



City of Fowler
128 S. 5th Street
Fowler, California 93625

SPECIAL MEETING
FOWLER PLANNING COMMISSION MEETING AGENDA
January 9, 2020
6:30 P.M.

In compliance with the Americans with Disabilities Act, if you need special assistance to access the Council Chamber or to otherwise participate at this meeting, including auxiliary aid or services, please contact City Clerk Jeannie Davis at (559) 834-3113 ext. 102. Notification at least 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to City Council/ Planning Commission Meetings. The City of Fowler is an equal opportunity employer and provider.

1. Call Meeting to Order
2. Roll Call
3. Approval of Minutes for October 3, 2019, General Plan Update Workshop.
4. Approval of Minutes for October 3, 2019, Planning Commission Meeting.
5. Public Presentation – (This portion of the meeting reserved for persons desiring to address the Commission on any matter (within the purview of the Commission) that is not on this agenda. Presentations are limited to five minutes per person and no more than 15 minutes per topic).
6. Public Hearing to Consider Conditional Use Permit No. 17-03, filed by Buford Oil Co., Inc., to construct a 7.96-acre travel center, 10,000 square foot truck tire repair, lube, and wash building, a 4,627 square foot dine-in restaurant, two (2) restaurants with drive throughs, 4,378 and 3,116 square feet in size, and a 120-room, four-story hotel, at 2747 East Manning Avenue (APN: 345-180-03)

Consider Adoption of Resolution No. 649 certifying an environmental impact report prepared for conditional use permit 17-03 pursuant to the California Environmental Quality Act, before the Planning commission of the city of Fowler, County of Fresno, State of California.

Consider Adoption of Resolution No. 650, approving of CUP 17-03, before the Planning commission of the city of Fowler, County of Fresno, State of California.

7. Communication
8. Adjournment

Next Resolution No.: 651

CERTIFICATION: I, Sennaida Zavala, Planning Secretary for the City of Fowler, California, hereby certify that the foregoing agenda was posted for public review on, Friday, September 13, 2019.


Sennaida Zavala
Planning Secretary

MINUTES OF THE FOWLER CITY PLANNING COMMISSION MEETING
General Plan Update Workshop
October 3, 2019

Chair Mellon called the meeting to order at 5:30 p.m. Roll call was taken.

Commissioners Present: Mellon, Mejia, Fernandez, Kandarian, Mukai

Commissioners Absent: None

City Staff Present: City Attorney Cross, Police Chief Alcaraz, Planning Consultants Marple, Planning Secretary Zavala

AGENDA ITEM NO. 3
General Plan Update Workshop

Ms. Marple presented the Workshop. The last comprehensive update was in 1976, and in 2004, the Land Use Circulation and Economic Development chapters were updated. The update will have a total of 6 Phases. The beginning stages of the update included conducting 14 stake holder interviews just to see what is most important and what is needed and will be used as a starting point. The purpose of the workshop was to show what the General Plan Update will consist of and what is important to the stakeholders. Expansion, Economic Development, Local Amenities, Growth Coordination, and Circulation are a few topics stakeholders thought were a key issue within Fowler.

Public Presentation

Ms. Claybon, Representative from Public Health Advocates spoke on behalf of the Public. Ms. Claybon is looking forward to working hand in hand with City Staff to work on the Complete Street Project.

Ms. Rico-Vasquez, resident of fowler and representative for Fresno County Department of Public Health, spoke on behalf of the Public. She is looking forward to working with staff on making Fowler a better, healthier city with community input.

COMMUNICATIONS:

Staff will be updating website to inform the public of future workshops, as well as looking into better ways to inform the public.

Work shop concluded at 6:47 PM.

MINUTES OF THE FOWLER CITY PLANNING COMMISSION MEETING
August 1, 2019

Chair Mellon called the meeting to order at 7:02 p.m. Roll call was taken.

Commissioners Present: Mellon, Mejia, Mukai, Fernandez

Commissioners Absent: Kandarian

City Staff Present: City Manager Davis, City Attorney Cross, Planning Consultants Marple, Planning Secretary Zavala

APPROVAL OF MINUTES FOR August 1, 2019:

Commissioner Mukai made a motion to approve the minutes for August 1, 2019, seconded by Commissioner Fernandez. Motion carried by unanimous voice vote.

AGENDA ITEM NO. 5

Public hearing to consider Vesting Tentative Subdivision Map (VTSM) No. 6274, Zoning Ordinance Amendment (Rezone) No. 19-02, annexation to the City of Fowler (Annexation Request No. 19-02), and adoption of a Mitigated Negative Declaration, submitted by Woodside 06N, LP for approximately 19.25 acres at the northwest corner of East Sumner Avenue and South Sunnyside Avenue.

Ms. Marple Presented the proposed project. The project is proposing 100 single family lots on 19.25 acres. The lot is not in the city limits but is in the sphere of influence, so an annexation is being proposed. The lot is zoned AE20 by Fresno County and proposed at R-1-5 family residential 5,000 square foot lot by the applicant. The proposed subdivision is proposing lot sizes ranging from 5,000 square feet to 8,800 square feet.

Ms. Marple needed to make some revisions/deletions to the conditions. Condition number 22 requires a traffic stop, which staff is not requiring for a traffic stop rather a fair share contribution for future traffic additions. Conditions 32 and 34 will be deleted.

Public Presentation

Ms. Medellin, Woodside Homes valley controller, came to speak on behalf of Woodside. Ms. Medellin is looking forward to working in Fowler once again. Lot sizes are going to be a little smaller than the previous subdivision they built, but solar will be provided for the housing.

Mr. Lemus, Land Developer for Woodside Homes, came to speak on behalf of Woodside. Mr. Lemus explained that adding another street to enter and exit the subdivision would not allow the subdivision to meet the density requirement. Mr. Lemus spoke about the possible future development of subdivisions.

Commissioner Mukai made a motion to adopt Resolution No. 645 recommending approval of a Mitigated Negative Declaration for Vesting Tentative Subdivision Map No. 6274, Zoning Ordinance Amendment No. 19-02, seconded by Commissioner Fernandez. Ayes: Mellon, Mejia, Fernandez, Mukai. Noes: none.

Commissioner Mukai made a motion to adopt Resolution No. 646 recommending approval of Zoning (rezoning) Ordinance Amendment No. 19-02, seconded by Chair Mellon. Ayes: Mellon, Mejia, Fernandez, Mukai. Noes: None.

Commissioner Mukai made a motion to adopt Resolution No. 647 recommending approval of Vesting Tentative Tract Map No. 6274 with the revision of conditions 22, 32, and 34, seconded by Commissioner Fernandez. Motion carried by 3-1 vote. Ayes: Mellon, Mukai, Fernandez. Noes: Mejia.

AGENDA ITEM NO. 6

Public Hearing to consider Conditional Use Permit Application No. 17-03 proposing to remove the existing use and replace it with a new, more modern facility to be called the Buford Oil Co. Travel Center. The proposed expansion will utilize the entire 19 acres and in addition to a newer diesel truck fueling and automobile gas fueling facility, weigh station, and convenience store, the expanded development will also include a hotel, two quick-serve and one sit-down family style dining options, and a truck wash, tire and lube center.

Ms. Marple asked commission to continue the project to November 7th meeting.

Chair Mellon made motion to continue item to November meeting, seconded by Commissioner Mejia. Ayes: Mellon, Mejia, Fernandez, Mukai. Noes: None

AGENDA ITEM NO. 7

Communication

Commissioner Mukai had a question about the continuance of Cup 19-01. Ms. Marple and Attorney Cross advised Commission that it was deemed approved due to State Law. After 60 days of no action, the project will then be deemed approved. Ms. Marple advised that in order for it to not happen again, there needs to be a quorum.

Chair Mellon made a motion to adjourn, motion seconded by Vice Chair Mejia. Motion carried and meeting was adjourned at 8:02 PM.



CITY OF FOWLER PLANNING & COMMUNITY DEVELOPMENT

California

STAFF REPORT

TO: City of Fowler Planning Commission

FROM: Dawn E. Marple, City Planner

DATE: January 9, 2020

SUBJECT: Public Hearing to Consider Conditional Use Permit No. 17-03, filed by Buford Oil Co., Inc., to construct a 7.96-acre travel center, 10,000 square foot truck tire repair, lube, and wash building, a 4,627 square foot dine-in restaurant, two (2) restaurants with drive throughs, 4,378 and 3,116 square feet in size, and a 120-room, four-story hotel, at 2747 East Manning Avenue (APN: 345-180-03)

I. Recommendation

Staff recommends that the Commission approve Conditional Use Permit (CUP) Application No. 17-03, including the attached resolutions and conditions of approval. The decision of the Planning Commission is final unless appealed to the City Council. The Commission is empowered to grant or deny applications for CUPs and to impose reasonable conditions upon granting approval.

II. Background & Project Description

The subject parcel is zoned C-3 (General Commercial) and planned for General Commercial land uses by the City of Fowler General Plan. The site is located on the north side of East Manning Avenue between State Route 99 and Golden State Boulevard and is approximately 19 acres (APN 345-180-03). The site is currently partially developed on approximately 10 acres as a truck stop and the following features:

- 14-dispenser diesel truck fueling island covered by an approximate 3,500 square foot canopy
- 8-gasoline dispenser fueling island covered by an approximate 2,900 square foot canopy
- Two 20,000-gallon underground tanks and three 20,000-gallon above ground tanks
- An above-ground propane tank that was been removed
- A truck weighing station consisting of two scales
- One approximately 2,600 square foot convenience store (Star Mart)
- An approximately 3,900 square foot restaurant (Port-of-Subs)
- Area designated for overnight truck parking of approximately 50 stalls
- An approximately 1-acre drainage basin

The applicant, Mr. Tom Buford, has submitted a Conditional Use Permit application requesting to develop, in six phases, the following:

- A 7.96-acre travel center (sometimes referred to as a "travel stop") located between Buford Drive and Golden State Boulevard containing the following:
 - Eight diesel fueling dispensers (includes diesel, diesel exhaust fluid, and bio diesel) with a 3,280-square-foot diesel fuel canopy
 - Six gas fueling dispensers (12 fueling positions) for automobiles with a 3,440-square-foot gas canopy
 - A propane gas tank not exceeding 1,000 gal., available to the public
 - A weigh station consisting of one truck scale



- 97 total truck parking stalls: 89 uncovered and 8 under canopy
- 63 total auto parking stalls; 51 uncovered and 12 under canopy
- One 9,000-square-foot building that will include:
 - i. A driver's lounge, game room, ATMs, Check Cashing, and wi-fi
 - ii. Restroom facilities that include showers and laundry
 - iii. Two quick service restaurants
- Construction of Buford Drive
- Access via an entrance-only driveway from westbound Manning Avenue, five driveways connecting to Buford Drive, and one driveway connecting to Golden State Boulevard
- Construction of a stormwater ponding (retention) basin on approximately 1.57 acres.
- A 10,000-square foot truck tire repair, lube, and wash building with three (3) vehicle bays and 11 auto parking stalls.
- A 4,627-square foot dine-in restaurant and 58 auto parking stalls.
- A 4,378-square foot restaurant with a drive through with 51 auto parking stalls.
- A 3,116-square foot restaurant with a drive through with 35 auto parking stalls.
- A four-story, 120-room hotel with a building area of approximately 40,000 square feet with 118 auto parking stalls and 8 RV parking stalls.

Figure 1 (Site Plan) depicts the proposed phased development. Figure 2 depicts the aerial photo of the site; Figure 3 is the zoning map and Figure 4 is the general plan map. The site is located in Fowler's C-3 (General Commercial) Zone District, surrounded by M-1 (Light Industrial) to the west, C-3 to the north and south, and C-2 (Community Commercial) to the east.

In the C-3 zone district the restaurant, service station and truck repair are allowed uses; however, the drive through facilities and the motel uses are subject to a Conditional Use Permit in accordance with Section 9-5.1205 of the Fowler Zoning Ordinance.

III. Findings

The zoning ordinance requires the Commission make the following findings for approval of a CUP:

- 1. The site for the proposed use is adequate in size and shape to accommodate such use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by the Zoning Ordinance.**

Conditional Use Permit Application No. 17-03 is proposed on approximately 19 acres and the proposed site is adequate size and shape to accommodate all of the proposed uses as it complies with all setbacks, parking aisle and stall dimension requirements, and turning movements for the largest expected vehicle for each proposed use. The site will accommodate the uses pursuant to the Fowler Zoning Ordinance.

- 2. The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use.**

The existing surrounding streets, as well as the proposed private Buford Drive, are of adequate size and capacity to facilitate the amount of traffic that will be generated by the proposed use. A Traffic Impact Study was completed for the project that determined with the incorporation of conditions and mitigation measures; the use will not adversely affect the surrounding street system for approximately 10 years as described by Mitigation Measure TRA-1.



3. ***The proposed use will have no adverse effect upon abutting property or the use thereof.***

Operation of Conditional Use Permit Application No. 17-03 will not impact abutting property as the surrounding properties are zoned C-2, C-3, and M-1 and planned for industrial and commercial uses.

4. ***The conditions established by the Planning Commission and stated in the Resolution for the Conditional Use Permit are deemed necessary to protect the public health, safety and general welfare.***

The conditions of approval and the Environmental Impact Report mitigation measures will serve to accommodate the proposed uses while protecting the health, safety, and welfare of the public. Conditions of approval are based upon standards contained within the Fowler General Plan and the Fowler Zoning Ordinance. Further, the proposed conditions of approval and mitigation measures will serve to implement the goals and objectives of the General Plan, which itself is intended to provide for logical and orderly development of the City in a manner that is beneficial to its residents.

IV. Environmental Review

The City, as the Lead Agency under the California Environmental Quality Act (CEQA) determined that an Environmental Impact Report (EIR) was required for the proposed project. The consulting firm of Provost & Pritchard Consulting Group, Inc. was contracted to prepare the EIR. The review and certification of the EIR involves the following procedural steps:

- a. *Notice of Preparation (NOP):* Upon the City's determination that an EIR was required for this project, a NOP was made available to the general public and responsible trustee agencies to solicit input on issues of concern that should be addressed in the EIR. The initial NOP was issued on June 11, 2018 and included a project description, project location, and a brief overview of the topics to be covered in the EIR. Comment letters were received from several public agencies and private citizens and were incorporated into the Draft EIR (DEIR).
- b. *Public Scoping Meeting:* On June 20, 2018 the City held a project scoping meeting at Fowler City Hall to which the Responsible and Trustee agencies as well as interested members of the public were invited, and which had been duly advertised in advance. The meeting was attended by approximately five (5) members of the public.
- c. *Notice of Completion (NOC):* Upon completion of the DEIR, the City filed a NOC with the State Clearinghouse, Office of Planning and Research, to begin the public and agency review period.
- d. *Public Notice/Public Review:* Concurrent with filing the NOC, the City provided public notice of the availability of the DEIR for public review by posting on the website, publishing in the Fresno Business Journal, mailing to all commenters, and other interested parties and filing with the County Clerk on July 19, 2019. Comment was invited from the general public, agencies, organizations, and other interested parties. The length of the public review period was 45 days, (from July 19 through September 3, 2019 during which time written comments on the DEIR were submitted to the City.
- e. *Response to Comments:* After the close of the public review period, the City and consultant prepared formal responses to the written comments received. A total of two (2) written comments were received from government agencies, non-governmental



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organizations/private companies, and members of the public regarding the DEIR. As required by CEQA Guidelines Section 15088(b), City responses were sent to public agencies that submitted comments.

- f. *Final EIR (FEIR)*: A FEIR was prepared that includes the comment letters and responses to comments and revisions to the DEIR.
- g. *Certification of the EIR*: The Planning Commission will hold a public hearing to consider the adequacy and completeness of the EIR under CEQA and to certify the EIR and adopt the necessary Findings of Fact and Statement of Overriding Considerations.
- h. *Mitigation Monitoring and Reporting Program (MMRP)*: The Planning Commission will also consider adopting a program to implement the EIR's recommended mitigation measures to mitigate, avoid, or substantially lessen the significant impacts of the project. The final Mitigation Monitoring and Reporting Program is included in the FEIR.

V. Findings of Fact and Statement of Overriding Considerations

The California Environmental Quality Act (CEQA Guidelines §15091) requires that no public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

- (1) Changes or alterations have been required in or incorporated into the project that mitigate or avoid the significant effect on the environment.
- (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

In addition to Section 15091 the California Environmental Quality Act (CEQA Guidelines §15093) requires a decision-making agency to balance the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve a project. For any significant effects that cannot be avoided or reduced to a less-than-significant level by the Project, the lead agency must describe the reasons why mitigation to less than significant is infeasible (PRC Section 21081(a)(3)). Approval of a project that would have significant adverse effects on the environment requires that the agency identify the project benefits that are evaluated as outweighing its significant effects on the environment (PRC Section 21081(b)). When an agency approves a project that will result in significant effects to the environment, the agency is required to state its rationale for support of the project based on the Final Environmental Impact Report (FEIR) and other information in the record.

SIGNIFICANT UNAVOIDABLE IMPACTS

The City of Fowler has determined that Project will contribute to unavoidable long-term, cumulative traffic impacts at the SR 99 northbound off-ramp intersection with Manning Avenue. Although short-term impacts resulting directly from the Project will be reduced to less than significant by mitigation requiring the Project to install a traffic signal at the intersection, said signal will not be sufficient to mitigate to less than significant the long-term cumulative impacts projected to year 2040 as discussed in the EIR. The long-term cumulative mitigation identified in the EIR and corroborated by Caltrans, would involve the construction of a new interchange that would



accommodate future anticipated traffic. An interchange design has not been determined or formally adopted by Caltrans for the SR 99/Manning Avenue interchange. Further, the interchange replacement is not currently programmed by Caltrans or the Fresno (County) Council of Governments. Without a design and program for interchange demolition and reconstruction, costs for a new interchange cannot be determined, but would be outside the financial capability of a single project to bear the cost upfront. There are currently insufficient funds allocated from other potential sources to reconstruct the interchange. Therefore, the City of Fowler finds the long-term cumulative impacts at the SR 99 northbound off-ramp cannot be feasibly mitigated to less than significant level by the proposed Project. Imposing such a significant cost burden to the Project would likely render it financially infeasible.

BENEFITS OF THE PROJECT

- 1.) The proposed Project will provide and help retain various long-term sales tax (gas/diesel, food, and tangible goods) and transient occupancy tax (hotel) net revenues to the City as well as promote new employment opportunities and related "multiplier" economic benefits to the City.
- 2.) In addition, the highway-oriented traveler amenities and services proposed will maximize the efficient utilization of land in the industrial corridor of the City and will thereby capture a larger portion of revenue benefits from the traveling public and goods movement off SR 99.
- 3.) The Project will provide a modernized and safe place for commercial truck drivers and vehicles to stop, rest, and dine.
- 4.) The Project will provide its fair share of Manning Avenue roadway improvements and traffic flow improvements, including installation of a signal at the SR 99 northbound off-ramp at Manning Avenue which will add an element of additional traffic safety and control benefits for community and industrial corridor at-large at that location and at the overpass in general for the next 10 years.
- 5.) The Project has the potential to serve as a catalyst for additional economic development that will provide additional fair share contributions to the cost of replacing the interchange with a more modern design that will better accommodate future growth in the Fowler community.

OVERRIDING CONSIDERATIONS

Staff recommends that the Planning Commission find that each of the overriding considerations set forth above constitutes a separate and independent ground for finding that the benefits of the proposed project outweigh its long-term cumulative environmental impacts and are considerations warranting approval of the proposed Project.

VI. Attachments

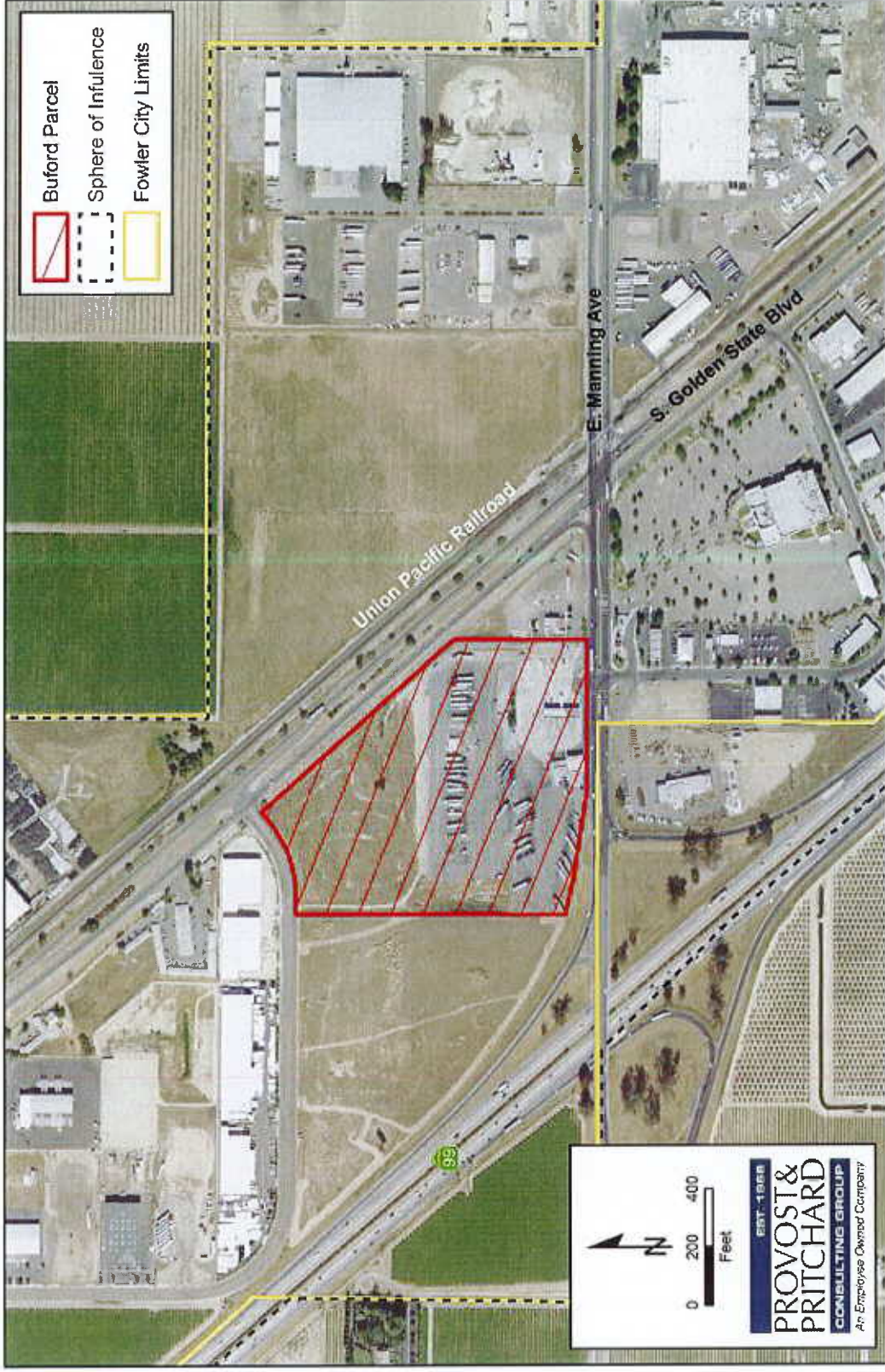
- A. Resolution 649
- B. Resolution 650





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Figure 2 – Aerial Photo



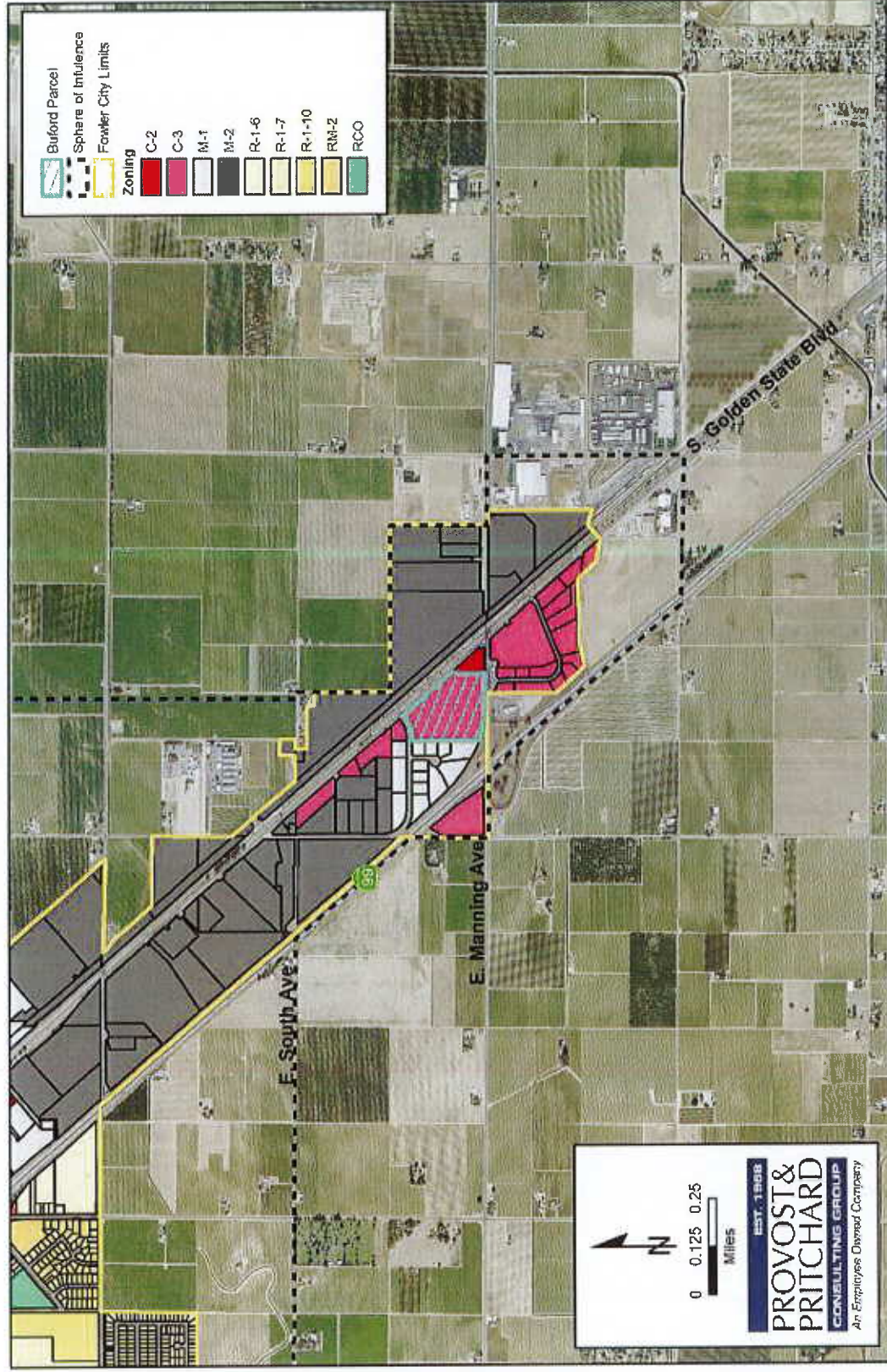
7/17/2018 : G:\Fowler_City of 2618\26181917012-Buford OI CUP\GIS\Map\Aerial(zoomed).mxd



CITY OF FOWLER PLANNING & COMMUNITY DEVELOPMENT STAFF REPORT

California

Figure 3 – Zoning Map



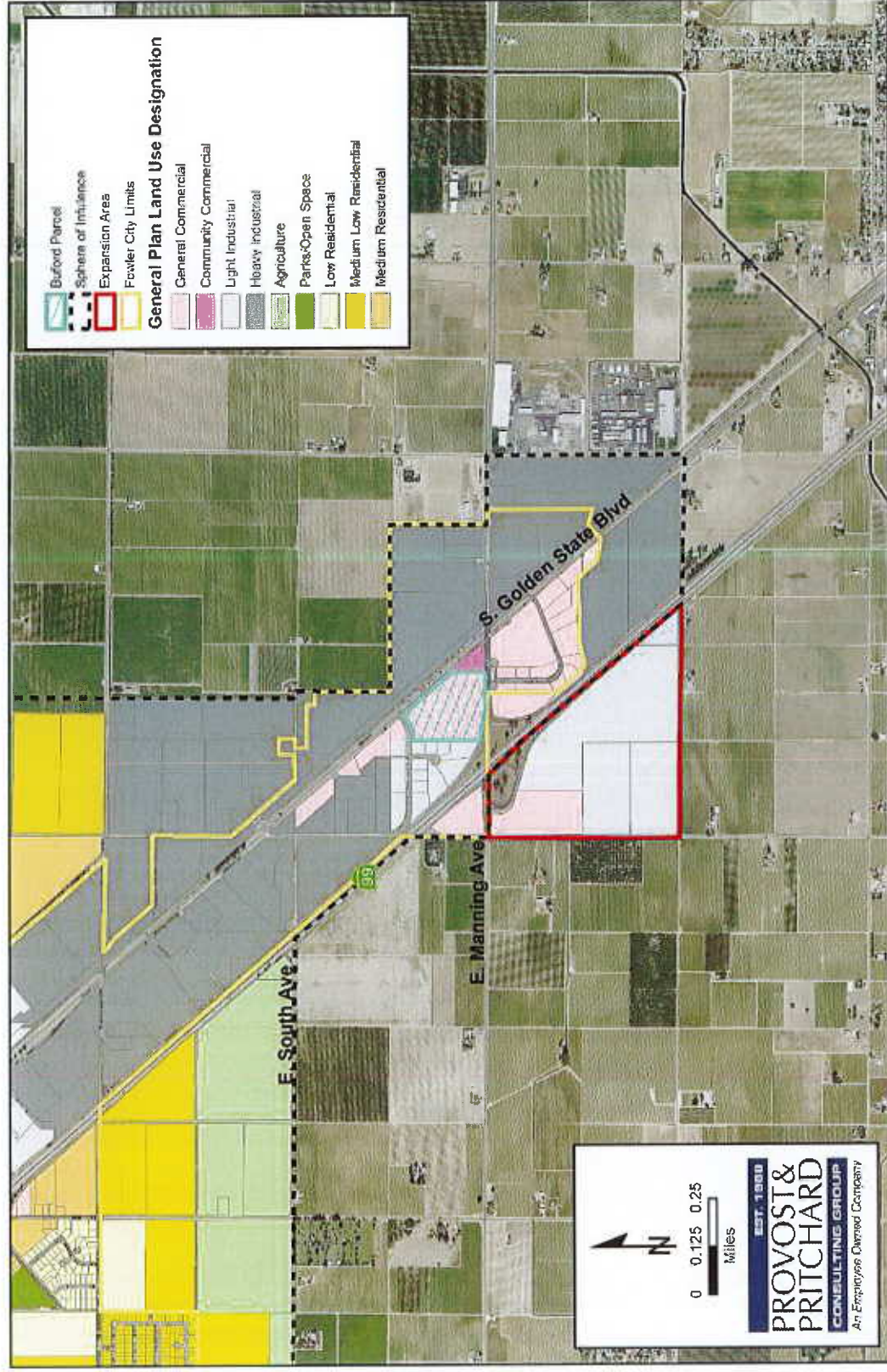
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CITY OF FOWLER PLANNING & COMMUNITY DEVELOPMENT *California*

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Figure 4 – General Plan Land Uses



RESOLUTION NO. 649
RESOLUTION BEFORE THE CITY PLANNING COMMISSION
OF THE CITY OF FOWLER
COUNTY OF FRESNO, STATE OF CALIFORNIA

RESOLUTION CERTIFYING AN ENVIRONMENTAL IMPACT REPORT
PREPARED FOR CONDITIONAL USE PERMIT 17-03
PURSUANT TO THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, an application for Conditional Use Permit 17-03 has been submitted to allow the establishment of the Buford Oil Company Travel Center ("Project") at 2724 East Manning Avenue on an approximately 19-acre parcel (APN 345-180-30) located on the north side of East Manning Avenue between State Route 99 and Golden State Boulevard; and

WHEREAS, the City of Fowler caused to be prepared an Initial Study for the Project to evaluate potential environmental impacts that may result from the Project; and

WHEREAS, based upon the outcome of an Initial Study the City determined that an Environmental Impact Report (EIR) was needed to further evaluate potentially significant adverse environmental impacts resulting from the Project; and

WHEREAS, the City of Fowler, in accordance with the California Environmental Quality Act (CEQA), Public Resources Code, sections 21000, et seq., and Guidelines for implementation of CEQA, Title 14 California Code of Regulations, Chapter 3 sections 15000, et seq., circulated a Notice of Preparation (NOP) of the EIR announcing a 30-day public review and comment period beginning June 11, 2018 and ending July 11, 2018, through the State Clearinghouse of the Governor's Office of Planning and Research, published said NOP in the Fresno Business Journal, a newspaper of general circulation in the Project area, and provided the NOP via US Mail to property owners within a 300-foot radius of the Project Boundary; and

WHEREAS, the City of Fowler held a Public Scoping Meeting in the City Council Chambers at City Hall on June 20, 2018, starting at 6:30 PM, to allow an additional opportunity for the public to hear a brief presentation about the Project and enable them to provide oral or written comments regarding their environmental concerns about the Project which they felt should be evaluated in the EIR; and

WHEREAS, the meeting was attended by various City staff, City's environmental consultants, and five public citizens, whose comments and questions were heard by City staff and environmental consultants, advising their concerns would be addressed in the EIR; and

WHEREAS, a written comment dated July 3, 2018 from Caltrans, District 6, Fresno, was also received by the City during the comment period; and

WHEREAS, based upon the outcome of the Initial Study and the Public Scoping Meeting testimony, the City determined that the EIR would further evaluate potentially significant adverse environmental impacts related to air quality, biological resources, cultural resources, greenhouse gas emissions, hazards and hazardous materials, hydrology/water quality, transportation/traffic, utilities/service systems, and mandatory findings of significance; and

WHEREAS, the EIR including a Mitigation Monitoring and Reporting Program (MMRP) has been prepared, circulated, and made available for public comment pursuant to CEQA, Public Resources Code, sections 21000, et seq., and the Guidelines for implementation of CEQA, Title 14 California Code of Regulations, Chapter 3 sections 15000, et seq.; and

WHEREAS, a public hearing notice was duly published informing the public that the EIR with MMRP and Conditional Use Permit 17-03 for the Project would be considered for final Planning Commission action at a Special Meeting of the Planning Commission held on January 9, at 6:30 p.m.; and

WHEREAS, the Planning Commission has independently reviewed and considered the EIR and MMRP, and has evaluated and considered all comments, written and oral, received from persons who reviewed the EIR, or otherwise commented on the Project.

NOW THEREFORE, BASED UPON THE ENTIRE RECORD OF THE PROCEEDINGS, THE PLANNING COMMISSION RESOLVES AS FOLLOWS:

1. That it has reviewed the recommendation of the staff.
2. That the Initial Study, EIR including a MMRP as set forth in Exhibit "A" for the Project are adequate and have been completed in compliance with CEQA and the State CEQA Guidelines.
3. That it has independently reviewed and considered the information contained in the Initial Study, EIR including the MMRP (Exhibit "A") prior to approving the project.
4. Finds on the basis of the whole record before it, including the Initial Study, EIR, MMRP, any oral or written comments received, and Findings of Fact contained in Exhibit "B" that there is no substantial evidence in the record that the Project will have a significant effect on the environment with the exception of long-term cumulative transportation/traffic impacts at the intersection of the SR 99 northbound off-ramp and East Manning Avenue.
5. Finds on the basis of the whole record before it, including the Initial Study, EIR, MMRP, any oral or written comments received, and Findings of Fact contained in Exhibit "A", that the Project's long-term cumulative impacts at the intersection of SR 99 northbound off-ramp and East Manning Avenue cannot be reasonably or feasibly mitigated to less than significant and will remain significant and unavoidable for the foreseeable future and therefore require, pursuant to CEQA, adoption of the Statement of Overriding Considerations contained in Exhibit "A".

BE IT FURTHER RESOLVED that the Planning Commission of the City of Fowler hereby adopts the EIR together with the MMRP set forth in Exhibit "A", and Findings of Fact and Statement of Overriding Considerations set forth Parts 1 and 2 in Exhibit "B" for Conditional Use Permit 17-03, and that mitigation measures contained in the MMRP, have been incorporated into the Conditions of Approval for Conditional Use Permit 17-03 adopted by Planning Commission Resolution 650, on January 9, 2020.

I hereby certify the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted by the Planning Commission of the City of Fowler at a meeting held on the 9th day of January 2020 by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

Chairman of the Planning Commission

Attest:

City Clerk

Exhibit "A"

Mitigation Monitoring and Reporting Program					
Mitigation Measure/Condition of Approval	When Monitoring is to Occur	Frequency of Monitoring	Agency Responsible for Monitoring	Method to Verify Compliance	Date, time and Initials of Authorized PID Personnel Verifying Compliance
Biological Resources					
General Mitigation Measures					
BIO-1 (WEAP Training) Prior to initiating construction activities (including staging and mobilization), all personnel associated with Project construction shall attend mandatory Worker Environmental Awareness Program (WEAP) training, conducted by a qualified biologist, to aid workers in identifying special status resources that may occur in the Project area. The specifics of this program shall include identification of the sensitive species and suitable habitats, a description of the regulatory status and general ecological characteristics of sensitive resources, and review of the limits of construction and mitigation measures required to reduce impacts to biological resources within the work area. A fact sheet conveying this information, along with photographs or illustrations of sensitive species with potential to occur onsite, shall also be prepared for distribution to all contractors, their employees, and all other personnel involved with construction of the Project. All employees shall sign a form documenting that they have attended WEAP training and understand the information presented to them.	Prior to initial construction and prior to any new construction workers begin work.	At least once, but again thereafter when any new workers come on site before they commence any construction activity.	City of Fowler	Signed and dated forms from all employees testifying they have attended WEAP training.	
BIO-2 (General Pre-construction Survey): A pre-construction survey for special status species shall be conducted by a qualified biologist within 30 days prior to the beginning of construction activities. If	Within 30-days prior to start of construction activities, or if any construction	Once before start of initial construction or as often as necessary prior to	City of Fowler	Written pre-construction Survey Report from qualified biologist to City	

Mitigation Monitoring and Reporting Program

Mitigation Measure /Condition of Approval	When Monitoring is to Occur	Frequency of Monitoring	Agency Responsible for Monitoring	Method to Verify Compliance	Date, time and Initials of Authorized PID Personnel Verifying Compliance
sensitive biological resources are present onsite, the biologist shall establish an appropriate buffer zone and label sensitive resources or areas of avoidance with flagging, fencing, or other easily visible means. If avoidance is not feasible, CDFW and/or USFWS shall be consulted to determine the best course of action.	is suspended for more than 30 days, then within 30 days prior to resumption of construction. As necessary pursuant to any non-avoidance plan developed in coordination with CDFW/USFWS.	resumption of any construction activities suspended longer than 30 days. Maintenance of avoidance buffers established prior to start of construction shall be monitored continuously until completion of construction. As necessary pursuant to any non-avoidance plan developed in coordination with CDFW/USFWS.		documenting results of preconstruction survey and any recommendations needed for follow-up monitoring and reporting. Written notification of CDFW/USFWS.	
BIO-3 (Construction Operational Hours): Construction shall be conducted during daylight hours to reduce disturbance to wildlife that could be foraging within work areas.	Daily, following full sunrise until completion of construction.	Daily, until completion of construction.	City of Fowler	City and/or contractor shall maintain daily records of the starting time of construction which shall not be before full sunrise.	
Nesting Raptors, Migratory Birds, and Special Status Birds (Including Swainson's Hawk) Although trees, shrubs, and herbaceous cover are scarce, some disturbance-tolerant avian species may find suitable nesting habitat within the Project site. For instance, a black phoebe or mourning dove could nest on a small structure, such as an irrigation standpipe and a killdeer could nest on the bare ground. Neighboring eucalyptus trees could provide suitable nesting habitat for a raptor or a variety of passerines. Birds nesting onsite could be killed or injured by Project activities, and construction could disturb birds nesting adjacent to work areas, resulting in nest abandonment. In order to protect nesting birds, the Project shall implement mitigation measures BIO-4a, BIO-4b, and BIO-4c, listed below. Nesting bird season is generally accepted as February 1 through August					

Mitigation Monitoring and Reporting Program

Mitigation Measure/Condition of Approval	When Monitoring is to Occur	Frequency of Monitoring	Agency Responsible for Monitoring	Method to Verify Compliance	Date, time and Initials of Authorized PID Personnel Verifying Compliance
31; however, Swainson's hawk nesting season is generally accepted as March 1 through September 15. For simplicity, these timeframes have been combined.					
BIO-4a (Avoidance): The Project's construction activities shall occur, if feasible, between September 16 and January 31 (outside of nesting bird season) in an effort to avoid impacts to nesting birds.	As necessary to assure construction activity starts on or after September 16 and stops or is suspended before January 31.	As necessary to assure construction activity starts on or after September 16 and stops or is suspended before January 31.	City of Fowler	Documentation of start and end dates of all ground disturbing construction activities, including start dates any construction suspensions and resumption dates of construction activities.	
BIO-4b (Pre-construction Nesting Bird Survey): If activities must occur within nesting bird season (February 1 to September 15), a qualified biologist shall conduct pre-construction surveys for active nests within 30 days prior to the start of construction. The survey shall include the proposed work area and surrounding lands within 0.5 mile. If no active nests are observed, no further mitigation is required. Active nests are generally defined by the presence of eggs or young; however, raptor nests are considered "active" upon the nest-building stage.	Within 30-days prior to start of construction activities, or if any construction is suspended for more than 30 days, then within 30 days prior to resumption of construction.	Once before start of initial construction or as often as necessary prior to resumption of any construction activities suspended longer than 30 days. Thereafter as may be needed, if active nests are found based upon findings and recommendation of qualified biologist in written report to City.	City of Fowler	Written Preconstruction Survey Report from qualified biologist to City documenting results of preconstruction survey and any recommendations needed for follow-up monitoring and reporting.	

Mitigation Monitoring and Reporting Program

Mitigation Measure/Condition of Approval	When Monitoring is to Occur	Frequency of Monitoring	Agency Responsible for Monitoring	Method to Verify Compliance	Date, time and Initials of Authorized PID Personnel Verifying Compliance
BIO-4c (Establish Buffers): On discovery of any active nests near work areas, the biologist shall determine appropriate construction setback distances based on applicable CDFW and/or USFWS guidelines and/or the biology of the species in question. Construction buffers shall be identified with flagging, fencing, or other easily visible means, and shall be maintained until the biologist has determined that the nestlings have fledged.	Immediately upon discovery of active nests, as often as recommended by biologist until nestlings have fledged.	As often as recommended by biologist until nestlings have fledged. Maintenance of avoidance buffers established prior to start of construction shall be monitored continuously until completion of construction.	City of Fowler	Written report from qualified biologist to City documenting required locations of buffer zones, flagging, fencing or other visible means and any recommendations needed for follow-up monitoring and reporting.	
Burrowing Owl: Mitigation measures BIO-4a through BIO-4c provide protection to nesting birds, including burrowing owl by requiring a pre-construction nesting bird survey prior to construction activities. However, due to their elusive burrowing nature, especially while overwintering, an active burrow could be missed on a general pre-construction survey. Project activities affecting reproductive success, such as the collapse of an active burrow or disturbance causing an individual to abandon a nest would be considered a significant impact, as would injury or mortality to an individual burrowing owl. In order to reduce potential impacts to this species to a less than significant level, the following additional mitigation measures will be employed.					
BIO-5a (Pre-construction Take Avoidance Survey): A take avoidance survey will be conducted by a qualified biologist for burrowing owls within 30 days prior to initiating ground disturbance activities. This survey will be conducted according to methods described in CDFW's 2012 Staff Report on Burrowing Owl Mitigation.	Within 30-days prior to start of initiation of ground disturbing activities, or if any construction is suspended for more than 30 days, then within 30 days prior to resumption of construction.	Once before start of initial construction or as often as necessary prior to resumption of any construction activities suspended longer than 30 days.	City of Fowler	Written pre-construction Survey Report from qualified biologist to City documenting results of preconstruction survey and any recommendations needed for follow-up monitoring and reporting pursuant to CDFW's 2012 Staff Report on Burrowing Owl	

Mitigation Monitoring and Reporting Program

Mitigation Measure /Condition of Approval	When Monitoring is to Occur	Frequency of Monitoring	Agency Responsible for Monitoring	Method to Verify Compliance	Date, time and Initials of Authorized PID Personnel Verifying Compliance																				
BIO-5b (Avoidance): If an active burrowing owl burrow is detected, the occurrence shall be reported to the local CDFW office and the CNDDDB, and disturbance-free buffers shall be implemented in accordance with CDFW's 2012 Staff Report on Burrowing Owl Mitigation, as outlined in the table below: <table><tr><th>Location</th><th>Time of Year</th><th colspan="2">Disturbance-free Buffers</th></tr><tr><td></td><td></td><th>Low</th><th>Medium</th></tr><tr><td>Nesting sites</td><td>April 1 – August 15</td><td>200 meters</td><td>500 meters</td></tr><tr><td>Nesting sites</td><td>August 16 – October 15</td><td>200 meters</td><td>200 meters</td></tr><tr><td>Nesting sites</td><td>October 16 – March 31</td><td>50 meters</td><td>100 meters</td></tr></table>	Location	Time of Year	Disturbance-free Buffers				Low	Medium	Nesting sites	April 1 – August 15	200 meters	500 meters	Nesting sites	August 16 – October 15	200 meters	200 meters	Nesting sites	October 16 – March 31	50 meters	100 meters	Immediately upon detection of a suspected burrowing owl burrow.	Once before start of initial construction or as often as necessary prior to resumption of any construction activities suspended longer than 30 days. Maintenance of avoidance buffers established prior to start of construction shall be monitored continuously until completion of construction.	City of Fowler	Written notification to local CDFW office and CNDDDB and written report from qualified biologist to City documenting establishment of and recommended maintenance of disturbance-free buffers in accordance with schedule set forth in mitigation measure.	
Location	Time of Year	Disturbance-free Buffers																							
		Low	Medium																						
Nesting sites	April 1 – August 15	200 meters	500 meters																						
Nesting sites	August 16 – October 15	200 meters	200 meters																						
Nesting sites	October 16 – March 31	50 meters	100 meters																						
BIO-5c (Consultation with CDFW and Passive Relocation): If avoidance of an active burrowing owl burrow is not feasible, CDFW shall be immediately consulted to determine the best course of action, which may include passive relocation during non-breeding season. Passive relocation and/or burrow exclusion shall not take place without coordination with CDFW and preparation of an approved exclusion and relocation plan.	Immediately upon detection of a suspected active burrow that cannot be avoided.	At least once upon each detection of an unavoidable suspected burrowing owl burrow and thereafter pursuant to recommendations of qualified biologist and	City of Fowler	Written notification to local CDFW office and written report from qualified biologist (in coordination with CDFW) to City documenting establishment of and implementation																					

Mitigation Monitoring and Reporting Program

Mitigation Measure/Condition of Approval	When Monitoring is to Occur	Frequency of Monitoring	Agency Responsible for Monitoring	Method to Verify Compliance	Date, time and Initials of Authorized PID Personnel Verifying Compliance
		CDFW until completion of construction.		of an approved exclusion and relocation plan.	
San Joaquin Kit Fox: General mitigation measure BIO-1 (WEAP Training) requires all construction personnel to attend a mandatory education program, which will include a detailed description of the San Joaquin kit fox and habitat requirements, color photographs or illustrations, an explanation of the conservation status of this species and its coverage under State and federal regulations, penalties for violating said regulations, and a list of required measures to reduce impacts to the species during construction. General mitigation measure BIO-3 (Construction Operational Hours) limits construction activities to daylight hours which would reduce the likelihood of encountering a kit fox onsite.					
BIO-6a (Pre-construction SJKF Burrow Survey): Within 30 days prior to the start of construction, a pre-construction survey for San Joaquin kit fox individuals and suitable burrows shall be conducted on and within 200 feet of proposed work areas. Any burrows within the survey area that are determined to be suitable for use by the SJKF shall be monitored for a period of three days using tracking medium and/or remotely triggered cameras. If an active kit fox den is detected within or adjacent to the Project area, construction will be delayed, and CDFW and USFWS shall be consulted to determine the best course of action.	For a period of 3 days within 30-days prior to start initiation of ground disturbing activities, or if any construction is suspended for more than 30 days, then for a period of 3 days within 30 days prior to resumption of construction.	Once before start of initial construction or as often as necessary prior to resumption of any construction activities suspended or delayed longer than 30 days.	City of Fowler	Written pre-construction Survey Report from qualified biologist to City documenting results of preconstruction survey and any recommendations needed for follow-up best course of action, monitoring and reporting.	
BIO-6b (Minimization): The Project shall observe all minimization and protective measures from the Construction and On-Going Operational Requirements of the USFWS 2011 Standardized Recommendations, including, but not limited to: construction speed limits, covering of pipes, installation of escape structures, restriction of herbicide and rodenticide use, proper disposal of food items and trash, prohibition of pets and firearms, and completion of an employee education program.	Continuously throughout construction	Continuously throughout construction. Failures to meet performance standards shall be immediately corrected and maintained through completion of construction.	City of Fowler through contractual agreement with all hired contractors performing project-related construction on- or off-site.	Written report from hired contractors to document and date monitoring and results in maintaining and achieving mitigation performance requirements.	

Mitigation Monitoring and Reporting Program

Mitigation Measure/Condition of Approval	When Monitoring is to Occur	Frequency of Monitoring	Agency Responsible for Monitoring	Method to Verify Compliance	Date, time and Initials of Authorized PID Personnel Verifying Compliance
BIO-6c (Mortality Reporting): The Sacramento Field Office of USFWS and the Fresno Field Office of CDFW will be notified in writing within three working days in the case of the accidental death or injury to a San Joaquin kit fox during construction. Notification must include the date, time, and location of the incident and any other pertinent information.	Continuously throughout construction and within 3 days of accidental death or injury event.	Upon the discovery of accidental injury or death of a suspected protected species.	City of Fowler	Written notification.	
Cultural Resources					
CUL-1 (Archaeological Remains): In the event that archaeological remains are encountered at any time during development or ground-moving activities within the entire project area, all work in the vicinity of the find shall halt until a qualified archaeologist can assess the discovery.	Continuously during ground disturbing construction activity.	Upon the discovery of archaeological remains.	City of Fowler	Archaeologist's assessment.	
CUL-2 (Human Remains) If human remains are uncovered, or in any other case when human remains are discovered during construction, the Fresno County Coroner is to be notified to arrange their proper treatment and disposition. If the remains are identified—on the basis of archaeological context, age, cultural associations, or biological traits—as those of a Native American, California Health and Safety Code 7050.5 and Public Resource Code 5097.98 require that the coroner notify the NAHC within 24 hours of discovery. The NAHC will then identify the Most Likely Descendant who will determine the manner in which the remains are treated.	Continuously during ground disturbing construction activity.	Upon the discovery of suspected human remains.	City of Fowler	Coroner's assessment.	

Mitigation Monitoring and Reporting Program

Mitigation Measure/Condition of Approval	When Monitoring is to Occur	Frequency of Monitoring	Agency Responsible for Monitoring	Method to Verify Compliance	Date, time and Initials of Authorized PID Personnel Verifying Compliance
Green House Gas Emissions					
GHG-1 Site design and building placement shall minimize barriers to pedestrian access and interconnectivity. Physical barriers such as walls, berms, landscaping, and slopes between residential and nonresidential uses that impede bicycle or pedestrian circulation are eliminated.	During project design phase.	Once, prior to issuance of building permits.	City of Fowler	Site plan approval.	
GHG-2: The Project shall install Energy Star labeled roof materials	During project design phase.	Once, prior to issuance of building permits.	City of Fowler	Building Permit issuance.	
GHG-3: The Project shall optimize building's thermal distribution by separating ventilation and thermal conditioning systems.	During project design phase.	Once, prior to construction and the issuance of building permits.	City of Fowler	Building Permit issuance.	
Traffic & Transportation					
TRA-1 (East Manning Avenue/SR99): The Project applicant shall provide a signalized intersection with a design life of at least 10-years or convert the northbound off ramp intersection to a two-lane roundabout. Implementation of the above mitigation measure will reduce impacts as the measure is completed. As shown in Table 3 37 the signalization of the intersection will improve LOS to LOS A in the short-term but will not be a long-term solution. Therefore, the long-term impact is significant and unavoidable unless or until the City of Fowler, County of Fresno, Fresno COG and/or Caltrans identify or adopt a long-term funding plan for the interchange reconstruction.	During construction prior to opening day of project.	Once at the completion of construction prior to opening day of project.	City of Fowler in cooperation with Caltrans.	City and/or Caltrans final sign-offs on encroachment permit and building permits for intersection improvements.	

Exhibit "B"

Part 1 – CEQA FINDINGS OF FACT

and

Part 2 – CEQA STATEMENT OF OVERRIDING CONSIDERATIONS

Part 1 – CEQA FINDINGS OF FACT

A. INTRODUCTION

The California Environmental Quality Act (CEQA Guidelines §15091) requires that no public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

- (1) Changes or alterations have been required in or incorporated into the project that mitigate or avoid the significant effect on the environment.
- (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

C. PROPOSED PROJECT

The Draft EIR, included here in totality by reference, contains a thorough and detailed description of the proposed Project and so is not repeated here.

The Draft EIR analyzes the potentially significant environmental effects that could result from the Project including Section 3.8 Transportation/Traffic Impacts. Specifically, subsection 3.8.7 of the EIR describes in detail the nature of forecasted long-term cumulative traffic impact at the SR 99 northbound off-ramp intersection at East Manning Avenue and the reasons why the Project cannot mitigate to less than significant the cumulative, long-term impacts to which it contributes.

D. RECORD OF PROCEEDINGS AND CUSTODIAN OF RECORD

The record, upon which all findings and determinations related to the approval of the Conditional Use Permit 17-03 are based, includes the following:

- (1) The EIR and all documents referenced in or relied upon by the EIR;
- (2) All information, including written evidence and testimony, provided by City staff and the environmental consultants to the City relating to the Conditional Use Permit 17-03 and the EIR;
- (3) All information, including written evidence and testimony, presented to the City from other public agencies related to the Conditional Use Permit 17-03 and the EIR;
- (4) All applications, letters, testimony, and presentations related to the Conditional Use Permit 17-03 and EIR.

- (5) All information, including written evidence and testimony, presented at any City scoping meeting or hearing related to the Conditional Use Permit 17-03 and the EIR;
- (6) All City-adopted or City-prepared land use plans and ordinances, including without limitation, the General Plan, specific plans, and ordinances together with the attending environmental review documents, findings, mitigation monitoring programs, and other documents relevant to planned growth in the area;
- (7) The Mitigation Monitoring and Reporting Program for the Conditional Use Permit 17-03;
- (8) All other documents composing the record pursuant to Public Resources Code §21167.6(e).

IV. SIGNIFICANT ENVIRONMENTAL IMPACTS IDENTIFIED IN THE EIR

The Draft EIR contains thorough descriptions of each potentially significant impact that could result from the proposed Project and recommended mitigation measures shown above in Exhibit “A” Mitigation Monitoring and Reporting Program. With the exception of EIR Impact XVI-a)-b) regarding the long-term significant adverse cumulative traffic impacts at the intersection of SR 99 northbound off-ramp with East Manning Avenue and related mitigation measure TRA-1, the City of Fowler finds that by adoption of Exhibit “A” Mitigation Monitoring and Reporting Program, changes or alterations are thereby required in or incorporated into the Project which avoid or substantially lessen the significant environmental effects resulting from the proposed Project.

Part 2 below provides the necessary Statement of Overriding Considerations regarding one impact that was found by the EIR to be significant and unavoidable even with the adoption of feasible mitigation measures.

Part 2 – CEQA STATEMENT OF OVERRIDING CONSIDERATIONS

The California Environmental Quality Act (CEQA Guidelines §15093) requires a decision-making agency to balance the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve a project. For any significant effects that cannot be avoided or reduced to a less-than-significant level by the Project, the lead agency must describe the reasons why mitigation to less than significant is infeasible (PRC Section 21081(a)(3)). Approval of a project that would have significant adverse effects on the environment requires that the agency identify the project benefits that are evaluated as outweighing its significant effects on the environment (PRC Section 21081(b)). When an agency approves a project that will result in significant effects to the environment, the agency is required to state its rationale for support of the project based on the Final Environmental Impact Report (FEIR) and other information in the record.

The Planning Commission of the City of Fowler intends to approve Conditional Use Permit 17-03 and therefore adopts and makes the following Statement of Overriding Considerations regarding the significant, unavoidable long-term traffic impacts at the intersection of SR 99 northbound off-ramp to which the Project will contribute which are outweighed by the below-identified anticipated benefits of the Project.

A. SIGNIFICANT UNAVOIDABLE IMPACTS

With respect to the findings set forth in the Part 1 of this Exhibit B and in recognition of those facts which are included in the record, the City of Fowler has determined that Project will contribute to unavoidable long-term, cumulative traffic impacts at the SR 99 northbound off-ramp intersection with East Manning Avenue. Although short-term impacts resulting directly from the Project will be reduced to less than significant by mitigation requiring the Project to install a traffic signal at the intersection, said signal will not be sufficient to mitigate to less than significant the long-term cumulative impacts

projected to year 2040 as discussed in the EIR. The long-term cumulative mitigation identified in the EIR and corroborated by Caltrans, would involve the construction of a new interchange that would accommodate future anticipated traffic. An interchange design has not been determined or formally adopted by Caltrans for the SR 99/East Manning Avenue interchange. Further, the interchange replacement is not currently programmed by Caltrans or the Fresno (County) Council of Governments. Without a design and program for interchange demolition and reconstruction, costs for a new interchange cannot be determined, but would be outside the financial capability of a single project to bear the cost upfront. There are currently insufficient funds allocated from other potential sources to reconstruct the interchange. Therefore, the City of Fowler finds the long-term cumulative impacts at the SR 99 northbound off-ramp cannot be feasibly mitigated to less than significant level by the proposed Project. Imposing such a significant cost burden to the Project would likely render it financially infeasible.

B. BENEFITS OF THE PROJECT

- 1.) The proposed Project will provide and help retain long-term sales tax (gas/diesel, food, and various tangible goods) and transient occupancy tax (hotel) net revenues to the City.
- 2.) The proposed Project will promote new employment opportunities and related “multiplier” economic benefits to the City.
- 3.) The expanded highway-oriented traveler amenities and services proposed will maximize the efficient utilization of land in the industrial corridor of the City and will thereby facilitate the capture of a larger portion of revenue benefits from the traveling public and SR 99 goods movement corridor.
- 4.) The Project will provide a modernized and safe place for commercial truck drivers and vehicles to stop, rest, and dine.
- 5.) The Project will provide its fair share of East Manning Avenue roadway improvements and traffic flow improvements, including installation of a signal at the SR 99 northbound off-ramp at East Manning Avenue which will add an element of addition traffic safety and control benefits for the community and industrial corridor at that location and over-all and at the overpass in general for the next 10 years.
- 6.) The Project has the potential to serve as a catalyst for additional economic development in this area of Fowler that will then provide additional fair share contributions to the cost of replacing the interchange with a more modern design that will better accommodate future growth in the Fowler community.

C. OVERRIDING CONSIDERATIONS

The City of Fowler finds that each of the overriding considerations set forth above constitutes a separate and independent ground for finding that the benefits of the proposed project outweigh its long-term cumulative environmental impacts and are considerations warranting approval of the proposed Project.

RESOLUTION NO. 650
RESOLUTION BEFORE THE PLANNING COMMISSION
OF THE CITY OF FOWLER
COUNTY OF FRESNO, STATE OF CALIFORNIA

RESOLUTION APPROVING
CONDITIONAL USE PERMIT APPLICATION NO. 17-03

WHEREAS, an application for Conditional Use Permit 17-03 has been received to allow the establishment of the proposed Buford Oil Company Travel Center ("Project") in a C-3 zone district, on an approximately 19-acre parcel (APN: 345-189-30) at 2747 East Manning Avenue, located on the north side of East Manning Avenue between State Route 99 and Golden State Boulevard; and

WHEREAS, an approximately 10-acre portion of the subject 19-acre parcel is currently occupied by the Fowler Shell Truck Stop containing automobile gas and commercial tractor/trailer diesel fueling islands, commercial truck parking, weighing, and limited traveler amenities, which will all be demolished to allow the new Travel Center and related off-site improvements to be constructed; and

WHEREAS, the subject application was deemed complete by the Fowler Planning Department and has been reviewed for compliance with the Fowler Zoning Ordinance; and

WHEREAS, the Project requires approval of a Conditional Use Permit in accordance with Article 25 of the Fowler Zoning Ordinance; and

WHEREAS, the City determined that the Project is subject to the California Environmental Quality Act (CEQA), Public Resources Code, sections 21000, et seq., and Guidelines for implementation of CEQA, Title 14 California Code of Regulations, Chapter 3 sections 15000, et seq., requiring the preparation of an Environmental Impact Report to evaluate potentially significant impacts on the environment regarding air quality, biological resources, cultural resources, greenhouse gas emissions, hazards & hazardous materials, hydrology/water quality, transportation/traffic, utilities/service systems, and mandatory findings of significance; and

WHEREAS, a public hearing notice was duly published informing the public that the EIR and Project would be considered for approval at a Special Planning Commission meeting held on January 9, 2020 at 6:30 p.m.; and

WHEREAS, by Resolution 649, passed on January 9, 2020, the Planning Commission has certified the EIR as adequate pursuant to CEQA and the Guidelines, adopted all mitigation measures recommended in the EIR; adopted the Mitigation Monitoring and Reporting Program, adopted Findings of Fact, and adopted a Statement of Overriding Considerations accepting the long-term significant adverse cumulative and unavoidable traffic impacts at the SR 99 northbound off-ramp and East Manning Avenue intersection based on identified benefits of the Project which outweigh the impacts; and

WHEREAS, the Planning Commission reviewed the proposed Conditional Use Permit together with the EIR at a Special Meeting on January 9, 2020; and

WHEREAS, the Planning Commission, after reviewing and considering the staff report, EIR, and all evidence presented at the Planning Commission Special meeting January 9, 2020, including oral and written public testimony on the Project and the EIR, and which is herein incorporated by this reference, did make the following findings with regard to the Conditional Use Permit 17-03 for the Buford Oil Company Travel Center Project:

1. The site for the proposed use is adequate in size and shape to accommodate the use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by the Zoning Ordinance.
2. The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use. No significant effects on the surrounding street system are anticipated.
3. The proposed use will have no adverse effect upon abutting property or the use thereof.
4. The conditions established by the Planning Commission and attached to this Resolution for Conditional Use Permit 17-03 are deemed necessary to protect the public health, safety and general welfare.

NOW THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Fowler does approve Conditional Use Permit No. 17-03 for the Buford Oil Company Travel Center Project subject to the conditions contained in Attachment "A."

I hereby certify the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted by the Planning Commission of the City of Fowler at a meeting held on the 9th day of January 2020 by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

Chairman of the Planning Commission

Attest:

City Clerk

Attachment "A"

CONDITIONS OF APPROVAL

Conditional Use Permit No. 17-03

(East Manning Avenue between SR 99 and Golden State Boulevard)

General Conditions

1. Approval of this conditional use permit and the associated site plan shall be valid for a period not to exceed one year from the date of approval unless a building permit for the facility described herein has been issued by the Building Department and construction is being diligently pursued. The owner may request an extension of up to one additional year via written request to the Planning Department submitted not less than thirty days prior to expiration of this approval. As there are two buildings on the site, once a building permit is facilitated for one of the proposed buildings construction of the second building will not be held to any time limits.
2. Development of the site shall be in substantial conformance with the site plan dated February 27, 2018 except as may be modified by these conditions or the direction of the Planning Commission.
3. All provisions of the C-3 (General Commercial) zone district shall apply.
4. All provisions of the Highway Beautification Overlay District shall apply.
5. Any free standing or occupancy signs are subject to review and approval by the Director by means of a separate Sign Review process.
6. All conditions shall be satisfied prior to occupancy approval for any portion of the project. Failure to comply with all conditions of approval shall be grounds for the imposition of penalties, suspension of the permit, modification of the permit, or revocation of the permit.
7. The operator shall keep the exterior premises free of trash and debris. Graffiti shall be removed or covered within 48 hours of its discovery by the applicant, manager, or any employee.
8. Any business operating on the site and all contractors or sub-contractors working in the City must obtain a business license from the Finance Department at Fowler City Hall.
9. The operator shall report applicable sales tax revenue to the State.
10. All lighting shall be hooded and directed as to not shine towards adjacent properties and public streets.
11. Drive aisles shall be kept unobstructed at all times. Vehicles shall not block driveways.
12. A copy of these conditions must be kept on the premises and be shown to any requesting City official. Failure to comply with all conditions of approval shall be grounds for the imposition of penalties, modification of the permit, or revocation of the permit.
13. All business and processes shall be conducted within a completely enclosed structure, except for off-street parking and loading areas, service stations, outdoor dining areas, nurseries, garden shops, signs, Christmas tree sales lots, bus depots, and transit stations, public utility stations and car sales.
14. No use shall be permitted and no process, equipment or materials shall be used that are found by the City to be objectionable to persons living or working in the vicinity by reasons of odor, fumes, dust, smoke, cinders, dirt,

refuse, water-carried waste, noise, vibration, illumination, glare, or unsightliness or to involve any hazard of fire or explosion.

Property Development Standards

15. Each site in the C-3 (General Commercial) zone district shall have a minimum area of 10,000 square feet.
16. The minimum front yard shall be fifteen (15) feet. A minimum of ten (10) feet of the required front yard shall be landscaped.
17. The maximum building height shall be fifty (50) feet.

**Please provide elevations of all buildings to the Planning Department for review and approval prior to submittal for building permits.

Highway Beautification Overlay Standards

18. Pursuant to Article 19, Section 9-5.1907 of the Fowler Zoning Ordinance along lot lines adjacent to at-grade or elevated highway sections, a landscaped buffer of no less than 20-feet shall be provided.
19. In accordance with Section 9-5.1907 (L) of the Fowler Zoning Ordinance any building wall visible from the highway shall be detailed and treated equally in terms of appearance to the front of the building.
20. In accordance with Section 9-5.1907 (M) of the Fowler Zoning Ordinance utility and mechanical equipment such as heating units, air conditioners, antennas, satellite dishes, HVAC units, or similar devices shall be integrated into the design of the building or situated on the site so that they are not visible from the highway. When this is not possible, the equipment shall be screened from view of the highway by a masonry wall or other method acceptable by the City.
21. In accordance with Section 9-5.1907 (N) of the Fowler Zoning Ordinance trash and recycling areas shall be situated on the site so that they are not visible from the highway. When this is not possible, the trash and recycling areas shall be screened from view of the highway by a masonry wall or other method acceptable to the City.
22. In accordance with Section 9-5.1907 (O) of the Fowler Zoning Ordinance loading areas shall be situated on the site so that they are not visible from the highway. When this is not possible, the loading areas shall be screened from view from the highway by a masonry wall or other method acceptable to the City.

Off-Street Parking and Loading Standards

23. Prior to the issuance of a building permit verification of the required number of parking stalls shall be determined adequate by the Planning Department.
24. Improvements shall include handicap parking stalls and an ADA accessible sidewalk providing access to the front door of the buildings the parking lot is serving. These spaces shall meet the State standards.
25. All parking areas shall have adequate ingress and egress to and from a street or alley. Sufficient room for turning and maneuvering vehicles shall be provided on the site. Bumper rails or other barriers shall be provided where needed for safety or to protect property, as determined by the City.
26. Entrances and exits to parking lots and other parking facilities shall be provided only at locations approved by the City.
27. Each parking space shall not be less than 20-feet in length and 9-feet in width, exclusive of aisles and access drives, except that up to thirty (3) percent of all spaces may be provided for compact cars and such spaces not less than 9-feet in width and 16-feet in length, and marked for compact cars.
28. Parking lot lighting shall be deflected away from abutting sites so as not to cause annoying glare.
29. Parking area for the convenient store shall be lit to a foot-candle coverage between 0.5 and 1.5.
30. No commercial repair work or servicing of vehicles shall be conducted on a parking site.
31. In accordance with Section 9-5.2005 of the Fowler Zoning Ordinance every building shall provide for a loading space on the same parcel with such building, as follows:

A. Having a gross floor area of 4,000 square feet or less: no requirement

- B. Having a gross floor area between 4,001 square feet and 40,000 square feet: at least one off-street loading space
 - C. For uses greater than 40,000 square feet: one additional off-street loading space for each 30,000 square feet or major fraction thereof of gross floor area, to a maximum of 5 loading spaces.
32. Every required loading space shall have a minimum length of 40-feet, a minimum width of 12-feet, and a minimum vertical clearance of 14-feet.
33. The required loading space may be within a building.
34. A loading space may occupy a rear or side yard, except such portion required to be landscaped.
35. In accordance with Section 9-5.2007 of the Fowler Zoning Ordinance at all points along streets or sidewalks (excepting points of access to the parking lot or area), a concrete curb or timber barrier not less than 6-inches high shall be installed and maintained.
36. In accordance with Section 9-5.2008 of the Fowler Zoning Ordinance any plan for off-street parking facilities shall be accompanied by a landscape plan. All off-street parking facilities shall conform with the following standards:
- A. A plot plan indicating the location of all landscaping.
 - B. Not less than five percent of a parking lot comprising of up to twenty parking spaces shall be landscaped and continually maintained.
 - C. Not less than ten percent of a parking lot comprising of more than twenty parking stalls shall be landscaped and continuously maintained.
 - D. Not more than ten (10) consecutive parking stalls shall be allowed without an approved landscaped tree well of twenty (20) square feet or more.

Landscaping Standards

37. Landscaping shall be provided in accordance with Fowler Zoning Ordinance Section 9-5.21.12.
38. Landscaping shall be kept free from weeds and litter.
39. Parking Lot Shading. Fifty (50) percent of paved parking lot surfaces shall be shaded by tree canopies within fifteen (15) years of planting.

Drive-Through Facilities Standards

40. Drive-through facilities require special consideration as their design can significantly impact vehicular circulation on a site. The following requirements apply in accordance with Section 9-5.2009 of the Fowler Zoning Ordinance:
- A. Each drive-through lane shall be separated from the circulation routes necessary for ingress or egress from the property, or access to any parking space.
 - B. Each drive-through lane shall be striped, marked, or otherwise distinctly delineated.
 - C. The vehicle stacking capacity of the drive-through facility and the design and location of the ordering and pick-up facilities will be determined by the Director based on appropriate traffic engineering and planning data. The applicant shall submit to the City data addressing the following issues:
 1. Nature of the product or service being offered.
 2. Time required to serve a typical customer.
 3. Peak demand hours.
 4. Anticipated vehicles served.
 - D. If parallel to and visible from a public street, the drive-through lane shall be appropriately screened with landscaping or other material so as to visually screen vehicles in the drive-through lane from the public right-of-way.

Public Works/Fire Department Comments

41. Submit a site plan showing sewer connections and improvements.
42. Submit a site plan depicting fire hydrant locations.
43. Submit a site plan depicting Fire Department connections (FDC) and backflow devices on both proposed buildings.
44. A secondary access point for emergency vehicles measuring no less than 20 feet in width must be developed.

Police Department Comments

45. Install security cameras on the external of the building and the ingress/egress routes of the parking lot in coordination with the Police Chief. Recording shall be maintained on a 7-day loop.

Engineering Conditions (Dated December 11, 2017)

General:

46. All proposals of the applicant be conditions of approval, except as further modified below, and subject to modifications to conform to applicable City Standards shall be considered conditions of approval.
47. Applicant shall provide on-site lighting. An on-site lighting plan shall be submitted to the City Engineer for review and approval. On-site lighting shall be hooded to prevent off-site glare.
48. Fire Department Access shall meet the requirements set forth in Appendix III-D of the California Fire Code.
49. Applicant shall construct a concrete masonry trash enclosure with screened gates. The trash enclosures shall be according to City Improvement Standards and reviewed and approved by the Building Official. The enclosures shall be of sufficient size to accommodate containers for refuse, green waste, and recycling.
50. Applicant shall pay applicable connection and development fees based upon the rates in effect at the time of payment.
51. Two points of access shall be developed for ingress/egress into the site.
52. All existing water wells(s) and septic systems that served the property shall be abandoned pursuant to City, County, and State standards.

Circulation:

53. Applicant shall dedicate 10 feet along the Manning Avenue frontage for street purposes to encompass the existing curb, gutter and sidewalk area.
54. Applicant shall complete frontage improvements along Manning Avenue (including, but not limited to, curb, gutter, 10' sidewalk, landscaping, and street lighting) in accordance with City standards.
55. Applicant shall pay a fair share towards mitigating significant impacts to the pavement structural section between Golden State Boulevard and State Route 99.
56. Applicant shall provide an irrevocable offer of dedication for an additional 14 feet behind the 10 foot dedication described in Item 9 for future street purposes (widening to a third westbound lane).
57. Applicant shall abandon the existing driveway approach closest to Vineyard Avenue along Manning Avenue and reconstruct those portions of the roadway with curb, gutter and sidewalk per City Standards. Additionally, a barrier shall be constructed to prevent trucks from accessing the site across the curb and gutter.
58. The Applicant may maintain the most westerly driveway approach as right-in / right-out only.
59. The applicant shall develop a right-in/right-out access on Golden State Boulevard at a location acceptable to the City Engineer and/or Public Works Director. Access shall be paved and shall include acceleration and deceleration lanes as directed by the City Engineer.
60. Applicant shall replace existing street lights that have been damaged or removed along the Manning Avenue frontage. A street light plan shall be prepared in accordance with City Standards and shall be submitted for review and approval by the City Engineer prior to work being performed.

61. Developer shall construct American with Disability Act upgrades within the existing public street right of way for streets abutting the project frontages.
62. Developer shall reconstruct the Vineyard Place / Manning Avenue curb ramps such that a WB-60 design vehicle (large semi-truck) can make turns into and out of the site without traversing curbs or other improvements. Improvements may include, but not be limited to, new curb ramps, pavement, utility adjustments, and traffic signal modifications.
63. Developer shall prepare a traffic study to identify project impacts and mitigations as identified by the City Engineer. The traffic study shall include and analysis of the following facilities:
 - A. Manning Avenue / SR 99 Interchange Ramp Intersections
 - B. Manning Avenue / Vineyard Place Intersection
 - C. Manning Avenue / Golden State Boulevard Intersection
64. Developer shall pay a fair share, construct improvements and/or otherwise mitigate traffic impacts as approved by the City Engineer.

Grading and Drainage:

65. A grading and site improvement plan shall be submitted to the building official for review and approval by the City Engineer. The applicant shall obtain a permit for all on-site grading and site improvement work.
66. A project specific geotechnical report shall be prepared and submitted for review by the City Engineer.
67. Applicant shall develop or expand on-site drainage facilities including, but not limited to, retention basin, pipelines, manholes, inlets, and any other facility required to convey and store the project storm drainage. Applicant shall submit storm drainage calculations to identify storm drainage flows and hydraulic grade lines of proposed storm drainage facilities.
68. Permanent surfacing shall be provided for the site consisting of an asphalt concrete surfacing and/or valley gutter for drainage, with minimum surfacing section to include 2.5" of asphalt concrete over 5" of aggregate base per City Standards. Valley gutters shall be a minimum width of 3' per City Standards.
69. The applicant shall obtain an NPDES permit from the Regional Water Quality Control Board. The plan shall provide for the mitigation of soil erosion from the project site during the construction and warranty periods and be submitted to the City prior to the start of construction.
70. Applicant shall pay one-half the applicable City's Storm Drainage fee for previously developed parcels and the full storm drainage fee for previously undeveloped parcels.

Landscaping:

71. Applicant shall submit an on-site and off-site landscape and irrigation plan for review and approval by the City Engineer.
72. Landscaping shall be drought tolerant and irrigation system shall be low water consumption, shall only contain drip or micro-spray irrigation, and shall comply with all provisions of AB 1881.

Water:

73. The new convenience store shall be provided with separate domestic, fire and landscape water services as approved by the City Engineer.
74. Applicant shall provide and install water meters and appropriate backflow devices as required by City ordinances and standards. Replace and Relocate Water Meters to City Easement east of property. Replace and Relocate Backflow Devices as close to Water Meter as possible and to City of Fowler Standards.
75. On-site fire hydrants shall be provided at locations approved by the Fire Chief. On-site water main supplying the fire hydrants shall be a minimum of 8" diameter. Verify size of supply line to onsite fire hydrant and install additional onsite hydrant as determined by the Fire Chief and install a double check detector assembly (DCDA) on private fire line to City of Fowler standards near city easement and water main.

Sewer:

- 76. Applicant shall submit a plan for sewer service for review and approval by the City Engineer and Selma-Kingsburg-Fowler County Sanitation District (SKF).
- 77. Applicant shall pay applicable sewer connection fees to SKF based upon the rates in effect at the time of payment.

Utilities:

- 78. All new electric, cable TV, telephone, internet, etc. services shall be provided to the development shall be undergrounded (including transformers).

Irrigation:

- 79. That any private irrigation facilities, private and those maintained by CID, be relocated outside of the street right of way, except at street crossings. Any irrigation lines that must remain in service shall be reconstructed with rubber gasket reinforced concrete pipe.
- 80. That all abandoned irrigation lines serving the property be removed.

Mitigation Measures:

- 81. BIO-1 (WEAP Training) Prior to initiating construction activities (including staging and mobilization), all personnel associated with Project construction shall attend mandatory Worker Environmental Awareness Program (WEAP) training, conducted by a qualified biologist, to aid workers in identifying special status resources that may occur in the Project area. The specifics of this program shall include identification of the sensitive species and suitable habitats, a description of the regulatory status and general ecological characteristics of sensitive resources, and review of the limits of construction and mitigation measures required to reduce impacts to biological resources within the work area. A fact sheet conveying this information, along with photographs or illustrations of sensitive species with potential to occur onsite, shall also be prepared for distribution to all contractors, their employees, and all other personnel involved with construction of the Project. All employees shall sign a form documenting that they have attended WEAP training and understand the information presented to them.
- 82. BIO-2 (General Pre-construction Survey): A pre-construction survey for special status species shall be conducted by a qualified biologist within 30 days prior to the beginning of construction activities. If sensitive biological resources are present onsite, the biologist shall establish an appropriate buffer zone and label sensitive resources or areas of avoidance with flagging, fencing, or other easily visible means. If avoidance is not feasible, CDFW and/or USFWS shall be consulted to determine the best course of action.
- 83. BIO-3 (Construction Operational Hours): Construction shall be conducted during daylight hours to reduce disturbance to wildlife that could be foraging within work areas.
- 84. BIO-4a (Avoidance): The Project's construction activities shall occur, if feasible, between September 16 and January 31 (outside of nesting bird season) in an effort to avoid impacts to nesting birds.
- 85. BIO-4b (Pre-construction Nesting Bird Survey): If activities must occur within nesting bird season (February 1 to September 15), a qualified biologist shall conduct pre-construction surveys for active nests within 30 days prior to the start of construction. The survey shall include the proposed work area and surrounding lands within 0.5 mile. If no active nests are observed, no further mitigation is required. Active nests are generally defined by the presence of eggs or young; however, raptor nests are considered "active" upon the nest-building stage.
- 86. BIO-4c (Establish Buffers): On discovery of any active nests near work areas, the biologist shall determine appropriate construction setback distances based on applicable CDFW and/or USFWS guidelines and/or the biology of the species in question. Construction buffers shall be identified with flagging, fencing, or other easily visible means, and shall be maintained until the biologist has determined that the nestlings have fledged.
- 87. BIO-5a (Pre-construction Take Avoidance Survey): A take avoidance survey will be conducted by a qualified biologist for burrowing owls within 30 days prior to initiating ground disturbance activities. This survey will be conducted according to methods described in CDFW's 2012 Staff Report on Burrowing Owl Mitigation.

88. BIO-5b (Avoidance): If an active burrowing owl burrow is detected, the occurrence shall be reported to the local CDFW office and the CNDDDB, and disturbance-free buffers shall be implemented in accordance with CDFW's 2012 Staff Report on Burrowing Owl Mitigation, as outlined in the table below:

Location	Time of Year	Disturbance-Free Buffers	
		Low	Medium
Nesting sites	April 1 – August 15	200 meters	500 meters
Nesting sites	August 16 – October 15	200 meters	200 meters
Nesting sites	October 16 – March 31	50 meters	100 meters

89. BIO-5c (Consultation with CDFW and Passive Relocation): If avoidance of an active burrowing owl burrow is not feasible, CDFW shall be immediately consulted to determine the best course of action, which may include passive relocation during non-breeding season. Passive relocation and/or burrow exclusion shall not take place without coordination with CDFW and preparation of an approved exclusion and relocation plan.
90. BIO-6a (Pre-construction SJKF Burrow Survey): Within 30 days prior to the start of construction, a pre-construction survey for San Joaquin kit fox individuals and suitable burrows shall be conducted on and within 200 feet of proposed work areas. Any burrows within the survey area that are determined to be suitable for use by the SJKF shall be monitored for a period of three days using tracking medium and/or remotely triggered cameras. If an active kit fox den is detected within or adjacent to the Project area, construction will be delayed, and CDFW and USFWS shall be consulted to determine the best course of action.
91. BIO-6b (Minimization): The Project shall observe all minimization and protective measures from the Construction and On-Going Operational Requirements of the USFWS 2011 Standardized Recommendations, including, but not limited to: construction speed limits, covering of pipes, installation of escape structures, restriction of herbicide and rodenticide use, proper disposal of food items and trash, prohibition of pets and firearms, and completion of an employee education program.
92. BIO-6c (Mortality Reporting): The Sacramento Field Office of USFWS and the Fresno Field Office of CDFW will be notified in writing within three working days in the case of the accidental death or injury to a San Joaquin kit fox during construction. Notification must include the date, time, and location of the incident and any other pertinent information.
93. CUL-1 (Archaeological Remains): In the event that archaeological remains are encountered at any time during development or ground-moving activities within the entire project area, all work in the vicinity of the find shall halt until a qualified archaeologist can assess the discovery.
94. CUL-2 (Human Remains) If human remains are uncovered, or in any other case when human remains are discovered during construction, the Fresno County Coroner is to be notified to arrange their proper treatment and disposition. If the remains are identified—on the basis of archaeological context, age, cultural associations, or biological traits—as those of a Native American, California Health and Safety Code 7050.5 and Public Resource Code 5097.98 require that the coroner notify the NAHC within 24 hours of discovery. The NAHC will then identify the Most Likely Descendent who will determine the manner in which the remains are treated.
95. GHG-1 Site design and building placement shall minimize barriers to pedestrian access and interconnectivity. Physical barriers such as walls, berms, landscaping, and slopes between residential and nonresidential uses that impede bicycle or pedestrian circulation are eliminated.
96. GHG-2: The Project shall install Energy Star labeled roof materials.
97. GHG-3: The Project shall optimize building's thermal distribution by separating ventilation and thermal conditioning systems.
98. TRA-1 (East Manning Avenue/SR99): The Project applicant shall provide a signalized intersection with a design life of at least 10-years or convert the northbound off ramp intersection to a two-lane roundabout.

Other:

99.

Approval of this Project is for the benefit of the Applicant. The submittal of applications by Applicant for this Project was a voluntary act on the part of the Applicant not required by the City. Therefore, as a condition of approval of this Project, the Applicant agrees to defend, indemnify and hold harmless the City of Fowler and its agents, officers, consultants, independent contractors and employees ("City") from any and all claims, actions or proceedings against the City to attack, set aside, void, or annul an approval by the City concerning the Project, including any challenges to associated environmental review, and for any and all costs, attorneys fees, and damages arising therefrom (collectively "Claim").

The City shall promptly notify the Applicant of any Claim and the City shall cooperate fully in the defense. If the City fails to promptly notify the Applicant of any Claim or if the City fails to cooperate fully in the defense, the Applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

Nothing in this condition shall obligate the City to defend any Claim and the City shall not be required to pay or perform any settlement arising from any such Claim not defended by the City, unless the City approves the settlement in writing. Nor shall the City be prohibited from independently defending any Claim, and if the City does decide to independently defend a Claim, the Applicant shall be responsible for City's attorneys' fees, expenses of litigation and costs for that independent defense, including the costs of preparing any required administrative record. Should the City decide to independently defend any Claim, the Applicant shall not be required to pay or perform any settlement arising from any such Claim unless the Applicant approves the settlement.

Signature of Applicant: _____

Dated: _____