of the building.
14. All signs shall comply with the sign requirements of the C-3 Zone. Signage shall be approved by separate permit.

15. Prior to issuance of a building permit, a photometric lighting plan shall be submitted for review and approval by the Community and Economic Development Director. Fixtures should be of a type or adequately shielded so as to prevent glare from normal viewing angles. Said plans shall include specifications of the proposed lighting fixtures and demonstrate adequate shielding of the lighting fixtures so that there is no glare or light spillage upon neighboring residents east of the project site. The Lighting fixtures east of buildings "Retail A, B and C" should not exceed 15 feet above grade.

PARKS, RECREATION AND NEIGHBORHOODS DEPARTMENT

16. Prior to the issuance of a building permit, a landscaping and irrigation plan for any new landscaping shall be approved by the Parks, Recreation and Neighborhood Director or designee. Proposed Landscaping and the irrigation system shall be installed and maintained in accordance with the approved plan.
17. Prior to the issuance of a building permit, the landscaping and irrigation plan shall provide for screen landscaping to be installed along the eastern property line as approved by the Parks, Recreation and Neighborhoods Director or designee.
18. Applicant shall install parking lot shade trees in all new parking areas to meet current parking lot shading requirements (1 tree per 8 stalls, 50% coverage within 10 years).

LAND DEVELOPMENT ENGINEERING

19. Prior to issuance of a building permit, improvement plans for required improvements shall be prepared by a Registered Civil Engineer and approved by the City Engineer or designee. Improvements shall be constructed in accordance with the approved plans.
20. Electric facilities and overhead lines shall be removed, relocated, or protected as required by the Modesto Irrigation District and the City Engineer or designee. Appropriate easements for electrical facilities shall be granted as required. Relocation or installation of electric facilities shall conform to the District's Electric Service Rules. Costs for relocation and/or undergrounding the District's facilities at the request of others will be borne by the requesting party.

STORMWATER QUALITY

21. Prior to the issuance of a Grading or Building Permit, Developer shall obtain coverage for the construction project under the General Construction Activity Permit (General Permit) issued by the State Water Resources Control Board (SWRCB). To obtain coverage under the General Permit, a Notice of Intent (NOI) must be filed with the SWRCB. Submit one copy of NOI to Land Development Engineering, Stormwater.

Upon receipt of NOI, the SWRCB will issue a Waste Discharge Identification Number (WDID Number) to the construction project. Submit one copy of the WDID Number to Land Development Engineering, Stormwater.

The General Construction Permit requires the Developer to prepare and implement a Stormwater Pollution Prevention Plan (SWPPP) for the construction project. Submit one copy of the SWPPP to Land Development Engineering, Stormwater for review.

22. Prior to the issuance of a Grading or Building Permit, Developer shall provide plans for trash enclosure(s):
 - a. To be sufficiently elevated to prevent stormwater run-on from parking lot.
 - b. To be graded to drain to adjacent landscape area(s).
 - c. To comply with the provisions of the Public resources Code Section 42911, to include adequate accessible and convenient areas for the collection and loading of recyclable materials.
23. Prior to the issuance of a Grading or Building Permit, Developer shall submit a plan to retain and infiltrate stormwater runoff on site, incorporating pervious landscape features into the project design wherever possible.
24. Prior to the issuance of a Grading or Building Permit, Developer shall submit a plan to provide permanent, post-construction treatment (grass swale, vegetative strip, or other approved proprietary device) to remove pollutants from the first ½" of stormwater run-off from site.
25. Prior to the issuance of a Grading or Building Permit, property owner shall provide a signed and notarized Stormwater Treatment Device Access and Maintenance Agreement to Land Development Engineering, Stormwater for recording.

FIRE PREVENTION

26. The onsite fire hydrants are required to be spaced and distributed on average at 300 feet. More fire hydrants are needed to meet this requirement.
27. Show details of the underground fire mains supplying the fire hydrants and automatic sprinkler systems. Include type and size of pipe and any associated valves. Fire mains supplying one or more fire hydrants or combination of fire hydrants and fire sprinkler systems shall have a minimum diameter of eight inches. The installation shall be according to Modesto City Standards.
28. Fire Department Connections (FDC) to automatic fire sprinklers

shall be located within 90' of a fire hydrant. The location of the FDC should be accessible to the Fire Department for use onsite. The use of the FDC at the proposed location at pad "D" and "F" would cause traffic obstruction and hazards on Chapman Road.

In addition, the following recommended Conditions of Approval are mitigation measures from the Modesto Urban Area General Plan Master Environmental Impact Report that should be applied to the project:

29. AQ-40: The City of Modesto shall require all access roads, driveways, and parking areas serving new commercial and industrial development are to be constructed with materials that minimize particulate emissions in accordance with the requirements of SJVAPCD Regulation VIII and are appropriate to the scale and intensity of the use.
30. AQ-42: All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover.
31. AQ-43: All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.
32. AQ-44: All land clearing, grubbing, scraping, excavation, land leveling, grading, cut & fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.
33. AQ-45: With the demolition of buildings up to six stories in height, all exterior surfaces of the building shall be wetted during demolition.
34. AQ-46: When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.
35. AQ-47: All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. (the use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions.) (Use of blower devices is expressly forbidden.)
36. AQ-48: Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.
37. AQ-49: Within urban areas, track out shall be immediately removed when it extends 50 or more feet from the site and at the end of each workday.
38. AQ-50: Any site with 150 or more vehicle trips per day shall prevent carryout and track out.

The following measures should be implemented at construction sites when required to mitigate significant PM10 impacts (note, these measures are to be implemented in addition to Regulation VIII requirements):

39. AQ-51: Limit traffic speeds on unpaved roads to 15 mph.
40. AQ-52: Install sandbags or other erosion control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent (1%).
41. AQ-53: Install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site.
42. AQ-54: Install wind breaks at windward side(s) of construction areas.
43. AQ-55: Suspend excavation and grading activity when winds exceed 20 mph. Regardless of wind speed, an owner/operator must comply with Regulation VIII's 20 percent (20%) opacity limitation.
44. AQ-56: Limit the area subject to excavation, grading and other construction activity at any one time.
45. N-3: Construction equipment and vehicles should be equipped with properly operating mufflers according to the manufacturers' recommendations. Air compressors and pneumatic equipment should be equipped with mufflers, and impact tools should be equipped with shrouds or shields. Equipment that is quieter than standard equipment should be utilized. Haul routes that affect the fewest number of people should be selected.
46. The City's Noise Ordinance (Modesto Municipal Code Section 4-9.101) prohibits the "loud and raucous discharge into the open air of the steam of any steam equipment or exhaust from any stationary internal-combustion engine."

The Noise Ordinance prohibits the loud and raucous operation or use of any of the following before 7:00 a.m. or after 9:00 p.m. daily (except Saturday and Sunday and State or Federal holidays, when the prohibited time shall be before 9:00 a.m. and after 9:00 p.m.):

- a. A hammer or any other device or implement used to pound or strike an object.
- b. An impact wrench or other tool or equipment powered by compressed air.
- c. A hand-powered saw.
- d. Any tool or piece of equipment powered by an internal-

combustion engine such as, but not limited to, chain saw, backpack blower, and lawn mower.

- e. Any electrically powered (whether by alternating current electricity or by direct current electricity) tool or piece of equipment used for cutting, drilling, or shaping wood, plastic, metal, or other materials or objects, such as, but not limited to, a saw, drill, lathe, or router.
- f. Any of the following: heavy equipment (such as but not limited to bulldozer, steam shovel, road grader, back hoe), ground drilling and boring equipment (such as but not limited to derrick or dredge), hydraulic crane and boom equipment, portable power generator or pump, pavement equipment (such as but not limited to pneumatic hammer, pavement breaker, tamper, compacting equipment), pile-driving equipment, vibrating roller, sand blaster, gunite machine, trencher, concrete truck, and hot kettle pump.
- g. Any construction, demolition, excavation, erection, alteration, or repair activity. In the case of urgent necessity and in the interest of public health and safety, the Chief Building Official may issue a permit for exemption from these. Such period shall not exceed three (3) working days in length while the emergency continues but may be renewed for successive periods of three (3) days or less while the emergency continues. The Chief Building Official may limit such permit as to time of use and/or permitted action, depending upon the nature of the emergency and the type of action requested.
- h. Construction equipment and vehicles should be equipped with properly operating mufflers according to the manufacturers' recommendations. Air compressors and pneumatic equipment should be equipped with mufflers, and impact tools should be equipped with shrouds or shields.

47. MEIR Table V-8-1 (b-f)

- a. Prior to excavation and construction, the prime construction contractor and any subcontractors shall be cautioned on the legal and/or regulatory implications of knowingly destroying cultural resources or removing artifacts, human remains, bottles, or other cultural materials from the project area.
- b. The project sponsor shall identify a qualified archeologist prior to any demolition, excavation, or construction. The City will approve the project sponsor's selection of a qualified archeologist. The archeologist would have the authority to temporarily halt excavation and construction activities in the immediate vicinity (ten-meter radius) of a find if significant or potentially significant cultural resources are exposed and/or adversely affected by construction operations.

- c. Reasonable time shall be allowed for the qualified archeologist to notify the proper authorities for a more detailed inspection and examination of the exposed cultural resources. During this time, excavation and construction would not be allowed in the immediate vicinity of the find; however, those activities could continue in other areas of the project site.
- d. If any find is determined to be significant by the qualified archeologist, representatives from the construction contractor and the City, the qualified archeologist, and a representative of the Native American community (if the discovery is an aboriginal burial) would meet to determine the appropriate course of action.
- e. All cultural materials recovered as part of a monitoring program would be subject to scientific analysis, professional curation, and a report prepared according to current professional standards.

BE IT FURTHER RESOLVED that the entire construction program be accomplished in one phase, construction to begin on or before May 17, 2021 and be completed by not later than May 17, 2023.

BE IT FURTHER RESOLVED that the conditions of project approval set forth herein include certain fees, dedication requirements, reservations requirements, and other exactions, and that pursuant to Government Code Section 66020(d)(1), these conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions.

BE IT FURTHER RESOLVED that the applicant is hereby further notified that the ninety (90) days approval period in which a protest of these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a) can be filed, begins on December 7, 2009, and that if a protest is not filed within this ninety (90)-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

BE IT FURTHER RESOLVED by the Planning Commission that the Secretary of the Planning Commission is hereby directed to file with the Stanislaus County Clerk a Notice of Determination in regard to the environmental impact of the proposed project.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on December 7, 2009, by _____, who moved its

adoption, which motion was seconded by _____ and carried by the following vote:

Ayes:

Noes:

Absent:

Recused:

BY ORDER OF THE PLANNING COMMISSION OF THE CITY OF MODESTO.

Patrick Kelly, Secretary

PLANNING COMMISSION
RESOLUTION NO. 2009-XX

DRAFT

A RESOLUTION RECOMMENDING TO THE CITY COUNCIL APPROVAL OF THE "FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MODESTO AND COSTA LIMITED PARTNERS, A CALIFORNIA LIMITED PARTNERSHIP"

WHEREAS, Government Code Section 65864, et seq., authorizes the City to enter into binding development agreements with any person or persons having a legal or equitable interest in real property for the development of such property and authorizes the City to establish procedures for the application and consideration of such agreements; and

WHEREAS, by City Council Resolution No. 97-492, adopted on August 26, 1997, the City Council established procedures and requirements for the consideration of development agreements; and

WHEREAS, the City and Costa Limited Partners, A California Limited Partnership are proposing the First Amendment to the Development Agreement in order to extend the term of the Development Agreement for an additional ten years to May 17, 2021; and

WHEREAS, a public hearing was held by the Planning Commission on December 7, 2009, in the Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the proposed First Amendment to the Development Agreement, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the Planning Commission certifies it has received and reviewed the Initial Study, Environmental Assessment No. EA/C&ED 2009-27, which concluded that the project is within the scope of the General Plan Master EIR (SCH# 2007072023) and that pursuant to Section 21157.1 of the Public Resources Code, no new environmental review is required.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission that it hereby finds and determines as follows:

1. The proposed First Amendment to the Development Agreement is consistent with the goals, objectives, policies, standards, programs and uses in the General Plan and Kiernan Business Park Specific Plan of the City of Modesto because the resulting development would be consistent with the Kiernan Business Park Specific Plan in land use and intensity.
2. The proposed First Amendment to the Development Agreement is consistent with the specific content and other requirements of City Council Resolution No. 97-492, the City's subdivision and zoning provisions of the Modesto Municipal Code, and Government Code Section 65864 et seq.
3. The type of project is described in Chapter II of the Master Urban Area General Plan Master EIR (MEIR).
4. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the project or otherwise made Conditions of Approval of the project.

5. An Initial Study was prepared by the City of Modesto that analyzed whether the proposed subsequent project may cause any significant effect on the environment that was not examined in the MEIR, and it has been determined that the project was described in the MEIR as being within the scope of the MEIR.
6. Based on the Initial Study, the City of Modesto finds and determines:
 - a. The proposed subsequent project will have no additional significant effect as defined in CEQA Section 21158 beyond that which was identified in the MEIR.
 - b. No new or additional mitigation measures or alternatives are required.
 - c. The proposed First Amendment to the Development Agreement is in compliance with the California Environmental Quality Act.
7. The Initial Study, Environmental Assessment No. EA/C&ED 2009-27, provides the substantial evidence to support findings 3-6, noted above.

BE IT FURTHER RESOLVED by the Planning Commission that it hereby recommends to the City Council approval by ordinance of the proposed First Amendment to Development Agreement By and Between the City of Modesto and Costa Limited Partners, A California Limited Partnership, attached hereto as Exhibit "A".

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on December 7, 2009, by _____, who moved its adoption, which motion was seconded by _____ and carried by the following vote:

Ayes:
Noes:
Absent:
Recused:

BY ORDER OF THE PLANNING COMMISSION OF THE CITY OF MODESTO

Patrick Kelly, Secretary

Attachment: Exhibit "A"

EXHIBIT "A"

**PROPOSED FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF MODESTO AND COSTA LIMITED PARTNERS, A
CALIFORNIA LIMITED PARTNERSHIP**

Draft on File with the Community & Economic Development
Department/Planning Division

**Final Amendment to Development Agreement on file
with the City Attorney's Office**

City of Modesto
Memorandum

TO: Chairperson Berglund and Members of the Planning Commission

PREPARED BY: Paul Liu, Senior Planner
Contact Info: 577-5267 pliu@modestogov.com

REVIEWED BY: Steve Mitchell, Principal Planner

APPROVED BY: Patrick Kelly, Planning Division Manager

DATE: December 7, 2009

SUBJECT: Workshop Update - Proposed Draft Code Amendment to Implement the Neighborhood Compatibility Guidelines

On October 19, 2009, a workshop was held to provide opportunity for the Planning Commission, Board of Zoning Adjustment, and interested members of the public to provide feedback and comments regarding the proposed draft Zoning Ordinance Code Amendment to implement the Neighborhood Compatibility Guidelines. Staff was requested to review several issues at the conclusion of the workshop. These were: (1) seek input from the construction industry; (2) compare the proposed setback with other agencies; (3) review notification options; and (4) clarify the wording of several sections.

1. Construction Industry Input

Staff has been in contact with the BIA regarding the proposed setbacks, and they have indicated that they will be providing staff with comments prior to the December 7 meeting. Staff will provide an update at the meeting.

2. Setback Comparison

Table 1 below provides a comparison of the setback requirements of nearby agencies. The proposed changes to the side and rear yard setbacks are comparable to the requirements in Ceres, Ripon, and Turlock.

Table 1: Minimum Yard Area Table (Setback in Feet)							
Agency		R-1		R-2		R-3	
		Side Yard	Rear Yard	Side Yard	Rear Yard	Side Yard	Rear Yard
Ceres		5/12 opposite	20% lot depth 25 max	5/12 opposite	20% lot depth 25 max	5/12 opposite	20% lot depth 25 max
Oakdale		7.5 or 5 and 10	10	5	10	5	10
Ripon	1 story	5/12 opposite	30	5	20	5	15
	2 story	8/12 opposite	30	5	20	5	15
Riverbank		5	5	5	5	5	5
Stockton		5	10	5	10	5	10
Turlock	1 story	5	10	10	10	10	10
	2 story	5	10	15	20	15	20
	3 story	--	--	20	30	20	30
Modesto Proposed	1 story	5	10	5/10 next to R-1	10	5/10 next to R-1	10
	2 story	5/10 next to R-1	15	10/15 next to R-1	15	10/15 next to R-1	15
	3 story	--	--	--	--	10/20 next to R-1	15/20 next to R-1

3. Notification Options

The City Council requested staff to provide options for the notification requirements for the review of second story projects. The following four options for notification were provided at the October 19, 2009, workshop: no notification, notification of adjacent properties, notification within 100 feet of the subject property, or notification within 300 feet of the subject property. The current practice is notification of adjacent properties. A fifth and sixth options are added to include notification within 150 feet and 200 feet of the subject property. See attached Exhibit A.

4. Wording Clarification

There are wording clarifications provided in the attached three sections. The changes are highlighted in gray.

- Attachments: 1. Proposed Code Amendments
2. Exhibit A