

RECORDING REQUESTED BY:

City of Merced, A California charter
municipal corporation

WHEN RECORDED MAIL TO:

City of Merced
City Clerk
678 West 18th Street
Merced, California 95340

(Above for Recorder's Use Only)

LEGISLATIVE ACTION AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____ 2023, by and between the City of Merced, a California Charter Municipal Corporation ("City") and Samrath Sahota and Sakira Sahota ("Owner").

W I T N E S S E T H

WHEREAS, Owner has applied to the City for a Zone Change (the "Entitlements") for 385 S. Coffee Street, generally located at the west side of S. Coffee Street, 300 feet north of E. Gerard Avenue, and as legally described on Exhibit "A" and shown on the map at Exhibit "B," attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, City is willing to consider the Owner's request provided that certain conditions are met; and

WHEREAS, the Owner is willing to enter into this Legislative Action Agreement with respect to the Property and the project contemplated by the Entitlements (the "Project") should the Entitlements be approved or conditionally approved by the City.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, and for other good and valuable

consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto agree as follows:

1. The Owner, for themselves and all successors thereto, agree to pay all City and school district fees, taxes, and/or assessments applicable to the Property and the Project in effect on the date of subdivision and/or permit approval, any increase in those fees, taxes, and/or assessments, and any new fees, taxes, and/or assessments which are in effect at the time building permits are issued, which may include public facility impact fees, other impact fees as applicable, and any Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc., and to comply with the additional conditions set forth in Planning Commission Resolution #4098, Exhibit “C” attached hereto and incorporated herein by this reference. Payment shall be made at the time of building permit issuance unless an Ordinance or other requirement of the City mandates or permits payment of such fees, taxes, and/or assessments at an earlier or subsequent time. The foregoing obligation shall apply to each Owner with respect to the portion of the Property owned by that Owner at the time payment or performance is due.

2. The Owner desires to comply with the conditions of approval set forth on Exhibit “C” and within this Agreement with respect to development of the Project and acknowledges that the conditions are necessary to mitigate the environmental impact caused by the Owner’s development of the Project on the Property or are necessary to offset the costs to the City generated by the Owner’s development of the Project including sewer connection costs pursuant to Chapter 15.16 of the Merced Municipal Code. The foregoing obligation shall apply to each Owner with respect to the portion of the Property owned by that Owner at the time compliance is required.

3. The Owner agrees to pay all sewer connection costs imposed by the City as delineated in Section 15.16.070 of the Merced Municipal Code and to pay all other costs required by Chapter 15.16 of the Merced Municipal Code.

4. The Owner shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and its/their officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments (hereinafter "Claims") against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul the approval of the Entitlements by the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the Entitlements. Furthermore, the Owner shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against another governmental entity in which the Owner's Project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the Owner of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action.

5. City, on its part, agrees to approve the Entitlements in accordance with Exhibit "D".

6. No building permit or other permit shall be issued for the Project that is not in compliance with this Agreement.

7. It is expressly agreed that this Agreement is not intended to limit the power of the City to impose other requirements, limitations, or fees, etc., as a

condition of development, and does not relieve the Owner from complying with all other requirements that may be imposed as a condition of development, whether now in existence or hereinafter imposed by the City whether by zone change, subdivision map approval, ordinance, resolution, use permit, or otherwise. The parties agree that this Paragraph does not apply to the approval of the final map and issuance of building permits for project(s) subject to this Agreement on the property described in Exhibit “A” and shown on Exhibit “B.”

8. To the extent allowed by law, the conditions of this Agreement constitute covenants running with the land, and shall be enforceable by the City or by any present or future owner of any of the land described in Exhibit “A” and shown on Exhibit “B.”

9. The Owner agrees to comply with and abide by all conditions set forth by the City relating to the development of the property subject to this Agreement.

10. In the event of default by the Owner, and in addition to any other remedy available to the City, the City shall have the right to rezone the land back to its original designation.

11. In the event that either City or the Owner shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

12. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

13. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

14. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

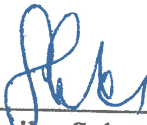
BY:  1/5/23
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

OWNER
SAMRATH SAHOTA AND
SARIKA SAHOTA

By: 
Samrath Sahota

By: 
Sarika Sahota

TAX PAYER ID: _____

ADDRESS: 123455 Prado De Los Peras
Calabasas, CA 91302

TELEPHONE: 213-500-0860

FAX: _____

EMAIL: sahota03@hotmail.com

{SIGNATURES MUST BE NOTARIZED}

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

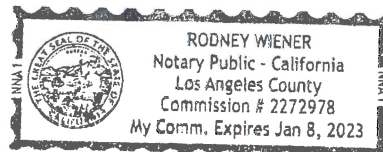
On 1/5/23 before me, Rodney Wiener, Notary Public
(insert name and title of the officer)

personally appeared Samrath Sahota & Sarika Sahota
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



BEING A PROPOSED SUBDIVISION OF ALL THAT PORTION OF LOTS 163 AND 165, ACCORDING TO MAP ENTITLED, "MERCED COLONY", RECORDED FEBRUARY 3, 1910 IN VOL. 4 OF OFFICIAL PLATS, PAGE 24, MERCED COUNTY RECORDS, DESCRIBED AS FOLLOWS, TO WIT:

THE NORTH ONE-HALF OF LOT 165 AND ALL THAT PORTION OF LOT 163 LYING SOUTH OF THE WESTERLY PROJECTION OF THE NORTH LINE OF SAID LOT 165 TO ITS POINT OF INTERSECTION WITH THE WEST LINE OF SAID LOT 13.

EXCEPTING THEREFROM THE SOUTH 5 ACRES OF LOT 163, THE SOUTH LINE OF SAID 5 ACRES BEING THE CENTER LINE OF AVENUE SHOWN AS LOT J ON SAID MAP OF MERCED COLONY.



EXHIBIT B

CITY OF MERCED
Planning Commission

Resolution #4098

WHEREAS, the Merced City Planning Commission at its regular meeting of December 7, 2022, held a public hearing and considered **Zone Change #431**, initiated by Sam Sahota, property owner. The applicant is requesting a Zone Change from Urban Transition (U-T) to Low Density Residential (R-1-5) to subdivide one parcel (approximately 9.91 acres) into 45 single-family residential lots ranging in size from 6,000 square feet to 8,691 square feet with an additional tot lot and basin lot. The 9.91-acre subject site is generally located at the west side of S. Coffee Street, 300 feet north of E. Gerard Avenue. The subject site is more particularly described as portions of Lots 163 and 165 as shown on the map entitled "Map of Merced Colony" recorded in Volume 4, Page 24, in Merced County Records; also known as a portion of Assessor's Parcel Number (APN) 061-260-025; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through E of Staff Report #22-915 (Exhibit B); and,

NOW THEREFORE, after reviewing the City's Initial Study and Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Negative Declaration regarding Environmental Review #22-32, and recommend approval of Zone Change #431, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

AYES: Commissioner White, Gonzalez, Delgadillo, Greggains, and
Chairperson Harris
NOES: None
ABSENT: None (one vacancy)
ABSTAIN: Commissioner Camper

PLANNING COMMISSION RESOLUTION #4098

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December 7, 2022

Adopted this 7th day of December 2022



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Exhibits:

Exhibit A – Conditions of Approval

Exhibit B – Findings/Considerations

Conditions of Approval
Planning Commission Resolution # 4098
Zone Change #431

1. The proposed Zone Change shall be as shown on the proposed Zoning Map at Attachment I.
2. All conditions contained in *Resolution #1175-Amended ("Standard Tentative Subdivision Map Conditions")* shall apply.
3. Approval of the Zone Change is subject to the applicant(s) entering into a written (developer) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and/or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
4. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
5. The Project shall comply with all applicable conditions set forth in the resolutions for Annexation No. 200 (Coffee Street Annexation) previously approved for this site.
6. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
7. Community Facilities District (CFD) annexation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map approval. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit

as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.

8. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, suits, or proceeding. Developer/applicant shall be responsible to immediately prefund the litigation cost of the City including, but not limited to, City's attorney's fees and costs. If any claim, action, suits, or proceeding is filed challenging this approval, the developer/applicant shall be required to execute a separate and formal defense, indemnification, and deposit agreement that meets the approval of the City Attorney and to provide all required deposits to fully fund the City's defense immediately but in no event later than five (5) days from that date of a demand to do so from City. In addition, the developer/applicant shall be required to satisfy any monetary obligations imposed on City by any order or judgment.
9. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

Findings and Considerations
Planning Commission Resolution #4098
Zone Change #431

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed residential subdivision would comply with Zoning with approval of the proposed Zone Change from Urban Transition (U-T) to Low Density Residential (R-1-5). The proposal would also conform with the existing General Plan designation of Low Density Residential (LD). At 45 units on 9.91 acres, the density would be approximately 4.5 dwelling units/acre, which is within the allowable range for the LD General Plan designation (allows residential densities between 2 to 6 dwelling units/acre).

The proposed Zone Change, with conditions of approval, will help achieve the following General Plan land use policies:

- Policy L-1.5: Protect existing neighborhoods from incompatible developments.
- Policy L-1.6: Continue to pursue quality single-family residential development.
- Policy L-1.8: Create livable and identifiable residential neighborhoods.
- Policy L-9: Ensure connectivity between existing and planned urban areas.

Zone Change Findings

- B) Chapter 20.80 (Zoning Ordinance Amendments) outlines procedures for considering Zone Changes, but does not require any specific findings to be made for approval. However, Planning practice would be to provide objective reasons for approval or denial, but these can take whatever form deemed appropriate by the Planning Commission and City Council. Based on State law and case law, the following findings are recommended:

1. *The proposed amendment is deemed to be in the public interest.*

The proposed amendment is deemed to be in the public interest because it will provide needed housing for residential projects.

2. *The proposed amendment is consistent and compatible with the rest of the General Plan and any implementation programs that may be affected.*

The proposed amendment is consistent and compatible with the rest of the General Plan and any implementation programs that may be affected.

3. *The potential impacts of the proposed amendment have been assessed and have been determined not to be detrimental to the public health, safety, or welfare.*

The proposed project does not include any uses that would be detrimental to the public health, safety, and welfare of the City. Implementation of the conditions of approval and adherence to all applicable Building and Fire Codes and City Standards would prevent the project from having any detrimental effect on the health, safety, and welfare of the City.

4. *The proposed amendment has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA).*

Planning staff has conducted an environmental review (#22-32) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Negative Declaration (see Attachment J of Planning Commission Staff Report #22-915) has been recommended.

Neighborhood Impact/Interface

- C) The subject site is surrounded by single family homes and urban transition parcels. To the east and the west are subdivisions with similar density to what is being proposed by the applicant. To the south are large lot residential parcels, sized between 0.30 acres and 1.30 acres, with single-family homes with an Urban Transition (U-T) Zoning classification. To the north are several 8-acre Low Density Residential parcels currently being used for agricultural purposes. However, the entire region surrounding the subject site has a General Plan designation of Low Density Residential (LDR), primarily intended for single-family homes. Approving the Zone Change from U-T to R-1-5 would bring the parcel into compliance with the City's General Plan designations for this neighborhood. The extension of Capella Drive with this subdivision would extend missing street network and other utilities bridging

the gap in infrastructure between the two subdivisions. The proposed residential subdivision would not create any unusual circumstances for the neighborhood, as the majority of the surrounding properties are used for residential purposes.

Public hearing notices were sent to all property owners within 300 feet of the project site. At the time that this report was prepared, the City had not received any comments regarding this project.

Affordability Requirements

- D) In April of 2022, the City Council approved Resolution 2022-15 regarding the requirement for 12.5% affordable housing for new single-family residential subdivisions and multifamily residential projects. This requirement is triggered by two qualifiers that need to be met; entitlement type and number of units created. For single-family residential developments, the affordability requirement is triggered for Zone Changes (and annexations or site utilization plan revisions) for projects with over 60 or more single-family residential homes. Projects under 60 single-family residential homes are not required to provide affordable units. The proposed 45-unit subdivision is exempt from having to provide affordable units, as even though the proposal does require a Zone Change it contains less than the 60 units that trigger the affordability requirement.

Environmental Clearance

- E) Infill projects over 5 acres or projects that don't comply with Zoning/General Plan designations require an Initial Study, per the California Environmental Quality Act (CEQA). In this case, the project site is consistent with the City's General Plan, but it is not consistent with Zoning and is over 5 acres – so an Initial Study was required. An Initial Study includes a wide range of analysis required by the State covering an array of subjects including, but not limited to impacts on traffic, biological resource, public services, cultural resources, utilities, etc. Planning staff has conducted an environmental review of the project in accordance with the requirements of CEQA, and concluded that Environmental Review #22-32 results in a Negative Declaration as the proposal would not have a significant effect on the environment and does not require the preparation of an Environmental Impact Report. A copy of the Initial Study with a Negative Declaration can be found at Attachment J of Planning Commission Staff #22-915.

Zone Change from U-T to R-1-5

