



**REPORT TO THE PLANNING COMMISSION**

AGENDA ITEM NO. VII-A
COMMISSION MEETING 3-21-12
APPROVED BY
<i>[Signature]</i> DEPARTMENT DIRECTOR <i>[Signature]</i>

March 21, 2012

FROM: MIKE SANCHEZ, Planning Manager  
Development Services Division *[Signature]*

BY: SOPHIA PAGOULATOS, Supervising Planner  
Development Services Division *[Signature]*

SUBJECT: **APPEAL OF CONDITIONAL USE PERMIT C-10-231 FOR EXPANSION AT YOSEMITE RANCH RESTAURANT, NORTHEAST CORNER OF EAST CHAMPLAIN DRIVE AND EAST SHEPHERD AVENUE**

**RECOMMENDATION**

1. Adopt Resolution upholding the appeal and denying the action of the Development and Resource Management Department Director approving Conditional Use Permit Amendment Application No. C-10-231;
2. Recommend to City Council that a city policy be developed to guide future proposed shared uses of Open Space.

**EXECUTIVE SUMMARY**

Recommendation No. 1:

At its March 7, 2012 regularly scheduled meeting, the Fresno Planning Commission desired to uphold the appeal and deny without prejudice Conditional Use Permit Amendment Application No. C-10-231. The Commission continued the item until March 21, 2012 in order to allow the drafting of a resolution with findings for denial for adoption by the Planning Commission. The resolution is included as Exhibit 1.

Recommendation No. 2:

Staff was further directed to present more detail on recommendation No. 3 regarding development of a city policy on shared uses of open space at the March 21, 2012 Planning Commission meeting. Specifically, possible contents of the policy were requested. The following outline is provided as a starting point:

**Scope of Policy** (just Sugar Pine Trail, all linear open space, or all Open Space?)

**Possible Objectives of Policy:**

1. Maintain primary use as open space?
2. Increase the public use of open space?
3. Reduce Vehicle miles traveled?
4. Improve open space security?
5. Others?

**Possible Topics for Analysis:**

1. Compatible Uses
2. Appropriate Locations
3. Design Guidelines
  - a. Amount of encroachment into the open space (if desired)
  - b. Setbacks & property development standards
  - c. Types of structures
  - d. Street or park furniture
  - e. Signage
  - f. Landscaping
  - g. Entries and Exits
  - h. Amplified sound
  - i. Other
4. Trail Protection Measures
  - a. Vehicular crossings
  - b. Landscape conservation
  - c. Permanence/non-permanence of structures
  - d. Other
5. Public Benefit in Exchange for Shared Use of Open Space
  - a. Maintenance
  - b. Trail amenities
  - c. Leases and value of open space
  - d. Public use of private space
  - e. Other
6. Tools for Implementation
  - a. General plan amendment
  - b. Zoning text amendment and/or overlay zones
  - c. Policy and Design Guidelines
  - d. Other

Attachment:

Exhibit 1: Planning Commission Resolution

**FRESNO CITY PLANNING COMMISSION  
RESOLUTION NO. \_\_\_\_\_**

The Fresno City Planning Commission, at its regular meeting on March 21, 2012, adopted the following resolution relating to the appeal of the Director's approval of Conditional Use Application Amendment No. C-10-231:

WHEREAS, Conditional Use Permit Amendment No. C-10-231 has been filed with the City of Fresno by Amber Adams of Quad Knopf on behalf of Yosemite Ranch Investors, LLC pertaining to the expansion of an existing restaurant located in the 11.08 acre Via Montaña Shopping Center, located at 1520 East Champlain Drive on the northeast corner of East Shepherd Avenue and North Champlain Drive (APN 567-030-69); and

WHEREAS, the proposed expansion would also occupy a portion of the Sugar Pine Trail (APN 567-010-04T) owned by the City of Fresno, a co-applicant; and

WHEREAS, Conditional Use Permit Application Amendment No. C-10-231 amends Conditional Use Permit No. C-05-232, approved by the Development and Resource Management Director on February 13, 2006, which established the restaurant use and State of California Alcoholic Beverage Control Type 47 license (*sale of beer, wine, and distilled spirits for consumption on the licensed premises*) for the Yosemite Ranch Restaurant currently existing on the Via Montaña Shopping Center site; and

WHEREAS, Conditional Use Permit Amendment Application No. C-10-231 requests authorization to expand the existing 7,320 square foot Yosemite Ranch Restaurant and Alcoholic Beverage Control Type 47 license (*sale of beer, wine, and distilled spirits for consumption on the licensed premises*) area by approximately 2,408 square feet, as a courtyard style structure on the south side of the existing restaurant, including a full service restaurant/bar area and seating for approximately 80 people; and

WHEREAS, the proposed addition would be constructed primarily within the 60-foot wide Sugar Pine Trail corridor, encroaching into the northern half of the trail corridor by approximately 30 feet, leaving approximately 12 feet clear between its southernmost wall and the paved bicycle/pedestrian trail; and

WHEREAS, the Sugar Pine Trail is planned "O" (Open Space) on the 2025 Fresno General Plan land use map, and is located in the C-1/UGM/cz zone district; and

WHEREAS, the Development and Resource Management Director approved Conditional Use Permit No. C-10-231 subject to conditions on September 9, 2011, subject to a 15-day appeal period closing on September 26, 2011; and

WHEREAS, two appeals were timely received on September 19, 2011 and September 26, 2011 contesting the Director's action on Conditional Use Permit Application No. C-10-231; and

WHEREAS, on March 7, 2012, the Fresno City Planning Commission received the appeals and held a public hearing regarding the same; and

WHEREAS, during the course of the public hearing the Fresno City Planning Commission received testimony, information and documents from the public and staff; and

WHEREAS, the Fresno City Planning Commission reviewed and considered the adequacy of the appeals and whether the necessary findings could be made to approve Conditional Use Permit Application No. C-10-231; and

WHEREAS, a conditional use permit can only be granted when it is found that:

- a. All applicable provisions of the Code are complied with and the site of the proposed use is adequate in size and shape to accommodate said use, and accommodate all yards, spaces, walls, and fences, parking, loading, recycling areas, landscaping, and other required features; and,
- b. The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use; and,
- c. The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located.

as required by Fresno Municipal Code Section 12-405-A-2; and,

WHEREAS, on March 7, 2012, the Fresno Planning Commission closed public testimony and after weighing the evidence, and considering the adequacy of proposed Conditional Use Permit Application Amendment No. C-10-231 and associated environmental assessment , applied its own independent judgment and analysis to the review and desired to take action to grant the appeals and deny the Project based on the findings found herein; and

WHEREAS, the Fresno Planning Commission directed staff to prepare this resolution, consistent with the direction of the Fresno Planning Commission, and to return for consideration and approval of the resolution at the next regularly scheduled public meeting of the Fresno Planning Commission on March 21, 2012; and

NOW, THEREFORE, BE IT RESOLVED by the Fresno Planning Commission, based upon the testimony and information presented at the hearing and upon review and consideration of the environmental documentation provided, as follows:

1. The Fresno Planning Commission finds proposed Conditional Use Permit Application Amendment No. C-10-231 does not comply with Fresno Municipal Code Section 12-405-A-2-a, which states that "*All applicable provisions of this Code are complied with and the site of the proposed use is adequate in size and shape to accommodate said use, and accommodate all yards, spaces, walls and fences, parking, loading, recycling areas, landscaping, and other required features,*" including each of the following:
  - a. No final study has been completed to qualify as an exemption for prohibited uses in a zoned district for "Activity Centers" as contemplated in the Urban Form Element of the 2025 Fresno General Plan, and the existing zoning is not consistent with the 2025 Fresno General Plan as required by the Fresno Municipal Code. The Sugar Pine Trail property is zoned C-1/UGM/cz (*Neighborhood Commercial/Urban Growth Management/conditions of zoning*). However, the 2025 Fresno General Plan designates the Sugar Pine trail as a trail with a planned land use of "O" (Open Space). Fresno Municipal Code Section 12-403-B-1 sets forth

a Zoned District Consistency Table establishing the only consistent zoned district designation for a plan designation of "Open Space" is either "O" (Open Conservation District) or "AE-20" (Agricultural Exclusive, 20 acres). "C-1" is not identified by the Zoned District Consistency Table as a consistent use of property with a planned land use of "O" (Open Space). Absent a Director's Classification under the provisions of Fresno Municipal Code Section 12-408 and other circumstances not applicable here, uses not listed as "permitted" in a zoned district are prohibited per Fresno Municipal Code Sections 12-302 and 12-305. Uses expressly prohibited by Fresno Municipal Code Section 12-204.4 in the "O" Open Conservation District include "Commercial uses other than those related to and under the regulations of City, County, State or Federal Recreational Agencies." The proposed expansion of the restaurant would be a commercial use.

- b. As an additional ground, the proposed expansion does not meet the property development standards for the O (Open Conservation District) district or the AE-20" (Agricultural Exclusive, 20 acres) district, including yard setback requirements per Fresno Municipal Code Sections 12-204.5-E, 12.205-E and non-agricultural operations per 12-204.10.
- c. As an additional ground, the expansion is proposed to be constructed across an existing parcel line contrary to the requirements of Fresno Municipal Code Section 11-101 et seq. and the adopted California Building and Fire Codes.
- d. As an additional ground, the proposed expansion and enclosure does not qualify as a "patio" consistent with the City of Fresno's Outdoor Dining Ordinance, is located within 1,000 feet of residences, and no acoustical analysis has been completed as required by Fresno Municipal Code Section 12-326-F-7.

2. As separate and additional grounds the Fresno Planning Commission finds proposed Conditional Use Permit Application No. C-10-231 does not comply with Fresno Municipal Code Section 12-405-A-2-c, which states "*The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located,*" due to each the following:

- a. The proposed location of a restaurant entrance in the Sugar Pine Trail right of way promotes "queuing" of standing restaurant patrons or foot traffic entering/exiting the restaurant across the Sugar Pine Bike/Pedestrian trail, which poses the risk of physical injury to both patrons and bicyclists.
- b. The City Council has not adopted a policy specifically addressing the proposed shared development of commercial uses in uses planned Open Space along the Sugar Pine Trail, and allowing commercial expansion onto the trail absent the adoption of such a policy to establish guidelines could result in inconsistent development in a manner injurious to future

potential uses of the Sugar Pine Trail as a transportation corridor, negatively impact the aesthetic value of the Trail by introducing non-natural structural encroachments out of scale with the current trail environment, is contrary to the general intent and purposes set forth in the City of Fresno's Zoning Ordinance and otherwise deleterious to the public welfare.

3. Based on each of the forgoing findings, requested Conditional Use Permit Application Amendment No. C-10-231 is hereby denied without prejudice.

The foregoing Resolution was adopted by the Planning Commission upon a motion by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_.

VOTING:           Ayes -  
                      Noes -  
                      Not Voting -  
                      Absent -

DATED: March 21, 2012

KEITH BERGTHOLD, Secretary  
Fresno City Planning Commission

Resolution No. \_\_\_\_\_  
Conditional Use Permit Application  
Amendment No. C-10-231  
Filed by Amber Adams of Quad Knopf on  
behalf of Yosemite Ranch Investors, LLC  
Action: Uphold Appeal and Deny Director's  
approval