

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT: #18-04

AGENDA ITEM: 4.1

FROM: Kim Espinosa,
Planning Manager

PLANNING COMMISSION
MEETING DATE: Feb. 21, 2018

PREPARED BY: Francisco Mendoza-Gonzalez,
Planner

SUBJECT: **Modification to Conditional Use Permit #1180**, initiated by Narkesh Kumar, on behalf of Promenade Center, Limited Partnership, property owner. This application involves a request to modify an existing beer and wine Alcoholic Beverage Control License to include the sale of liquor for on-site consumption for Turmeric Indian Cuisine, located within the Promenade Shopping Center at 731 E. Yosemite Avenue, Suite C. In addition, the applicant is requesting approval to serve alcohol outdoors within a fenced area with seating. The subject site is generally located at the northwest corner of Yosemite Avenue and Paulson Road, with a zoning classification of Planned Development (P-D) #48 and a General Plan designation of Neighborhood Commercial (CN). *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify

- 1) Environmental Review #18-05 (Categorical Exemption)
- 2) Modification to Conditional Use Permit #1180

SUMMARY

In 2013, the Planning Commission approved Conditional Use Permit #1180 allowing, the previously named, Rai Indian Cuisine to serve beer and wine for on-site consumption, secondary to their primary restaurant. The applicant is requesting approval to modify the existing Conditional Use Permit to include the sale of liquor. The 2,048-square-foot restaurant is located within the southwest corner of the Promenade Shopping Center at 731 E. Yosemite Avenue, Suite C (Attachment A). The subject site has a zoning classification of Planned Development (P-D) #48 with a General Plan designation of Neighborhood Commercial (CN). Approval of this Conditional Use Permit does not allow the applicant to convert their restaurant into a bar, lounge, or nightclub. City staff, including the Police Department, have reviewed this request and are recommending approval with conditions.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #18-05 (Categorical Exemption) and the modification to Conditional Use Permit #1180 (including the adoption of the modified Resolution at Attachment I), subject to the following additional conditions:

- 10) In addition to beer and wine, the restaurant shall now be allowed to sell liquor if they meet all applicable Alcoholic Beverage Control (ABC) requirements.
- 11) The outdoor seating/dining area shall be enclosed by a minimum 3-foot-tall wrought-iron fence. The fence shall delineate the outdoor seating area from the remainder of the shopping center. No alcoholic drinks shall be allowed outside the fenced area.
- 12) If a gate is installed, it shall remain unlocked during business hours. Entrance into the outdoor seating area shall be kept open at all times during hours of operation.
- 13) Signs shall be posted on the fence stating “No Alcohol Allowed Outside This Area.” The signs shall be a maximum of 1 square foot and shall be posted on each side of the outdoor dining area in an area visible to customers.
- 14) No temporary signs shall be attached to the wrought-iron fence. All temporary signs shall be approved and a “Temporary Sign Permit” shall be obtained prior to installation.
- 15) Any umbrellas placed in the outdoor seating area shall be of color that matches or compliments the building color, and shall not have any type of advertisement.
- 16) An employee shall monitor the outdoor seating area at all times when alcohol is being served.
- 17) Alcohol sales in the outdoor seating area shall end no later than 10:00 p.m. Alcohol sales within the restaurant shall end no later than 11:00 p.m., indifferent of the restaurant’s hours of operation.
- 18) This approval is for alcohol sales as an ancillary use to the primary restaurant only.
- 19) Request to operate as a nightclub, bar, or similar use shall require an additional review and approval from the Planning Commission.

PROJECT DESCRIPTION

Turmeric Indian Cuisine occupies approximately 2,048 square feet within the Promenade Shopping Center located at the southwest corner of Yosemite Avenue and Paulson Road (Attachment A). The restaurant is located within Building “D,” towards the northern end of the building (Attachment B). Their floor plan includes dining tables, a dining counter, a kitchen, two restrooms, and a cooler (Attachment C). The applicant is not requesting to make any modifications to the interior or exterior of the building with this application. The outdoor dining section is located in front of the main entrance within an existing fenced area that occupies approximately 300 square feet. The restaurant serves a variety of meals with a focus on Indian cuisine. The restaurant operates from 11:00 a.m. to 9:30 p.m., Monday through Saturday, and from 11:00 a.m. to 3:00 p.m. on Sundays.

The applicant is requesting approval to modify Conditional Use Permit #1180 to include the sale of liquor for on-site consumption (in addition to their current approval to sell beer and wine). Approval of this Conditional Use Permit does not allow the applicant to convert their establishment into a bar, lounge, or night club. The applicant has been in contact with the Department of Alcoholic Beverage Control (ABC) and their ABC license to sell liquor is pending approval of this Conditional Use Permit. Because the applicant is requesting to sell alcohol with a full menu for

on-site consumption, the project will not be reviewed for the overconcentration of alcohol sales within their census tract and will not require a Finding of Public Convenience or Necessity from the City Council.

Surrounding Zones and Land Uses (Attachment A):

| Surrounding Land | Existing Use of Land | City Zoning Designation | City General Plan Land Use Designation |
|-------------------------|--|--------------------------------|---|
| North | Residential (across the shopping center) | R-1-6 | Low Density (LD) Residential |
| South | Residential/Commercial Office (across Yosemite Avenue) | R-2/PD #26 | Low-Medium Density (LMD)/Commercial Office (CO) |
| East | Vacant Lot/Residential (across Paulson Road) | R-1-6 | Low Density (LD) Residential |
| West | St. Patrick's Church | R-1-6 | Low Density (LD) Residential |

BACKGROUND

The Planning Commission approved the Promenade Shopping Center in 2003. The subject site is located within Planned Development (P-D) #48 and has a General Plan designation of Neighborhood Commercial (CN). The shopping center was approved to have a mixture of uses with approximately 35,994 square feet of retail space, 24,015 square feet of office space, and 15,350 square feet of medical type uses. Restaurants serving alcoholic beverages within P-D #48 require Conditional Use Permit approval.

Over the past decade, several restaurants within the Promenade Shopping Center have obtained CUP approval to sell alcohol for on-site consumption such as: Strings Italian Café (Building D) and Wingstop (Building E). Thai Cuisine II (Building E) and Bobcat Diner (Building C) have approval to sell beer, wine, and liquor for on-site consumption. The applicant is requesting approval to modify their existing alcohol license to include the sale of liquor as an ancillary use to the restaurant. Beer and wine have been served at this site since early 2013. City staff, including the Police Department, have not received an excessive number of complaints from restaurants in the shopping center regarding public drunkenness, lewd behavior, or criminal activities.

FINDINGS/CONSIDERATIONS:

General Plan/Zoning Compliance and Policies Related to This Application

- A) The proposed project complies with the General Plan designation of Neighborhood Commercial (CN) and the zoning classification of Planned Development (P-D) #48 with approval of a Conditional Use Permit.

Merced Police Department

- B) Between February 2017 and February 2018, the Merced Police Department recorded 132 incidents within the shopping center. The table below shows the number of incidents and the number of cases within that area involving DUI's, public intoxication, assaults, MMC

violations, and narcotics violations (totaling 13 incidents). The number of incidents reported City-wide for the same time period was 80,162 (Attachment F). Based on the total number of calls within the City, the 96 calls to this area equals 0.16% of the overall crime within the City (Attachment G). As shown on the attached Crime Hot Spot Map for the City of Merced (Attachment E), crime rates in this area are considered low compared to the rest of the City and approval of this project should not overburden the Police Department with excessive calls related to alcohol.

Incidents and Cases Reported in Feb. 2017 – Feb. 2018

| Incident/Case Type | Number of Incidents |
|------------------------|---------------------|
| DUI | 1 |
| Public Intoxication | 1 |
| Disturbance (assaults) | 10 |
| MMC* | 1 |
| Narcotics violations | 0 |

*Municipal Code Violations regarding open containers, drinking in public, etc.

Planning staff consulted with the Merced Police Department regarding the sale of liquor at this location. The Police Department did not have any concerns with this request and is not requiring any conditions of approval not normally associated with alcohol sales for on-site consumption. Beer and wine have been sold at this location since 2013 (with a few changes in ownership), and the Police Department has not experienced any particular issues with the restaurant or their management of alcohol sales. Based on the information provided by the Police Department and the fact that alcohol sales currently exist in the area (Strings, Bobcat Diner, Thai Cuisine II, and Wingstop), staff does not anticipate that the approval of liquor sales at this location would adversely affect the economic and public welfare of the surrounding area.

Parking

- C) In 2016, the Site Plan Review Committee reviewed and approved a parking lot expansion at the Promenade Shopping Center to accommodate the parking requirements for adding new restaurants. With the approved parking lot expansion, the Promenade Shopping Center has adequate parking to serve this business and the other businesses within the shopping center.

Proximity to Residential Uses and Church

- D) The Zoning Ordinance does not establish a required distance for restaurants with alcohol sales from residential areas and churches. State law allows ABC to deny a license for projects located within 600 feet of schools, public playgrounds, and non-profit youth facilities. Generally, ABC will deny a license in the above situations when there is evidence that normal operation of the licensed premises will be contrary to public welfare and morals. Mere proximity by itself is not sufficient to deny a license. However, ABC will not license a new location within 100 feet of a residence unless the applicant can ensure that their operation will not interfere with the quiet enjoyment of the property by residents.

In this case, the residential uses across Yosemite Avenue and Paulson Road are approximately 200 to 300 feet away from the restaurant. The residential uses to the north are at least 300 feet away and the church is approximately 500 feet away from the restaurant. Since the sensitive uses are more than 100 feet away and due to the nature of the business, staff finds that there would be no significant impact to the area and the sale of liquor for on-site consumption would not interfere with the quiet enjoyment for the surrounding residents. However, to make the project more compatible with the surrounding neighborhoods, Condition #17 is being included to limit the hours of alcohol sales until 10:00 p.m. outdoors and 11:00 p.m. indoors, indifferent of the restaurant's hours of operation.

Environmental Clearance

- E) The Planning staff has conducted an environmental review (#18-05) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (Attachment H).

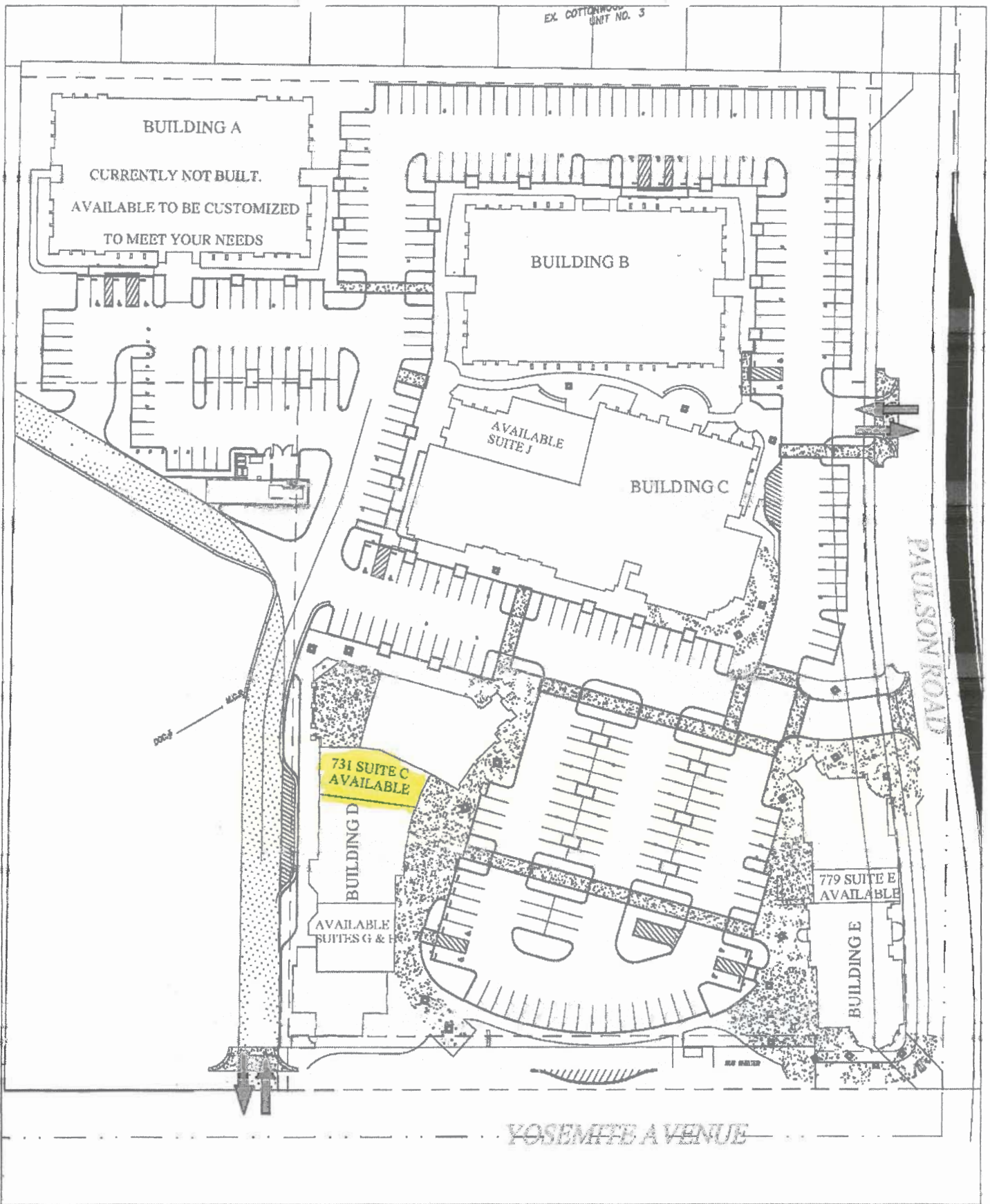
Attachments:

- A) Location Map
- B) Site Plan (*Bldg. A was converted into a parking lot)
- C) Floor Plan
- D) Photos of Existing Fence
- E) Crime Hot Spot Map (Feb. 2017 - Feb. 2018)
- F) Incident Map for the Entire City (Feb. 2017 - Feb. 2018)
- G) Incident Map within the Promenade Shopping Center
- H) Categorical Exemption
- I) Modified Planning Commission Resolution #3017 for CUP #1180



ATTACHMENT A

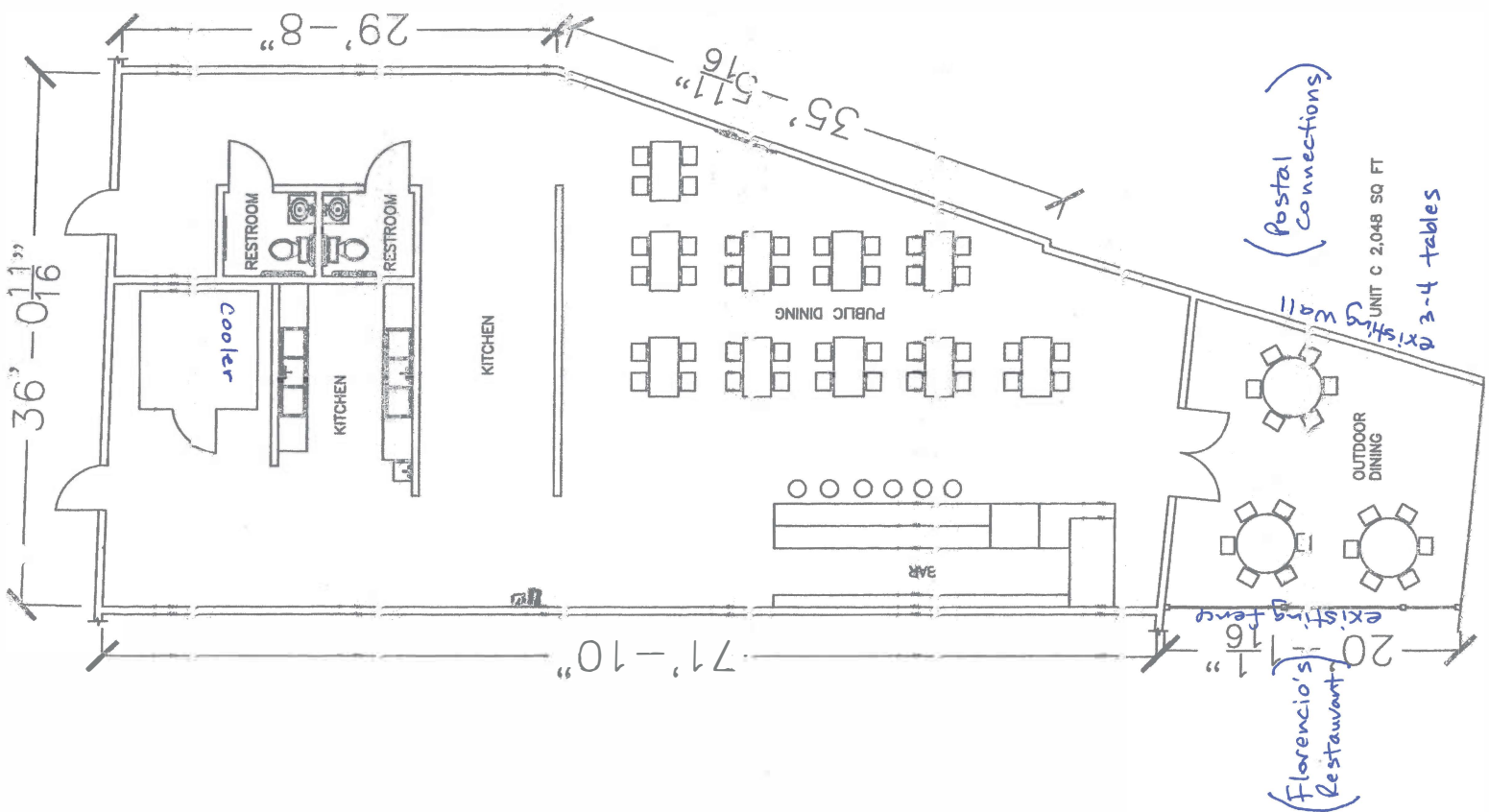
EX. COTTAGEWOOD UNIT NO. 3



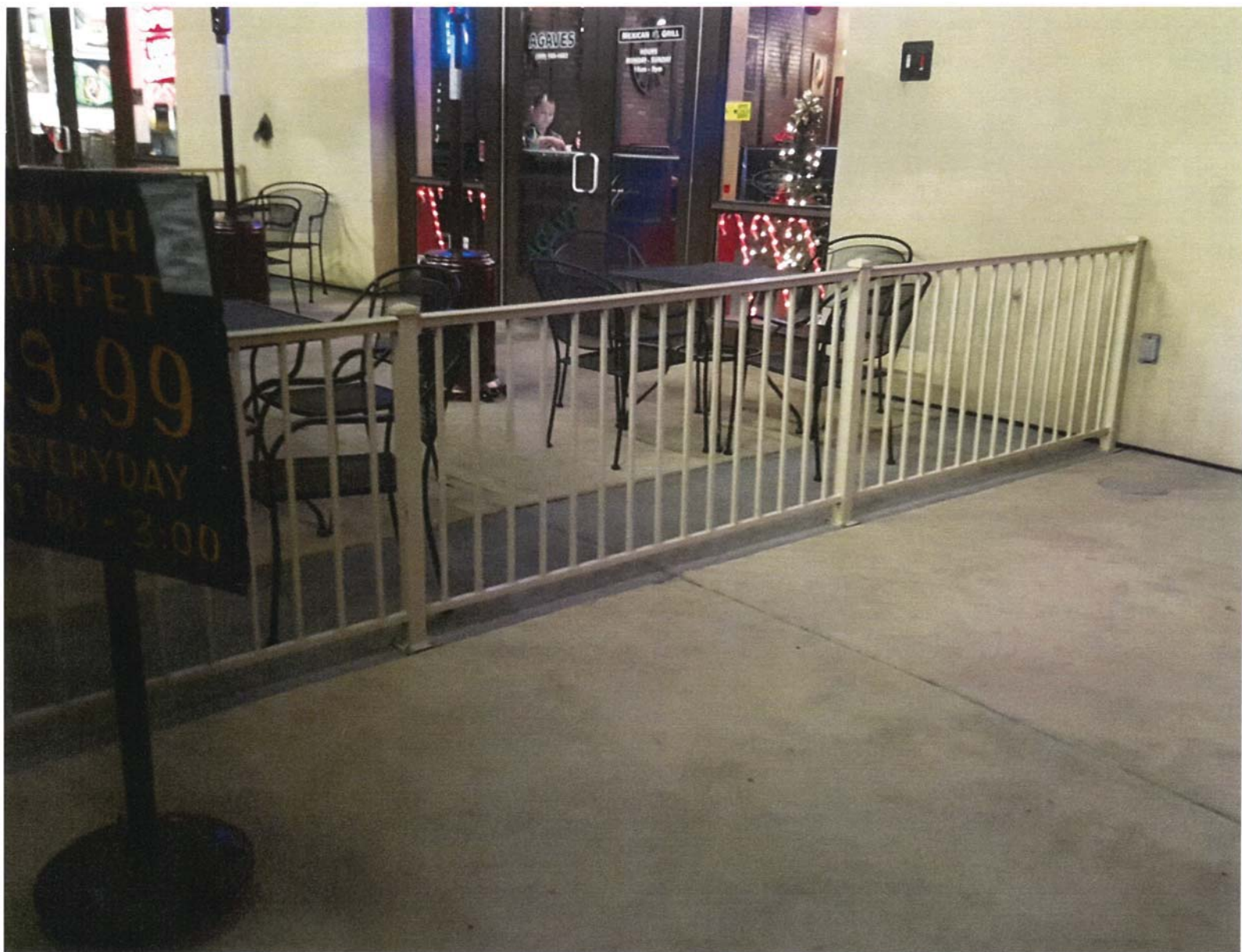
THE PROMENADE

719-779 E YOSEMITE AVENUE

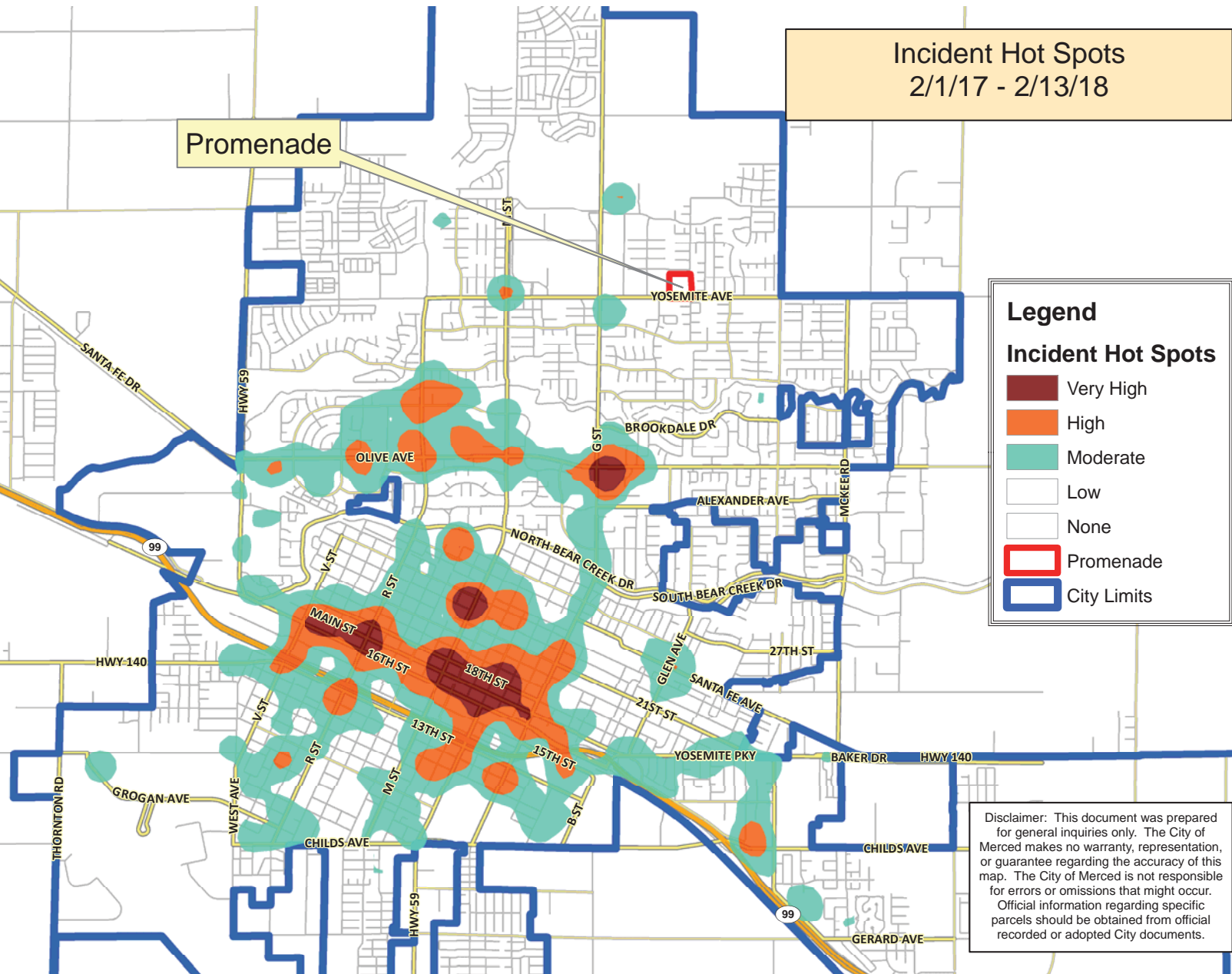
ATTACHMENT B



ATTACHMENT C






ATTACHMENT D



80,162 Incidents
2/1/17 - 2/13/18

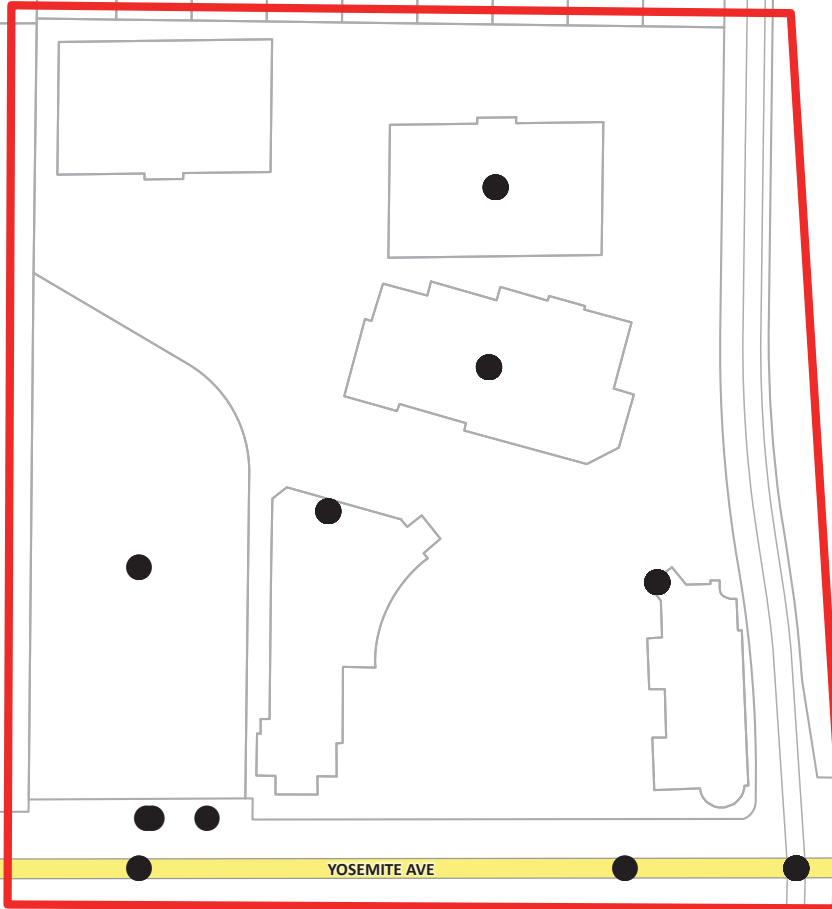
Legend

-  Promenade
-  80,162 Incidents
-  City Limits

Promenade

Disclaimer: This document was prepared for general inquiries only. The City of Merced makes no warranty, representation, or guarantee regarding the accuracy of this map. The City of Merced is not responsible for errors or omissions that might occur. Official information regarding specific parcels should be obtained from official recorded or adopted City documents.

Incidents within the Promenade 2/1/17 - 2/13/18



Legend

- 132 Incidents
- ▭ Promenade
- ▭ City Limits

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NOTICE OF EXEMPTION

To: _____ Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

From: (Public Agency)
City of Merced
678 West 18th St.
Merced, CA 95340

X County Clerk
County of Merced
2222 M Street
Merced, CA 95340

Project Title: Modification to CUP #1180 (Environmental Review #18-05)

Project Applicant: Turmeric Indian Cuisine

Project Location (Specific): 731 E. Yosemite Ave., Ste. C

APN: 231-180-004

Project Location - City: Merced

Project Location - County: Merced

Description of Nature, Purpose, and Beneficiaries of Project:

Name of Public Agency Approving Project: City of Merced

Name of Person or Agency Carrying Out Project: Turmeric Indian Cuisine

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- X Categorical Exemption. State Type and Section Number: 15301 (a)
- Statutory Exemptions. State Code Number: _____.
- General Rule (Sec. 15061 (b)(3))

Reasons why Project is Exempt: As defined under the above referenced Section, the proposed project consists of minor interior and exterior alterations only, which are considered to be exempt under the CEQA Guidelines per Section 15301 (a).

Lead Agency: City of Merced

Contact Person: Francisco Mendoza-Gonzalez **Area Code/Telephone:** (209) 385-6858

Signature:  **Date:** 01-22-2018 **Title:** Planner

X Signed by Lead Agency **Date Received for Filing at OPR:** _____
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

Amended by PC
on 2/21/2018.
See page 3.

**CITY OF MERCED
Planning Commission**

Resolution #3017

WHEREAS, the Merced City Planning Commission at its regular meeting of March 6, 2013, held a public hearing and considered **Conditional Use Permit #1180**, initiated by Davinder Rai, applicant for Pearson Scott, property owner. This application involves a request to allow beer and wine to be sold for on-site consumption within a restaurant (Indian Cuisine) at 731 E. Yosemite Avenue, Suite C, generally located at the northwest corner of Paulson Road and Yosemite Avenue within a Planned Development (P-D) #48 with a Neighborhood Commercial (C-N) designation; also known as Assessor's Parcel No. 231-180-004; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through D of Staff Report #13-06; and,

NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #13-02, and approve Conditional Use Permit #1180, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

AYES: Commissioners McCoy, Williams, Madayag, Amey, and
Chairperson Colby
NOES: None
ABSENT: None (two vacancies)
ABSTAIN: None

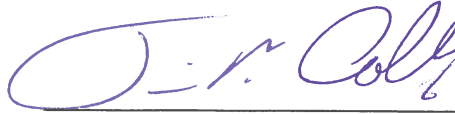
ATTACHMENT I

PLANNING COMMISSION RESOLUTION #3017

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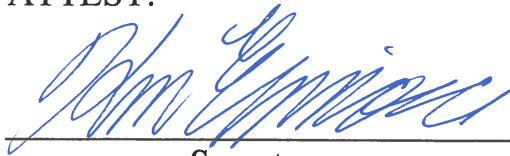
March 6, 2013 / February 21, 2018

Adopted this 6th day of March 2013



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

PLANNING COMMISSION RESOLUTION #3017

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March 6, 2013/ February 21, 2018

February 21, 2018: At their regularly scheduled meeting of February 21, 2018, the Merced City Planning Commission considered Modification to Conditional Use Permit#1180 and Environmental Review #18-05.

WHEREAS, the Merced City Planning Commission concurs with Findings A through E of Staff Report #18-04; and,

NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #18-05, and approve a Modification of Conditional Use Permit #1180 with the addition of ten (10) Conditions, numbers 10 through 19 in the Amended Conditions of Approval set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: Commissioner(s)

**Amended Conditions of Approval
Planning Commission Resolution #3017
Conditional Use Permit #1180**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) -- Attachment B of Staff Report #13-06, except as modified by the conditions.
2. All conditions contained in Resolution #1249-Amended (“Standard Conditional Use Permit Conditions”—except for Condition #16 which has been superseded by Code) shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
7. The City reserves the right to periodically review the area for potential problems. Should excessive calls for service or violation of these conditions of approval occur, the City may consider revocation of the Conditional Use Permit (CUP) after a public hearing.
8. This approval is subject to the business owner being in good standing with all laws of the State of California, including the Alcohol Beverage Control (ABC), the City of Merced, and other regulatory agencies.
9. The business shall operate as a “bona-fide” restaurant at all times. Per the Municipal Code, a bona-fide restaurant is required to serve a full-menu during all hours of operation.
10. In addition to beer and wine, the restaurant shall now be allowed to sell liquor if they meet all applicable Alcoholic Beverage Control (ABC) requirements.
11. The outdoor seating/dining area shall be enclosed by a minimum 3-foot-tall wrought-iron fence. The fence shall delineate the outdoor seating area from the remainder of the shopping center. No alcoholic drinks shall be allowed outside the fenced area.
12. If a gate is installed, it shall remain unlocked during business hours. Entrance into the outdoor seating area shall be kept open at all times during hours of operation.
13. Signs shall be posted on the fence stating “No Alcohol Allowed Outside This Area.” The signs shall be a maximum of 1 square foot and shall be posted on each side of the outdoor dining area in an area visible to customers.
14. No temporary signs shall be attached to the wrought-iron fence. All temporary signs shall be approved and a “Temporary Sign Permit” shall be obtained prior to installation.
15. Any umbrellas placed in the outdoor seating area shall be of color that matches or compliments the building color, and shall not have any type of advertisement.

16. An employee shall monitor the outdoor seating area at all times when alcohol is being served.
17. Alcohol sales in the outdoor seating area shall end no later than 10:00 p.m. Alcohol sales within the restaurant shall end no later than 11:00 p.m., indifferent of the restaurant's hours of operation.
18. This approval is for alcohol sales as an ancillary use to the primary restaurant only.
19. Request to operate as a nightclub, bar, or similar use shall require an additional review and approval from the Planning Commission.

n:shared:planning:PC Resolutions:CUP#1180 Exhibit A