

Attachment 'F'

Resolution No. 2024-____

**RESOLUTION OF THE CITY OF KERMAN PLANNING COMMISSION
CONTINGENTLY APPROVING CONDITIONAL USE PERMIT 2023-02, TO
ALLOW MULTI-FAMILY RESIDENTIAL USES AND A TEMPORARY
DRAINAGE BASIN LOCATED ON THE EAST SIDE OF SOUTH MODOC
AVENUE BETWEEN WEST KEARNEY BOULEVARD AND WEST
CALIFORNIA AVENUE ALIGNMENT/SAN JOAQUIN VALLEY RAILROAD
(APNS 020-160-36S AND 020-160-18S)**

WHEREAS, the Planning Commission considered a request for a conditional use permit filed by Whispering Falls, LLC. to allow multi-family residential uses located on the east side of South Modoc Avenue between West California Avenue (proposed) and the West California Avenue Alignment/San Joaquin Valley Railroad (APN 020-160-36S); and allow a temporary drainage basin located on the east side of South Modoc Avenue between West Kearney Boulevard and West California Avenue (proposed) (APN 020-160-18S); and

WHEREAS, the parcels are zoned SD-R-2.5 and are within the Medium Density Residential and High Density Residential land use designations, with approval of Annexation 2023-01, Rezone 2023-01, General Plan Amendment 2023-01, Variance 2023-01, Tentative Subdivision Map 2023-01, and multi-family residential uses and public utility uses such as a drainage basin are permitted subject to approval of a conditional use permit; and

WHEREAS, a public notice was circulated to adjacent property owners within a 300-foot radius of the parcels and published in the local newspaper at least 10 days prior to the meeting as required by law; and

WHEREAS, a written report was prepared by staff which included a recommendation for approval of Conditional Use Permit 2023-02 and was made available for public review at least 72 hours prior to the public hearing; and

WHEREAS, the City of Kerman, acting as the Lead Agency, prepared an Initial Study and Mitigated Negative Declaration 2023-01 and Mitigation Monitoring and Reporting Program dated June 2024 (SCH # 2024040147) for the project, and this related conditional use permit; and the project is in compliance with the California Environmental Quality Act (CEQA); and

WHEREAS, on July 15, 2024, the Planning Commission conducted a duly noticed public hearing and concurrently considered Mitigated Negative Declaration 2023-01 and Mitigation Monitoring and Reporting Program dated June 2024, Annexation 2023-01, General Plan Amendment 2023-01, Rezone 2023-01, Tentative Subdivision Map 2023-01, Development Plans 2023-01 and 2023-02, and Variance 2023-01; and

WHEREAS, after deliberation and consideration of all relevant items, the Planning Commission now desires to contingently approve Conditional Use Permit 2023-02 such that no decision of approval of Conditional Use Permit 2023-02 becomes final and effective until immediately after the City Council adopts Mitigated Negative Declaration 2023-01 and Mitigation Monitoring and Reporting Program, Annexation 2023-01, Rezone 2023-01, General Plan Amendment 2023-01, and Tentative Subdivision Map 2023-01; and if no such approval occurs within 180 days of the adoption of this Resolution, then the Planning Commission intends that

Conditional Use Permit 2023-02 be set for further consideration and a final decision by the Planning Commission

NOW, THEREFORE, the Planning Commission of the City of Kerman resolves as follows:

1. Recitals. The Planning Commission hereby finds that all of the facts set forth in the recitals above are true and correct and incorporated herein.
2. CEQA. Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, the City, as the Lead Agency, has analyzed the proposed Project and has prepared an Initial Study and Mitigated Negative Declaration 2023-01 and Mitigated Monitoring and Reporting Program dated June 2024 (SCH #2024040147) to evaluate the environmental effects of the project, including the proposed conditional use permit. The Planning Commission finds that Conditional Use Permit 2023-02 is consistent with, and has been fully assessed by, the MND, and that Conditional Use Permit 2023-02 is an entitlement specifically anticipated for the proposed Project in the MND, and is consistent with the purposes and intent of the MND

3. Conditional Use Permit Findings. The Planning Commission finds as follows:

- a. That the proposed establishment, maintenance, and operations of the use(s) applied for will not be detrimental to the public health, safety, and welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be dangerous or detrimental to property and improvements in the neighborhood or the City.

The project will not be detrimental to public health, safety, or welfare. It is located in a designated residential area with conditions of approval which will minimize any potential negative impacts on adjacent land uses. The conditions of approval limit types of uses that may be objectionable or detrimental to other permitted uses or adverse to the public interest health, safety, convenience or welfare of the City.

- b. That the proposed use is consistent with the Kerman General Plan.

The project is located in a residential area suitable for residential uses. Upon approval of Annexation 2023-01 and Rezone 2023-01, the project site will be annexed and pre-zoned to the smart development zone district, which is consistent with the underlying Medium Density Residential and High Density Residential land use designations. The project proposes residential uses that are consistent with the underlying land use designations and the smart development zone district, specifically by proposing a mix of residential uses including single-family and multi-family uses, at varying densities. The project also proposes a drainage basin which is necessary for the collection of stormwater runoff resulting from the project. This use is also consistent with the underlying land use designation and zone district.

- c. That the environmental document is prepared as per the California Environmental Quality Act (CEQA).

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, the City, as the Lead Agency, has analyzed the proposed Project and has prepared an Initial Study and Mitigated Negative

Declaration 2023-01 and Mitigated Monitoring and Reporting Program dated June 2024 (SCH #2024040147) to evaluate the environmental effects of the project, including the proposed conditional use permit. The Planning Commission has fully considered the Mitigated Negative Declaration and has concurrently recommended it for approval by the City Council. Approval of this entitlement is conditional on such approval. As such, the Planning Commission finds that the conditional use permit and related project entitlements are specifically anticipated and assessed for the proposed project in the Mitigated Negative Declaration and are consistent with the purpose and intent of the Mitigated Negative Declaration.

- d. That the site for the proposed use is adequate in size, shape, and location to accommodate the use as it relates to the district for which the use is proposed.

The location of the project is within the smart development zone district, upon approval of the annexation and pre-zone, in a residential area suited for residential uses on an undeveloped parcel of land. The project's design and operations are appropriate to meet all applicable development and operational standards of the Zoning Ordinance.

4. Conditional Approval of Conditional Use Permit 2023-02. Given that all the findings can be made, the Planning Commission approves Conditional Use Permit 2023-02 subject to conditions of approval included herein as Exhibit 'F-1' and contingent upon the following:
 - a. The approval of Conditional Use Permit 2023-02 shall become final and effective immediately only after the City Council of Kerman i) adopts Mitigated Negative Declaration 2023-01 and the associated Mitigation Monitoring and Reporting Program; ii) approves Annexation 2023-01; iii) approves General Plan Amendment 2023-01; iv) approves Rezone 2023-01 and said ordinance adopting the same then becomes effective; and v) approves Tentative Subdivision Map 2023-01 (collectively "Council Approvals"). If all of the Council Approvals are not made within 180 days of the adoption of this Resolution, then Conditional Use Permit 2023-02 shall be returned to the Planning Commission for further consideration and a final decision. If Council Approvals are made within 180 days of the adoption of this Resolution, but any change is made by the Council to any of the Council Approvals in a manner that could reasonably affect the findings of the Planning Commission needed to approve Conditional Use Permit 2023-02, or require a modification or addition of a condition of approval to be consistent with a Council Approval, then Conditional Use Permit 2023-02 shall be returned to the Planning Commission for further consideration and a final decision.
5. Final Action and Appeals. This action shall become final and effective after, and only upon, the prior approvals including the MND and adoption of the Council Approvals and if a timely appeal of Conditional Use Permit 2023-02 is then not filed with the City Clerk in accordance with the provisions of the City of Kerman Zoning Ordinance.

I HEREBY CERTIFY that the foregoing Resolution was approved at a special meeting of the Planning Commission of the City of Kerman on the 15th day of July 2024, and was fully adopted at said meeting by the following vote:

Ayes:

Noes:

Absent:

Recused:

The foregoing resolution is hereby approved.

Scott Bishop
Chairperson

Attest:

Jesus R. Orozco
Planning Commission Secretary

Exhibit 'F-1': Conditional Use Permit 2023-02 Conditions of Approval

EXHIBIT 'F-1'

**CONDITIONS OF APPROVAL
WHISPERING FALLS – CUP 2023-02**

Notice To Applicant

Pursuant to Government Codes Section 66020(d)(1) and/or Section 66499.37, any protest related to the imposition of fees, dedications, reservations, or exactions for this project or any proceedings undertaken regarding the City's actions taken or determinations made regarding the project, including but not limited to the validity of conditions of approval must occur within ninety (90) calendar days after the date of this decision. This notice does not apply to those fees, dedications, reservations, or exactions which were previously imposed and duly noticed; or where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

Important: Please Read Carefully

This project is subject to a variety of discretionary conditions of approval. These include conditions based on adopted City plans and policies; those determined through conditional use permit review and environmental assessment essential to mitigate adverse effects on the environment including the health, safety, and welfare of the community; and recommended conditions for development that are not essential to health, safety, and welfare, but would, on the whole, enhance the project and its relationship to the neighborhood and environment.

Discretionary conditions of approval may be appealed. All code requirements, however, are mandatory and may only be modified by variance, provided the findings can be made.

All discretionary conditions of approval for CUP 2023-02 will ultimately be deemed mandatory unless appealed by the applicant to the City Council within ten (10) working days after the decision by the Planning Commission. In the event you wish to appeal the Planning Commission's decision or discretionary conditions of approval for this entitlement, you may do so by filing a written appeal with the City Clerk. The appeal shall state the grounds for the appeal and wherein the Commission failed to conform to the requirements of the zoning ordinance. This should include identification of the decision or action appealed (including its identification number) and specific reasons why you believe the decision or action appealed should not be upheld, and the identity of the appellant.

Approval of this conditional use permit shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development.

Approval of this conditional use permit may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this use

permit, the zoning ordinance, and all City standards and specifications. This use permit and site plan review is granted, and the conditions imposed, are based upon the application submittal provided by the applicant, including any operational statement. The application is material to the issuance of this use permit. Unless the conditions of approval specifically require an operation inconsistent with the application, a new or revised use permit is required if the operation of this establishment changes or becomes inconsistent with the application. Failure to operate in accordance with the conditions and requirements imposed may result in revocation of the use permit, or any other enforcement remedy available under the law. The City shall not assume responsibility for any deletions or omissions resulting from the use permit review process, or for additions or alterations to any construction or building plans not specifically submitted and reviewed and approved pursuant to this use permit or subsequent amendments or revisions. These conditions are conditions imposed solely upon the use permit as delineated herein and are not conditions imposed on the City or any third party. Likewise, imposition of conditions to ensure compliance with federal, state, or local laws and regulations does not preclude any other type of compliance enforcement.

These conditions are applicable to any person or entity making use of this use permit, and references to “developer” or “applicant” herein also include any applicant, property owner, owner, lessee, operator, or any other person or entity making use of this use permit.

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by the receipt in the Planning Division of the applicant’s signature upon an Acknowledgement and Acceptance of Conditions within 30 days of the date of approval. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by the receipt in the Planning Division of the applicant’s signature upon an Acknowledgement and Acceptance of Conditions within 30 days of the date of approval.
2. Any intensification or expansion of the use beyond its approval shall be cause for review and modification of the use permit to be approved by the Commission.
3. Any proposed future modifications to the site not specifically contemplated by CUP 2023-02, including but not limited to; the building exterior, parking/loading areas, fences/walls, new buildings, or landscaping shall require an amendment to CUP 2023-02.
4. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specified in the conditions of approval listed herein or mandated by statute.
5. It shall be the responsibility of the property owner and/or applicant to ensure that any required permits, inspections, and approval from any regulatory agency are obtained

from the concerned agency prior to the issuance of a business license or final occupancy issuance.

6. Failure to comply with the conditions of approval contained herein shall be cause for review and possibly modification or revocation to CUP 2023-02.
7. The project shall comply with all applicable mitigation measures required by the Mitigated Monitoring and Reporting Program prepared for Mitigated Negative Declaration 2023-01, dated June 2024 (SCH #2024040147).
8. Approval of CUP 2023-02 is for the benefit of the applicant. The submittal of application(s) by the 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 Kerman 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, attorney's fees, and damages arising therefrom (collectively "claim"). The City shall promptly notify the applicant of any claim.

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.

Building Division

9. A building permit shall be required for all proposed or future tenant and site improvements as required by the California Building Code, California Fire Code, and Americans with Disability Act (ADA) prior to occupancy.
10. The property owner shall submit plans consistent with the California Building Standards Code, including site development and ADA accessibility based upon the codes in effect at the time of plan check submittal.

North Central Fire Protection District

11. The applicant shall be responsible for contacting the NCFPD by email at Fire.Prevention@NorthCentralFire.org or by phone at (559) 878-4560 to schedule an over-the-counter meeting to receive your specific requirements for your project. Failure to schedule an appointment with the NCFPD will affect your ability to obtain final approval for your project.

Planning Division

Conditional Use Permit 2023-02

12. Conditional Use Permit 2023-02 shall allow for the development of 56 multi-family units a property zoned SD-R-2.5 where forty-one (41) or more multi-family units are permitted subject to a conditional use permit, to be located on APN 020-160-36, 020-041-45S and 020-041-47S, and the development of a temporary drainage basin to be located on APN 020-160-18S.
13. Prior to development of the temporary drainage basin, the property owner shall submit an application for Tentative Parcel Map and/or Lot Line Adjustment with the Planning Division.
14. Development of the temporary drainage basin shall be subject to applicable City standards and regulations and other requirements as deemed necessary by the City Engineer.
15. Where applicable, conditions of approval for Tentative Subdivision Map 2023-01 and Development Plan Permit 2023-01 & 02 shall also apply.

End of Conditions