

**CITY OF FRESNO
PLANNING AND DEVELOPMENT DEPARTMENT**

**CONDITIONS OF APPROVAL
August 6, 2008**

**CONDITIONAL USE PERMIT APPLICATION NO. C-06-252
5901 West Shaw Avenue**

PART A – PROJECT INFORMATION

PROJECT	Conditional Use Permit Application No. C-06-252 proposes the development of a planned residential subdivision with private streets and common open space for 102 multiple family units on 27 proposed lots of Vesting Tentative Tract Map No. 5608.
APPLICANT	Midstate Investors LLC and WEM Properties Inc.
LOCATION	5901 West Shaw Avenue (APN: 311-140-03, 04, 14) The subject site is located on the north side of West Santa Ana Avenue between North Hayes and North Polk, (Council District 1, Councilmember Xiong)
SITE SIZE	8.8 Acres
LAND USE	Medium-high density residential
ZONING	Existing – AE-5/UGM (<i>Exclusive Five Acre Agricultural/Urban Growth Management</i>) zone district Proposed – R-2/UGM (<i>Low Density Multiple Family Residential/Urban Growth Management</i>) pursuant to Rezone Application No. R-06-63
PLAN DESIGNATION AND CONSISTENCY	The proposed multiple family residential development is consistent with the planned land use designation of medium-high density residential as designated by the West Area Community Plan and the 2025 Fresno General Plan
ENVIRONMENTAL FINDING	A Finding of Conformity was filed with the Fresno County Clerk’s office on April 26, 2007
STAFF RECOMMENDATION	Approval of Conditional Use Permit Application No. C-06-252 subject to compliance with conditions of approval and Exhibits A, A-1, B-1, B-2, B-3, F-1, F-2, F-3, and L-1 dated August 6, 2008
RELATED APPLICATIONS	Rezone Application No. R-06-63 Vesting Tentative Tract Map No. 5608/UGM

PART B – GENERAL CONDITIONS AND REQUIREMENTS

The Planning Commission on August 6, 2008, approved the special permit application subject to the enclosed list of conditions and Exhibits A, A-1, B-1, B-2, B-3, F-1, F-2, F-3 and L-1 dated August 6, 2008.

An environmental assessment/initial study was conducted and resulted in a Finding of Conformity to the 2025 Fresno General Plan Master Environmental Impact Report (MEIR 10130), dated April 26, 2007. The Finding of Conformity was published in the Fresno Bee commencing a 20-day public review and comment period on April 26, 2007.

IMPORTANT: PLEASE READ CAREFULLY

Please note that this project may be subject to a variety of discretionary conditions of approval. These include conditions based on adopted City plans and policies, those determined through site plan 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 are listed in the last section of this list of conditions under the heading "Part F - Miscellaneous" and may be appealed. All code requirements, however, are mandatory and may only be modified by variance, provided the findings pursuant to Fresno Municipal Code Section 12-405.A can be made.

All discretionary conditions of approval will ultimately be deemed mandatory unless appealed in writing pursuant to the provisions of Section 12-406-c and 12-406-j of the Fresno Municipal Code.

In the event you wish to appeal the Director's decision or discretionary conditions of approval, you may do so by filing a written appeal with the Director. The appeal shall include a statement of your interest in or relationship to the subject property, the decision or action appealed and specific reasons why you believe the decision or action appealed should not be upheld. Your appeal must be filed within 15 days of the Planning Commission action.

Approval of this special 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 including, but not limited to, the following.

1. All existing and proposed improvements including but not limited to buildings and structures, signs and their uses, trees, walls, driveways, outdoor storage, and open land use areas on the subject property and all of the preceding which are located on adjoining property and may encroach on the subject property.
2. All public and private easements, rights-of-way and any actual or potential prescriptive easements or uses of the subject property.

3. Existing and proposed grade differentials between the subject property and adjoining property zoned or planned for residential use.

Approval of this special 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 special permit, the Zoning Ordinance, and all Public Works Standards and Specifications. The Planning and Development Department shall not assume responsibility for any deletions or omissions resulting from the special permit review process or for additions or alterations to construction plan not specifically submitted and reviewed and approved pursuant to this special permit or subsequent amendments or revisions.

No uses of land, buildings, or structures other than those specifically approved pursuant to this site plan shall be permitted. **(Include this note on the site plan.)**

Transfer all red line notes, etc., shown on all original site plan exhibits (dated August 6, 2008) to the final site plan. CORRECTIONS SHALL INCLUDE ALL THOSE LISTED IN THIS DOCUMENT AND THOSE LISTED IN THE CORRECTION LIST PROVIDED BY THE PLAN CHECK PROCESS.

The exercise of rights granted by this special permit must be commenced by August 6, 2012 (four years from the date of Planning Commission approval). There is no exception.

To complete the backcheck process for building permit relative to planning and zoning issues, submit eight copies of this corrected, final site plan, together with six copies of the elevations, landscape and irrigation plans, and any required covenants and/or studies or analyses to the Planning Division for final review and approval ten days before applying for building permits.

Copies of this final approved site plan, elevations, landscape, and irrigation plans stamped by the Planning Division **must be substituted** for unstamped copies of same in each of the four sets of construction plans submitted for plan check prior to issuance of building permits. The final approved site plan must also include all corrections identified in the plan check process.

Be advised that on-site inspections will not be authorized unless the final stamped approved site plan, elevations, landscape, and irrigation plans are included in the plan check file copy.

Please call for an appointment for final sign-off for building permits following your receipt and substitution of the four copies of the stamped, corrected, approved exhibits in the plan check sets. Contact David Braun at 559-621-8038 or via e-mail at David.Braun@fresno.gov to schedule an appointment.

NOTICE TO PROJECT APPLICANT

In accordance with the provisions of Government Code Section 66020(d)(1), the imposition of fees, dedication, reservations or exactions for this project are subject to protest by the project applicant at the time of approval or conditional approval of the development or within 90 days after the date of imposition of fees, dedications, reservation, or exactions imposed on the development project.

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.

PART C – PUBLIC IMPROVEMENT REQUIREMENTS

The following requirements are based on city records and the accuracy of the existing and proposed on-site and off-site conditions depicted on the exhibits submitted. Requirements not addressed due to omission or misrepresentation of information, for which this review process is dependent, will be imposed whenever such conditions are disclosed.

Questions relative to dedications, street improvements, or off-street parking geometrics may be directed to the Public Works Department, Engineering Division, Traffic Planning Section: Mario.Rocha@fresno.gov, or Greg.Jenness@fresno.gov, or Ann.Lillie@fresno.gov, (telephone: 559-621-8800).

The applicant shall submit the following as a single package to the Public Works Department, Engineering Division, Plan Check and GIS Mapping Section (phone: 559-621-8650), for review and approval, **prior to** issuance of building and street work permits: Street Improvement Plans, Signing and Striping Plans, Street Lighting Plans, and Landscaping and Irrigation Plans.

The applicant shall underground all existing off-site overhead utilities within the limits of this site/map pursuant to Fresno Municipal Code Section 12-1011 and Resolution No. 78-522/88-229.

Traffic Signal Mitigation Impact Fee

This project shall pay its Traffic Signal Mitigation Impact Fee (TSMI Fee) at the time of building permit based on the trip generation raters) as set forth in the latest edition of the ITE Generation Manual.

1. SURVEY MONUMENTS AND PARCEL CONFIGURATION

- a. The applicant shall ensure that all survey monuments within the area of construction are preserved or reset by a person licensed to practice Land Surveying in the State of California.
- b. The parcel configuration depicted for the proposed development does not conform to record information: a tract map (Tract Map 5608) is required to establish this configuration prior to building permits or revise site plan to identify existing property lines. Contact the Planning and Development Department for details or submit a revised exhibit confining the proposed development within existing parcel lines.

2. STREET DEDICATIONS AND ENCROACHMENT PERMITS

- a. The applicant shall identify on Exhibit A all street furniture within the public right-of-way, -e.g., public utility poles and boxes, guy wires, signs, fire hydrants, bus stop benches, mail boxes, news stands, trash receptacles, tree wells, etc, within the public right-of-way; and identify the required 4-foot minimum path of travel along the public sidewalk directly in front of property as

required by the California Administration Code (Title 24). **A pedestrian easement may be required if Title 24 requirements cannot be met.**

- b. ENCROACHMENT PERMIT. The construction of any overhead, surface or sub-surface structures and appurtenances in the public rights-of-way is prohibited unless an encroachment permit is approved by the Public Works Department, Engineering Division, Special Districts/Projects and Right-of-Way Section (phone: 559-621-8693). Encroachment permits must be approved **prior to** issuance of building permits.
- c. Deed documents for the required dedications shall be prepared by the applicant's engineer and submitted to the Public Works Department, Engineering Division, Special Districts/Projects and Right of Way Section with verification of ownership **prior to** issuance of building permits. The cost of deed document processing and recordation fee must be paid at the time of deed submittal. Deed documents must conform to the format specified by the city. Document format specifications may be obtained from the City of Fresno Public Works Department, Engineering Division, Special Districts/Projects and Right of Way Section (phone: 559-621-8694).

4. STREET IMPROVEMENTS

- a. The applicant shall ensure that all improvements are constructed in accordance with the Standard Specifications and Standard Drawings of the City of Fresno Public Works Department. **Street construction plans are required and shall be approved by the City Engineer.**
- b. STREET WORK PERMIT: The performance of any work within the public street rights-of-way (including pedestrian and utility easements) requires a street work permit **prior to** commencement of the work. Contact the City of Fresno Public Works Department, Engineering Services Section (phone: 559-621-8686), for detailed information. All required street improvements must be completed and accepted by the City **prior to** occupancy. The final corrected exhibit (Exhibit A) shall incorporate all required dedications, parking lot geometrics and improvements required as conditions of approval for development.
- c. The applicant shall repair all damaged and/or off-grade off-site concrete improvements as determined by the Public Works Department, Construction Management Division (phone: 559-621-5500). Such repairs must be completed **prior to** final occupancy.
- d. The applicant shall construct street improvements as specified in the attached memorandum from the Traffic Division of the Public Works Department, dated August 1, 2008.

5. URBAN GROWTH MANAGEMENT (UGM) REQUIREMENTS

- a. This application is in UGM major street zone E-4; therefore, the applicant shall pay all applicable UGM fees. The applicant shall pay all fees at the time of issuance of building permits. The UGM fee obligations for this development will be computed during the building construction plan check process.

A BUILDING PERMIT CANNOT BE ISSUED UNTIL THE UGM REQUIREMENTS HAVE BEEN SATISFIED.

PART D – PLANNING/ZONING REQUIREMENTS

1. PLANNING

Development is subject to the following plans and policies:

- a. 2025 Fresno General Plan
- b. West Area Community Plan
- c. Highway City Neighborhood Specific Plan
- d. Planned Development (Section 12-306-N-21 of the Fresno Municipal Code)
- e. Medium-high density residential planned land use

2. ZONING

- a. Development is proposed in accordance with all applicable plans and policies of the proposed R-2/UGM (*Low Density Multiple Family/Urban Growth Management*) zone district and in accordance with all applicable plans and policies of the West Area Community Plan and the 2025 Fresno General Plan. Approval of the conditional use permit is contingent upon approval of related Rezone Application No. R-06-63 and Vesting Tentative Tract Map No. 5608/UGM.

3. POPULATION DENSITY (Residential Projects)

- a. Contingent upon approval of Rezone Application No. R-06-63 and the medium high density residential planned land use designation, the subject property shall be developed with a density of 10.38 -18.15 units per acre. The project is proposed to be developed at a density of 11.6 units per acre.

4. BUILDING HEIGHT

- a. The maximum allowable building height is two and one-half stories not to exceed 35 feet pursuant to Section 12-212.5-D of the Fresno Municipal Code. The proposal is within the required height at two stories and 27 feet.
- b. EXCEPTIONS: Overheight structures may be approved by the City Planning Commission. However, no roof structure or any space above the height limit shall be allowed for the purpose of providing additional living or floor space. Submit a letter together with the filing fee to the Secretary of the Planning Commission requesting approval.

5. BUILDING SETBACKS AND LANDSCAPING

- a. West Santa Ana Avenue (front yard): Provide a 20-foot building setback.

- b. West and east property lines (side yards): Provide a 5-foot building setback.
- c. Provide building setbacks as shown on Exhibit A dated August 6, 2008.
- d. The property owner/developer shall create a homeowner's association for the maintenance of the landscape areas and proposed private streets, utilities and walls/gates. The proposed Declaration of Covenants, Conditions, and Restrictions (CC&Rs) and the proposed instruments for the homeowners association shall be submitted to the Planning and Development Department for review two weeks prior to final map approval. Said documents shall be recorded with the final map or alternatively submit recorded documents or documents for recording prior to final acceptance of subdivision improvements. Said documents shall include assignment of responsibility to the homeowners association for landscaping and other provisions as stated in the Planning and Development Department Guidelines for preparation of CC&Rs dated January 11, 1985.
- e. Provide the following minimum landscaped areas:
 - (1) West Santa Ana Avenue: 10 feet behind property line.
 - (2) Provide landscaping as shown on Exhibit A dated August 6, 2008.
- f. The number of trees will be determined by the following formula: Section 12-306-N-24-G-3 of the FMC requires one medium sized tree (30 -60 feet at maturity) for each parking space, plus one medium sized tree for each residential unit. Two small trees (15-30 feet at maturity) shall be counted as one medium-sized tree. This project shall have a total of 269 trees.
- g. Provide shade calculations on the landscape plan for parking lot shading in accordance with the attached Parking Lot Shading Policy, including tree species and tree counts.
- h. Provide sufficient trees in the parking lot area to provide 50 percent shading of the parking area surface within 15 years. (This requirement may be reduced to 40 percent for existing development if it is demonstrated that the constraints of an existing site would make it impossible to meet the normal standards.) Trees shall also be planted in the required landscaped area along the periphery of the development in order to shade and enhance adjacent property and public rights-of-way. Refer to the attached "Performance Standards for Parking Lot Shading" for the tree list and further details.
- i. Trees shall be maintained in good health. However, trees may not be trimmed or pruned to reduce the natural height or overall crown of the tree, except as necessary for the health of the tree and public safety; or as may otherwise be approved by the Planning and Development Department. **(Include this note on the landscape plan.)**
- j. Submit six copies of landscaping and irrigation plans prepared by a landscape professional, showing the number and types of trees, to the Planning Division. These plans must be reviewed and approved prior to obtaining building permits.

- k. Landscaping must be in place before issuance of the certificate of occupancy. A Hold on Occupancy shall be placed on the proposed development until such time that landscaping has been approved and verified for proper installation by the Planning Division. **(Include this note on the landscape plan.)**
- l. Prior to final inspection, a written certification, signed by a landscape professional approved by the Director, shall be submitted stating that the required landscaping and irrigation system was installed in accordance with the landscaping and irrigation plans approved by the Planning Division, Development Department. **(Include this note on the landscape plan.)**

6. OPEN SPACE

- a. Pursuant to Section 12-306-N-21-C-2 of the Fresno Municipal Code, a minimum of 25 percent of the site area shall be comprised of usable open space for residents of the development, provided that the Director may permit a ten percent reduction in this standard in unusual circumstances where it is demonstrated that the amount of open space provided is adequate to meet the needs of residents of the development. Required front yards and street side yards shall not be considered part of the 25 percent open usable space. Usable open space shall include rear yards, interior side yards and landscaped areas between units and pathways, provided that each of them meet the minimum width and depth requirements set forth below. Usable open space shall also include private patios and balconies. Driveway and parking areas, indoor living areas of dwelling units, garages, carports, equipment rooms, utility rooms and any other buildings used for the maintenance of the development shall not be considered as part of the usable open space. The Director may permit a portion of the 25 percent open space standard to be provided off-site if such area is available for the exclusive use of residents of the development. The minimum dimensions of a usable open space shall be eight feet by eight feet. On lot frontages greater than 400 feet, at least one dimension of the usable open space shall be equal to two percent of the frontage length.

In addition, pursuant to Section 12-306-N-21-C-(iv) of the FMC, for sites greater than one acre in size, a minimum of forty percent of the required twenty five percent usable open space shall be developed with gardens, turfed play fields, hard surfaced game courts, recreation rooms, swimming pools or other features designed for the exclusive active recreational use of residents of the development.

The required 25 percent of open space for the project site is equal to 95,832 square feet. Please provide open space calculations to verify. Consistent with Fresno Municipal Code Section 12-306-N-21-C-2(iv), 40 percent of the usable open space is proposed to be developed with gardens, turfed play fields, hard surfaced game courts, recreation rooms, and swimming pools. The proposed landscape plan shows a swimming pool and a recreation room.

- b. Clearly identify all condensing units, air conditioning and heating units on the site and elevation plans. Mechanical equipment must be screened.

- c. No structures of any kind (including signs, call boxes, site maps, directional signs, etc. unless permitted by Section 12-212.5-K-2 of the FMC) may be installed or maintained within the above-landscaped areas. No exposed utility boxes, transformers, meters, piping (excepting the backflow prevention device), etc., are allowed to be located in the landscape areas or setbacks or on the street frontages of the buildings. All transformers, etc., shall be shown on the site plan. The backflow device shall be screened by landscaping or such other means as may be approved. **(Include this note on the site plan.)**

7. FENCES, HEDGES, AND WALLS

- a. Temporary fences to secure projects under construction are allowed. Any temporary fence shall be adequately secured and constructed to prevent overturning due to wind, vandalism, and/or casual contact by the general public. The construction shall be performed in such a manner as to minimize any potential safety hazard, which may occur as a result of improper fence installation or damage to the fence.
- b. Provide a 6-foot high wood fence along the northerly, easterly and westerly property lines.
- c. Submit a rendering depicting the fence height, design, and color for review and approval.

8. OFF-STREET PARKING

- a. Comply with the Parking Lot Shading Policy, attached. Provide shade calculations directly on the landscape plan in accordance with the Parking Lot Shading Policy, including tree species and tree counts.
- b. The parking lot design must accommodate the provision of trees in accordance with the attached Parking Lot Shading Policy.
- c. The general requirement for off-street parking spaces is one and one-half parking spaces per dwelling unit, one of which shall be in a carport or garage. There are **167** proposed parking stalls (102 covered) shown on the site plan per the following:

102 units = 102×1.5 = **153 parking stalls required**. No additional parking spaces shall be required.

- d. Provide ten bicycle parking spaces on the site. Bicycle parking spaces shall each consist of one slot in a bike rack. They shall be grouped in racks which allow four feet of clearance on all sides. There shall be adequate space between rack slots to park, lock, and remove bicycles. Bicycle parking spaces shall each consist of one slot in a bike rack. Bicycle parking spaces and the required four-foot clearance shall be protected from motor vehicle encroachment by means of fixed barriers not less than six inches or more than three in height. Bicycle parking spaces shall not encroach into pedestrian ways, landscaped areas, or other required open spaces, and shall be located proximal to structures (depict on Exhibit A). **Note: Exhibit A, dated August 6, 2008, does not display these bicycle parking spaces; please depict bicycle parking spaces on Exhibit A.**

- e. Provide six handicap parking spaces in accordance with the State of California Building Code. All handicapped parking stalls shall be of a width providing at least 14-feet of useable space. Refer to the "Development Requirements for Handicapped Accessibility" of abovementioned code.
- f. All handicapped stalls shall be marked with the international symbol of spaces and a warning that vehicles in violation of Section 10-1017 of the Fresno Municipal Code shall be towed away. The international symbol and tow-away warning shall be posted conspicuously on seven-foot poles. **(Include this note on the site plan.)**
- g. All handicapped parking stalls shall be paved adjacent to facility access ramps or in strategic areas where the handicapped shall not have to wheel or walk behind parked vehicles while traveling to or from handicapped parking stalls and ramps. **(Include this note on the site plan.)**
- h. Lighting, where provided, to illuminate parking, sales, or display areas shall be hooded and so arranged and controlled so as not to cause a nuisance either to highway traffic or to the living environment. The amount of light shall be provided according to the standards of the Department of Public Works. **(Include this note on the site plan.)**

9. ACCESS

- a. Vehicular and pedestrian access shall be provided as indicated pursuant to Conditions of Approval for Vesting Tentative Tract Map No. 5608/UGM dated August 6, 2008.

10. COVENANTS AND AGREEMENTS

- a. The covenants, conditions, and restrictions for the owner's association shall comply with Section 12-1026 of the Fresno Municipal Code.
- b. Unless otherwise noted, all covenants or agreements will be prepared upon receipt of the appropriate fee. Covenants must be approved by the City Attorney's Office prior to issuance of building permits.

11. OUTDOOR ADVERTISING

- a. Signs, other than directional signs, are not approved for installation as part of this special permit. Submit for a separate Master Sign Program or Sign Review Application. Applications and requirements for submittal are available at the Planning Division's Public Front Counter. Note that all signs, including directional signs, must be located outside of the required landscape setbacks.
- b. Signs must comply with Sections 12-212.5-K-2 and 12-207.5-J-1, 2, 3, and 4 of the Fresno Municipal Code.

12. BUILDING ELEVATIONS

- a. Structures shall be in compliance with building elevations shown in Exhibits B-1, B-2, and B-3 dated August 6, 2008.

PART E – CITY AND OTHER SERVICES

1. FIRE PROTECTION REQUIREMENTS

- a. Comply with the requirements of the attached Fire Department memorandum dated December 27, 2006.

2. SOLID WASTE COLLECTION

- a. Comply with the attached Solid Waste Management memorandum dated January 25, 2007.
- b. The subject site shall be serviced by the City of Fresno Department of Public Utilities, Solid Waste Management Division.

3. PUBLIC UTILITIES REQUIREMENTS

- a. Comply with the attached Public Utilities memorandum dated January 25, 2007, and December 27, 2006.

4. FRESNO METROPOLITAN FLOOD CONTROL DISTRICT (FMFCD)

- a. Comply with the attached Fresno Metropolitan Flood Control District memorandum dated January 25, 2007.

5. SCHOOL FEES

- a. School fees must be paid prior to issuance of building permits. Contact Central Unified School District. Provide proof of payment (or no fee required) prior to issuance of building permits.
- b. Comply with the letter from Central Unified School District dated June 20, 2008.

6. SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT

- a. Comply with the attached San Joaquin Valley Air Pollution Control District memorandum dated January 18, 2007.

7. DEPARTMENT OF PUBLIC WORKS, STREET TREES DIVISION

- a. Comply with the attached Public Works Department, Street Tree Division, memorandum dated April 24, 2008.

PART F – MISCELLANEOUS

Approval of this site plan is contingent upon the submittal of corrected site plans showing all existing/proposed on-site conditions as reflected on all exhibits and the following:

1. Include a color and material schedule on the site plan, as well as on the elevations, for the exterior of all buildings and structures, including the proposed maintenance room.
2. If archaeological and/or animal fossil material is encountered during project surveying, grading, excavating, or construction, work shall stop immediately. **(Include this note on the site plan.)**
3. If there are suspected human remains, the Fresno County Coroner shall be immediately contacted. If the remains or other archaeological material is possibly Native American in origin, the Native American Heritage Commission (Phone: 916/653-4082) shall be immediately contacted, and the California Archaeological Inventory/Southern San Joaquin Valley Information Center (Phone: 805/644-2289) shall be contacted to obtain a referral list of recognized archaeologists. An archaeological assessment shall be conducted for the project, the site shall be formally recorded, and recommendations made to the City as to any further site investigation or site avoidance/preservation. **(Include this note on the site plan.)**
4. If animal fossils are uncovered, the Museum of Paleontology at U.C. Berkeley shall be contacted to obtain a referral list of recognized paleontologists. An assessment shall be conducted by a paleontologist and, if the paleontologist determines the material to be significant, it shall be preserved. **(Include this note on the site plan.)**

All discretionary conditions of approval will ultimately be deemed mandatory unless appealed in writing to the Planning and Development Director within 15 days.