

# PLANNING COMMISSION AGENDA

CHAIRPERSON:

Brett Taylor



VICE CHAIRPERSON:

Liz Wynn

COMMISSIONERS: Brett Taylor, Liz Wynn, Chris Gomez, Marvin Hansen, Sarrah Peariso

**MONDAY, AUGUST 13, 2018; 7:00 P.M., COUNCIL CHAMBERS, 707 W. ACEQUIA, VISALIA CA**

1. THE PLEDGE OF ALLEGIANCE –
2. CITIZEN'S COMMENTS – This is the time for citizens to comment on subject matters that are not on the agenda but are within the jurisdiction of the Visalia Planning Commission. The Commission requests that a 5-minute time limit be observed for comments. Please begin your comments by stating and spelling your name and city. Please note that issues raised under Citizen's Comments are informational only and the Commission will not take action at this time.
3. CHANGES OR COMMENTS TO THE AGENDA–
4. CONSENT CALENDAR - All items under the consent calendar are to be considered routine and will be enacted by one motion. For any discussion of an item on the consent calendar, it will be removed at the request of the Commission and made a part of the regular agenda.
  - Request to initiate a General Plan Air Quality Element Amendment (GPA), and Zoning Text Amendment (ZTA) to address revisions to the Indirect Source Review (ISR) Rule 9510 administered by the San Joaquin Valley Air Pollution Control District (SJVAPCD).
  - Time Extension for Conditional Use Permit No. 2007-17.
5. PUBLIC HEARING – Brandon Smith  
Tentative Parcel Map No. 2018-03: A request by Westgate Construction and Development, Inc. to subdivide a 17.49-acre parcel into two parcels to separate commercial and residential land uses on property containing Mixed Use Commercial (CMU) and Multi-Family Residential (R-M-2 and R-M-3) zoning designations. The project site is located on the northeast corner of Dinuba Boulevard (State Route 63) and Shannon Parkway (APN: 079-071-029). The project is Categorical Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15315, Categorical Exemption No. 2018-44.
6. PUBLIC HEARING – Brandon Smith  
Variance No. 2018-08: A request by San Joaquin Valley Homes to allow a variance to the minimum front and/or rear yard setbacks associated with three new single-family residences in the Pine River Ranch Estates Subdivision located within the R-1-5 (Single-Family Residential, 5,000 square foot minimum lot size) Zone. The sites are located at 2239 E. Delta Court, 2226 and 2227 E. Woodsville Court (APNs: 098-420-047, 050; 098-510-036). The project is Categorical Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15305, Categorical Exemption No. 2018-43.

7. PUBLIC HEARING – Andrew Chamberlain

Variance No. 2018-06: A request by United Signs to amend the sign program for the Country Club Plaza Shopping Center, to allow two monument signs for the Chevron gas station and convenience store in the Neighborhood Commercial (NC) zone. The site is located at 1330 N. Demaree Street (APN: 089-490-029). The project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15305, Categorical Exemption No. 2018-38.

8. DIRECTOR'S REPORT/ PLANNING COMMISSION DISCUSSION-

- Update on the Mobile Food Truck Ordinance
- Update on the Micro-brewery/winery Ordinance
- Update on Assistant/Associate Planner Position

The Planning Commission meeting may end no later than 11:00 P.M. Any unfinished business may be continued to a future date and time to be determined by the Commission at this meeting. The Planning Commission routinely visits the project sites listed on the agenda.

For Hearing Impaired – Call (559) 713-4900 (TTY) 48-hours in advance of the scheduled meeting time to request signing services.

Any written materials relating to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the City Office, 315 E. Acequia Visalia, CA 93291, during normal business hours.

**APPEAL PROCEDURE**

**THE LAST DAY TO FILE AN APPEAL IS THURSDAY, AUGUST 23, 2018 BEFORE 5 PM**

According to the City of Visalia Zoning Ordinance Section 17.02.145 and Subdivision Ordinance Section 16.04.040, an appeal to the City Council may be submitted within ten days following the date of a decision by the Planning Commission. An appeal form with applicable fees shall be filed with the City Clerk at 220 N. Santa Fe, Visalia, CA 93292. The appeal shall specify errors or abuses of discretion by the Planning Commission, or decisions not supported by the evidence in the record. The appeal form can be found on the city's website [www.visalia.city](http://www.visalia.city) or from the City Clerk.

**THE NEXT REGULAR MEETING WILL BE HELD ON MONDAY, AUGUST 27, 2018**



# City of Visalia



**To:** Planning Commission

**From:** Paul Scheibel, Principal Planner (713-4369)

**Date:** August 13, 2018

**Re:** Request to initiate a General Plan Air Quality Element Amendment (GPA), and Zoning Text Amendment (ZTA) to address revisions to the Indirect Source Review (ISR) Rule 9510 administered by the San Joaquin Valley Air Pollution Control District (SJVAPCD), Citywide

## **RECOMMENDATION**

Staff recommends that the Planning Commission authorize staff to initiate a GPA and ZTA to address revisions to the Indirect Source Review (ISR) Rule 9510, which is an air quality regulation administered by the San Joaquin Valley Air Pollution Control District (SJVAPCD). The recommended action to initiate the amendments is made pursuant to the provisions of Zoning Ordinance Section 17.44.020.B. and 17.54.020.B. that allows the Planning Commission to initiate General Plan and Zoning amendments.

## **DISCUSSION**

The recommendation to amend the General Plan Air Quality Element and Zoning Code is being made to align the City's relevant policy documents with recent changes to Rule 9510 that were adopted by the SJVAPCD in December 2017. Rule 9510 was originally adopted by the SJVAPCD in December 2005. Rule 9510 set limits on various project types mobile source emissions (PM10 and nitrogen oxides), and it set up an in-lieu fee process to satisfy mobile emissions source reduction standards.

When Rule 9510 was first adopted by the SJVAPCD, it applied only to discretionary projects, such as CUPs, Tentative Subdivision Maps, and General Plan Land Use and Zoning Map amendments. Consequently, larger sized projects such as industrial warehouses that, in the City of Visalia, are permitted by right (Ministerial actions), were previously exempt from Rule 9510. The recent change makes Rule 9510 applicable to all projects that meet a size threshold, regardless whether the project approval is discretionary or ministerial.

The proposed GPA and ZTA updates will acknowledge that ministerial projects exceeding certain size thresholds are now subject to Rule 9510. The amendments will set forth the City's procedures in applying the revised Rule 9510 provisions. Finally, the action will include an addendum to the General Plan Environmental Impact Report (GP EIR) that concludes the GP EIR is consistent with the Rule 9510 revisions, and that ministerial projects that may exceed the new size thresholds are still otherwise categorically exempt from CEQA review. The benefit of these amendments will be to preserve the City's ability to grant ministerial approvals for larger projects while exempting them from further environmental review under CEQA Guidelines section 15268 (Ministerial Projects).

## **ATTACHMENTS**

- Zoning Ordinance Chapter 17.44 and 17.54
- Amended Rule 9510, December 2017

- **Chapter 17.44**

## **ZONING AMENDMENTS**

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### **Sections:**

- 17.44.010 Purpose.**
- 17.44.020 Initiation.**
- 17.44.030 Application procedures.**
- 17.44.040 Public hearing—Notice.**
- 17.44.050 Investigation and report.**
- 17.44.060 Hearing.**
- 17.44.070 Action of city planning commission.**
- 17.44.090 Action of city council.**
- 17.44.100 Change of zoning map.**
- 17.44.110 New application.**
- 17.44.120 Report by city planner.**

### **17.44.010 Purpose.**

As a general plan for Visalia is put into effect, there will be a need for changes in zoning boundaries and other regulations of this title. As the general plan is reviewed and revised periodically, other changes in the regulations of this title may be warranted. Such amendments shall be made in accordance with the procedure prescribed in this chapter.

### **17.44.020 Initiation.**

A. A change in the boundaries of any zone may be initiated by the owner of the property within the area for which a change of zone is proposed or by his authorized agent. If the area for which a change of zone is proposed is in more than one ownership, all of the property owners or their authorized agents shall join in filing the application, unless included by planning commission resolution of intention.

B. A change in boundaries of any zone, or a change in a zone regulation, off-street parking or loading facilities requirements, general provision, exception or other provision may be initiated by the city planning commission or the city council in the form of a request to the commission that it consider a proposed change; provided, that in either case the procedure prescribed in Sections 17.44.040 and 17.44.090 shall be followed.



**17.44.030 Application procedures.**

A. A property owner or his authorized agent may file an application with the city planning commission for a change in zoning boundaries on a form prescribed by the commission and that said application shall include the following data:

1. Name and address of the applicant;
2. Statement that the applicant is the owner of the property for which the change in zoning boundaries is proposed, the authorized agent of the owner, or is or will be the plaintiff in an action in eminent domain to acquire the property involved;
3. Address and legal description of the property;
4. The application shall be accompanied by such sketches or drawings as may be necessary to clearly show the applicant's proposal;
5. Additional information as required by the historic preservation advisory board.

B. The application shall be accompanied by a fee set by resolution of the city council sufficient to cover the cost of processing the application.

**17.44.040 Public hearing—Notice.**

The city planning commission shall hold at least one public hearing on each application for a change in zone boundaries and on each proposal for a change in zone boundaries or of a zone regulation, off-street parking or loading facilities requirements, general provisions, exception or other provision of this title initiated by the commission or the city council. Notice of the public hearing shall be given not less than ten days or more than thirty (30) days prior to the date of the hearing by publication in a newspaper of general circulation within the city, and by mailing notice of the time and place of the hearing to property owners within three hundred (300) feet of the boundaries of the area occupied or to be occupied by the use that is the subject of the hearing.

**17.44.050 Investigation and report.**

The city planning staff shall make an investigation of the application or the proposal and shall prepare a report thereon that shall be submitted to the city planning commission.

**17.44.060 Hearing.**

A. At the public hearing, the city planning commission shall review the application or the proposal and may receive pertinent evidence as to why or how the proposed change is necessary to achieve the objectives of the zoning ordinance prescribed in Section 17.02.020.

B. If the commission's recommendation is to change property from one zone designation to another, the commission may recommend that conditions be imposed so as not to create problems adverse to the public health, safety and general welfare of the city and its residents.

**17.44.070 Action of city planning commission.**

The city planning commission shall make a specific finding as to whether the change is required to achieve the objectives of the zoning ordinance prescribed in Section 17.02.020. The commission shall transmit a report to the city council recommending that the application be granted, conditionally approved, or denied or that the proposal be adopted or rejected, together with one copy of the application, resolution of the commission or request of the Council, the sketches or drawings submitted and all other data filed therewith, the report of the city engineer and the findings of the commission.

**17.44.080 [Reserved].**

**17.44.090 Action of city council.**

A. Upon receipt of the resolution or report of the city planning commission, the city council shall review the application or the proposal and shall consider the resolution or report of the commission and the report of the city planning staff.

B. The city council shall make a specific finding as to whether the change is required to achieve the objectives of the zoning ordinance prescribed in Section 17.02.020. If the council finds that the change is required, it shall enact an ordinance amending the zoning map or an ordinance amending the regulations of this title, whichever is appropriate. The city council may impose conditions on the change of zone for the property where it finds that said conditions must be imposed so as not to create problems inimical to the public health, safety and general welfare of the city and its residents. If conditions are imposed on a change of zone, said conditions shall run with the land and shall not automatically be removed by a subsequent reclassification or change in ownership of the property. Said conditions may be removed only by the city council after recommendation by the planning commission. If the council finds that the change is not required, it shall deny the application or reject the proposal.

**17.44.100 Change of zoning map.**

A change in zone boundary shall be indicated on the zoning map.

**17.44.110 New application.**

Following the denial of an application for a change in a zone boundary, no application for the same or substantially the same change shall be filed within one year of the date of denial of the application.

**17.44.120 Report by city planner.**

On any amendment to the zoning code changing property from one zone classification to another, the city planner shall inform the planning commission and the city council of any conditions attached to previous zone changes as a result of action taken pursuant to Sections 17.44.060, 17.44.070 and 17.44.090.



## Chapter 17.54

### GENERAL PLAN AMENDMENTS

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#### Sections:

- 17.54.010 Purpose.**
- 17.54.020 Initiation.**
- 17.54.030 Application procedures.**
- 17.54.040 Public hearing—Notice.**
- 17.54.050 Investigation and report.**
- 17.54.060 Hearing.**
- 17.54.070 Action of city planning commission.**
- 17.54.080 Action of the city council.**

#### **17.54.010 Purpose.**

As the general plan for Visalia is implemented, there may be a need for amendments to land use boundaries and policies of the general plan. Such amendments shall be made in accordance with the procedure prescribed in this chapter.

#### **17.54.020 Initiation.**

A. An amendment to the land use boundaries of the general plan may be initiated by any interested person or the owners of the property within the area for which the amendment is proposed. The area of a proposed land use amendment and/or policy amendment may be expanded in scope by the planning commission in the resolution of intention.

B. An amendment to land use boundaries and/or policies may be initiated by the city planning commission or the city council by adoption of a resolution of intention.

#### **17.54.030 Application procedures.**

A. An application for an amendment shall be filed by the applicant with the city planning commission on a form prescribed by the commission. Said application shall include the following data:

1. Name and address of the applicant;

2. Statement that the applicant is the owner of the property for which a land use boundary amendment is proposed or the authorized agent of the owner. In the case of a policy amendment the statement shall indicate the interest of the applicant;
  3. Address and legal description of the subject property, if applicable;
  4. The application shall include material deemed necessary by the city planner to clearly show the applicant's proposal.
- B. The application shall be accompanied by a fee set by resolution of the city council to cover the cost of processing the application.

**17.54.040 Public hearing—Notice.**

Notice of the public hearing shall be given not less than ten days or more than thirty (30) days prior to the date of the hearing by publication in a newspaper of general circulation within the city, and by mailing notice of the time and place of the hearing to property owners within three hundred (300) feet of the boundaries of the area under consideration if an amendment to the land use element is under consideration.

**17.54.050 Investigation and report.**

The city planning staff shall make an investigation of the application or the proposal and shall prepare a report thereon that shall be submitted to the city planning commission.

**17.54.060 Hearing.**

At the public hearing, the city planning commission shall review the application or the proposal and may receive pertinent evidence regarding the proposed amendment.

**17.54.070 Action of city planning commission.**

Within forty-five (45) days following the public hearing, the city planning commission shall make a specific recommendation and shall transmit a report to the city council. The report shall include a resolution recommending either approval or denial of the proposed amendment, together with pertinent information and the report of the city planning staff.

**17.54.080 Action of the city council.**

- A. Upon receipt of the resolution and report of the city planning commission, the city council shall hold at least one public hearing with public notice as prescribed in Section 17.54.040. Following the noticed public hearing, the city council shall approve, deny or modify the city planning commission recommendation.
- B. If the element or amendment has been approved by the city planning commission, the city council shall not modify the recommendation until the proposed change or modification has been referred back to the city planning commission for a report and a copy of the report has been filed with the city council. Failure of the city planning commission to report within forty (40) days after the reference, or such longer period as may be designated by the city council shall be deemed to be approval of the proposed change or modification. It shall not be necessary for the city planning commission to hold a public hearing on such proposed change or modification.



C. The adoption of a general plan element, or amendment, shall be by resolution of the city council.

RULE 9510 INDIRECT SOURCE REVIEW (ISR) (Adopted December 15, 2005; Amended December 21, 2017, but not in effect until March 21, 2018)

1.0 Purpose

The purposes of this rule are to:

- 1.1 Fulfill the District's emission reduction commitments in the PM10 and Ozone Attainment Plans.
- 1.2 Achieve emission reductions from the construction and use of development projects through design features and on-site measures.
- 1.3 Provide a mechanism for reducing emissions from the construction of and use of development projects through off-site measures.

2.0 Applicability

- 2.1 Effective on and after March 1, 2006, this rule shall apply to any applicant that seeks to gain a final discretionary approval for a development project, or any portion thereof, which upon full build-out will include any one of the following:

- 2.1.1 50 residential units;
- 2.1.2 2,000 square feet of commercial space;
- 2.1.3 25,000 square feet of light industrial space;
- 2.1.4 100,000 square feet of heavy industrial space;
- 2.1.5 20,000 square feet of medical office space;
- 2.1.6 39,000 square feet of general office space;
- 2.1.7 9,000 square feet of educational space;
- 2.1.8 10,000 square feet of government space;
- 2.1.9 20,000 square feet of recreational space; or
- 2.1.10 9,000 square feet of space not identified above.

- 2.2 Except as specified in Section 2.3, this rule shall apply to any applicant that seeks to gain approval from a public agency for a large development project, which upon full build-out will include any one of the following:



- 2.2.1 250 residential units;
  - 2.2.2 10,000 square feet of commercial space;
  - 2.2.3 125,000 square feet of light industrial space;
  - 2.2.4 500,000 square feet of heavy industrial space;
  - 2.2.5 100,000 square feet of medical office space;
  - 2.2.6 195,000 square feet of general office space;
  - 2.2.7 45,000 square feet of educational space;
  - 2.2.8 50,000 square feet of government space;
  - 2.2.9 100,000 square feet of recreational space; or
  - 2.2.10 45,000 square feet of space not identified above.
- 2.3 Section 2.2 shall not apply if any of the following are true:
- 2.3.1 Final discretionary approval for the large development project has been received prior to March 1, 2006; or
  - 2.3.2 The large development project requires or required a discretionary approval and is subject to the rule under Section 2.1; or
  - 2.3.3 Prior to March 21, 2018, the applicant received project-level building permits, a conditional use permit, or similar approvals for the particular large development project; or
  - 2.3.4 The large development project qualifies as a Grandfathered Large Development Project.
- 2.4 Effective on and after March 1, 2006, this rule shall apply to any transportation or transit development project where construction exhaust emissions equal or exceed two (2.0) tons of NOx or two (2.0) tons of PM10.
- 2.5 Projects on Contiguous or Adjacent Property
- 2.5.1 Residential projects with contiguous or adjacent property under common ownership of a single entity in whole or in part, that is designated and zoned for the same development density and land use, regardless of the number of tract maps, and has the capability to accommodate more than fifty (50) residential units when determining applicability of the rule under Section 2.1, or more than 250 residential units when determining applicability of the rule under Section 2.2, are subject to this rule.

2.5.2 Nonresidential projects with contiguous or adjacent property under common ownership of a single entity in whole or in part, that is designated and zoned for the same development density and land use, and has the capability to accommodate development projects emitting more than two (2.0) tons per year of operational NOx or PM10 when determining applicability of the rule under Section 2.1, or more than ten (10.0) tons per year of operational NOx or PM10 when determining applicability of the rule under Section 2.2, are subject to this rule. Single parcels where the individual building pads are to be developed in phases must base emissions on the potential development of all pads when determining the applicability of this rule.

### 3.0 Definitions

- 3.1 APCO: as defined in Rule 1020 (Definitions).
- 3.2 APCO-Approved Model: any computer model that estimates construction, area source and/or operational emissions of NOx and PM10 from potential land uses, using the most recent approved version of relevant ARB emissions models and emission factors, and has been approved by the APCO and EPA.
- 3.3 Air Impact Assessment (AIA): the calculation of emissions generated by the project and the emission reductions required by the provisions set forth in this rule. The AIA must be based solely on the information provided to the APCO in the AIA application, and must include all information listed in Section 5.6, et seq.
- 3.4 Air Impact Assessment (AIA) Application: the aggregate of documentation supporting the development of an AIA. This includes, but is not limited to, the information listed in Section 5.0, et seq.
- 3.5 Air Resources Board (ARB or CARB): as defined in Rule 1020 (Definitions).
- 3.6 Applicant: any person or entity that undertakes a development project.
- 3.7 Area Source: any multiple non-mobile emissions sources such as water heaters, gas furnaces, fireplaces, wood stoves, landscape equipment, architectural coatings, consumer product, etc., that are individually small but can be significant when combined in large numbers.
- 3.8 Baseline Emissions: the unmitigated NOx or PM10 emissions as calculated by the APCO-approved model.
- 3.9 Construction: any excavation, grading, demolition, vehicle travel on paved or unpaved surfaces, or vehicle exhaust that occurs for the sole purpose of building a development project.
- 3.10 Construction Baseline: the sum of baseline NOx or exhaust PM10 for the duration



of construction activities for a project, or any phase thereof, in total tons.

- 3.11 Construction Emissions: any NO<sub>x</sub> or exhaust PM<sub>10</sub> emissions resulting from the use of internal combustion engines related to construction activity, which is under the control of the applicant through ownership, rental, lease agreements, or contract.
- 3.12 Contiguous or Adjacent Property: a property consisting of two or more parcels of land with a common point or boundary, or separated solely by a public roadway or other public right-of-way.
- 3.13 Development Project: any project, or portion thereof, that is subject to an approval by a public agency, and will ultimately result in:
  - the construction of a new building, facility, or structure; or
  - the reconstruction of a building, facility, or structure for the purpose of increasing capacity or activity.
- 3.14 Discretionary Approval: a decision by a public agency that requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular development project, as distinguished from situations where the public agency merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.
- 3.15 District: the San Joaquin Valley Unified Air Pollution Control District as defined in Rule 1020 (Definitions).
- 3.16 Emission Reduction Measure: an activity taken or conditions incorporated in a project to avoid, minimize, reduce, eliminate, or compensate emissions estimated to occur from new development projects.
  - 3.16.1 On-Site Emission Reduction Measure: any feature activity, device, or control technology of a project, which is incorporated into the design of that project or through other means, which will avoid, minimize, reduce or eliminate the project's emissions. All on-site emission reductions achieved beyond District or state requirements shall count towards the mitigated baseline. City, County and other public agency requirements may also be credited towards emission reductions.
  - 3.16.2 Off-Site Emission Reduction Measure: any feature, activity, or emission reduction project used, undertaken, or funded to compensate for a project's emission that is not part of the development project.
- 3.17 Grandfathered Large Development Project: a large development project that meets the following to the satisfaction of the APCO:
  - 3.17.1 The large development project must be identified by the applicant and be a particular and defined large development project meeting at least one of the land use categories in Section 2.2; and

- 3.17.2 The applicant provides written confirmation from the public agency responsible for project-level building permits, conditional use permits, or similar approvals, that the large development project identified under Section 3.17.1 has received a land-use entitlement and requires no discretionary approval prior to starting construction; and
- 3.17.3 Prior to March 21, 2018, and in reliance upon the land use entitlement, the applicant has entered into binding agreements or contractual obligations for the large development project identified under Section 3.17.1, which cannot be canceled or modified without substantial loss to the applicant, for designing, developing, or constructing the large development project.
- 3.18 Indirect Source: any facility, building, structure, or installation, or combination thereof, which attracts or generates mobile source activity that results in emissions of any pollutant, or precursor thereof, for which there is a state ambient standard, as specified in Section 1.1.
- 3.19 Land Use: any facility, building, structure, installation, activity, or combination thereof, and the purpose, for which it is arranged, designed, intended, constructed, erected, moved, altered or enlarged on, or for which it is or may be occupied or maintained. Land use can be identified in the following categories:
- 3.19.1 Commercial: any facility, building, structure, installation, activity or combination thereof, that offers goods and services for sale. This can include but is not limited to wholesale and retail stores, food establishments, hotels or motels, and movie theatres.
- 3.19.2 Educational: any facility, building, structure, installation, activity or combination thereof, whose purpose is to develop knowledge, skill, and character. This can include but is not limited to: schools, day care centers, libraries, and churches.
- 3.19.3 General Office: any facility, building, structure, installation, activity or combination thereof, where the affairs of a non-medical business are conducted.
- 3.19.4 Governmental: any facility, building, structure, installation, activity or combination thereof, where the affairs of an entity that exercises authority over a country, or any subdivision thereof, are carried on.
- 3.19.5 Industrial: any facility, building, structure, installation, activity or combination thereof that creates, collects, extracts, packages, modifies, and/or distributes goods.
- 3.19.5.1 Light Industrial: usually employs fewer than 500 persons, with an emphasis on activities other than manufacturing and typically

have minimal office space. Typical light industrial activities include: print plants, material testing labs, and assemblers of data processing equipment. Light Industrial tends to be free-standing.

- 3.19.5.2 Heavy Industrial: also categorized as manufacturing facilities. Heavy Industrial usually has a high number of employees per industrial plant.
- 3.19.6 Medical Office: any facility, building, structure, installation, activity or combination thereof, where the affairs of a business related to the science and art of diagnosing, treating, and preventing diseases are carried on.
- 3.19.7 Recreational: any facility, building, structure, installation, activity or combination thereof, where individuals may relax or refresh the body or the mind. This can include but is not limited to: parks, fitness clubs, and golf courses.
- 3.19.8 Residential: any facility, building, structure, installation, activity or combination thereof, which provides a living space for an individual or group of individuals.
- 3.20 Mitigation: synonym of on-site emission reduction measure. For the purposes of this rule, mitigation is all on-site emission reductions achieved beyond District or state requirements. City, County and other public agency requirements may be counted as mitigation, and credited towards emission reductions for the mitigated baseline.
- 3.21 Mitigated Baseline: the NO<sub>x</sub> or PM<sub>10</sub> emission generated by a project after on-site emission reduction measures have been applied.
- 3.22 Mobile Emissions: the NO<sub>x</sub> or PM<sub>10</sub> emissions generated by motorized vehicles.
- 3.23 Monitoring and Reporting Schedule (MRS): a form listing on-site emission reduction measures committed to by the applicant that are not enforced by another public agency along with the implementation schedule and enforcement mechanism for each measure. The Construction Equipment Schedule constitutes a MRS for the construction phase of a development project. The format of the MRS shall be provided by the District.
- 3.24 NO<sub>x</sub>: any oxides of nitrogen.
- 3.25 Off-Site Emission Reduction Fee (Off-Site Fee): a fee to be paid by the applicant to the District for any emission reductions required by the rule that are not achieved through on-site emission reduction measures. Off-Site Fees shall only apply to off-site emission reductions required, and shall only be used for funding off-site emission reduction projects.

- 3.26 Off-Site Emission Reduction Fee Deferral Schedule (FDS): a payment schedule requested by the applicant and approved by the District for Off-Site Emission Reduction Fees that ensures contemporaneous off-site emission reductions for the development project. Fee payment shall be made prior to the issuance of a building permit. The District shall provide the FDS format.
- 3.27 On-Site Emission Reduction Checklist (On-Site Checklist): the list provided by the District that identifies potential on-site emission reduction measures. Project applicants must identify those measures that will be implemented and those that will not. There is no minimum required to be selected for implementation.
- 3.28 Operational Baseline: the baseline NO<sub>x</sub> or PM<sub>10</sub> emissions, including area source and mobile emissions, calculated by the APCO-approved model, for the first year of buildout for that project, or any phase thereof, in tons per year.
- 3.29 Operational Emissions: for the purposes of this rule, the combination of area and mobile emissions associated with an indirect source.
- 3.30 Phase: a defined portion or stage of a development project.
- 3.31 PM<sub>10</sub> (or PM-10): as defined in Rule 1020 (Definitions).
- 3.32 Public Agency: any federal, state, local, or special agency that exercises discretionary powers on development activities within the San Joaquin Valley Air Basin.
- 3.33 San Joaquin Valley Air Basin (SJVAB): as defined in Rule 1020 (Definitions).
- 3.34 Transit Development Project: any project solely intended to create a passenger transportation service, local, metropolitan or regional in scope that is available to any person who pays a prescribed fare. Examples of transit development projects include: transportation by bus, rail, or other conveyance, either publicly or privately owned, which is provided to the public or specialty service on a regular or continuing basis. Also known as “mass transit,” “mass transportation,” or “public transportation.”
- 3.35 Transportation Development Project: any project solely intended to create a new paved surface that is used for the transportation of motor vehicles, or any structural support thereof. Examples of transportation development projects include: streets, highways and any related ramps, freeways and any related ramps, and bridges. This does not include development projects where traffic surfaces are a portion of the project, but not the main land-use.
- 3.36 Vehicle Trip: a trip by a single vehicle regardless of the number of persons in the vehicle, which is one way starting at one point and ending at another. A ‘round trip’ is counted as two separate trips.



#### 4.0 Exemptions

- 4.1 Transportation development projects shall be exempt from the requirements in Sections 6.2 and 7.1.2.
- 4.2 Transit development projects shall be exempt from the requirements in Sections 6.2 and 7.1.2.
- 4.3 Development projects that have a mitigated baseline below two (2.0) tons per year of NO<sub>x</sub> and two (2.0) tons per year of PM<sub>10</sub> shall be exempt from the requirements in Sections 6.0 and 7.0.
- 4.4 The following shall be exempt from the requirements of this rule:
  - 4.4.1 Reconstruction of any development project that is damaged or destroyed, or is retrofitted solely for seismic safety, and is rebuilt to essentially the same use and intensity.
  - 4.4.2 Transportation development projects that consist solely of:
    - 4.4.2.1 A modification of existing roads subject to District Rule 8061 that is not intended to increase single occupancy vehicle capacity, or,
    - 4.4.2.2 Transportation control measures included in a District air quality attainment plan.
  - 4.4.3 A development project on a facility whose primary functions are subject to Rule 2201 (New and Modified Stationary Source Review Rule) or Rule 2010 (Permits Required), including but not limited to the following industries:
    - 4.4.3.1 Aggregate Mining or Processing;
    - 4.4.3.2 Almond Hulling, Canning Operations, Food Manufacturing, Grain Processing and Storage, Vegetable Oil Manufacturing, and Wineries;
    - 4.4.3.3 Animal Food Manufacturing;
    - 4.4.3.4 Confined Animal Facilities;
    - 4.4.3.5 Coatings and Graphic Arts;
    - 4.4.3.6 Cotton Ginning Facilities;
    - 4.4.3.7 Energy Production Plants;
    - 4.4.3.8 Ethanol Manufacturing;

- 4.4.3.9 Gas Processing and Production, Oil Exploration, Production, Processing, and Refining;
- 4.4.3.10 Glass Plants;
- 4.4.3.11 Solid Waste Landfills;
- 4.4.3.12 Petroleum Product Transportation and Marketing Facilities.

## 5.0 Application Requirements

Any applicant subject to this rule shall submit an Air Impact Assessment (AIA) application no later than applying for a final discretionary approval with the public agency. Nothing in this rule shall preclude an applicant from submitting an AIA application prior to filing an application for a final discretionary approval with the public agency. It is preferable for the applicant to submit an AIA application as early as possible in the process for that final discretionary approval.

Any applicant for a large development project subject to this rule under Section 2.2 shall submit an AIA application no later than applying for, or otherwise seeking to gain, approval from a public agency for the project. An applicant for a large development project subject to this rule under Section 2.2 who has applied for, or otherwise sought to gain, approval from a public agency for the project prior to March 21, 2018 shall submit an AIA application prior to April 20, 2018.

The AIA application shall be submitted on a form provided by the District and shall contain the following information:

- 5.1 Applicant name and address;
- 5.2 Detailed project description including, but not limited to:
  - 5.2.1 Site Size;
  - 5.2.2 Site Plans;
  - 5.2.3 Proposed Project Schedule;
  - 5.2.4 Associated Project;
  - 5.2.5 If residential, the number and type of dwelling units;
  - 5.2.6 If commercial, the type, square footage and loading facilities;
  - 5.2.7 If industrial, the type, estimated employment per shift, and loading facilities;
  - 5.2.8 Amount of off-street parking provided for non-residential projects;

- 5.3 On-site Emission Reduction Checklist (On-Site Checklist): The District shall provide an On-Site Checklist that includes quantifiable on-site measures that reduce operational NOx and/or PM10 emissions.
- 5.3.1 The applicant shall identify measures voluntarily selected and how those measures will be enforced. On-Site measures must be fully enforceable through permit conditions, development agreements, or other legally binding instrument entered into by the applicant and the public agency; or, if the measure is not a requirement by another public agency, by a MRS contract with the District. Enforcement mechanisms can include:
- 5.3.1.1 Applicable local ordinance or section of a regulation that requires the measure, if any,
- 5.3.1.2 A District approved MRS, as identified in Section 5.4 below.
- 5.3.2 The applicant shall also include justification for those measures not selected.
- 5.3.3 All selected on-site measures, regardless of enforcement mechanism, shall count towards on-site emission reductions.
- 5.4 Monitoring and Reporting Schedule (MRS): The District shall provide a standardized MRS format. The applicant shall include in the AIA application a completed proposed MRS for on-site emission reduction measures selected that are not subject to other public agency enforcement, and the timeline for submittal of the construction equipment schedule. A proposed MRS shall outline how the measures will be implemented and enforced, and will include, at minimum, the following:
- 5.4.1 A list of on-site emission reduction measures included;
- 5.4.2 Standards for determining compliance, such as funding, record keeping, reporting, installation, and/or contracting;
- 5.4.3 A reporting schedule;
- 5.4.4 A monitoring schedule;
- 5.4.5 Identification of the responsible entity for implementation;
- 5.4.6 Provisions for failure to comply;
- 5.4.7 Applicants proposing on-site emission reduction measures that require ongoing funding, shall provide evidence in the proposed MRS of continued funding, including, but not limited to:

- 5.4.7.1 Bonds; or
  - 5.4.7.2 Community Service Districts; or
  - 5.4.7.3 Contracts.
- 5.4.8 The schedule for submitting a construction equipment schedule.
- 5.5 Off-Site Fee Deferral Schedule (FDS): The District shall provide a standardized Fee Deferral Schedule form. The payment schedule must provide assurance that reductions from off-site emission reduction projects can be obtained reasonably contemporaneous with emissions increases associated with the project and shall, at minimum, include the following:
  - 5.5.1 Identification of the person or entity responsible for payment;
  - 5.5.2 Billing address;
  - 5.5.3 Total required off-site operational emissions for the development project and any phase thereof;
  - 5.5.4 Total required off-site construction emissions for the development project and any phase thereof;
  - 5.5.5 Year of build-out, and any phase thereof;
  - 5.5.6 Any applicable milestones;
  - 5.5.7 Payment schedule not to exceed or go beyond the issuance of a building permit. For development projects with multiple phases, the payment schedule shall connect fee deadlines for off-site emission reductions required by each phase prior to the issuance of building permits for those phases.
  - 5.5.8 The cost of reductions corresponding to the payment schedule;
  - 5.5.9 Applicable project termination and delay clauses; and
  - 5.5.10 Provisions for failure to comply.
- 5.6 Air Impact Assessment (AIA): An AIA shall be produced for the project from the project specific information identified in the AIA application. An AIA may be produced by or for the applicant. If an AIA is not provided by the applicant, the District shall perform the AIA during the AIA application review period. The AIA shall meet the following requirements:



- 5.6.1 The analysis of the proposed project shall be conducted according to the information provided in the application;
- 5.6.2 The analysis shall employ an APCO-approved model or calculator and include detailed documentation and reasons for all changes to the default input values;
- 5.6.3 If the AIA is conducted by or for the applicant, a hard copy and an electronic copy of all model runs conducted for the project and each phase thereof, shall be submitted;
- 5.6.4 The applicant shall include any other information and documentation that supports the calculation of emissions and emissions reductions;
- 5.6.5 The AIA shall quantify construction and operational NOx and PM10 emissions associated with the project. This shall include the estimated construction and operational baseline emissions, and the mitigated emissions for each applicable pollutant for the development project, or each phase thereof;
- 5.6.6 The AIA shall quantify the Off-Site Fee, if applicable.

## 6.0 General Mitigation Requirements

### 6.1 Construction Equipment Emissions

- 6.1.1 The exhaust emissions for construction equipment greater than fifty (50) horsepower used or associated with the development project shall be reduced by the following amounts from the statewide average as estimated by the ARB:
  - 6.1.1.1 20% of the total NOx emissions, and
  - 6.1.1.2 45% of the total PM10 exhausts emissions.
- 6.1.2 An applicant may reduce construction emissions on-site by using less-polluting construction equipment, which can be achieved by utilizing add-on controls, cleaner fuels, or newer lower emitting equipment.

### 6.2 Operational Emissions

#### 6.2.1 NOx Emissions

Applicants shall reduce 33.3%, of the project's operational baseline NOx emissions over a period of ten years as quantified in the approved AIA as specified in Section 5.6.

6.2.2 PM10 Emissions

Applicants shall reduce of 50% of the project's operational baseline PM10 emissions over a period of ten years as quantified in the approved AIA as specified in Section 5.6.

6.3 The requirements listed in Sections 6.1 and 6.2 above can be met through any combination of on-site emission reduction measures or off-site fees.

7.0 Off-site Emission Reduction Fee (Off-Site Fee) Calculations and Fee Schedules

7.1 Off-site Fee Calculations

7.1.1 Construction Activities

7.1.1.1 NOx Emissions

The applicant shall pay to the District a monetary sum necessary to offset the required construction NOx emissions not reduced on-site. The off-site fee shall be calculated as follows:

$$CN\ OF = \sum_{i=1}^n [NACE_i - (0.8 \times NSEE_i)] \times CNR_i$$

Where,

CN OF = Construction NOx Off-Site Fee, in dollars

i = each phase

n = last phase

NACE = Actual Estimated Equipment NOx Emissions, as documented in the APCO approved Air Impact Assessment application, in total tons

NSEE = Statewide Average Equipment NOx Emissions, as calculated by the APCO, in total tons

CNR = Cost of NOx Reductions identified in Section 7.2.1 below, in dollars per ton. The cost of emissions reductions, in dollars per ton, shall be based on the applicable rate at the time the invoice is issued.

7.1.1.2 PM10 Emissions

The applicant shall pay a monetary sum necessary to offset the required construction PM10 exhaust emissions not reduced on-

site. The off-site fee shall be calculated as follows:

$$CPM\ OF = \sum_{i=1}^n [PMACE_i - (0.55 \times PSEE_i)] \times CPR_i$$

Where,

CPM OF = Construction PM10 Off-Site Fee, in dollars

i = each phase

n = last phase

PMACE = Actual Estimated Equipment PM10 Emissions, as documented in the APCO approved AIA application, in total tons

PSEE = Statewide average Equipment PM10 Emissions, as calculated by the APCO, in total tons

CPR = Cost of PM10 Reductions identified in Section 7.2.2 below, in dollars per ton. The cost of emissions reductions, in dollars per ton, shall be based on the applicable rate at the time the invoice is issued.

## 7.1.2 Operational and Area Source Activities

### 7.1.2.1 NOx Emissions

The applicant shall pay a monetary sum necessary to offset the excess NOx emissions not reduced on-site. The off-site fee shall be calculated as follows:

$$NOx\ OF = \sum_{i=1}^n \left[ \left( \frac{NEB_i \times 7.5}{3} \right) - (NEB_i \times 7.5 \times NAPOR_i) \right] \times CNR_i$$

Where,

NOx OF = Operational NOx Off-Site Fee, in dollars

i = each phase

n = last phase

NEB = Estimated Baseline Emissions, of Operational NOx, as documented in the APCO approved AIA application, in tons per year

NAPOR = NOx Actual Percent of On-Site Reductions, as documented in the APCO approved air impact assessment application, as a fraction of one, calculated as (NEB-NOx

Mitigated Baseline)/NEB

CNR = Cost of NOx Reductions identified in Section 7.2.1 below, in dollars per ton. The cost of emissions reductions, in dollars per ton, shall be based on the applicable rate at the time the invoice is issued.

#### 7.1.2.2 PM10 Emissions

The applicant shall pay a monetary sum necessary to offset the excess PM10 emissions not reduced on-site for a period of ten years. The off-site fee shall be calculated as follows:

$$PM10OF = \sum_{i=1}^n [(PMMB - 0.5PEB_i)(10)] \times CPR_i$$

Where,

PM10 OF = Operational PM Off-Site Fee, in dollars

i = each phase

n = last phase

PEB = Estimated Baseline Emissions, of Operational PM10, as documented in the APCO approved AIA application, in tons per year

PMMB = Mitigated Baseline Emissions, as documented in the APCO approved AIA application, in tons per year

CPR = Cost of PM10 Reductions, identified in Section 7.2.2 below, in dollars per ton. The cost of emissions reductions, in dollars per ton, shall be based on the applicable rate at the time the invoice is issued.

## 7.2 Fee Schedules

### 7.2.1 The costs of NOx reductions are as follows:

Year	Cost of NOx Reductions (\$/ton)
2006	\$4,650.00
2007	\$7,100.00
2008 and beyond	\$9,350.00



7.2.2 The costs of PM10 reductions are as follows:

Year	Cost of PM10 Reductions (\$/ton)
2006	\$2,907.00
2007	\$5,594.00
2008 and beyond	\$9,011.00

7.3 The applicant shall pay the Off-Site Fees in full by the invoice due date or prior to generating emissions associated with the project or any phase thereof, whichever occurs first.

7.4 The applicant shall receive credit for any off-site emission reduction measures that have been completed and/or paid for, prior to December 15, 2005, if the following conditions have been met:

7.4.1 The prior off-site emission reduction measures were part of an air quality mitigation agreement with the APCO; or

7.4.2 The applicant demonstrates to the satisfaction of the APCO that the off-site emission reduction measures result in real, enforceable, and surplus reductions in emissions.

7.5 Refund: If a project is terminated or is cancelled, the building permit or use permit expires, is cancelled, or is voided, no construction has taken place, and the use has never occupied the site, the applicant is entitled to a refund of the unexpended Off-Site fees paid less any administrative costs incurred by the APCO. The applicant must provide a written request for the refund, with proof of the project termination, within thirty (30) calendar days of the termination. Proof of project termination can include a confirmation from a local agency of permit cancellation.

7.6 The APCO may adjust the cost of reductions according to the following process:

7.6.1 An Analysis shall be performed that details:

7.6.1.1 The cost effectiveness of projects funded to date;

7.6.1.2 The rule effectiveness of achieving the required emission reductions to date;

7.6.1.3 The availability of off-site emission reduction projects;

7.6.1.4 The cost effectiveness of those projects.

7.6.2 The APCO shall provide a draft revised cost effectiveness based on the analysis.

7.6.3 The process shall include at least one public workshop.

## 8.0 Administrative Process

8.1 Completeness of the AIA application: The APCO shall determine whether the application is complete and contains the necessary information no later than ten (10) calendar days after receipt of the application, or after such longer time as agreed to by both the applicant and the APCO.

8.1.1 Should the application be deemed incomplete, the APCO shall notify the applicant in writing of the decision and shall specify the additional information required. Resubmittal of any portion of the application begins a new ten (10) day calendar period for the determination of completeness by the APCO.

8.1.2 Completeness of an application or resubmitted application shall be evaluated on the basis of the information requirements set forth in the District Rules and Regulations as they exist on the date on which the application or resubmitted application is received.

8.1.3 The APCO shall notify the applicant in writing that the application is deemed complete.

8.2 Public Agency Review of the proposed project: The APCO shall forward a copy of the AIA application, including the MRS (if applicable) to the relevant public agencies for review. The public agencies may review and comment at any time on the provisions of the MRS. Comments received by the APCO shall be forwarded to the applicant. The proposed MRS may be modified, if necessary, based on the input from the public agency. If any changes result from their comments, the APCO shall make the appropriate changes and provide the applicant a revised Off- Site Fee, if applicable. No section or provision within this rule requires action on the part of the public agency.

8.3 APCO Evaluation of the AIA Application: The AIA application shall be evaluated for content.

8.3.1 If the applicant submits an AIA, the APCO will evaluate the modeling inputs and calculations.

8.3.2 If the applicant does not submit an AIA, the APCO will complete an AIA from the information contained in the AIA application.

8.3.3 The APCO may, during the evaluation of the application, request

clarification, amplification, and any correction as needed, or otherwise supplement the information submitted in the application. Any request for such information shall not count towards the time the APCO has to provide notice of approval or disapproval. The clock shall resume once the APCO has received the requested information.

- 8.4 AIA Approval: The APCO shall notify the applicant in writing of its decision regarding the AIA application and its contents within thirty (30) calendar days after determination of an application as complete and provide the following in writing to the applicant, the public agency, all interested parties as identified by the developer, and make available to the public.
- 8.4.1 APCO approval determination of the AIA application;
  - 8.4.2 The required emission reductions;
  - 8.4.3 The amount of on-site emission reduction achieved;
  - 8.4.4 The amount of off-site emission reduction required, if applicable;
  - 8.4.5 The required Off-Site Fee if applicable;
  - 8.4.6 A statement of tentative rule compliance;
  - 8.4.7 A copy of the final MRS, if applicable; and
  - 8.4.8 An approved FDS, if applicable.
- 8.5 Off-Site Fee: After the APCO approves the AIA application and its contents; the APCO shall provide the applicant with an estimate for the projected off-site fees, if applicable. The applicant shall pay the off-site fee in accordance with Section 7.3.
- 8.6 Fee Deferral Schedule: In the event that the applicant had not previously submitted FDS in the AIA application, but desires one, the applicant shall ensure that the proposed FDS is submitted to the APCO no later than fifteen (15) calendar days after receipt of the AIA Approval. The District shall have fifteen (15) calendar days to approve the FDS request.
- 8.7 MRS Compliance: After the APCO approves the AIA application and its contents; the APCO shall enact the MRS contract, if applicable. The applicant is responsible for implementation and/or maintenance of those measures identified within the MRS. Upon completion of Monitoring and Reporting, the District shall provide to the applicant, the public agency, and make available to the public, an MRS Compliance letter.
- 8.7.1 Operational On-Site Measures: On-site emission reduction measures that are active operational measures, such as providing a service, must be

implemented for 10 years after buildout of the project, if applicable.

8.7.2 Construction Equipment Schedule: The construction equipment schedule shall be submitted to the District if identified in the MRS prior to the start of construction, but not to exceed the issuance of a grading permit, if applicable.

8.8 In the event the applicant significantly changes the AIA application or any portion thereof during the Administrative Process, the APCO shall re-start the evaluation process pursuant to Section 8.3.

## 9.0 Changes to the Project

### 9.1 Changes Proposed By The Applicant

9.1.1 The applicant may substitute equivalent or more effective on-site emission reduction measures upon written approval from the APCO.

9.1.2 Changes in the project or to the build-out schedule that increase the emissions associated with the project shall require submission of a new AIA application. A new AIA shall be conducted and the off-site fees shall be recalculated in accordance with the applicable provisions of this rule. The APCO shall notify the applicant of the new off-site fees, the difference of which shall be payable by the due date specified on the billing invoice.

9.1.3 If a project, or portion thereof, changes ownership, the seller shall inform the District of the change in ownership by filing a "Change of Developer" form with the District prior to the buyer generating emissions associated with the project.

### 9.2 Changes Required By The Public Agency or Any Court Of Law

Project changes that result in an increase in the emissions shall require submission of a new AIA application within 60 days of said changes, or prior to the start of project construction, whichever is less. A new AIA shall be conducted and the off-site fees shall be recalculated in accordance with the applicable provisions of this rule.

## 10.0 APCO Administration of the Off-Site Fee Funds

10.1 The District shall establish and maintain separate accounts for NOx and for PM10 for funds collected under this rule. Any off-site fees collected by the District shall be deposited into these accounts.

10.2 The District shall utilize monies from the accounts to fund quantifiable and enforceable Off-Site projects that reduce surplus emissions of NOx and PM10 in an expeditious manner.

- 10.2.1 The District shall set forth funding criteria for each category of off-site projects that may be funded by this rule.
- 10.2.2 The District shall ensure that the emission reductions calculations for the off-site projects are accurate.
- 10.2.3 If the off-site project involves the replacement of existing equipment, the District shall inspect the existing equipment.
- 10.2.4 The District shall enter into a binding contract with the applicant of the off-site project, which will, at minimum, require an annual report from the applicant that includes information necessary to ensure that emissions reductions are actually occurring.
- 10.2.5 The District shall conduct inspections on the off-site project to verify that the project is installed or implemented and operating for the life of the contract.
- 10.2.6 The District may substitute NOx reductions for PM10 in a 1.5 to 1 ratio.
- 10.3 Any interest that accrues in the off-site account(s) shall remain in the account, to be used in accordance with Section 10.2 above.
- 10.4 The District shall prepare an annual report that will be available to the public regarding the expenditure of those funds, and shall include the following:
  - 10.4.1 Total amount of Off-Site Fees received;
  - 10.4.2 Total monies spent;
  - 10.4.3 Total monies remaining;
  - 10.4.4 Any refunds distributed;
  - 10.4.5 A list of all projects funded;
  - 10.4.6 Total emissions reductions realized; and
  - 10.4.7 The overall cost-effectiveness factor for the projects funded.



# City of Visalia

## Memo



To: Planning Commission  
From: Andrew Chamberlain, Principal Planner (559) 713-4003  
Date: August 13, 2018  
Re: Time Extension for Conditional Use Permit No. 2007-17

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### **RECOMMENDATION:**

Staff recommends that the Planning Commission approve a one-year time extension of Conditional Use Permit No. 2007-17 that expires on October 26, 2018, pursuant to Zoning Ordinance Section 17.38.030.

### **BACKGROUND:**

On April 25, 2011, the Visalia Planning Commission approved Conditional Use Permit No. 2007-17 for a proposed 54,076 square-foot expansion of the Walmart store located 1819 E. Noble Avenue. The Planning Commission action was appealed to the City Council by Smart Growth (Save Mart) with the City Council approving the project on June 20, 2011. Subsequently, Smart Growth, through a series of Court challenges directed at the Environmental Impact Report (EIR) held the City Council certification of the EIR and CUP in abeyance.

The City Council recertified the EIR and reapproved the project for the final time on December 7, 2015. The judge issued his ruling confirming that the City and Walmart had finally complied with CEQA to his satisfaction on May 20, 2016. Smart Growth appealed the Court's decision, but later dismissed their appeal, thus concluding the matter in October of 2016.

The applicants are requesting a one year time extension as described in the attached correspondence. The requested extension is based upon the above court challenge and the need to do coordination with Caltrans and the City of Visalia related to off-site traffic mitigation improvements. The project building permit has been submitted to the City, but may not be issued until such time as the traffic mitigation has been addressed.

A one-year time extension may be granted pursuant to Zoning Ordinance Section 17.38.030 by the Planning Commission. This allows a total of three years for the applicants to act upon the use permit. Approval of the time extension request will extend the expiration date to October 26, 2019. The Planning Commission has the authority to approve or deny this request.

### **ATTACHMENTS**

1. Letter of Request for the Time Extension
2. Location Map

August 3, 2018

VIA ELECTRONIC AND FIRST CLASS MAIL  
[[susan.currier@visalia.city](mailto:susan.currier@visalia.city)]

City of Visalia  
Planning Commission  
Attn: Susan Currier  
315 East Acequia Avenue  
Visalia, CA 93291

Re: *Request for Time Extension for Entitlements – Walmart Expansion Project*

Dear Ms. Currier:

This firm represents Walmart Stores, Inc. ("Walmart"). On behalf of Walmart, we request a twelve (12) month extension for **Conditional Use Permit No. 2007-17** (the "Permit") pursuant to Section 17.38.030 of the Visalia Municipal Code. The Permit authorizes the expansion of the existing Walmart Store (the "Expansion Project"). This entitlement is currently set to expire on or around **October 26, 2018**.

Under Section 17.38.030, of the Visalia Municipal Code, a CUP shall not lapse and will become void if "a building permit is issued by the city and construction is commenced" or "an application for renewal is filed with the Planning Commission." Walmart has been diligently pursuing the Building Permit; however, with the expiration date only a few months away, Walmart will not be able to obtain a Building Permit and commence construction before the Permit expires. We request this extension for the following reasons:

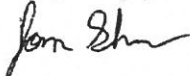
- 1) The Permit was the subject of a lawsuit filed by MR Wolf and Associates challenging the City Council's action to approve the Permit. While the lawsuit stayed the entitlement expiration until the litigation was settled or an official final judgment was issued, the lawsuit has detrimentally delayed the Expansion Project. Due to the uncertainty of the litigation, Walmart did not proceed with the designs and permitting until the final judgment was issued.

City of Visalia  
Attn: Susan Currier  
August 3, 2018  
Page 2

- 2) Walmart has been unable to obtain a Building Permit and start construction due to the off-site transportation related mitigation that requires coordination with and permits from Caltrans, specifically, the *Lovers Lane/SR-198 Interchange Improvements Project* ("Caltrans Project"). Due to the Caltrans Project, the City is currently considering amending the current mitigation measures to revise the requirement that Walmart construct improvements on Lovers Lane, and instead, require only that Walmart pay a proportionate share of the Expansion Project to the City. The reasoning behind this is that the Caltrans Project will require additional improvements beyond what is required by Walmart. Any improvements Walmart undertakes now will have to be torn out; thus, making it more practical and economical if all construction on Lovers Lane and SR-198 is handled under one project and Walmart pays its fair share of the Expansion Project to the City. However, until the City makes a final decision, Walmart cannot proceed with implementation of the mitigation measures, issuance of a Building Permit, and construction.

For these reasons, we request a twelve (12) month extension. Enclosed with this letter, please find a check in the amount of \$222 for the requested extension application fee. Please let me know if you have any questions or need additional information.

Very truly yours,



Jonathan E. Shardlow, of  
GRESHAM SAVAGE  
NOLAN & TILDEN,  
A Professional Corporation

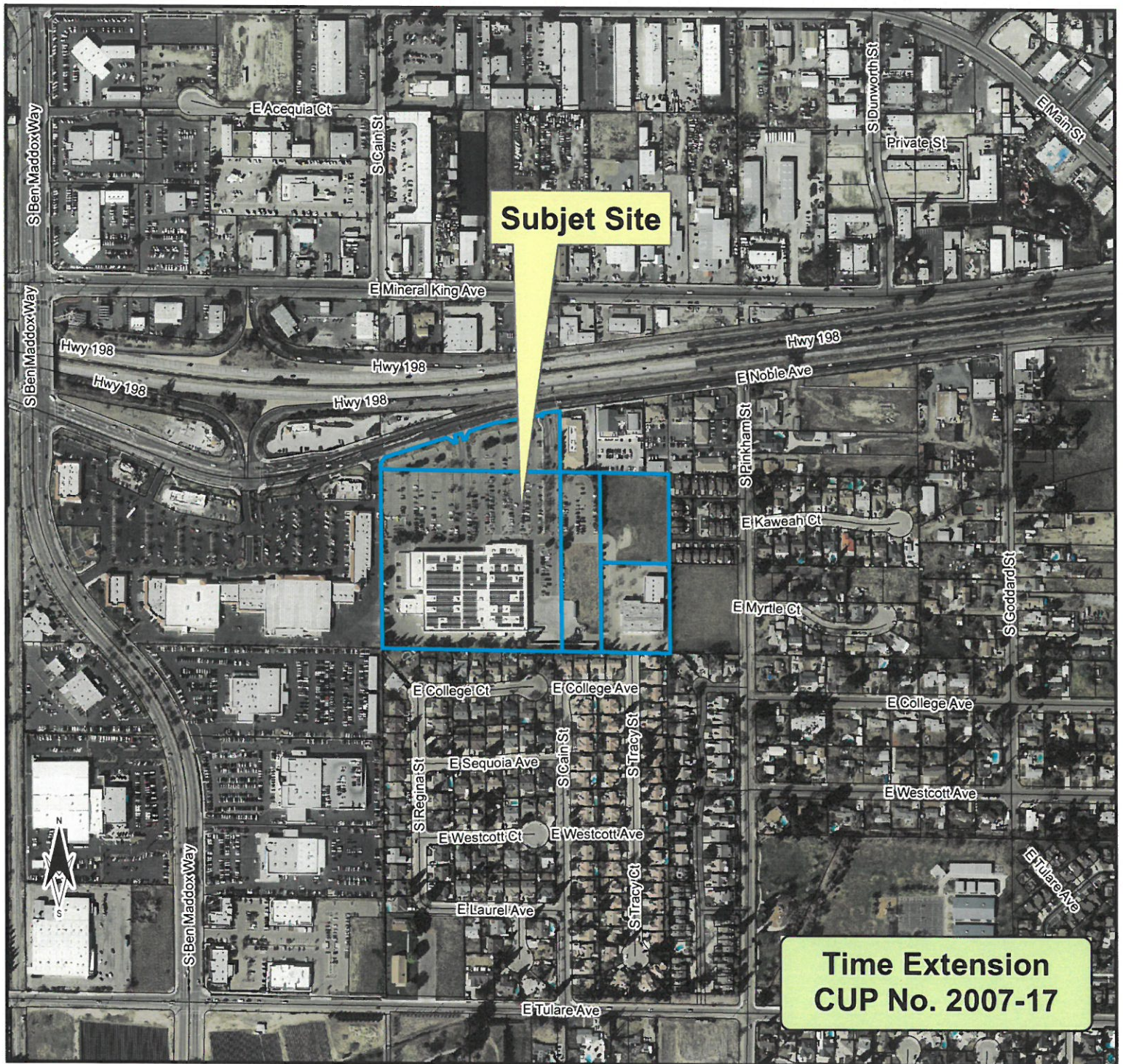
JES:dms

Enclosure

cc: Andrew Chamberlain, Principal Planner (w/o encl.)



# City of Visalia



## Location Map