

Amended

Meeting Agenda

City Council Chamber Merced Civic Center 2nd Floor 678 W. 18th Street Merced, CA 95340

City Council/Public Finance and Economic Development Authority/Parking Authority

Monday, October 1, 2018

6:00 PM

Council Chambers, 2nd Floor, Merced Civic Center, 678 W. 18th Street, Merced, CA 95340

Closed Session at 5:30 PM

NOTICE TO PUBLIC

WELCOME TO THE MEETING OF THE MERCED CITY COUNCIL

At least 72 hours prior to each regular City Council meeting, a complete agenda packet is available for review on the City's website at www.cityofmerced.org or at the City Clerk's Office, 678 W. 18th Street, Merced, CA 95340. All public records relating to an open session item that are distributed to a majority of the Council will be available for public inspection at the City Clerk's Office during regular business hours.

PUBLIC COMMENT: OBTAIN SPEAKER CARD FROM THE CITY CLERK

Members of the audience who wish to address the City Council are requested to complete a speaker card available at the podium against the right-hand side of the Council Chamber. Please submit the completed card to the City Clerk before the item is called, preferably before the meeting begins.

INDIVIDUALS WITH DISABILITIES

Accommodation for individuals with disabilities may be arranged by contacting the City Clerk at (209) 388-8650. Assisted hearing devices are available for meetings held in the Council Chamber.

A. CLOSED SESSION ROLL CALL

B. CLOSED SESSION

B.1. 18-501 SUBJECT: PUBLIC EMPLOYMENT - Title: City Attorney; Authority: Government Code Section 54957

C. CALL TO ORDER

- C.1. Invocation Lamar Henderson, Human Services Agency (All Dads Matter)
- C.2. Pledge of Allegiance to the Flag

D. ROLL CALL

D.1. In accordance with Government Code 54952.3, it is hereby announced that the City Council sits either simultaneously or serially as the Parking Authority and the Public Financing and Economic Development Authority. City Council members receive a monthly stipend of \$20.00 by Charter for sitting as the City Council; and the Mayor receives an additional \$50.00 each month as a part of the adopted budget and Resolution 1975-37. The members of the Parking Authority and the Public Financing and Economic Development Authority receive no compensation.

E. REPORT OUT OF CLOSED SESSION

F. CEREMONIAL MATTERS

F.1.	<u>18-467</u>	SUBJECT: Proclamation - Domestic Violence Awareness Month
		REPORT IN BRIEF Received by a representative of the Valley Crisis Center.
F.2.	<u>18-508</u>	SUBJECT: Proclamation - Fire Prevention Month
		REPORT IN BRIEF Accepted by a representative of the Merced Fire Department.
F.3.	<u>18-509</u>	SUBJECT: Proclamation - Breast Cancer Awareness Month
		REPORT IN BRIEF Accepted by a representative from the Merced Fire Department.
F.4.	<u>18-511</u>	SUBJECT: Proclamation - Code Enforcement Officer Appreciation Week
F.5.	<u>18-510</u>	REPORT IN BRIEF Received by the City of Merced Code Enforcement Officers. SUBJECT: Proclamation - Merced Pride Weekend
		REPORT IN BRIEF

G. SPECIAL PRESENTATIONS

G.1. Youth Council Presentation

Received by a representative of the Merced LGBTQ+ Alliance.

G.2. LAFCO - Agriculture Preservation Presentation

H. WRITTEN PETITIONS AND COMMUNICATIONS

I. ORAL COMMUNICATIONS

Members of the public who wish to speak on any matter not listed on the agenda may speak during this portion of the meeting and will be allotted 5 minutes. The Mayor may, at his discretion, reduce the time to 3 minutes if there are more than 3 speakers, in order to accommodate as many speakers as possible. State law prohibits the City Council from acting at this meeting on any matter raised during the public comment period. Members of the public who wish to speak on a matter that is listed on the agenda will be called upon to speak during discussion of that item.

J. CONSENT CALENDAR

Adoption of the Consent Calendar may be made by one motion of the City Council, provided that any Council member, individual, or organization may request removal of an item from the Consent Calendar for separate consideration. If a request for removal of an item from the Consent Calendar has been received, the item will be discussed and voted on separately.

J.1. 18-446 SUBJECT: Reading by Title of All Ordinances and Resolutions

REPORT IN BRIEF

Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and a summary title may be read with further reading waived.

RECOMMENDATION

City Council - Adopt a motion waiving the reading of Ordinances and Resolutions, pursuant to Section 412 of the Merced City Charter.

J.2. <u>18-504</u> SUBJECT: Information-Only Contracts

REPORT IN BRIEF

Notification of awarded Non-Public Works contracts under \$31,000 and of Public Works contracts under \$69,833.

AUTHORITY

Pursuant to the authority delegated to the City Manager on behalf of the City by Article XI, Section 1109, of the Merced City Charter to execute Public Works contracts under the adjusted FY 2018-2019 threshold of \$69,833.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted FY

2018-2019 threshold of \$31,000.00, the contracts listed on the attached
table were entered into by the City.

J.3. SUBJECT: Information Only-Site Plan Review Minutes of August 2, 2018

RECOMMENDATION

For information only.

J.4. SUBJECT: Information Only - Planning Commission Minutes of August 22, 2018

RECOMMENDATION

For information only.

J.5. 18-512 SUBJECT: City Council/Public Financing and Economic

Development/Parking Authority Meeting Minutes of September 4, 2018

REPORT IN BRIEF

Official adoption of previously held meeting minutes.

RECOMMENDATION

City Council/Public Financing and Economic

Development/Parking Authority - Adopt a motion approving the meeting minutes of September 4, 2018.

J.6. 18-453 SUBJECT: Measure V Regional Project Funding Agreement with the Merced County Association of Governments

REPORT IN BRIEF

Consider approving the Measure V Regional Project Funding Agreement template to be executed in the future for projects approved by the Measure V Eastside Regional Projects Committee and Merced County Association of Governments (MCAG) Governing Board.

RECOMMENDATION

City Council - Adopt a motion:

A. Approving the Measure V Regional Project Funding Agreement with Merced County Association of Governments; and,

B. Authorizing the increase of revenue and appropriating the same of all future Regional Project funding and authorizing the Finance Officer to make

the appropriate budget adjustments; and,

C. Authorizing the City Manager or Assistant City Manager to execute the necessary documents.

J.7. 18-463

SUBJECT: Vacation #18-02 - Setting a Public Hearing to Vacate a

5.88-Acre Park Site Generally Located at the Southwest Corner of M

Street and Arrow Wood Drive

REPORT IN BRIEF

Set a public hearing for November 5, 2018, to vacate a 5.88-acre park site generally located at the southwest corner of M Street and Arrow Wood Drive.

RECOMMENDATION

City Council - Adopt a motion adopting Resolution 2018-64, a Resolution of the City Council of the City of Merced, California, declaring its intention to vacate an approximately 5.88 acre park site generally located at the southwest corner of M Street and Arrow Wood Drive (extended) (Vacation #18-02) and setting time and place for Public Hearing.

SUBJECT: Allocation of Fiscal Year 2018/19 Community Development

Block Grant (CDBG) and HOME Investment Partnership Program

(HOME) to Fund Sub-Recipient Agreements with Restore Merced for

Neighborhood Clean-Up Program (\$60,000), Sierra Saving Grace for
the Homeless Project (\$465,000), Merced Rescue Mission for the
Hope for Families Project Program (\$250,000) and County of Merced
for the Continuum of Care Program; and First Technical Amendment
to the 2018 Department of Housing and Urban Development Annual
Action Plan

REPORT IN BRIEF

Authorizes execution of Community Development Block Grant and HOME Investment Partnership Program Sub-Grantee Agreements with Restore Merced for Neighborhood Clean-Up Program in the amount of \$60,000, Sierra Saving Grace for the Homeless Project in the amount of \$465,000, Merced Rescue Mission for the Hope for Families Project Program in the amount of \$250,000 and Continuum of Care Program in the amount of \$38,000.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving agreements identified in the 2018 Department of Housing and Urban Development (HUD) Annual Plan with Community Development Block Grant (CDBG) funds from the 2018/19 Fiscal Year (Accounts 018-1301-552-17.00 / Professional Services, 018-1301-552-29.00 / Supplies and Services, and 033-1349-552-29.00 / Supplies and Services, per previous City Council recommendation for:
 - 1. An agreement with Restore Merced for Neighborhood Clean-Up Program in the amount of \$60,000; and,
 - 2. An agreement with Sierra Saving Grace for the Homeless Project in the amount of \$465,000; and,
 - 3. An agreement with Merced Rescue Mission for the Hope for Families Project Program in the amount of \$250,000; and,
 - 4. An agreement with County of Merced for the Continuum of Care Program in the amount of \$38,000; and,
- B. Authorizing the City Manager or Assistant City Manager to execute, and if necessary, make minor modifications to the agreements described above as attached to this report and all associated documents; and,
- C. Authorizing the Finance Officer to make necessary budget adjustments.

J.9. 18-465

SUBJECT: Agreement to Negotiate Exclusively with the Richman Group of California, LLC for the Childs and B Street Affordable Housing

Development

REPORT IN BRIEF

Approves the exclusive negotiating agreement with the Richman Group of California, LLC for the eventual development of an affordable housing project at Childs Avenue and B Street.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the exclusive negotiating agreement between the City of Merced and the Richman Group of California, LLC; and,
- B. Authorizing the City Manager or Assistant City Manager to execute, and if necessary, make minor modifications to the agreements described

above as attached to this report and all associated documents; and,

C. Authorizing the Finance Officer to make necessary budget adjustments.

J.10. 18-442 **SUBJECT:** Approval of a Five-Year Agreement with Environmental Compliance Resources for Graffiti Abatement Services

REPORT IN BRIEF

Considers approving a five (5) year agreement for graffiti abatement services between the City of Merced and Environmental Compliance Resources for \$189,500 for the first year with 1.8% increases for each subsequent year.

RECOMMENDATION

City Council - Adopt a motion approving a five-year agreement for graffiti abatement services with Environmental Compliance Resources and authorizing the City Manager or Assistant City Manager to execute all the necessary documents.

J.11. 18-488 **SUBJECT:** Street Closure Request- 2018 Central California Band Review

REPORT IN BRIEF

Consider allowing street closures on November 10, 2018, for portions of Parsons Avenue, Dinkey Creek, Watertown Drive, and East Childs Avenue to facilitate the Central California Band Review.

RECOMMENDATION

City Council - Adopt a motion approving the street closures of Parsons Avenue, from Merced Avenue to Dinkey Creek; Dinkey Creek, from Parsons Avenue to Watertown Drive; Watertown Drive, from Dinkey Creek to East Childs Avenue; and East Childs Avenue, from Coffee Street to Carol Avenue, as requested by Golden Valley High School Band Boosters Coordinator Kirsten Shulley for the 2018 Central California Band Review scheduled Saturday, November 10, 2018. The street closures will be between 6:00 a.m. and 3:30 p.m.; subject to the conditions of the administrative staff report.

K. PUBLIC HEARINGS

Members of the public who wish to speak on public hearings listed on the agenda will be heard when the Public Hearing is opened, except on Public Hearing items previously heard and closed to public comment. After the public has commented, the item is closed to further public comment and brought to the Council for discussion and action. Further comment will not be received unless requested by the Council.

K.1. 18-490

SUBJECT: Continued Public Hearing - Annexation and Pre-Zoning

Application #15-01, General Plan Amendment #15-04, and

Pre-Annexation Development Agreement, Initiated by Louann Bianchi,
and Quad LLC, Property Owners

REPORT IN BRIEF

Consider approval of the proposed annexation of 8.83 acres of land generally located at the northwest and southwest corners of North Highway 59 and Santa Fe Drive, along with changes in the General Plan designation, pre-zoning, and approval of a Pre-Annexation Development Agreement.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving **Resolution 2018-60**, a Resolution of the City Council of the City of Merced, California, approving a Mitigated Negative Declaration for Annexation #15-01, Pre-Zoning Application #15-01, and General Plan Amendment #15-04 for 7.83 acres of land generally located at the northwest corner of North Highway 59 and Santa Fe Drive and 1.0 acre of land generally located at the southwest corner of North Highway 59 and Santa Fe Drive and approving General Plan Amendment #15-05 for the 7.83 acres of land generally located at the northwest corner of North Highway 59 and Santa Fe Drive changing the General Plan land use designation from Open Space (OS) to Thoroughfare Commercial (CT); and.
- B. Approving **Resolution 2018-61**, a Resolution of the City Council of the City of Merced, California, to the Local Agency Formation Commission for the annexation of uninhabited property located at the northwest and southwest corners of North Highway 59 and Santa Fe Drive, as described herein; and,
- C. Introducing **Ordinance 2494**, an Ordinance of the City Council of the City of Merced, California, amending the official zoning map by Pre-zoning land generally located at the northwest corner of North Highway 59 and Santa Fe Drive as Thoroughfare Commercial (C-T) and the land generally located at the southwest corner of North Highway 59 and Santa Fe Drive

as Light Industrial (I-L); and,

D. Introducing **Ordinance 2495**, an Ordinance of the City Council of the City of Merced, California, approving a Pre-Annexation Development Agreement between the City of Merced and Lou Ann Bianchi for the Highway 59 and Santa Fe Annexation.

L. REPORTS

L.1. 18-496

SUBJECT: Pavement Management System Survey Results, Current
Capital Improvement Projects, and Discussion of Future Streets Funding

REPORT IN BRIEF

Discuss the results of the Pavement Management System (PMS) survey completed by Merced County Association of Governments (MCAG), the current Capital Improvement Program (CIP) and provide direction on the programming of future Streets funding.

RECOMMENDATION

Provide staff direction for the implementation of the Pavement Management System survey results and future programming of Streets funding through the City's Capital Improvement Program.

L.2. 18-513

SUBJECT: Update on Goals and Priorities (1st Quarter)

REPORT IN BRIEF

Update on the City Council's goals and priorities for FY 2018-2019 1st Quarter.

RECOMMENDATION

For information only.

M. BUSINESS

M.1. <u>18-499</u>

SUBJECT: Approval of Employment Agreement with City Attorney

Item added late

REPORT IN BRIEF

It is requested that the City Council consider hiring a permanent City Attorney.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the Employment Agreement and announcing the new City Attorney; and,
- B. Authorizing the Mayor to sign on behalf of the City; and,
- C. Authorizing the Finance Officer to make the necessary budget adjustments.

M.2. <u>18-500</u>

Item added late

SUBJECT: Considers Approving the Second Amendment to the City
Manager Employment Agreement

REPORT IN BRIEF

The City Council is asked to consider approving the Second amendment to the employment agreement for the City Manager.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the Employment Agreement with the City Manager/City Clerk; and,
- B. Authorizing the Mayor to sign on behalf of the City; and,
- C. Authorizing the Finance Officer to make the necessary budget adjustments
- M.3. Request to Add Item to Future Agenda
- M.4. City Council Comments

N. ADJOURNMENT

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item B.1. Meeting Date: 10/1/2018

SUBJECT: PUBLIC EMPLOYMENT - Title: City Attorney; Authority: Government Code Section <u>54957</u>



Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item F.1. Meeting Date: 10/1/2018

SUBJECT: Proclamation - Domestic Violence Awareness Month

REPORT IN BRIEF

Received by a representative of the Valley Crisis Center.

ATTACHMENTS

1. Domestic Violence Awareness Proclamation



WHEREAS, three in four American knows someone who's experienced domestic violence; and

WHEREAS, domestic violence affects women, men, and children of all racial, ethnic, cultural, social, religious, and economic groups in the United States and here in California; and

WHEREAS, the marginalization of certain groups in society, including undocumented individuals, transgender individuals, and people living with disabilities, increases their vulnerability to intimate partner violence; and

WHEREAS, among families domestic violence is the third leading cause of homelessness; and

WHEREAS, all victims deserve access to culturally appropriate programs and services to increase their safety and improve their life situations; and

WHEREAS, children exposed to domestic violence can experience long-term consequences including difficulty at school, substance abuse, and serious adult health problems; and

WHEREAS, we must work together to educate our community about domestic violence prevention, supporting survivors, and speaking out against harmful attitudes and actions; and,

NOW, THEREFORE, I, MIKE MURPHY, Mayor of the City of Merced hereby recognize the month of October 2018 as "Domestic Violence Awareness Month" and recognize the efforts of Valley Crisis Center's Peace for Families March on Thursday, October 4th. We urge all citizen to actively participate in the scheduled activities and programs, which work toward improving victim safety and hold perpetrators of domestic violence accountable for their actions against individuals and our society as a whole.

Signed this 1st day of October 2018.



Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item F.2. Meeting Date: 10/1/2018

SUBJECT: Proclamation - Fire Prevention Month

REPORT IN BRIEF

Accepted by a representative of the Merced Fire Department.

ATTACHMENTS

1. Fire Prevention Month Proclamation



Proclamation

WHEREAS.

WHEREAS,

WHEREAS

the City of Merced is committed to ensuring the safety and security of all those living in

and visiting Merced; and fire is a serious public safety concern both locally and nationally, and homes are the WHEREAS, locations where people are at greatest risk from fire; and home fires killed 2,735 people in the United States in 2016, according to the National Fire WHEREAS, Protection Association (NFPA), and fire departments in the United States responded to 352,000 home fires; and WHEREAS. the majority of U.S. fire deaths (4 out of 5) occur at home each year; and WHEREAS, the fire death rate per 1000 home fires reported to U.S. fire departments was 10 percent higher in 2016 than in 1980; and WHEREAS, Merced's residents should identify places in their home where fires can start and eliminate those hazards; and working smoke alarms cut the risk of dying in reported home fires in half; and WHEREAS, WHEREAS, Merced's residents should install smoke alarms in every sleeping room, outside each separate sleeping area, and on every level of the home; and Merced's residents should listen for the sound of the smoke alarm and when it sounds WHEREAS, respond by going outside immediately to the designated meeting place; and Merced's residents who have planned and practiced a home fire escape plan are more WHEREAS, prepared and will therefore be more likely to survive a fire; and

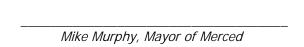
the 2018 Fire Prevention Month theme, "Look. Listen. Learn. Be aware – fire can happen anywhere™" effectively serves to remind us that we need to take personal steps to increase our safety from fire.

Merced's first responders are dedicated to reducing the occurrence of home fires and

NOW, THEREFORE, I, MIKE MURPHY, Mayor of Merced, do hereby proclaim October 2018, as Fire Prevention Month throughout this city, and I urge all the people of Merced to be aware of their surroundings, look for available ways out in the event of a fire or other emergency, respond when the smoke alarm sounds by exiting the building immediately, and to support the many public safety activities and efforts of Merced's fire and emergency services during Fire Prevention Month 2018.

home fire injuries through prevention and protection education; and

Signed this 1st day of October 2018.





Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item F.3. Meeting Date: 10/1/2018

SUBJECT: Proclamation - Breast Cancer Awareness Month

REPORT IN BRIEF

Accepted by a representative from the Merced Fire Department.

ATTACHMENTS

1. Breast Cancer Awareness Month Proclamation



- WHEREAS, a woman receives a diagnosis of breast cancer every two minutes, making the disease the second most frequently diagnosed cancer among women in the United States; and
- WHEREAS, each year it is estimated that more than 220,000 women in the United States will be diagnosed with breast cancer and more than 40,000 will die as a result of the disease; and
- WHEREAS, screening rates are declining and a recent study revealed that among the 1.5 million women studied over the age of 40 with health insurance, less than fifty percent received the recommended annual screening; and
- WHEREAS, the efforts of the Merced City Firefighters, IAFF Local #1479, and other organizations have made a major contribution to spreading breast cancer awareness to men and women in our community through outreach, education, and screening programs; and
- WHEREAS, through research and advocacy, significant advances have been made in the fight against breast cancer, decreasing the mortality rate by 36 percent; and
- WHEREAS, the 2.5 million breast cancer survivors living in the United States today are a testament to courage, as well as to the importance of promoting awareness about breast cancer, providing information, funding research, following recommended screening guidelines, and offering treatment to those who are affected; and
- WHEREAS, throughout the month of October, women are encouraged to make a renewed commitment to following recommended screening guidelines and to make a mammogram appointment,

NOW, THEREFORE, I, MIKE MURPHY, Mayor of the City of Merced, do hereby proclaim October 2018 Breast Cancer Awareness Month, and urge all citizens of Merced to take cognizance of this event and participate fittingly in its observance.

Signed this 1st day of October 2018.

Mike Murphy, Mayor of Merced



Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item F.4. Meeting Date: 10/1/2018

SUBJECT: Proclamation - Code Enforcement Officer Appreciation Week

REPORT IN BRIEF

Received by the City of Merced Code Enforcement Officers.

ATTACHMENTS

1. Code Enforcement Officer Appreciation Proclamation



- WHEREAS, the State of California has proclaimed the 2nd week of October as Code Enforcement Officer Appreciation Week, and
- WHEREAS, Code Enforcement Officers provide for the safety, health, and welfare of citizens in the City of Merced through the enforcement of local, state, and federal laws and ordinances dealing with various issues of building, zoning, housing, animal control, environmental, health, and life safety; and
- WHEREAS, Code Enforcement Officers have challenging and demanding roles and often do not receive recognition for the job they do in improving quality of life for residents and businesses of local communities; and
- WHEREAS, the role of many Code Enforcement Officers has expanded in recent years with jurisdictions increasingly relying on the expertise and training of Code Enforcement Officers in their communities; and
- WHEREAS, Code Enforcement Officers are dedicated, highly qualified, and highly trained professionals who share the goals of preventing neighborhood deterioration, enhancing communities, ensuring safety, and preserving property values through knowledge, training, and application of housing, zoning, and nuisance laws; and
- WHEREAS, Code Enforcement Officers often have a highly visible role in the City of Merced and regularly interact with the public and a variety of federal, state, county, and local officials in their capacity as code enforcement officers.

NOW, THEREFORE, I, MIKE MURPHY, Mayor of the City of Merced, on behalf of the City Council, do hereby proclaim that the second week of October in 2018, and annually thereafter, be known as Code Enforcement Officer Appreciation Week in the City of Merced and for residents to join in recognizing and expressing their appreciation for the dedication and service by the individuals who serve as our Code Enforcement Officers.

Signed this 1st day of October 2018



Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item F.5. Meeting Date: 10/1/2018

SUBJECT: Proclamation - Merced Pride Weekend

REPORT IN BRIEF

Received by a representative of the Merced LGBTQ+ Alliance.

ATTACHMENTS

1. Merced Pride Weekend Proclamation



- WHEREAS, Lesbian, Gay, Bisexual, Transgender, and Queer Pride celebrates human diversity and takes a position against discrimination; and
- WHEREAS, LGBTQ+ community members are historically more vulnerable to sanctioned violence than their heterosexual and cisgender counterparts and there is a need for more resources for LGBTQ+ youth; and
- WHEREAS, The City of Merced actively supports fostering inclusivity and re-affirmation of all its residents and acknowledges the efforts of the Merced LGBTQ+ Alliance to move towards a unified City.

NOW, THEREFORE, I, MIKE MURPHY, Mayor of the City of Merced hereby recognize October 5-7 as Merced Pride Weekend.

Signed this 1st day of October 2018.	
Mike Murphy Mayor of Merced	



Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item J.1. Meeting Date: 10/1/2018

SUBJECT: Reading by Title of All Ordinances and Resolutions

REPORT IN BRIEF

Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and a summary title may be read with further reading waived.

RECOMMENDATION

City Council - Adopt a motion waiving the reading of Ordinances and Resolutions, pursuant to Section 412 of the Merced City Charter.



Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item J.2. Meeting Date: 10/1/2018

Report Prepared by: Kirkland Greene, Records Clerk II

SUBJECT: Information-Only Contracts

REPORT IN BRIEF

Notification of awarded Non-Public Works contracts under \$31,000 and of Public Works contracts under \$69,833.

AUTHORITY

Pursuant to the authority delegated to the City Manager on behalf of the City by Article XI, Section 1109, of the Merced City Charter to execute Public Works contracts under the adjusted FY 2018-2019 threshold of \$69,833.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted FY 2018-2019 threshold of \$31,000.00, the contracts listed on the attached table were entered into by the City.

ATTACHMENTS

1. "Information-Only" Contracts Table for September 2018

$\underline{Exhibit\ 1-Table\ of\ Contracts}$

10/1/2018 City Council Meeting

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Department/Division	Vendor	Purpose/Location	Amount
	California Natural Resources Agency	Temporary Entry Permit (TEP) to Conduct Nutria Control	
1115 – PW - Land Application	 Department of Fish & Wildlife 	on Private Lands (Access Agreement for three parcels).	(No funds.)
		Emergency Medical Services (EMS) Agreement to Provide	
	Merced Union High School District	Special Standby Emergency Medical Services for El	
0901 – Fire	(MUHSD)	Capitan High School's 2018 Season Home Football Games.	(No funds.)
		Drill one boring to determine R-values, collect samples,	
		and make recommendations for full depth reclamation	
		(FDR), along "M" Street between Rambler Avenue and	
		Bear Creek Drive (RSTP Project No. 117040 - "M" Street	
		Improvements at Bear Creek).	
0803 – Engineering	Technicon Engineering Services, Inc.	(Statement of Services, PO #132016.)	\$ 2,100.00
		Professional Services Agreement (Proposal) for Appraisal	
		of City-Owned Property Near Yosemite Avenue and East	
2002 – Economic Development	Valbridge Property Advisors	of "G" Street (4.56-acre parcel; APN: 231-040-021-000).	\$ 3,000.00
•		Subrecipient Agreement to Administer a Youth Services	
	The Kiwanis Club of Greater Merced	"Kiddie Boot Camp" Program, Using Community	
1301 – Housing	Foundation, Inc.	Development Block Grant (CDBG) Funds.	\$ 7,000.00
		Agreement for Professional Services in Connection With a	
		Youth Enrichment Project.	
1201 – Recreation and Parks	Merced County Arts Council, Inc.	(Summer Youth Arts Camp: July 9 - 27, 2018.)	\$10,000.00
	·	Remove and replace 125 linear feet of 24" RCP with 24"	
		SDR 35 sewer pipe. (Fahren's Park south of Buena Vista,	
		north of Loughborough Drive, and west of "R" Street.)	
1107 – PW - Sewer Systems	Phase 1 Construction	(Statement of Services, PO #131942.)	\$14,600.00
•	Emcor Services Mesa Energy	Maintenance Agreement for HVAC at the Merced Civic	
1119 – PW - Facilities	Systems	Center and at the Police Department.	\$14,681.00
		Subrecipient Agreement for Administering an Activity	
		Grant to Provide a Warming Center (commencing	
		November 1, 2018), Using Community Development	
1301 – Housing	Merced Rescue Mission, Inc.	Block Grant (CDBG) Funds.	\$16,000.00

Exhibit 1 – Table of Contracts (Continued)

10/1/2018 City Council Meeting

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		Subrecipient Agreement for Administering a Senior Rental	
	Healthy House Within a Match	Assistance and Advocacy Program, Using Community	
1301 – Housing	Coalition, Inc.	Development Block Grant (CDBG) Funds.	\$20,000.00
		Subrecipient Agreement to Administer a Rental	
		Deposits/Rapid Rehousing Program, Using Community	
1301 – Housing	Merced Rescue Mission, Inc.	Development Block Grant (CDBG) Funds.	\$20,000.00
		Subrecipient Agreement to Administer a Homeless Project	
		Emergency Assistance Program, Using Community	
1301 – Housing	Sierra Saving Grace	Development Block Grant (CDBG) Funds.	\$20,000.00
		Painting of secondary Clarifier #2 center drive, sweeps,	
	Bulldog Painting, Inc. (Villanueva	catwalks, and submerged flights.	
1108 – WWTP	Painting)	(Statement of Services, PO #132080.)	\$23,700.00



Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item J.3. Meeting Date: 10/1/2018

Report Prepared by: Stephani Davis, Secretary I, Planning Division

SUBJECT: Information Only-Site Plan Review Minutes of August 2, 2018

RECOMMENDATION

For information only.

ATTACHMENTS

1. SP Minutes 08-02-2018

CITY OF MERCED Site Plan Review Committee

MINUTES

Planning Conference Room 2nd Floor Civic Center Thursday, August 2, 2018

Chairperson McBRIDE called the meeting to order at 1:30 p.m.

1. ROLL CALL

Committee Members Present: Development Services Director McBride,

City Engineer Son, and Chief Building

Official Frazier

Committee Members Absent: None

Staff Present: Planning Manager Espinosa and Associate

Planner/Recording Secretary Nelson

2. MINUTES

M/S SON/FRAIZER, and carried by unanimous voice vote, to approve the Minutes of April 26, 2018, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

4.1 Extension of Vesting Tentative Subdivision Map (VTSM) #1298 ("Salazar"), submitted by Jay Thiara, on behalf of Jinder, Michelle, Ravinder, and Sureena Thiara, property owners, for 41 single-family lots on 8.85 acres, generally located south of Childs Avenue, at the eastern end of Dinkey Creek Avenue and approximately 124 feet east of Rye Street within an R-1-5 zone.

Associate Planner NELSON reviewed the application for this item. For further information, refer to the memo to the Site Plan Review Committee dated August 2, 2018.

The applicant was not in attendance.

The Committee discussed the regulations of the Subdivision Map Act regarding extensions for tentative subdivision maps. Committee Member SON expressed concern about extending the map without knowing what the property owner's plans were. There was further discussion regarding the requirements of the subdivision map act and about the improvements that were required with the original approval of the tentative map.

There being no one from the public wishing to speak on this matter, the public hearing was opened and closed at 1:38 p.m.

M/S FRAZIER/McBRIDE, and carried by the following vote, to grant a one-year extension for Vesting Tentative Subdivision Map #1298 subject to the Findings and thirty-six (36) conditions set forth in the Planning Commission Resolution #2929.

AYES: Committee Member Frazier and Chairperson

McBride

NOES: None ABSENT: None

ABSTAIN: Committee Member Son

4.2 Extension of Vesting Tentative Subdivision Map (VTSM) #1296 ("Summerfield"), submitted by Jay Thiara, on behalf of Jinder, Michelle, Ravinder, and Sureena Thiara, property owners, for 251 single-family lots on 55.24 acres, generally located south of Childs Avenue, approximately 250 feet west of Coffee Street and 300 feet north of Gerard Avenue within an R-1-5 zone.

Associate Planner NELSON reviewed the application for this item. For further information, refer to the memo to the Site Plan Review Committee dated August 2, 2018.

The applicant was not in attendance.

There being no one from the public wishing to speak on this matter, the public hearing was opened and closed at 1:45 p.m.

Site Plan Review Committee Minutes Page 3

August 2, 2018

M/S FRAZIER/SON, and carried by the following vote, to grant a one-year extension for Vesting Tentative Subdivision Map #1296 subject to the Findings and fifty-one (51) conditions set forth in the Planning Commission Resolution #2928.

AYES:

Committee Members Frazier, Son, and Chairperson

McBride

NOES:

None

ABSENT:

None

5. **ADJOURNMENT**

There being no further business, Chairperson McBRIDE adjourned the meeting at 1:50 p.m.

Respectfully submitted,

Julie Nelson, Secretary

Merced City Site Plan Review Committee

APPROVED:

Scott McBride, Chairperson/Development

Services Director

Merced City Site Plan Review Committee

CITY OF MERCED Planning Commission

Resolution #2929

Extended on 7/15/08, 7/15/09, 7/15/11, 7/11/13, 10/10/15, & 8/2/18-See Page 9.

WHEREAS, the Merced City Planning Commission at its regular meeting of August 22, 2007, held a public hearing and considered Vesting Tentative Subdivision Map #1298 ("Salazar"), initiated by O'Dell Engineering, applicants for Rucker Family Trust, property owner, to allow the subdivision of 8.85 acres, generally located south of Childs Avenue, at the eastern end of Dinkey Creek Avenue, and 124 feet east of Rye Street, into approximately 41 single-family residential lots within an R-1-5 (Low-Density Residential 5,000 square-foot lot minimum) pre-zone; also known as Assessor's Parcel No. 061-260-005; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through S of Staff Report $\#07-20-2^{nd}$ Addendum; and,

WHEREAS, the Merced City Planning Commission does resolve to hereby find that the previous environmental review [Expanded Initial Study #04-80 (Mitigated Negative Declaration) for the Coffee Street Annexation] remains sufficient and no further documentation is required (Subsequent EIR/ND Section 15162 Findings), and approve Vesting Tentative Subdivision Map Application #1298, subject to the following conditions:

- The proposed project shall be constructed/designed as shown on Exhibits 1 & 2 (Proposed Vesting Tentative Map) Attachments B, C, & D of Staff Report #07-20 2nd Addendum, subject to conditioned changes.
- 2. All conditions contained in *Resolution #1175-Amended ("Standard Tentative Subdivision Map Conditions")* and Ordinance #2276 (Annexation for the Coffee Street Annexation) shall apply.
- 3. The proposed project shall comply with all standard Municipal Code (including R-1-5 design standards) and Subdivision Map Act requirements as applied by the City Engineering Department.
- 4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.

- 5. Community Facilities District (CFD) formation 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 <u>before final map approval</u>. 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 cost and maintenance costs expected prior to first assessments being received.
- 6. The developer/applicant shall indemnify, protect, defend, 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, or proceedings 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. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
- 7. 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.
- 8. Street names to be approved by City Engineer.

- 9. Dedicate, by Final Map, all interior street rights-of-way and all necessary easements, as shown on plans, and as needed for irrigation, utilities, drainage, landscaping, and open space.
- 10. Developer shall conform to existing sanitary sewer master plan established for the area. Developer shall share cost of pump station with the subdivision to the east ("Summerfield") if joint use occurs.
- 11. Developer shall provide storm drainage calculations, including retention volumes where such volume is proposed, and share proportionally in the cost of the storm pump station located adjacent to Dinkey Creek Drive.
- 12. Compliance with the 40-foot visual corner is required for corner lots and may result in the applicant constructing smaller homes on these lots or increasing the front yard setbacks. A 4-foot encroachment for the porch area can be allowed within this area. Details to be worked out with staff.
- 13. Front yard setbacks for the living portion of the home shall be a minimum of 15-feet. The garage portion of the home shall maintain a minimum setback of 20-feet, allowing for a minimum 20-foot driveway. The driveway length shall be measured from either the back of the sidewalk or from the property line, whichever results in a 20-foot driveway length without encroachment on the sidewalk area.
- 14. Fire Hydrants to be provided and spaced in accordance with City of Merced standards. The maximum spacing between hydrants is 500 feet. Placement of fire hydrants and number of hydrants to be worked out at the improvement plan stage.
- 15. Utility meters serving the homes shall be placed adjacent to the Cityowned street or sidewalk to facilitate the electronic reading of said meters. All utilities will need to be located prior to approval of the map; this includes water, sewer, electrical, gas, and cable.

- 16. The street tree and street light locations shall be located prior to approval of the Final Map.
- 17. Refuse containers shall be stored out of site of the general public. A concrete pad (3 x 6 foot minimum) with paved access to the street shall be installed in the side or back yard of each unit to house refuse containers.
- 18. City utility service (water and sewer) connections shall be located under the driveway for each lot that faces a City street. Water lines are privately owned and maintained between the meter and the home. Sewer lines are privately owned and maintained from the point of connection to the City-owned main sewer line.
- 19. All open space and landscape areas along the western edge of the proposed local street (to be named Weaver Avenue) and cul-de-sac (to be named Weaver Court) shall be fully maintained by CFD's, and shall be dedicated to the City of Merced.
- 20. Additional right-of-way and easements shall be granted along Dinkey Creek Avenue within the Project site to comply with current requirements to allow for a 64-foot wide collector and landscape/public facilities easements of 10-feet in width.
- 21. Additional right-of-way and easements shall be acquired and granted along Childs Avenue to comply with the *Merced Vision 2015 General Plan* requirements to allow for a 94-foot wide arterial and landscape/public facilities easements of 15-feet in width in front of properties.
- 22. On local streets, cul-de-sac's, and dead-end roads with a 49-foot ROW width and park-strips, the minimum park strip width shall be 7 feet and the minimum sidewalk width shall be 5 feet. Trees shall be planted with root barriers to help prevent damage to the sidewalk.

- 23. All local streets, cul-de-sac's, and dead-end roads shall be designed to City Standards. In no case shall a park strip be eliminated along any Local Street.
- 24. The effective date of this tentative map approval shall be the effective date of the final annexation for Coffee Street Annexation. (Annexation to the City has not yet been finalized and is subject to pre-clearance under the Voting Rights Act before the Annexation can become effective.)
- 25. There shall be no valley gutters allowed within this subdivision.
- 26. The tentative map shows no surface storage of storm water. Developer shall install underground pipe storage facility as approved by the City Engineer, or connection to the east (Summerfield) storage basin.
- 27. For the purposes of traffic calming on Dinkey Creek Avenue and to satisfy Mitigation Measure #15-7 of EIS #04-80, the developer is responsible to share in the cost for the raised intersection to be installed by the developer of Summerfield at the intersection of Dinkey Creek Avenue and Manzanita Drive designed as shown at Attachment E of Staff Report #07-20 2nd Addendum with the full cost proportionally shared between the Salazar and Summerfield Subdivisions.
- 28. For the purposes of traffic calming on Dinkey Creek Avenue and to satisfy Mitigation Measure #15-7 of ERC #04-80, the developer is responsible to share in the cost for the two speed tables that are to be installed by the developer of Summerfield; the first one shall be installed between Yorktown Street and Watertown Drive, and the second shall be installed between South Fork Drive and Sweetwater Street. The speed tables shall be designed as shown at Attachment E of Staff Report #07-20 2nd Addendum with the full cost proportionally shared between the Salazar and Summerfield Subdivisions.

- 29. Consistent with Mitigation Measure #15-6 of EIS #09-80, the developer shall incur the cost to analyze modifying the timing of the signal located at the intersection of Childs and Parsons Avenues. The developer shall reimburse the City its cost for this modification.
- 30. Developer shall be responsible for a proportional share of cost and development of the Park/Basin area in the adjacent Summerfield subdivision.
- 31. The developer/applicant shall not be required to install a sidewalk along the western portion of Weaver Avenue that abuts Assessor Parcel No. 061-260-002 or along the eastside of Lots #1 through 7 & #25 through 28 of Hartley Crossings (Tuscany Estates III). However, curb, gutter, park-strip, and asphalt to the centerline of the road shall be installed along the western portion of Weaver Avenue and Weaver Court. The developer shall construct the park-strip, sidewalk, curb, gutter and pavement only along the east side of Weaver Avenue. At no time shall the intersection of Weaver and Childs Avenue be gated or blocked.
- 32. City review and approval of landscape/irrigation plans, to be prepared by a licensed landscape architect is required for all areas of landscaping that are to be maintained by City.
- 33. Consistent with the Project Pre-Annexation Childs Avenue: Development Agreement previously approved, the developer/applicant shall acquire and dedicate additional rights-of-way prior to approval of the Final Map, within their Project site and northern portion of Parcel 1. The developer/applicant shall be 100% responsible for the frontage improvements for the Childs Avenue frontage along both the Tuscany IV (Rucker) and the Parcel 1 non-owned frontage (approximately 297.3 feet), coordinating efforts with the "Summerfield" portion of the development. The developer/applicant is responsible for improvements inclusive of piping and covering the Merced Irrigation District Canal, the relocation of overhead power, cable, and telephone lines, sidewalk, park-strip, curb, gutter, and needed asphalt to the centerline of Childs Avenue. The improvements shall be required when Alfarata Boulevard is required to be built and connected to Childs

Avenue for non-emergency use. If water, sewer, and storm water are not available to the land area covered by this agreement, however, then the City may choose to defer construction of Childs Avenue frontage improvements. Owner is entitled to reimbursement for said improvements adjacent to the U-T zoned properties if and when those properties are developed, to the extent City can acquire funds due to such development.

- 34. The developer/applicant shall be required to install an emergency access drive with full-pavement width, curb, and gutter that connects Weaver Avenue to Childs Avenue. Acquisition and construction of emergency access drive shall commence prior to the first certificate of occupancy, inclusive of completion of model homes for the proposed subdivision.
- 35. Traffic Mitigation Fee Payment: Consistent with Mitigation Measures #15-1, #15-4, #15-5, and #15-8, the developer/applicant shall pay the City of Merced their fair-share of traffic mitigation fees as part of the final map process.
- 36. A provision shall be recorded by the developer or its successor, at time of sale of any residential property within the project that lies within 1,000 feet of the external boundary of any non-project property which then currently has an active agricultural operation, or has had an agricultural operation on it during the calendar year preceding the year within which the sale takes place. This provision shall notify the buyer(s) and any subsequent owner(s) of the possible inconvenience or discomfort of farming operations, arising from the use of agricultural chemicals, including pesticides, and fertilizers, as well as from the pursuit of agricultural operations including plowing, spraying, and harvesting which occasionally generate dust, smoke, noise and odor, and the priority to which Merced County places on agricultural operations.

PLANNING COMMISSION RESOLUTION #2929

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August 22, 2007/July 15, 2008/July 15, 2009/July 15, 2011/July 11, 2013/Oct. 10, 2015/Aug. 2, 2018

Upon motion by Commissioner Amey, seconded by Commissioner Williams, and carried by the following vote:

AYES:

Commissioners Shankland, McCoy, Amey, Cervantes,

Williams, Acheson, and Chairperson Ward

NOES:

None

ABSENT: None

Adopted this 22nd day of August, 2007

Chairperson, Planning Commission of the City of Merced, California

ATTEST:

Secretary

n:shared:planning:PC Resolutions:#2929 VTSM#1298 Salazar

July 15, 2008/July 15, 2009: On July 15, 2008, the State of California gave a one-year extension to all active (not expired) tentative maps that were otherwise scheduled to expire on or before December 30, 2010. On July 15, 2009, the State of California gave a second, two-year extension. Therefore, this Tentative Map #1298 hereby has its expiration date extended to August 22, 2012.

<u>July 15, 2011</u>: On July 15, 2011, the State of California gave a 24-month extension to all active (not expired) tentative maps that were otherwise scheduled to expire on or before January 1, 2014. Therefore, Vesting Tentative Subdivision Map #1298 hereby has its expiration date extended to August 22, 2014.

July 11, 2013: On July 11, 2013, the State of California gave a 24-month extension to all active (not expired) tentative maps that were approved on or after January 1, 2000. Therefore, Vesting Tentative Subdivision Map #1298 hereby has its expiration date extended to August 22, 2016.

October 10, 2015: On October 10, 2015, the State of California gave a 24-month extension to all active (not expired) tentative maps that were approved on or after January 1, 2002, and not later than July 11, 2013. Therefore, Vesting Tentative Subdivision Map #1298 hereby has its expiration date extended to August 22, 2018.

August 2, 2018: On August 2, 2018, the City of Merced Site Plan Review Committee granted a one-year extension for Vesting Tentative Subdivision Map #1296. The expiration date is now August 22, 2019.

CITY OF MERCED Planning Commission

Resolution #2928

Extended on 7/15/08, 7/15/09, 7/15/11, 7/11/13, 10/10/15, & 8/2/18-See Page 12.

WHEREAS, the Merced City Planning Commission at its regular meeting of July 18, 2007, held a public hearing and considered Vesting Tentative Subdivision Map #1296 ("Summerfield"), initiated by Golden Valley Engineering, applicants for L & G Land, LLC, property owner, to allow the subdivision of 55.24 acres, generally located south of Childs Avenue, into approximately 251 single-family residential lots within an R-1-5 (Low-Density Residential 5,000 square-foot lot minimum) pre-zone; also known as Assessor's Parcel Numbers 061-260-028, -029, -032, -036, -077, and -085; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through T of Staff Report #07-21; and,

WHEREAS, the Merced City Planning Commission does resolve to hereby find that the previous environmental review [Expanded Initial Study #04-80 (Mitigated Negative Declaration) for the Coffee Street Annexation] remains sufficient and no further documentation is required (Subsequent EIR/ND Section 15162 Findings), and approve Vesting Tentative Subdivision Map Application #1296, subject to the following conditions:

- 1. The proposed project shall be constructed/designed as shown on Exhibits 1 & 2 (Proposed Vesting Tentative Map, Plot-Plans, elevations) Attachments C & D of Staff Report #07-21, subject to conditioned changes.
- 2. All conditions contained in *Resolution #1175-Amended ("Standard Tentative Subdivision Map Conditions")*, and Ordinance #2275 (Annexation for the Coffee Street Annexation) shall apply, as well as conditions and mitigation measures spelled out in the Pre-Annexation Development Agreement for Coffee Street Annexation adopted January 16, 2007, and any subsequent amendments (see Attachment H of Staff Report #07-21 for mitigation measures).

- 3. The proposed project shall comply with all standard Municipal Code (including R-1-5 design standards) and Subdivision Map Act requirements as applied by the City Engineering Department.
- 4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
- 5. Community Facilities District (CFD) formation 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 cost and maintenance costs expected prior to first assessments being received.
- 6. The developer/applicant shall indemnify, protect, defend, 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, or proceedings 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. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
- 7. 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.
- 8. Street names to be approved by City Engineer.
- 9. Dedicate, by Final Map, all interior street rights-of-way and all necessary easements, as shown on plans, and as needed for irrigation, utilities, drainage, landscaping, and open space.
- 10. Developer shall conform to existing sanitary sewer master plan established for the area.
- 11. Developer shall provide storm drainage calculations, including retention volumes where such volume is proposed, and pay any cost to modify existing storm pump station located adjacent to Halley Avenue.
- 12. Compliance with the 40-foot visual corner is required for corner lots and may result in the applicant constructing smaller homes on these lots or increasing the front yard setbacks. A 4-foot encroachment for the porch area can be allowed within this area. Details to be worked out with staff.
- 13. Front yard setbacks for the living portion of the home shall be a minimum of 15-feet. The garage portion of the home shall maintain a minimum setback of 20-feet, allowing for a minimum 20-foot driveway. The driveway length shall be measured from either the back of the sidewalk or from the property line, whichever results in a 20-foot driveway length without encroachment on the sidewalk area.
- 14. A 6-foot tall masonry wall will need to be constructed along the entire length of the northern property line of parcels that neighbor the southern boundary of the park/basin (APN's 061-522-001 through –010). The wall shall separate the development from the local park. Design and details shall be worked out with Planning Staff at the Improvement Plan review stage.
- 15. Fire Hydrants shall be provided and spaced in accordance with City of Merced standards. The maximum spacing between hydrants is 500

- feet. Due to access issues to Lots 20 & 99, a fire hydrant will need to be place near the entrance to these lots. Placement of fire hydrants, sprinklers, and number of hydrants is to be worked out with the Fire Department.
- 16. Utility meters serving the homes located on Lots 20 & 99 shall be placed adjacent to the City-owned street or sidewalk to facilitate the electronic reading of said meters. In no case shall these meters be located along the private driveways. All utilities will need to be located prior to approval of the map; this includes water, sewer, electrical, gas, and cable.
- 17. The street tree and street light locations shall be located prior to approval of the Final Map.
- 18. Refuse containers utilized by homes on the private driveways shall be placed on the City-owned streets for collection. City refuse vehicles will not travel on the private driveways to collect refuse.
- 19. Refuse containers shall be stored out of site of the general public, including those homes located on the private driveways. A concrete pad (3 x 6 foot minimum) with paved access to the street shall be installed in the side or back yard of each unit to house refuse containers.
- 20. City utility service (water and sewer) connections shall be located under the driveway for each lot that faces a City street. Water lines are privately owned and maintained between the meter and the home. Sewer lines are privately owned and maintained from the point of connection to the City-owned main sewer line.
- 21. All open space and landscape areas, will be fully maintained by CFD's, and shall be dedicated to the City of Merced. The Park/Basin and level Park Area shall be eligible for park fee credits pursuant to existing City Policies and Standards.
- 22. Additional right-of-way and easements shall be acquired and granted along Childs Avenue to comply with the *Merced Vision 2015 General*

- *Plan* requirements to allow for a 94-foot wide arterial and landscape/public facilities easements.
- 23. Additional right-of-way and easements shall be granted along Dinkey Creek Avenue within the Project site to comply with current requirements to allow for a 64-foot wide collector and landscape/public facilities easements. Lots 30 through 36 shall have landscape and utility/public easements of 10-feet in width in front of a 6-foot high masonry wall.
- 24. Additional right-of-way and easements shall be granted along Alfarata Boulevard to comply with current requirements to allow for a 68-foot wide collector and landscape/public facilities easements. Lots 247 through 251 shall have landscape and utility/public easements of 10-feet in width in front of a 6-foot high masonry wall. The right-of-way and easements shall be acquired and dedicated from Gerard Avenue to Childs Avenue and completed prior to the issuance of the 100th Building Permit.
- 25. On local streets, cul-de-sac's, and dead-end roads with a 49-foot ROW width and park-strips, the minimum park strip width shall be 7 feet and the minimum sidewalk width shall be 5 feet. Trees shall be planted with root barriers to help prevent damage to the sidewalk.
- 26. All local streets, cul-de-sac's, and dead-end roads shall have a continuous park-strip that shall extend from intersection to intersection, beginning of bulb, or end of right-of-way. In no case shall a park strip be removed along any Local Street.
- 27. A minimum turning radius of 33 feet inside, 47 feet curb-to-curb and 49 feet wall-to-wall for fire apparatus access must be provided throughout the subdivision. Refuse containers or other items shall not be permitted or placed within the required clear space of the turning area.
- 28. All cul-de-sac bulbs shall be open-end style, including sidewalk connectors to adjacent streets and walls from back-of-house to back-of-house. Any wall openings shall be a minimum of 20 feet wide and have

- wrought iron gates, which would allow pedestrian access per City design practices and handicapped accessibility standards.
- 29. A water main shall be included in Alfarata Boulevard and Gerard Avenue as part of the construction required in Conditions #42 and #45 herein. Storm and sanitary sewer mains shall be installed if deemed necessary by the City Engineer.
- 30. The effective date of this tentative map approval shall be the effective date of the final annexation for Coffee Street Annexation. (Annexation to the City has not yet been finalized and is subject to pre-clearance under the Voting Rights Act before the Annexation can become effective.)
- 31. The Developer shall provide and construct a minimum 20-foot wide all weather access easement and road along the northern portion of Lot 102 and connecting the east-west street with Coffee Street prior to issuance of a certificate of occupancy for Lots 102 through 117. There shall be an emergency access gate installed along the western property line as the street intersects with Lot 102.
- 32. There shall be no valley gutters or rolled curbs allowed to be installed within this subdivision.
- 33. Lots 244 through 246 shall be required to have either hammerhead or circular driveways accessing Dinkey Creek Drive.
- 34. For the purposes of traffic calming on Dinkey Creek Avenue and to satisfy Mitigation Measure #15-7 of EIS #04-80, there shall be a raised intersection installed (prior to issuance of the 125th building permit) at the intersection of Dinkey Creek Avenue and Manzanita Drive designed as shown at Attachment F of Staff Report #07-21 at the full cost of the developer.
- 35. For the purposes of traffic calming on Dinkey Creek Avenue and to satisfy Mitigation Measure #15-7 of EIS #04-80, there shall be two speed tables installed (prior to issuance of the 125th building permit); the first one shall be installed between Yorktown Street and Watertown Drive, and the second shall be installed between South Fork Drive and

- Sweetwater Street. The speed tables shall be designed as shown at Attachment F of Staff Report #07-21 at the full cost of the developer.
- 36. Developer shall install a four-way stop intersection at the intersection of Alfararta Boulevard and Dinkey Creek Avenue per City standards.
- 37. The developer shall coordinate with Merced County Public Works ("The Bus") on the design and location of two bus stops within the Coffee Street Annexation area. The Project Final Map shall include the bus stop locations and provide adequate area within the right-of-way for their design. The Project Improvement Plans submitted to the City shall include these bus stops.
- 38. Consistent with Mitigation Measure #15-6 of EIS #04-80, the developer shall incur the cost to analyze modifying the timing of the signal located at the intersection of Childs and Parsons Avenues. The developer shall reimburse the City its cost for this modification. Such analysis and signal modification will occur during the later phases of the Project.
- 39. The right-of-way frontage for Lot 10 shall develop as a local street intersection. The developer shall install an intersection for this location inclusive of the following: a street sign pole, stormwater drains, curb and gutter radii, etc., ADA compliant crosswalk shall be installed until the City is able to make a determination to either have the street fully developed and extended south to the neighboring property line or deeded back to the developer.
- 40. The houses for Lots 9 & 11 shall be designed on these parcels as if they were to be corner lots with double street frontage. These two lots shall conform to Municipal Code Section 20.10.070.C. whereas Lot 9 would have a 10-foot eastern property line setback and Lot 11 would have a 10-foot western property line setback.
- 41. The Parks and Community Services Director shall review and approve the design and the layout for the park/basin prior to Final Map approval. Developer shall be responsible for the development of the Park/Basin area to the extent required by City Code. Additional landscaping and

- improvement would be through a reimbursement agreement pursuant to existing City Policies and Standards.
- 42. The park/storm basin within the specific site shall be dedicated to the City and shall be maintained by a combination of City and CFD funds, as allowed by law. The specific combination will be determined as part of the Rate and Method of Apportionment study for the Services CFD.
- 43. Consistent with the Project Pre-Annexation Gerard Avenue: Development Agreement, the developer/applicant shall acquire and dedicate additional rights-of-way (prior to issuance of the 125th building permit) and construct frontage improvements on the north side of Gerard Avenue frontage from the southeast corner of APN 061-500-011 eastward to the centerline of the Coffee Street. The developer/applicant shall be provided a reimbursement for a portion of road improvements when adjacent properties not owned by the developer/applicant are subsequently developed, pursuant to the mechanisms and amounts set forth in Municipal Code Section 17.58.030. The developer/applicant is entitled to reimbursements of said improvements as development occurs per city code. improvements shall be required once Alfarata Boulevard is connected to Gerard Avenue. The City is requiring this intersection to be improved with the third phase of the development. Said improvement shall be included in the improvements plans of the third Final Map of the Project, consistent with the Phasing Plan shown in Attachment F of Staff Report #07-21.
- 44. *Childs/Coffee Street Intersection*: The developer/applicant shall acquire and dedicate additional rights-of-way and construct any remaining improvements for the completion of the Childs Avenue and Coffee Street intersection. The developer/applicant is responsible for all improvements inclusive of sidewalk, park-strip, curb, gutter, and needed asphalt to the centerline of Childs Avenue and Coffee Street. This is inclusive of piping the MID lateral and the relocation of aboveground utilities as deemed necessary for the completion of this intersection. The improvements shall be required when Alfarata Boulevard is connected to Childs Avenue for non-emergency access.

- Consistent with Mitigation Measure #15-3 of EIS #04-80, the Developer shall also pay the City 12.5% of the Coffee Street/Childs Avenue signal costs at time of issuance of the 45th building permit.
- 45. Consistent with the Project Pre-Annexation Childs Avenue: Development Agreement, the developer/applicant shall acquire and dedicate additional rights-of-way (prior to issuance of the 200th building permit), within their Project site and from those properties zoned "Urban Transition" within the boundaries of the Coffee Street The developer/applicant shall construct frontage Annexation. improvements for the Childs Avenue frontage from the northwest corner of the Coffee Street Annexation eastward to the centerline of Coffee Street, coordinating efforts with the "Salazar" portion of the development. The developer/applicant is responsible for all improvements inclusive of piping and covering the Merced Irrigation District Canal, the relocation of overhead power, cable, and telephone lines, sidewalk, park-strip, curb, gutter, and needed asphalt to the centerline of Childs Avenue. The improvements shall be required when either Weaver Avenue or Alfarata Boulevard are required by the City to be built and connected to Childs Avenue for non-emergency use.
- 46. Alfarata *Blvd*: Consistent with the Project Pre-Annexation Development Agreement, the developer/applicant shall acquire and dedicate necessary rights-of-way and construct full-street and related improvements for Alfarata Boulevard within the Project site and through the "Urban-Transition" zoned properties situated north of Gerard Avenue and south of the proposed subdivision. developer/applicant is responsible for all improvements inclusive of stubbing the local roads from Alfarata Boulevard to Polaris Court and Cappella Court, sidewalk, park-strip, curb, gutter, and storm water drainage, as well as the landscaped easement and wall typically associated with collector roads. The developer/applicant shall be provided a reimbursement for a portion of road improvements when adjacent properties not owned by the developer/applicant are subsequently developed, pursuant to the mechanisms and amounts set forth in Municipal Code Section 17.58.030. Acquisition and construction to commence with full improvements at the intersection of

Alfarata Boulevard and Gerard Avenue. The City is requiring this intersection to be improved as part of the third Final Map of the development, consistent with the Phasing Plan shown in Attachment E of Staff Report #07-21.

- 47. *Emergency Access*: Consistent with the Project Pre-Annexation Development Agreement, the developer/applicant shall install a "minimum fire access" which shall provide an all-weather asphalt emergency road that has three points of access and connects the interior of the Project to Coffee Street, Childs Avenue, and Gerard Avenue. Within phases being developed, the road shall be constructed as fully improved roadways. The developer/applicant is not entitled to reimbursements of said improvements for emergency access to the proposed development. Said road shall be complete prior to issuance of the first building permit, inclusive of model homes, for the proposed subdivision. Said emergency road shall be included in the improvement plans for the first phase of the Project.
- 48. A provision shall be recorded by the developer or its successor, at time of sale of any residential property within the project that lies within 1,000 feet of the external boundary of any non-project property which then currently has an active agricultural operation, or has had an agricultural operation on it during the calendar year preceding the year within which the sale takes place. This provision shall notify the buyer(s) and any subsequent owner(s) of the possible inconvenience or discomfort of farming operations, arising from the use of agricultural chemicals, including pesticides, and fertilizers, as well as from the pursuit of agricultural operations including plowing, spraying, and harvesting which occasionally generate dust, smoke, noise, and odor, and the priority to which Merced County places on agricultural operations.
- 49. Consistent with Mitigation Measure #4-2 of EIS #04-80, a spring preconstruction survey shall be conducted prior to any construction or removal of trees, and evidence of such survey shall be provided to the City.

PLANNING COMMISSION RESOLUTION #2928

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July 18, 2007/July 15, 2008/July 15, 2009/July 15, 2011/July 11, 2013/Oct. 10, 2015/Aug. 2, 2018

- 50. Storm Drainage: Consistent with the Project Pre-Annexation Development Agreement, the developer/applicant shall design and construct a storm-drainage system to allow flow from "Starlight Estates I & II" such that flow no longer goes to Gerard Avenue. Said design shall be included in the Improvement Plans for the Project's park/basin design.
- 51. Traffic Mitigation Fee Payment: Consistent with Mitigation Measures #15-1, #15-4, #15-5, and #15-8 of EIS #04-80, the developer/applicant shall pay the City of Merced their fair-share of traffic mitigation fees as part of the final map process.

Upon motion by Commissioner Amey, seconded by Commissioner Acheson, and carried by the following vote:

AYES: Commissioners Amey, Ward, McCoy, Cervantes, Acheson,

and Chairman Shankland

NOES: None

ABSENT: Commissioner Williams

Adopted this 18th day of July, 2007

Chairman, Planning Commission of the City of Merced, California

Fay Sell-l

ATTEST:

Secretary

July 15, 2008/July 15, 2009: On July 15, 2008, the State of California gave a one-year extension to all active (not expired) tentative maps that were otherwise scheduled to expire on or before December 30, 2010. On July 15, 2009, the State of California gave a second, two-year extension. Therefore, this Tentative Map #1296 hereby has its expiration date extended to July 18, 2012.

<u>July 15, 2011</u>: On July 15, 2011, the State of California gave a 24-month extension to all active (not expired) tentative maps that were otherwise scheduled to expire on or before January 1, 2014. Therefore, Vesting Tentative Subdivision Map #1296 hereby has its expiration date extended to July 18, 2014.

<u>July 11, 2013</u>: On July 11, 2013, the State of California gave a 24-month extension to all active (not expired) tentative maps that were approved on or after January 1, 2000. Therefore, Vesting Tentative Subdivision Map #1296 hereby has its expiration date extended to July 18, 2016.

October 10, 2015: On October 10, 2015, the State of California gave a 24-month extension to all active (not expired) tentative maps that were approved on or after January 1, 2002, and not later than July 11, 2013. Therefore, Vesting Tentative Subdivision Map #1296 hereby has its expiration date extended to July 18, 2018.

August 2, 2018: On August 2, 2018, the City of Merced Site Plan Review Committee granted a one-year extension for Vesting Tentative Subdivision Map #1296. The expiration date is now July 18, 2019.



CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item J.4. Meeting Date: 10/1/2018

Report Prepared by: Stephani Davis, Secretary I, Planning Division

SUBJECT: Information Only - Planning Commission Minutes of August 22, 2018

RECOMMENDATION

For information only.

ATTACHMENTS

1. PC Minutes 08-22-2018

CITY OF MERCED Planning Commission

MINUTES

Merced City Council Chambers Wednesday, August 22, 2018

Chairperson DYLINA called the meeting to order at 7:01 p.m., followed by a moment of silence and the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Mary Camper, Scott G. Drexel, Michael Harris,

Jeremy Martinez, Peter Padilla, Sam Rashe, and

Chairperson Robert Dylina

Commissioners Absent: None

Staff Present: Director of Development Services McBride,

Planning Manager Espinosa, Principal Planner Hren, Interim Deputy City Attorney Flores, and

Recording Secretary Davis

1. **APPROVAL OF AGENDA**

M/S PADILLA-MARTINEZ, and carried by unanimous voice vote, to approve the Agenda as submitted.

2. **MINUTES**

M/S PADILLA-DREXEL, and carried by unanimous voice vote, to approve the Minutes of August 8, 2018, as submitted.

3. <u>COMMUNICATIONS</u>

None.

4. **ITEMS**

4.1 Commercial Cannabis Business Permit #18-27, #18-28, and #18-31, initiated by Blue Fire, Inc., on two properties owned by REM Land Group, LLC. These applications are requests to permit the Cultivation of up to 22,000 square feet of cannabis and Distribution of cannabis and cannabis-based products on a parcel of 3.6 acres; and Distribution of cannabis and cannabis-based products on a separate parcel of 2.08 acres. The first parcel, for which the permits seek both Cultivation and Distribution activities, is 1985 W. Olive Avenue, Suite A, within Planned Development (P-D) #12, with a General Plan designation of Industrial (IND). The second parcel, for which the permit seeks Distribution activities, is 1975 W. Olive Avenue within Planned Development (P-D) #12, with a General Plan Designation of Industrial (IND).

Principal Planner HREN reviewed the report on this item. He noted a memo from staff recommending the addition of Conditions #17, #18, and #19, which was provided to the Commission prior to the meeting. For further information, refer to Staff Report #18-19.

Public testimony was opened at 7:20 p.m.

Speakers from the Audience in Favor:

CALEB COUNTS, Connected Cannabis Co., Consultant to Blue Fire, Inc., Sacramento
DEVIN STETLER, Applicant, Modesto
RON ROBERTS, Property Owner, Oakdale

Mr. STETLER talked about the facility's security and he indicated that bringing in a well-designed facility into the area might displace/remove any cases of loitering or vandalism that is frequently reported at this time.

Public testimony was completed at 7:38 p.m. and then re-opened by Chairperson DYLINA to allow a member from the audience to speak.

Speakers from the Audience in Opposition:

GWEN KELLER, Resident near the project site, Merced JEFF KELLER, Resident near the project site, Merced

Mr. and Mrs. KELLER voiced concerns of having a Cannabis business near their neighborhood. They brought up the odors and the possibility of an influx in crime in their community.

Mr. ROBERTS spoke in rebuttal. He assured the audience and the Commission that their facility is secure and that no one can enter without expressed consent via a pre-scheduled appointment.

Public testimony was completed at 7:53 p.m.

The Commission voiced concerns including the applicant's lack of experience in the industry and their method of addressing public complaints.

Director of Development Services McBRIDE addressed the Commission and assured them that the City has developed a well-researched system of regulations for these businesses and informed the Commission that the City reserves the right to revoke licenses if the businesses do not comply with those regulations.

Planning Manager ESPINOSA added that the businesses are obligated to renew their licenses every year, which will include a review by the Director of Development Services of the business' overall compliance.

M/S PADILLA-RASHE, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #18-19 and #18-40, and approve Commercial Cannabis Business Permits #18-27, #18-28, and #18-31, subject to the Findings and sixteen (16) Conditions set forth in Staff Report #18-19, with the addition of Conditions #17, #18, and #19 as follows (RESOLUTION #4002):

(Note: Strikethrough and deleted language, underline added language.)

- "17. The room labeled as 'Manufacturing' on the submitted floor plan for 1985 W. Olive Avenue, Suite A, is listed as a potential future use of space and neither this room nor any other room on this property is to be utilized for any activity that would require a Commercial Cannabis Business Permit for Manufacturing unless such a permit is obtained from the City of Merced; furthermore, all uses for this room must be in compliance with all other conditions of Commercial Cannabis Business Permits #18-28 and #18-31.
- "18. Third party peer review for unlisted mechanical equipment shall be obtained at the expense of the applicant as part of the plan submittal for building review.
- "19. The applicant shall, at their own expense, repair or cause to be repaired all damaged sidewalk along the frontage of 1985 and 1975 W. Olive Avenue."

AYES: Commissioners Camper, Drexel, Harris, Martinez,

Padilla, Rashe, and Chairperson Dylina

NOES: None ABSENT: None ABSTAIN: None

4.2 Commercial Cannabis Business Permit #18-32, #18-33, and #18-34, initiated by Connected Cannabis Co., on property owned by REM Land Group, LLC. These applications are requests to permit the Cultivation of up to 22,000 square feet of cannabis, the Distribution of cannabis and cannabis-based products, and the Manufacturing of cannabis-based products using both volatile and non-volatile methods at 1985 W. Olive Avenue, Suite B, a parcel of 3.6 acres within Planned Development (P-D) #12, with a General Plan designation of Industrial (IND).

Principal Planner HREN reviewed the report on this item. He noted a memo from staff recommending the addition of Conditions #16 and #17, which was provided to the Commission prior to the meeting. For further information, refer to Staff Report #18-20.

Public testimony was opened at 8:08 p.m.

Speakers from the Audience in Favor:

CALEB COUNTS, Connected Cannabis Co., Applicant, Sacramento RON ROBERTS, property owner, Oakdale

The Commission asked questions of the applicant regarding their years of experience in the industry and their chosen method of security.

Mr. COUNTS stated that Connected Cannabis Co. uses armed guards to patrol their facilities after business hours.

Mr. ROBERTS described the layout of the camera systems on the premises.

There were no speakers from the audience in opposition to the project.

Public testimony was completed at 8:14 p.m.

M/S PADILLA-HARRIS, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #18-48, and approve Commercial Cannabis Business Permits #18-32, #18-33, and #18-34, subject to the Findings and fifteen (15) Conditions set forth in Staff Report #18-20, with the addition of Conditions #16 and #17 as follows (RESOLUTION #4003):

(Note: Strikethrough and deleted language, <u>underline</u> added language.)

- "16. Third party peer review for unlisted mechanical equipment shall be obtained at the expense of the applicant as part of the plan submittal for building review.
- "17. The applicant shall, at their own expense, repair or cause to be repaired all damaged sidewalk along the frontage of 1985 W. Olive Avenue."

Planning Commission Minutes

Page 6

August 22, 2018

AYES:

Commissioners Camper, Drexel, Harris, Martinez,

Padilla, Rashe, and Chairperson Dylina

NOES:

None

ABSENT: None

ABSTAIN: None

5. <u>INFORMATION ITEMS</u>

5.1 <u>Calendar of Meetings/Events</u>

Planning Manager ESPINOSA briefed the Planning Commission on items for the next few Planning Commission meetings.

6. **ADJOURNMENT**

There being no further business, Chairperson DYLINA adjourned the meeting at 8:19 p.m.

Respectfully submitted,

KIM ESPINOSA, Secretary

Merced City Planning Commission

APPROVED:

ROBERT DYLINA, Chairperson

Merced City Planning Commission

CITY OF MERCED Planning Commission

Resolution #4002

WHEREAS, the Merced City Planning Commission at its regular meeting of August 22, 2018, held a public hearing and considered Commercial Cannabis Business Permits #18-27, #18-28, and #18-31, initiated by Blue Fire. Inc., on two properties owned by REM Land Group, LLC. These applications are requests to permit the Cultivation of up to 22,000 square feet of cannabis and Distribution of cannabis and cannabis-based products on a parcel of 3.6 acres; and Distribution of cannabis and cannabis-based products on a separate parcel of 2.08 acres. The first parcel, for which the permits seek both Cultivation and Distribution activities, is 1985 W. Olive Avenue, Suite A, within Planned Development (P-D) #12, with a General Plan designation of Industrial (IND). The second parcel, for which the permit seeks Distribution activities, is 1975 W. Olive Avenue within Planned Development (P-D) #12, with a General Plan Designation of Industrial (IND); also known as Assessor's Parcel Numbers (APNs) 058-030-036 and 058-030-004; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through K of Staff Report #18-19; and,

NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #18-19 and Environmental Review #18-40, and approve Commercial Cannabis Business Permits #18-27, #18-28, and #18-31, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner PADILLA, seconded by Commissioner RASHE, and carried by the following vote:

AYES: Commissioners Camper, Drexel, Harris, Martinez, Padilla,

Rashe, and Chairperson Dylina

NOES: None ABSENT: None ABSTAIN: None PLANNING COMMISSION RESOLUTION #__4002 Page 2

August 22, 2018

Adopted this 22nd day of August, 2018

Chairperson, Planning Commission of

the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

Conditions of Approval Planning Commission Resolution # 4002 Commercial Cannabis Business Permits #18-27, #18-28, and #18-31

- 1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (elevations) -- Attachments B and D of Staff Report #18-19, except as modified by the conditions.
- 2. All conditions and requirements contained in Ordinance #2480 (Attachment F of Staff Report #18-19) shall apply.
- 3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
- 4. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
- The developer/applicant shall indemnify, protect, defend (with counsel 5. 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 Furthermore, developer/applicant shall approvals granted herein. 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 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 such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

- 6. 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. State Law shall prevail in regards to cannabis activities as permitted by State Law.
- 7. The proposed project shall comply with all applicable regulations of the State of California including, but not limited to, those found in the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).
- 8. The proposed project shall provide that all cultivation and distribution activities occur indoors within a fully enclosed and secure structure, and ensure that the property on which the structure sits is secure and appropriately screened. The details of the property's fencing, security, and screening are to meet the approval of the Director of Development Services and Chief of Police prior to the issuance of a Certificate of Occupancy.
- 9. The applicants shall meet the standards of the City of Merced's "Commercial Building Permit Application Submittal Requirements" (Attachment G of Staff Report #18-19) at the time of submittal for building permits for tenant improvement.
- 10. The applicants shall keep on the premises of the proposed project site a physical copy of the approved plans, to be annotated and updated accordingly with any notes, changes, or requirements determined to be necessary by representatives of the City of Merced or any contractors that the City of Merced may employ for the purpose of site inspections. These plans shall be made available to the City's representatives, employees, agents, inspectors, or contractors upon request.
- 11. The facility operated by the applicants shall be secured from intentional or accidental access by any person not employed, contracted or otherwise authorized on the premises, including any tenants of other buildings on the same property.
- 12. Fire sprinklers shall be modified to accommodate the building configuration and process configuration prior to occupancy.

- 13. Regulatory Fees, as per Resolution #2017-67, are to be paid prior to the issuance of a Certificate of Occupancy and annually thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs. The amount of the fees shall be adjusted annually (starting on January 1, 2019) to account for inflation by using the Consumer Price Index (CPI). In no event, shall the fees in any year be less than the preceding year.
- 14. A Commercial Cannabis Business Permit is valid for one year or until December 31 of each year, unless sooner revoked. Applications for the renewal of a permit shall be filed with the Director of Development Services, in accordance with 20.44.170(L).4, "Commercial Cannabis Business Permit Renewal (All Types)", at least sixty (60) calendar days before the expiration of the current permit. If the permittee allows their permit to lapse, they shall be required to submit a new application, pay corresponding fees and be subject to all aspects of the selection process.
- 15. Commercial Cannabis Business Permit (CCBP) #18-27 is expressly for the purposes of cannabis distribution activities and does not permit the use of the facility at 1975 W. Olive Avenue for use as a dispensary or retail sales facility. An application for a CCBP for operation of a Dispensary at this address has been received by the City of Merced and will be processed separately. Any portion of the application materials for CCBP #18-27 that refer to Retail Sales or Dispensary activities shall not be undertaken without a valid permit from the City of Merced expressly for Dispensary use.
- 16. Future modifications to the scale, scope, activities, implementation, processes, materials, design, layout, or other factors pertaining to the operation of the project that are consistent with permits to perform activities related to the cultivation and distribution of cannabis and cannabis-based products may be authorized with the approval of the City's Chief Building Official, Fire Chief, and Director of Development Services.
- 17. The room labeled as 'Manufacturing' on the submitted floor plan for 1985 W. Olive Avenue, Suite A, is listed as a potential future use of space and neither this room nor any other room on this property is to be utilized for any activity that would require a Commercial Cannabis Business Permit for Manufacturing unless such a permit is obtained from the City of Merced; furthermore, all uses for this room must be in compliance

- with all other conditions of Commercial Cannabis Business Permits #18-28 and #18-31.
- 18. Third party peer review for unlisted mechanical equipment shall be obtained at the expense of the applicant as part of the plan submittal for building review.
- 19. The applicant shall, at their own expense, repair or cause to be repaired all damaged sidewalk along the frontage of 1985 and 1975 W. Olive Avenue.

n:shared:planning:PC Resolutions: CCBP #18-27, 18-28, 18-31 Exhibit A

CITY OF MERCED Planning Commission

Resolution #4003

WHEREAS, the Merced City Planning Commission at its regular meeting of August 22, 2018, held a public hearing and considered Commercial Cannabis Business Permits #18-32, #18-33, and #18-34, initiated by Connected Cannabis Co., on a property owned by REM Land Group, LLC. These applications are requests to permit the Cultivation of up to 22,000 square feet of cannabis, the Distribution of cannabis and cannabis-based products, and the Manufacturing of cannabis-based products using both volatile and non-volatile methods at 1985 W. Olive Avenue, Suite B, a parcel of 3.6 acres within Planned Development (P-D) #12, with a General Plan designation of Industrial (IND); also known as Assessor's Parcel Number (APN) 058-030-036; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through K of Staff Report #18-20; and,

NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #18-48 and approve Commercial Cannabis Business Permits #18-32, #18-33, and #18-34, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner PADILLA, seconded by Commissioner HARRIS, and carried by the following vote:

AYES: Commissioners Camper, Drexel, Harris, Martinez, Padilla,

Rashe, and Chairperson Dylina

NOES: None ABSENT: None ABSTAIN: None PLANNING COMMISSION RESOLUTION # 4003
Page 2
August 22, 2018

Adopted this 22nd day of August, 2018

Chairperson, Planning Commission of the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

Conditions of Approval Planning Commission Resolution #4003 Commercial Cannabis Business Permits #18-32, #18-33, and #18-34

- 1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (elevations) -- Attachments B-1 and D of Staff Report #18-20, except as modified by the conditions.
- 2. All conditions and requirements contained in Ordinance #2480 (Attachment F of Staff Report #18-20) shall apply.
- 3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
- 4. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
- The developer/applicant shall indemnify, protect, defend (with counsel 5. 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 (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 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 such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

- 6. 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. State Law shall prevail in regards to cannabis activities as permitted by State Law.
- 7. The proposed project shall comply with all applicable regulations of the State of California including, but not limited to, those found in the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).
- 8. The proposed project shall provide that all manufacturing, cultivation, and distribution activities occur indoors within a fully enclosed and secure structure, and ensure that the property on which the structure sits is secure and appropriately screened. The details of the property's fencing, security, and screening are to meet the approval of the Director of Development Services and Chief of Police prior to the issuance of a Certificate of Occupancy.
- 9. The applicants shall meet the standards of the City of Merced's "Commercial Building Permit Application Submittal Requirements" (Attachment G of Staff Report #18-20) at the time of submittal for building permits for tenant improvement.
- 10. The applicants shall keep on the premises of the proposed project site a physical copy of the approved plans, to be annotated and updated accordingly with any notes, changes, or requirements determined to be necessary by representatives of the City of Merced or any contractors that the City of Merced may employ for the purpose of site inspections. These plans shall be made available to the City's representatives, employees, agents, inspectors, or contractors upon request.
- 11. The facility operated by the applicants shall be secured from intentional or accidental access by any person not employed, contracted or otherwise authorized on the premises, including any tenants of other buildings on the same property.
- 12. Fire sprinklers shall be modified to accommodate the building configuration and process configuration prior to occupancy.

- 13. Regulatory Fees, as per Resolution #2017-67, are to be paid prior to the issuance of a Certificate of Occupancy and annually thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs. The amount of the fees shall be adjusted annually (starting on January 1, 2019) to account for inflation by using the Consumer Price Index (CPI). In no event, shall the fees in any year be less than the preceding year.
- 14. A Commercial Cannabis Business Permit is valid for one year or until December 31 of each year, unless sooner revoked. Applications for the renewal of a permit shall be filed with the Director of Development Services, in accordance with 20.44.170(L).4, "Commercial Cannabis Business Permit Renewal (All Types)", at least sixty (60) calendar days before the expiration of the current permit. If the permittee allows their permit to lapse, they shall be required to submit a new application, pay corresponding fees and be subject to all aspects of the selection process.
- 15. Future modifications to the scale, scope, activities, implementation, processes, materials, design, layout, or other factors pertaining to the operation of the project that are consistent with permits to perform activities related to the cultivation and distribution of cannabis and cannabis-based products may be authorized with the approval of the City's Chief Building Official, Fire Chief, and Director of Development Services.
- 16. Third party peer review for unlisted mechanical equipment shall be obtained at the expense of the applicant as part of the plan submittal for building review.
- 17. The applicant shall, at their own expense, repair or cause to be repaired all damaged sidewalk along the frontage of 1985 W. Olive Avenue.



CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item J.5. Meeting Date: 10/1/2018

SUBJECT: City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of September 4, 2018

REPORT IN BRIEF

Official adoption of previously held meeting minutes.

RECOMMENDATION

City Council/Public Financing and Economic Development/Parking Authority - Adopt a motion approving the meeting minutes of September 4, 2018.

ALTERNATIVES

- 1. Approve as recommended; or,
- 2. Approve, subject to amendments.

ATTACHMENTS

1. Minutes of September 4, 2018



CITY OF MERCED

City Council Chamber Merced Civic Center 2nd Floor 678 W. 18th Street Merced, CA 95340

Minutes

City Council/Public Finance and Economic Development Authority/Parking Authority

Tuesday, September 4, 2018

6:00 PM

A. CLOSED SESSION ROLL CALL

Present: 6 - Council Member Michael Belluomini, Council Member Anthony Martinez, Council

Member Joshua Pedrozo, Council Member Matthew Serratto, Mayor Mike Murphy,

and Council Member Kevin Blake

Absent: 1 - Mayor Pro Tempore Jill McLeod

B. CLOSED SESSION

Mayor MURPHY called the Closed Session to order at 5:01 PM.

B.1. SUBJECT: CONFERENCE WITH LABOR NEGOTIATORS -- Agency

<u>Designated Representative: City Manager Steve Carrigan; Employee</u>
<u>Organizations: Merced Police Officers' Association (MPOA); Merced</u>
Association of Police Sergeants. AUTHORITY: Government Code

Section 54957.6

B.2. SUBJECT: PUBLIC EMPLOYMENT - Title: City Attorney; Authority:

Government Code Section 54957

B.3. SUBJECT: CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED

<u>LITIGATION 54956.9(d)(3) - Receipt of a claim or other written</u> communication from a potential plaintiff threating litigation

B.4. SUBJECT: CONFERENCE WITH LEGAL COUNSEL -- EXISTING

LITIGATION; McKinnon, et. al. v. City of Merced; Case No.

1:18-CV-01124-LJO-SAB; AUTHORITY: Government Code Section

54956.9(d)(1)

Clerk's Note: Council adjourned from Closed Session at 5:58 PM.

C. CALL TO ORDER

Mayor MURPHY called the Regular Meeting to order at 6:02 PM.

C.1. Invocation - Father Ryan Bradley, St. Luke's Anglican Church

The invocation was delivered by Father Ryan BRADLEY from St. Luke's Anglican Church.

C.2. Pledge of Allegiance to the Flag

Council Member MARTINEZ led the Pledge of Allegiance to the Flag.

D. ROLL CALL

Present: 6 - Council Member Michael Belluomini, Council Member Anthony Martinez, Council Member Joshua Pedrozo, Council Member Matthew Serratto, Mayor Mike Murphy,

and Council Member Kevin Blake

Absent: 1 - Mayor Pro Tempore Jill McLeod

D.1. In accordance with Government Code 54952.3, it is hereby announced that the City Council sits either simultaneously or serially as the Parking Authority and the Public Financing and Economic Development Authority. City Council members receive a monthly stipend of \$20.00 by Charter for sitting as the City Council; and the Mayor receives an additional \$50.00 each month as a part of the adopted budget and Resolution 1975-37. The members of the Parking Authority and the Public Financing and Economic Development Authority receive no compensation.

E. REPORT OUT OF CLOSED SESSION

There was no report.

F. SPECIAL PRESENTATIONS

Needle Exchange Program - Dr. Oscar Ramos and Dr. Yang Cao

Dr. Yang CAO and Dr. Oscar RAMOS from the Merced Family Medicine Residency Program gave a presentation on the Needle Exchange Program.

G. WRITTEN PETITIONS AND COMMUNICATIONS

There were none.

H. ORAL COMMUNICATIONS

Monica VILLA, Merced - spoke on the Homeless Connect event and other various topics.

I. CONSENT CALENDAR

Items I.7. 2018 Local Agency Biennial Notice, I.11. Award Contract to Cardno, Inc. to Perform Engineering Evaluation of Elevated Water Tanks, Project No. 117025, I.12. Rejecting all Bids for the Yosemite Avenue Corporation Yard Statelite (Leaf Collection Site), Project No. 116017, I.14. Authorization to Purchase Two New Way Sidewinder Refuse Trucks for

\$569,478.82, One Articulating Telescopic Aerial Bucket Truck for \$155,245.61 and Five Chevrolet Silverado 2500 HD Trucks for \$199,441.40 and to Waive the Competitive Bidding Requirements to Allow the Purchase to be Made Through Cooperative Purchasing Agreements with Sourcewell (Formerly Known as the National Joint Powers Alliance [NJPA]), and I.15. Fourth Amendment to Professional Services Agreement with Stantec Consulting Services, Inc., for the City of Merced Wastewater Collection System (Sewer) Master Plan Update; were pulled for separate consideration.

Approval of the Consent Agenda

A motion was made by Council Member Pedrozo, seconded by Council Member Blake, to approve the Consent Agenda. The motion carried by the following vote:

Aye: 6 - Council Member Belluomini, Council Member Martinez, Council Member Pedrozo, Council Member Serratto, Mayor Murphy, and Council Member Blake

No: 0

Absent: 1 - Mayor Pro Tempore McLeod

I.1. SUBJECT: Reading by Title of All Ordinances and Resolutions

REPORT IN BRIEF

Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and a summary title may be read with further reading waived.

RECOMMENDATION

City Council - Adopt a motion waiving the reading of Ordinances and Resolutions, pursuant to Section 412 of the Merced City Charter.

This Consent Item was approved.

I.2. SUBJECT: Information-Only Contracts

REPORT IN BRIEF

Notification of awarded Non-Public Works contracts under \$31,000 and of Public Works contracts under \$69,833.

AUTHORITY

Pursuant to the authority delegated to the City Manager on behalf of the City by Article XI, Section 1109, of the Merced City Charter to execute Public Works contracts under the adjusted FY 2018-2019 threshold of

\$69,833.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted FY 2018-2019 threshold of \$31,000.00, the contracts listed on the attached table were entered into by the City.

This Consent Item was approved.

I.3. SUBJECT: Information Only-Planning Commission Meeting Minutes

of July 5, 2018

RECOMMENDATION

For information only.

This Consent Item was approved.

I.4. SUBJECT: Information Only - Site Plan Review Committee Meeting

Minutes of April 26, 2018

RECOMMENDATION

For information only.

This Consent Item was approved.

I.5. SUBJECT: City Council/Public Financing and Economic

Development/Parking Authority Meeting Minutes of August 6, 2018

REPORT IN BRIEF

Official adoption of previously held meeting minutes.

RECOMMENDATION

City Council/Public Financing and Economic

Development/Parking Authority - Adopt a motion approving the meeting minutes of August 6, 2018.

This Consent Item was approved.

I.6. SUBJECT: Set a Public Hearing for the Housing and Urban

Development (HUD) Consolidated Annual Performance and

Evaluation Report (CAPER)

REPORT IN BRIEF

Set a public hearing for Monday, September 17, 2018, to consider the Housing and Urban Development (HUD) Consolidated Annual Performance and Evaluation Report (CAPER).

Authority/Parking Authority

1.9.

RECOMMENDATION

City Council - Adopt a motion setting a public hearing for Monday, September 17, 2018, to consider the Housing and Urban Development Consolidated Annual Performance and Evaluation Report (CAPER).

This Consent Item was approved.

I.8. SUBJECT: 2019 Cafeteria Plan Renewal

REPORT IN BRIEF

Consider approving the renewal of the 2019 Cafeteria Plan regarding employees' and retirees' health and welfare benefits.

RECOMMENDATION

City Council - Adopt a motion approving the employees' health and welfare benefits cafeteria plan renewal for calendar year 2019 and authorizing the City Manager or Assistant City Manager to execute the necessary documents.

This Consent Item was approved.

SUBJECT: 2018 California Office of Traffic Safety Selective Traffic Enforcement Program (STEP) Grant

REPORT IN BRIEF

Consider the acceptance of grant funding in the amount of \$100,000 from the California Office of Traffic Safety STEP Grant to reimburse the City for traffic enforcement operations conducted on overtime.

RECOMMENDATION

City Council - Adopt a motion:

- A. Accepting the grant award and increasing the revenue budget in account 035-1016-324.01-02 by \$100,000; and,
- B. Appropriating the same to Fund 035-Police Office of Traffic Safety Grant Fund; and,
- C. Approving the use of pooled cash until reimbursement from the grant is received; and,
- D. Authorizing the City Manager to execute the necessary documents.

This Consent Item was approved.

I.10. SUBJECT: Second Amendment to the Contract with Data Ticket,

Inc.

REPORT IN BRIEF

Second Amendment to the Agreement for Professional Services with Data Ticket, Inc. for the addition of AB503, processing of Indigent Payment Plans.

RECOMMENDATION

City Council - Adopt a motion approving the second amendment to the agreement for professional services with Data Ticket, Inc., for the addition of AB503, processing of Indigent Payment Plans and authorizing the City Manager or Assistant City Manager to execute the necessary documents.

This Consent Item was approved.

I.13. SUBJECT: Approval of Small Government Enterprise License

Agreement (SG-ELA) with Environmental Systems Research

Institute, Inc., (Esri), and Waiver of the Competitive Bidding

Requirement (Sole Source)

REPORT IN BRIEF

Considers entering into a three-year agreement with Environmental Systems Research Institute, Inc., (Esri) for GIS software licenses and maintenance.

RECOMMENDATION

City Council - Adopt a motion waiving the competitive bidding requirements as stated in Section 3.04.210 of the Merced Municipal Code for the Sole Source Purchase of software licenses and maintenance; and, authorizing the City Manager or Assistant City Manager to execute the necessary documents.

This Consent Item was approved.

I.7. SUBJECT: 2018 Local Agency Biennial Notice

REPORT IN BRIEF

Accept and file the 2018 Local Agency Biennial Notice to review the City's Conflict of Interest Code.

RECOMMENDATION

City Council - Adopt a motion accepting and filing the 2018 Local Biennial Notice; and, directing staff to return the amended Conflict of Interest Code within 90 days of this date for final adoption by City Council.

Council Member MARTINEZ pulled this item to ask for clarification.

Assistant City Clerk John TRESIDDER explained that the Local Agency Biennial Notice is a notice stating the need to review the conflict of interest code.

A motion was made by Council Member Martinez, seconded by Council Member Pedrozo, that this agenda item be approved. The motion carried by the following vote:

Aye: 6 - Council Member Belluomini, Council Member Martinez, Council Member Pedrozo, Council Member Serratto, Mayor Murphy, and Council Member Blake

No: 0

Absent: 1 - Mayor Pro Tempore McLeod

I.11. SUBJECT: Award Contract to Cardno, Inc. to Perform Engineering
Evaluation of Elevated Water Tanks, Project No. 117025

REPORT IN BRIEF

Consider approving an agreement for professional services (structural engineering) to evaluate the condition of the elevated water tanks at Well Sites #1, #2, and #7.

RECOMMENDATION

City Council - Adopt a motion approving an agreement for professional services (engineering design services) with Cardno, Incorporated, in the amount of \$121,253; and, authorizing the City Manager or Assistant City Manager to execute the necessary documents.

Council Member MARTINEZ pulled this item to ask for clarification on the scope of the project.

Environmental Project Manager Joe ANGULO explained that the engineering evaluation would determine if it would be more cost effective to bring the water tanks up to code or to demolish them.

A motion was made by Council Member Martinez, seconded by Council Member Blake, that this agenda item be approved. The motion carried by the

I.12.

following vote:

Aye: 6 - Council Member Belluomini, Council Member Martinez, Council Member Pedrozo, Council Member Serratto, Mayor Murphy, and Council Member Blake

No: 0

Absent: 1 - Mayor Pro Tempore McLeod

SUBJECT: Rejecting all Bids for the Yosemite Avenue Corporation
Yard Satellite (Leaf Collection Site), Project No. 116017

REPORT IN BRIEF

Consider rejecting all of the bids for the Yosemite Avenue Corporation Yard Satellite (Leaf Collection Site) due to insufficient project funding.

RECOMMENDATION

City Council - Adopt a motion rejecting all bids for the Yosemite Avenue Corporation Yard Satellite (Leaf Collection Site), Project 116017 due to insufficient project funding and directing staff to re-advertise the project after reduction of project scope.

Mayor MURPHY pulled this item to ask for an overview of the statelite Corporation Yard.

Deputy Public Works Director Steven SON discussed the multi use of the statelite Corporation Yard that includes minor vehicle repairs and large item dump site for residents.

Council Member SERRATTO and Mr. SON discussed the bid proposals, a revised scope of work, and an estimated cost.

Council and Director of Public Works Ken ELWIN discussed the challenges of the Corporation Yard and the operational advantages of the statelite Corporation Yard regarding street sweeping, dumping, and vehicle maintenance operation.

A motion was made by Council Member Belluomini, seconded by Council Member Blake, to reject all the bids and to bring this item back for discussion on the design and planned operation of the Statelite Corporation Yard prior to going back out to bid. The motion carried by the following vote:

Aye: 6 - Council Member Belluomini, Council Member Martinez, Council Member Pedrozo, Council Member Serratto, Mayor Murphy, and Council Member Blake

No: 0

Absent: 1 - Mayor Pro Tempore McLeod

I.14.

Refuse Trucks for \$569,478.82, One Articulating Telescopic Aerial
Bucket Truck for \$155,245.61 and Five Chevrolet Silverado 2500
HD Trucks for \$199,441.40 and to Waive the Competitive Bidding
Requirements to Allow the Purchase to be Made Through
Cooperative Purchasing Agreements with Sourcewell (formerly known as the National Joint Powers Alliance [NJPA])

REPORT IN BRIEF

Considers authorizing the purchase of the following replacement vehicles for the Public Works Department: two New Way Sidewinders refuse trucks for \$569,478.82 from Ruckstell California Sales, Inc., one Articulating Telescopic Aerial Bucket Truck from Altec, Inc. for \$155,245.61 and Five Chevrolet Silverado 2500 HD Trucks for \$199,441.40 from the National Auto Fleet Group and to Waive the Competitive Bidding Requirements to Allow the Purchase to be Made Through Cooperative Purchasing Agreements with Sourcewell (formerly known as the NJPA).

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the purchase of two New Way Sidewinder refuse trucks, one articulating telescopic aerial bucket truck and five Chevrolet Silverado 2500 HD work trucks; and,
- B. Waiving the City's competitive bidding requirement and authorizing the purchases to be made with cooperative purchase agreements with various vendors through Sourcewell, a government procurement program; and,
- C. Authorizing the City Manager or Assistant City Manager to execute any necessary documents for the purchases specified above.

Mayor MURPHY pulled this item to ask about the use of local vendors.

Wallace BROUGHTON stated that the local vendors were not able to match the pricing by Sourcewell.

Council and staff continued to discuss the use of local vendors and the local preference policy.

A motion was made by Mayor Murphy, seconded by Council Member Belluomini, to approve this item with a condition providing for local bids for the five Chevrolet vehicles, if local pricing is competitive with Sourcewell.

The motion carried by the following vote:

Aye: 6 - Council Member Belluomini, Council Member Martinez, Council Member Pedrozo, Council Member Serratto, Mayor Murphy, and Council Member Blake

No: 0

Absent: 1 - Mayor Pro Tempore McLeod

I.15.

SUBJECT: Fourth Amendment to Professional Services Agreement with Stantec Consulting Services, Inc., for the City of Merced Wastewater Collection System (Sewer) Master Plan Update

REPORT IN BRIEF

Consider approving a fourth amendment to an agreement with Stantec Consulting Services, Inc., for additional CEQA/EIR related efforts, updates to the Wastewater Collection System Master Plan, including additional stakeholder and staff input on the draft plan as well as further specific task evaluation(s).

RECOMMENDATION

City Council - Adopt a motion approving a fourth amendment to professional services agreement with Stantec Consulting Services, Inc., in the amount of \$130,400 for the City of Merced Sewer Master Plan Update; and, authorizing the City Manager or Assistant City Manager to execute the necessary documents.

Council Member BELLUOMINI pulled this item to ask for clarification on the amendment to professional services agreement with Stantec Cosulting.

Director of Public Works Ken ELWIN stated that the amendment is for additional money for work that has already occurred and future work.

Council, Mr. ELWIN, and Assistant City Manager Stephanie DIETZ discussed the draft project descripton, alternative options to the scope of work, and the need for flexiblilty.

A motion was made by Council Member Belluomini, seconded by Council Member Pedrozo, that this agenda item be approved. The motion carried by the following vote:

Aye: 6 - Council Member Belluomini, Council Member Martinez, Council Member Pedrozo, Council Member Serratto, Mayor Murphy, and Council Member Blake

No: 0

Absent: 1 - Mayor Pro Tempore McLeod

J. PUBLIC HEARINGS

J.1. SUBJECT: Public Hearing - Reintroduction of Ordinance 2492,

Amending Section 10.16.010, "Speed Limits." of the Merced Municipal Code

REPORT IN BRIEF

Consider the reintroduction of Ordinance 2492 amending Section 10.16.010, "Speed Limits," of the Merced Municipal Code. Amendment to the Speed Limits section consist of modification to the speed limits throughout the City.

RECOMMENDATION

City Council - Adopt a motion reintroducing **Ordinance 2492**, an Ordinance of the City Council for the City of Merced, California, amending Section 10.16.010, "Speed Limits" of the Merced Municipal Code

Deputy Public Works Director Steven SON discussed the changes to the Ordinance amending section 10.16.010, "Speed Limits".

Mayor MURPHY stated that Council received an email from a resident stating their concern for the speed limit on East 21st Street.

Clerk's Note: This item was split in two segments. The first segment was presented prior to Item K.1. and the second segment was presented after Item K.1. for staff to bring back the information requested from Council.

K. REPORTS

K.1. SUBJECT: Options for Median Island Landscaping

REPORT IN BRIEF

On June 18, 2018, Council Member Belluomini discussed the landscape in median islands within the City. Council directed staff to present alternative solutions to median island landscaping with implementation strategies.

RECOMMENDATION

Provide direction to staff regarding the options presented for median island landscaping.

Director of Public Works Ken ELWIN gave a slide show presentation on options for Median Island Landscaping.

Council, Mr. ELWIN, and Assistant City Manager Stephanie DIETZ discussed the options presented, gradually updating the Median Islands, appropriating funds, planting drought tolerant plants, and waiting for the mid year review before appropriating funds. They also discussed the cost of continuous maintenance and the development of Median Islands.

Council Member PEDROZO discussed involving students from the local high schools and Merced College with the Median Islands.

Council Member BELLUOMINI made a motion for staff to provide design for the three Median Islands and receive input from the Merced College or Merced High School landscape department and bring back a cost estimate to the mid year review.

Mr. ELWIN stated that it would be best to have a quailified consultant to put together a design.

Ms. DIETZ explained the complexity of the Median Island design.

Clerk's Note: Council Member BELLUOMINI withdrew his motion for staff to provide a design for the three Median Islands and receive input from the Merced College or Merced High School landscape department.

A motion was made by Council Member Belluomini, seconded by Council Member Blake, to direct staff to work with the landscape departments at Merced College and local high schools to prepare a design for the three Median Islands and request a quote from a qualified landscape contractor to mirror the current landscaping design from other areas in the City. The motion carried by the following vote:

Aye: 6 - Council Member Belluomini, Council Member Martinez, Council Member Pedrozo, Council Member Serratto, Mayor Murphy, and Council Member Blake

No: 0

Absent: 1 - Mayor Pro Tempore McLeod

J.1. SUBJECT: Public Hearing - Reintroduction of Ordinance 2492,

Amending Section 10.16.010, "Speed Limits." of the Merced Municipal
Code

REPORT IN BRIEF

Consider the reintroduction of Ordinance 2492 amending Section 10.16.010, "Speed Limits," of the Merced Municipal Code. Amendment to the Speed Limits section consist of modification to the speed limits throughout the City.

RECOMMENDATION

City Council - Adopt a motion reintroducing **Ordinance 2492**, an Ordinance of the City Council for the City of Merced, California, amending Section 10.16.010, "Speed Limits" of the Merced Municipal Code

Clerk's Note: This item was discussed after Item K.1.

Deputy Public Works Director Steve SON presented the speed limit changes and stated that the speed limit on East 21st Street would not increase.

Mayor MURPHY opened the Public Hearing at 7:48 PM and subsequently closed the Public Hearing due to lack of public comment.

A motion was made by Council Member Martinez, seconded by Council Member Serratto, that this agenda item be approved. The motion carried by the following vote:

Aye: 6 - Council Member Belluomini, Council Member Martinez, Council Member Pedrozo, Council Member Serratto, Mayor Murphy, and Council Member Blake

No: 0

Absent: 1 - Mayor Pro Tempore McLeod

Clerk's Note: Council recessed at 7:50 PM and returned at 7:57 PM.

K.2. SUBJECT: Overview of North Merced Annexation Feasibility Study
Process

REPORT IN BRIEF

The City Council will receive an overview of the proposed North Merced Annexation Feasibility Study process.

RECOMMENDATION

Information Only.

Planning Manager Kim ESPINOSA gave a slide show presentation on the overview of the North Merced Annexation Feasibility Study Process.

Council and Ms. ESPINOSA discussed annexing land outside the sphere of influence, goal of the feasibility study process, property owners expectations, and potential alternatives to annexation.

K.3. SUBJECT: Request City Council Direction Regarding Next Steps on

Industrial Park Land Development

REPORT IN BRIEF

City staff is requesting direction from the City Council regarding next steps on industrial park land for development.

RECOMMENDATION

Provide direction to staff regarding the annexation of Industrial Park land.

Director of Economic Development Frank QUINTERO gave a slide show presentation on the next steps on Industrial Park Land Development.

Council and Mr. QUINTERO discussed issues with prime agriculture areas, extension of West Avenue, freeway access, sewer capacity, and considering annexing Area 6. They also discussed a timeline for Area 6 and the western industrial area, and the potential Heavy High Speed Rail Maintenance Facility.

A motion was made by Council Member Belluomini, seconded by Council Member Pedrozo, to direct staff to concurrently pursue the annexation of the south airport industrial area, the industrial area between Bear Creek and 16th Street, and Area 6 while continuing work on Industrial Park Area 7. The motion carried by the following vote:

Aye: 5 - Council Member Belluomini, Council Member Martinez, Council Member Pedrozo, Mayor Murphy, and Council Member Blake

No: 1 - Council Member Serratto

Absent: 1 - Mayor Pro Tempore McLeod

L. BUSINESS

L.1. SUBJECT: Appointments (2) - Building and Housing Board of Appeals

REPORT IN BRIEF

Accept nominations to fill Building and Housing Board of Appeals vacancies.

RECOMMENDATION

City Council - Adopt a motion accepting nominations and appointing two individuals to the Building and Housing Board of Appeals and directing staff to continue recruitment for additional vacancies.

Assistant City Clerk John TRESIDDER gave a brief presentation on the Building and Housing Board of Appeals.

A motion was made by Council Member Pedrozo, seconded by Council Member Blake, to appoint Ashley McComb Thanadabouth and Curtis Papineau to the Building and Housing Board of Appeals. The motion carried by the following vote:

Aye: 6 - Council Member Belluomini, Council Member Martinez, Council Member Pedrozo, Council Member Serratto, Mayor Murphy, and Council Member Blake

No: 0

Absent: 1 - Mayor Pro Tempore McLeod

L.2. SUBJECT: City Council Position on League of California Cities Resolutions

REPORT IN BRIEF

Provides direction to the City's official League of California Cities voting delegate on two proposed League Resolutions.

RECOMMENDATION

City Council - Adopt a motion stating the City's position on each of the two proposed League Resolutions and directing the City's official League voting delegate to cast votes as such at the League's Annual Business Meeting on Friday, September 14, at the Long Beach Convention Center.

Assistant City Clerk John TRESIDDER gave a brief report on the City Council position on League of California Cities Resolutions.

Council discussed the two resolutions presented to them.

A motion was made by Council Member Blake, seconded by Council Member Serratto, to vote in favor of the proposed resolutions. The motion carried by the following vote:

Aye: 6 - Council Member Belluomini, Council Member Martinez, Council Member Pedrozo, Council Member Serratto, Mayor Murphy, and Council Member Blake

No: 0

Absent: 1 - Mayor Pro Tempore McLeod

L.3. Request to Add Item to Future Agenda

No items were added.

L.4. City Council Comments

Council Member MARTINEZ reported on attending the League of California Cities dinner.

Mayor MURPHY congratulated the Merced Police Department for their successful Lip Sync video. He spoke on the UC Merced Cat Crawl event. He reported on attending a rotary bbq and the League of California Cities dinner.

M. ADJOURNMENT

Clerk's Note: The Regular Meeting was adjourned at 9:08 PM.

A motion was made by Council Member Pedrozo, seconded by Council Member Blake, to adjourn the Regular Meeting. The motion carried by the following vote:

Aye: 6 - Council Member Belluomini, Council Member Martinez, Council Member Pedrozo, Council Member Serratto, Mayor Murphy, and Council Member Blake

No: 0

Absent: 1 - Mayor Pro Tempore McLeod

MERCED

CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item J.6. Meeting Date: 10/1/2018

Report Prepared by: Ken Elwin, PE, Director of Public Works

SUBJECT: Measure V Regional Project Funding Agreement with the Merced County Association of Governments

REPORT IN BRIEF

Consider approving the Measure V Regional Project Funding Agreement template to be executed in the future for projects approved by the Measure V Eastside Regional Projects Committee and Merced County Association of Governments (MCAG) Governing Board.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the Measure V Regional Project Funding Agreement with Merced County Association of Governments; and,
- B. Authorizing the increase of revenue and appropriating the same of all future Regional Project funding and authorizing the Finance Officer to make the appropriate budget adjustments; and,
- C. Authorizing the City Manager or Assistant City Manager to execute the necessary documents.

ALTERNATIVES

- 1. Approve as recommended by Staff; or
- 2. Deny; or,
- 3. Refer to Staff for further evaluation.

AUTHORITY

Charter of the City of Merced, Section 200.

CITY COUNCIL PRIORITIES

Addresses Council's priority of improving local roads, sidewalks, and traffic.

DISCUSSION

On November 8, 2016, the voters of Merced County approved "Measure V", a one-half cent sales transaction and use tax to supplement transportation roads and alternative transportation project funding. The Measure V transportation sales tax will be in place for 30 years, expiring on March 31, 2047.

File #: 18-453 Meeting Date: 10/1/2018

Measure V allocates 44% of collected funds to "Regional Projects". The Regional Projects funds are split into the Eastside Share (27%) and Westside Share (17%). The dividing line is East and West of the San Joaquin River, with the City of Merced lying within the Eastside. The Regional Project funding is separate from the City's annual Local Projects share.

In order for a project to be eligible for Regional Project funding, projects must be located in or directly benefit more than one jurisdiction. Additionally, the project must be listed in the applicable Regional Transportation Plan, recommended by the appropriate Regional Projects Committee, approved by the Merced County Association of Governments (MCAG) Governing Board, and included in the current Measure V Implementation Plan. Funds can be used for all phases of project development and implementation.

City proposed Regional Projects were submitted to the Eastside Regional Project Committee for approval by the MCAG Governing Board. For funding from Fiscal Years 2017-18 and 2018-19, two City of Merced projects were approved by the Governing Board:

Highway 59 Black Rascal Bridge

This project includes widening the Black Rascal Bridge on Highway 59 to a four-lane structure. Project funding for the project study, environmental, and design phase has been approved at \$460,000 in Regional Projects funding. The total estimated project cost is \$4,090,000. Staff will seek grant opportunities, in addition to Measure V, for future construction.

Highway 59 Phase 1 (16th Street to Olive Avenue)

This project includes widening of Highway 59 from 16th Street to Olive Avenue, including the construction of new sidewalks. Project funding for the project study, environmental, design, and right-of-way acquisition phase has been approved at \$764,580 in Regional Projects funding. The total estimated project cost is \$5,944,300. Staff will seek additional funding for future construction.

The City of Merced must enter into the attached Measure V Regional Project Funding Agreement for each approved project. Once the agreement has been executed, the City has 6 months to execute consultant contracts or initiate work by staff, and must adhere to the approved project schedule.

The City Attorney's Office has approved as to form the Funding Agreement template and staff recommends Council approval in order to proceed with Regional Projects.

IMPACT ON CITY RESOURCES

Two separate funds have been established to receive and administer Measure V funding. Funds will be allocated to specific projects in the future as staff proceeds with approved Regional Projects.

ATTACHMENTS

Regional Project Funding Agreement Template

MEASURE V REGIONAL PROJECT FUNDING AGREEMENT

between

MERCED COUNTY ASSOCIATION OF GOVERNMENTS

and the

JURISDICTION

This Measure V Regional Project Funding Agreement ("AGREEMENT"), effective the DAY of MONTH, 2018, is entered into by and between Merced County Association of Governments, a joint powers authority pursuant to California Government Code Section 6500 et seq. (MCAG), and the JURISDICTION, ("RECIPIENT") for the approved project phase and name ("PROJECT").

RECITALS

- A. On November 8, 2016, the voters of Merced County, pursuant to the provisions of the Local Transportation Authority and Improvement Act, California Public Utilities Code Section 180000 et seq. ("Act"), approved Measure V, thereby authorizing MCAG to administer the proceeds from the one-half cent transaction and use tax ("Measure V").
- B. The duration of the Measure V transportation sales tax will be 30 years from the initial year of collection, which began April 1, 2017, with said tax to terminate/expire on March 31, 2047. The tax proceeds will be used to pay for the programs and projects outlined in Merced County's 2016 ½ Cent Transportation Sales Tax Measure Expenditure Plan ("Expenditure Plan"), as it may be amended in accordance with State law.
- C. This AGREEMENT delineates the rights and responsibilities of the Parties hereto as they relate to the Regional Projects funds that are allocated to the PROJECT by the MCAG Governing Board, as authorized by the Expenditure Plan.

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

ARTICLE I: REGIONAL PROJECTS FUNDING ALLOCATION

This AGREEMENT authorizes MCAG to allocate Regional Projects funds derived from Measure V receipts to RECIPIENT in accordance with the voter-approved Expenditure Plan based on the PROJECT's satisfaction of the following criteria:

- The PROJECT is of regional significance by being located on the State Highway System, the Regional Road System, in more than one jurisdiction, and/or directly benefiting more than one jurisdiction.
- The PROJECT is included in the applicable Regional Transportation Plan (RTP).
- The PROJECT was recommended by the appropriate Regional Projects Committee of authority based on the PROJECT location.
- The PROJECT was approved by the MCAG Governing Board.
- The PROJECT is included in the current Measure V Implementation Plan.

ARTICLE II: PROJECT SCOPE, COSTS, AND SCHEDULE

A. Project Scope

- The PROJECT funding allocation was approved by the MCAG Governing Board for PROJECT PHASE.
- 2. The PROJECT will SHORT DESCRIPTION INCLUDING PROJECT LIMITS.
- 3. In utilizing the Measure V funding allocation, the RECIPIENT shall only proceed with work authorized for the specific phase(s) with written "Authorization to Proceed." Within 5 days of the execution of this AGREEMENT or amendment thereof, MCAG shall provide a written "Authorization to Proceed" to the RECIPIENT.

B. Project Costs

- The PROJECT has a total estimated project cost of DOLLAR AMOUNT as of the date of this AGREEMENT.
- The PROJECT has been approved for an allocation from the Measure V EAST or WEST Side Regional Projects funding account in an amount not to exceed DOLLAR AMOUNT.
- 3. The RECIPIENT is responsible for any PROJECT cost overruns. Requests for additional Measure V regional projects revenue beyond what is approved and programmed in the current Implementation Plan may be considered by MCAG through an amendment to the Implementation Plan. All Implementation Plan amendments must be approved by the Governing Board.
- Regional funding allocated to RECPIENT for the PROJECT that remains unspent at the completion of the PROJECT will remain in the appropriate Regional Projects funding account

and will be eligible for future programming to regional projects as authorized by the Expenditure Plan.

C. Project Schedule

RECIPIENT shall adhere to the following schedule to deliver the PROJECT in a timely manner.
 Inactivity causing delays of 6 months or more during any phase of the PROJECT shall require action from the MCAG Governing Board to either extend the PROJECT schedule through an amendment to this AGREEMENT or reallocate the PROJECT's funding to another project in the current Implementation Plan.

a.	Project Study	DATE
b.	Environmental Impact Study	DATE
c.	Design	DATE
d.	Right of Way Acquisition	DATE
e.	Construction	DATE

- 2. The RECIPIENT has six months from the date of this AGREEMENT to execute consultant contracts or initiate work if done by the RECIPIENT's staff.
- The RECIPIENT shall advertise, award, and administer the PROJECT in accordance with RECIPIENT standards and all applicable federal and state laws.
- 4. Award information shall be submitted by the RECIPIENT to MCAG within sixty (60) days after the project contract award.
- 5. If no costs have been invoiced for a six-month period, RECIPIENT agrees to submit for each phase a written explanation of the absence of the PROJECT's activity along with target billing date and target billing amount.
- 6. Measure V Regional Projects funding allocated to the PROJECT that remains unused at the conclusion of the PROJECT schedule above (including any extensions authorized by MCAG) may be redistributed to other regional projects within the current Implementation Plan at the discretion of the MCAG Governing Board.

D. Changes to Project

Changes to the PROJECT scope, schedule or Measure V Regional Projects funding allocation may require an amendment to the Measure V Implementation Plan at the discretion of the MCAG Governing Board. Subsequently, any amendments to the Implementation Plan related to the PROJECT will also require an amendment to this AGREEMENT, requiring action from both parties.

ARTICLE III: FUNDING AND EXPENDITURES

A. MERCED COUNTY ASSOCIATION OF GOVERNMENTS (MCAG)

- RECIPIENT shall be reimbursed no later than thirty (30) days following the submission of invoices to MCAG for allowed PROJECT costs, with the exception of costs associated with compliance with the requirements outlined in Article IV, Section A of this AGREEMENT.
- 2. MCAG shall provide the reimbursement forms and documentation requirements for the submission of invoices to RECIPIENT no later than thirty (30) days following the date of this AGREEMENT.
- 3. MCAG shall include Measure V Regional Projects funds distributed to the PROJECT in a quarterly report to the MCAG Governing Board.
- 4. Per the Expenditure Plan, MCAG shall provide for an independent annual audit of Measure V revenue and expenditures for all funding categories, including the PROJECT.
- 5. MCAG shall provide thirty (30) days notice to RECIPIENT prior to conducting an audit of Regional Project funds received by RECIPIENT for the PROJECT to determine whether the RECIPIENT's use of said funds is in compliance with this AGREEMENT and the Expenditure Plan.

B. RECIPIENT'S DUTIES AND OBLIGATIONS

- RECIPIENT shall use all Regional Projects funds received for this PROJECT in compliance with the applicable guidelines and plan(s), as they may be adopted or amended by the MCAG Governing Board in accordance with applicable law.
- 2. RECIPIENT must account for Regional Projects funds separately independent of Measure V Local Projects accounts. The accounting system shall provide adequate internal controls and audit trails to facilitate an annual compliance audit for each fund type and the respective usage and application of said funds. MCAG and its representatives and agents shall have the right at any reasonable time to inspect and copy any accounting records related to such funds, except to the extent specifically prohibited by applicable law.
- 3. RECIPIENT will utilize the Designated Reporting Tool to provide MCAG with the required information related to Regional Projects fund expenditures according to the following schedule:

Quarter	Reporting Period	Due Date
FY 18-19 Q1	July 1 to September 31	October 31, 2018
FY 18-19 Q2	October 1 to December 31	January 31, 2019
FY 18-19 Q3	January 1 to March 31	April 30, 2019
FY 18-19 Q4	April 1 to June 30	August 30, 2019*
FY 19-20 Q1	July 1 to September 31	October 31, 2019
FY 19-20 Q2	October 1 to December 31	January 31, 2020
FY 19-20 Q3	January 1 to March 31	April 30, 2020
FY 19-20 Q4	April 1 to June 30	August 31, 2020*

^{*60} days provided for the 4th quarter of each fiscal year.

C. OTHER CONSIDERATIONS

- PROJECT-Specific Allocation: RECIPIENT shall use all Regional Projects funds allocated to the PROJECT solely for the PROJECT. Any jurisdiction that violates this provision, as determined by the MCAG Governing Board or Measure V Citizens Oversight Committee, must fully reimburse all misspent funds, including all interest which would have been earned thereon. The interest rate shall not exceed the maximum allowed by law.
- Staff Cost Limitations: Direct costs associated with the delivery of programs and projects
 associated with the PROJECT, including direct staff costs and consultant costs, are eligible
 uses of said funds. Indirect costs, including, but not limited to, overhead costs such as rent,
 utilities, and human resources staff, are not allowed.
- 3. <u>CEQA:</u> The PROJECT shall comply with the California Environmental Quality Act (CEQA) and other environmental reviews as required.
- 4. <u>Promotion:</u> At a minimum, RECIPIENT agrees to promote the PROJECT through branded signage and is encouraged to utilize additional means such as news releases, social media, events, or any other tools to communicate to the public that the project was funded by Measure V. RECIPIENT also agrees to provide MCAG with at least five (5) photographs of the project, either in progress, before and after completion, or some combination thereof. At least one photograph of the completed PROJECT is required.

ARTICLE IV: REPORTING REQUIREMENTS

A. REQUIREMENTS AND WITHOLDING

RECIPIENT shall comply with each of the reporting requirements set forth below. If RECIPIENT fails to comply with one or more of these requirements, MCAG may withhold reimbursement payment for the PROJECT until full compliance is achieved.

- As a means to keep the public informed, the RECIPIENT, at a minimum, shall provide
 quarterly updates of current and accurate information on RECIPIENT's website (if applicable)
 and to MCAG for the Measure V website, related to the PROJECT's progress.
- 2. RECIPIENT shall, at least annually, publish an article highlighting the PROJECT, or provide information to MCAG regarding such project or program for publication.
- RECIPIENT shall make its administrative officer or designated staff available upon request to render a report or answer any and all inquiries in regard to RECIPIENT's receipt, usage, and/or compliance with audit findings regarding the PROJECT before the Citizens Oversight Committee.
- 4. RECIPIENT agrees that MCAG may review and/or evaluate the PROJECT pursuant to this AGREEMENT. This may include visits by representatives, agents or nominees of MCAG to observe RECIPIENT's project or program operations, to review project or program data and financial records, and to discuss the project with RECIPIENT's staff or governing body.

ARTICLE V: OTHER PROVISIONS

A. INDEMNITY BY RECIPIENT

Neither MCAG nor its governing body, elected officials, officers, consultants, agents or employees shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by RECIPIENT in connection with the Regional Projects funds distributed to RECIPIENT for the PROJECT pursuant to this AGREEMENT. It is also understood and agreed, pursuant to Government Code Section 895.4, that RECIPIENT shall fully defend, indemnify and hold harmless MCAG, its governing body, elected officials, officers, agents and employees from any liability imposed on MCAG for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by RECIPIENT for the PROJECT in connection with the Regional Projects funds distributed to RECIPIENT pursuant to this AGREEMENT.

B. INDEMNITY BY MCAG

Neither RECIPIENT nor its governing body, elected officials, officers, consultants, agents or employees shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by MCAG under or in connection with any work, authority or jurisdiction delegated to MCAG under this AGREEMENT. It is also understood and agreed, pursuant to Government Code Section 895.4, that MCAG shall fully defend, indemnify and hold harmless RECIPIENT, its governing body, elected officials, officers, agents and employees from any liability imposed on RECIPIENT for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by MCAG under or in connection with any work, authority or jurisdiction delegated to MCAG under this AGREEMENT.

C. JURISDICTION AND VENUE

The laws of the State of California will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims to which it relates. All legal actions arising out of this AGREEMENT shall be brought in a court of competent jurisdiction in Merced County, California.

D. ATTORNEY'S FEES

Should it become necessary to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to recover reasonable expenses and attorney's fees from the other party.

E. TERM

The term of this AGREEMENT shall be from MONTH DAY, 2018 to sixty (60) days following the completion of the scope of work as described in Article II, unless amended in writing or a new Measure V Regional Project Funding Agreement is executed between MCAG and RECIPIENT.

F. SEVERABILITY

If any provision of this AGREEMENT is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions of the AGREEMENT, but such unenforceable provisions shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this AGREEMENT.

G. ENTIRE AGREEMENT; MODIFICATION

This AGREEMENT, as well as the referenced Expenditure Plan, constitutes the entire AGREEMENT and supersedes all prior written or oral understandings regarding the Regional Projects funding for the PROJECT. This AGREEMENT may only be modified by a written agreement executed by both parties.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT by their duly authorized officers as of the date first written below.

JURISDICTION (RECIPIENT	·)	MERCED COUNTY ASSOCIATION OF GOVERNMENTS (MCAG)	
Ву:		Ву:	
Name	Date	Stacie Dabbs	Date
Title		Interim Executive Dire	ctor
Approved as to Budget/Financial Controls:		Reviewed as to Budget/Financial Controls:	
Ву:		Ву:	
Name	Date	Nav Bagri	Date
Title		Finance Director	
Approved as to Legal Form:		Approved as to Legal Form:	
ву:	7 9-12-2018	Ву:	
Legal Counsel	Date	Emily Haden	Date
		Legal Counsel to MCAG	î

MERCED

CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item J.7. Meeting Date: 10/1/2018

Report Prepared by: Julie Nelson, Associate Planner, Development Services Department

SUBJECT: <u>Vacation #18-02 - Setting a Public Hearing to Vacate a 5.88-Acre Park Site Generally</u> Located at the Southwest Corner of M Street and Arrow Wood Drive

REPORT IN BRIEF

Set a public hearing for November 5, 2018, to vacate a 5.88-acre park site generally located at the southwest corner of M Street and Arrow Wood Drive.

RECOMMENDATION

City Council - Adopt a motion adopting **Resolution 2018-64**, a Resolution of the City Council of the City of Merced, California, declaring its intention to vacate an approximately 5.88 acre park site generally located at the southwest corner of M Street and Arrow Wood Drive (extended) (Vacation #18-02) and setting time and place for Public Hearing.

ALTERNATIVES

- 1. Approve as recommended by staff; or,
- 2. Approve, subject to modifications by the City Council; or,
- 3. Deny; or,
- 4. Refer back to staff for reconsideration of specific items (specific items to be addressed in the motion); or,
- 5. Continue to a future meeting (date and time to be specified in motion).

AUTHORITY

Government Code Section 66477.5 (c) specifies the procedures for vacating land previously dedicated for public use, such as for parks and other public facilities. The City of Merced Administrative Policies and Procedures No. A-6 provides direction to staff for processing vacation requests, and City Council Resolution No. 86-90 establishes a policy concerning costs associated with the vacation.

CITY COUNCIL PRIORITIES

Not applicable.

DISCUSSION

The developer of Bellevue Ranch, Stonefield Home, Inc., is requesting the vacation of approximately 5.88 acres of land generally located at the southwest corner of M Street and Arrow Wood Drive (Attachment 1). This park site (Attachment 2) was dedicated as part of the Bellevue Ranch Village

File #: 18-463 Meeting Date: 10/1/2018

12, Phase 1 Subdivision (Attachment 3) in accordance with the conditions of approval for Tentative Map #1304 for Bellevue Ranch Village 12.

The proposed Vacation of the park site is part of the overall plan to move the park site from the current location at M Street and Arrow Wood Drive to the southeast corner of the future Catherine A Hostetler Boulevard and Freemark Avenue (extended) as shown on the map at Attachment 4. The change in land use designation from Open Space/Park (OS) to Low-Medium Density Residential (LMD) as proposed by General Plan Amendment #18-01 (heard at the City Council meeting on September 17, 2018) would allow the construction of single-family dwellings at this location. General Plan Amendment #18-01 will also move the park site adjacent to the future school site.

Prior to recording the proposed Vacation of this site, a new park site would be dedicated adjacent to the future school site as required by Planning Commission Resolution #3098.

On September 5, 2018, the Planning Commission reviewed the proposed vacation and found it to be consistent with the General Plan, subject to City Council approval of General Plan Amendment #18-01.

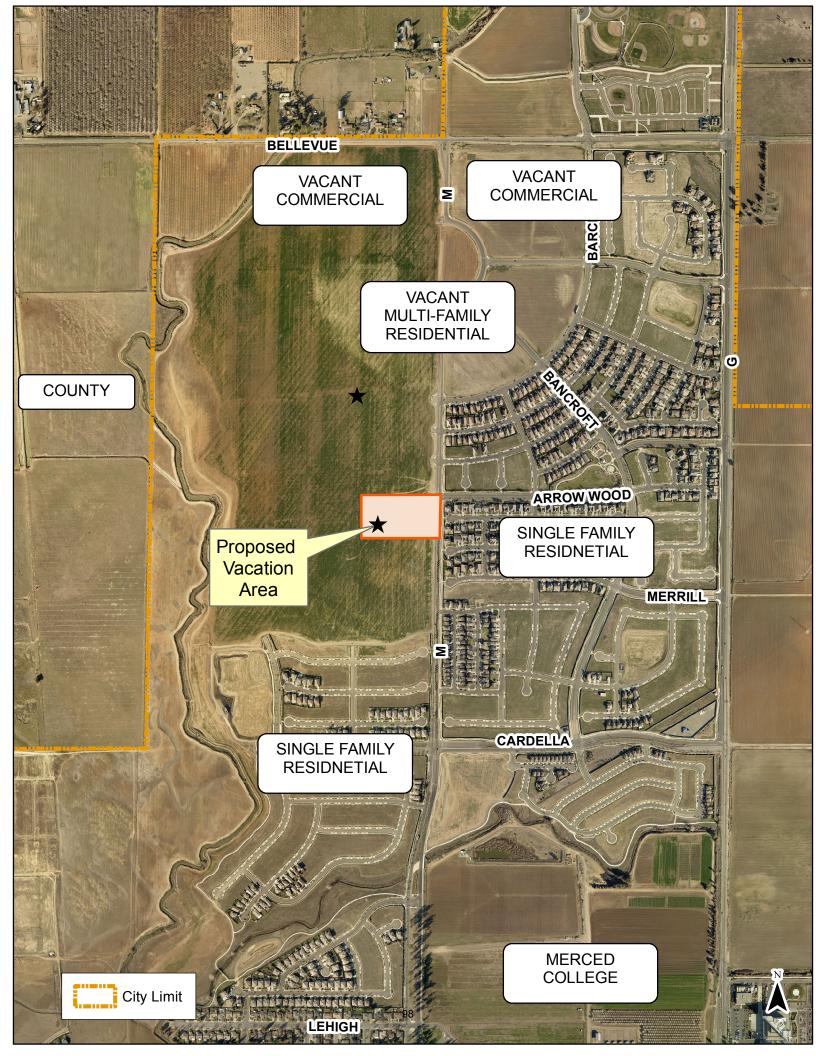
The City Council's action would be to adopt the resolution at Attachment 5 setting the public hearing for Vacation #18-02 for Monday, November 5, 2018.

IMPACT ON CITY RESOURCES

There would be no impact on City resources as a result of this action.

ATTACHMENTS

- 1. Location Map
- 2. Abandonment Area
- 3. Bellevue Ranch West, Village 12, Phase 1 Map
- 4. Proposed New Park Site
- 5. Draft City Council Resolution

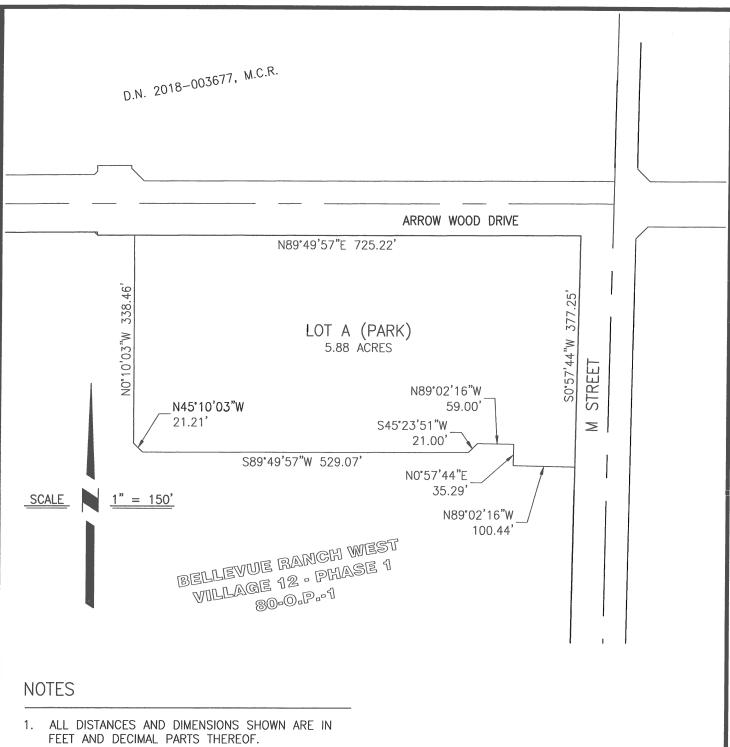


LEGAL DESCRIPTION

VILLAGE 12, PHASE 1, LOT A

All that certain real property situate, lying, and being Lot A (Park), as shown on that certain map of "Bellevue Ranch West, Village 12 – Phase 1", filed in Volume 80 of Official Plats, at Pages 1 through 6, Merced County Records, lying in the City of Merced, County of Merced, State of California.

Containing a total of 5.88 acres, more or less.



 ALL RECORD INFORMATION SHOWN IS FROM MERCED COUNTY RECORDS.

DATE: 8/10/2018 10:04 FILE: M:\125971\Survey Drawings\PARK SITE\LOT A.dwg



PHASE 1 - LOT A
BELLEVUE RANCH WEST

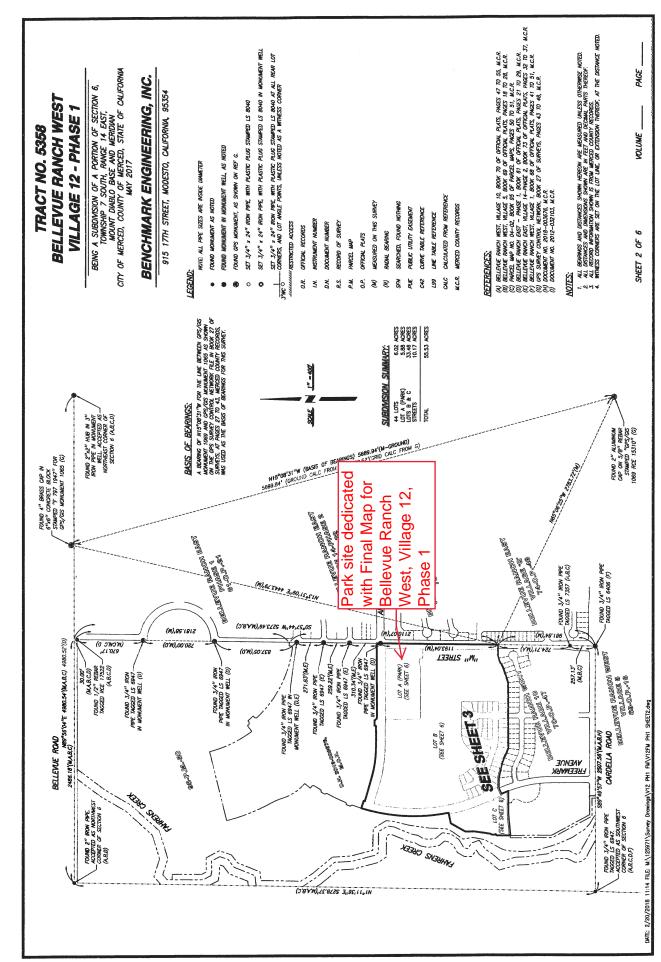
MERCED, CALIFORNIA

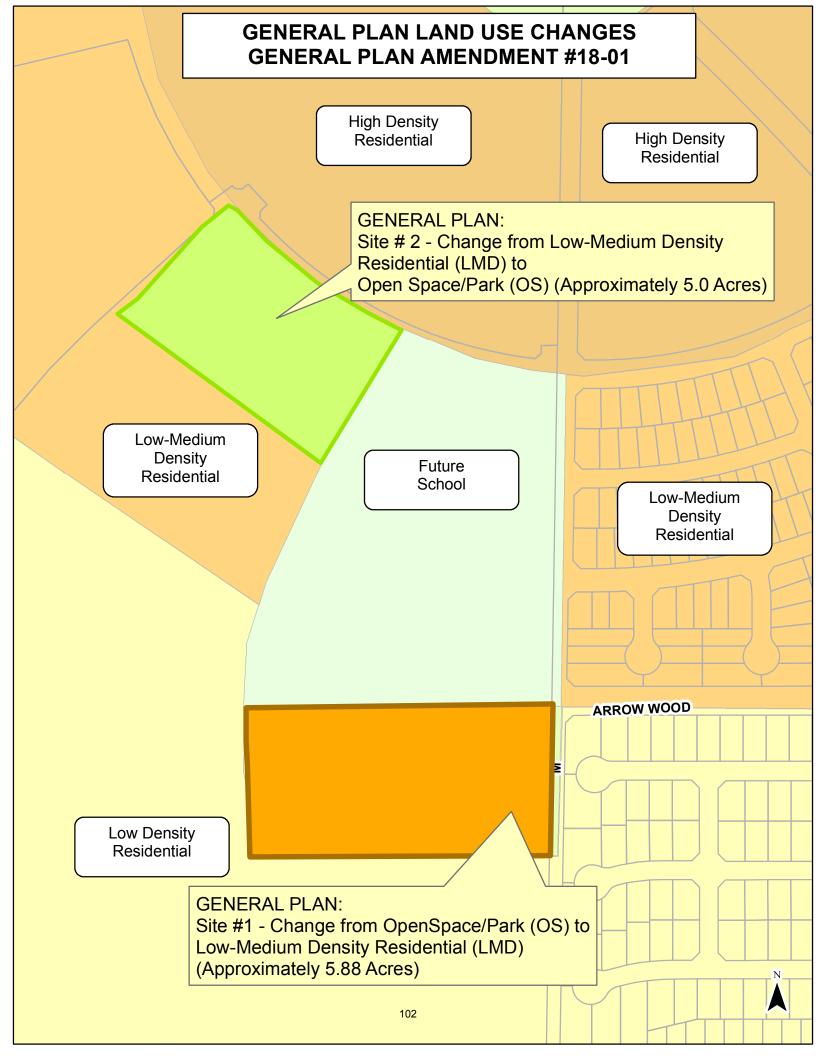
DRAWN BY: SYD

DATE: 2018-08-10

SHEET: 1 OF 2

JOB: 125971





RESOLUTION NO. 2018-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, DECLARING ITS INTENTION TO VACATE AN APPROXIMATELY 5.88 ACRE PARK SITE GENERALLY LOCATED AT THE SOUTHWEST CORNER OF M STREET AND ARROW WOOD DRIVE (EXTENDED) (VACATION #18-02) AND SETTING TIME AND PLACE FOR PUBLIC HEARING

WHEREAS, the City Engineer of the City of Merced has recommended that the hereinafter described portion of public right-of-way is unnecessary for prospective public purposes; and

WHEREAS, the City Engineer has filed maps or plans with the City Clerk of the City of Merced showing the portion of the public right-of-way to be vacated at a specific time that will be determined.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City Council of the City of Merced declares its intention to proceed under the provisions of Part 3 of the Streets and Highways Code of the State of California, being the Public Streets, Highways, and Service Easements Vacation Law, Chapter 3, to vacate an approximately 5.88 acre parcel of land generally located at the southwest corner of M Street and Arrow Wood Drive (extended) as described in Exhibit "A" and shown on the map at Exhibit "B," attached hereto and incorporated herein by this reference.

SECTION 2. Reference is made to the maps and plans which are filed in the office of the City Clerk of the City of Merced for further particulars as to the proposed vacation and reservation.

SECTION 3. November 5, 2018, at the hour of 6:00 p.m. of said day in the Council Chamber of the City Council, 678 West 18th Street, Merced, California, is fixed as the time and place for hearing all persons interested in or objecting to the proposed vacation. Said hearing may be postponed or continued.

SECTION 4. The City Engineer is directed to post or cause to be posted at least two weeks before the date set for hearing not less than three (3) notices of vacation of a portion of public right-of-way, not more than three hundred (300) feet apart, conspicuously along the lines of said portion of the public street proposed to be vacated, stating adoption of this resolution and the time and place of the hearing herein called. Posting a copy of this resolution shall constitute the posting of the required notice.

SECTION 5. The City Clerk is directed to cause a copy of this Resolution to be published once each week for two successive weeks prior to the public hearing in the official newspaper.

regular meeting held on vote:	the day of	ncil of the City of Merced at a 2018, by the following
AYES:	Council Members:	
NOES:	Council Members:	
ABSENT:	Council Members:	
ABSTAIN:	Council Members:	
		APPROVED:
	-	Mayor

ATTEST: STEVE CARRIGAN, CITY CLERK
BY:Assistant/Deputy City Clerk
(SEAL)
APPROVED AS TO FORM:
Hylokel 8/21/18 /City Attorney Date

LEGAL DESCRIPTION

VILLAGE 12, PHASE 1, LOT A

All that certain real property situate, lying, and being Lot A (Park), as shown on that certain map of "Bellevue Ranch West, Village 12 – Phase 1", filed in Volume 80 of Official Plats, at Pages 1 through 6, Merced County Records, lying in the City of Merced, County of Merced, State of California.

Containing a total of 5.88 acres, more or less.

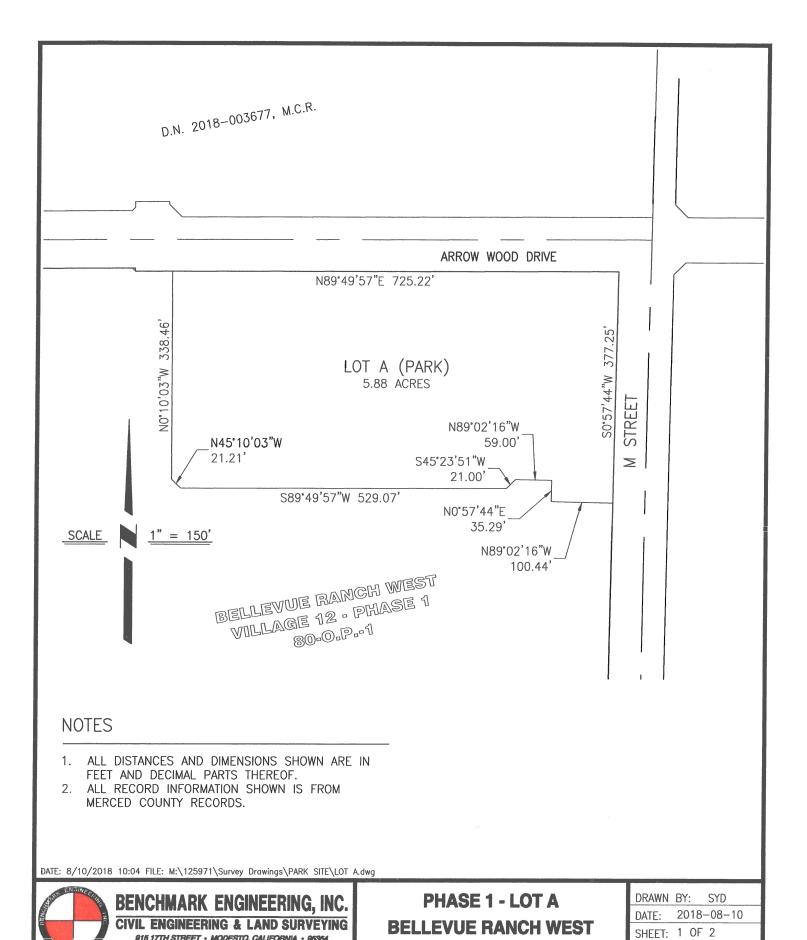


EXHIBIT B

MERCED, CALIFORNIA

JOB:

125971

915 17TH STREET • MODESTO, CALIFORNIA • 96354 (209) 548-9300 FAX:(200) 548-9305

CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item J.8. Meeting Date: 10/1/2018

Report Prepared by: Mark E. Hamilton, Housing Program Supervisor, Housing Division, Department of **Development Services**

SUBJECT: Allocation of Fiscal Year 2018/19 Community Development Block Grant (CDBG) and HOME Investment Partnership Program (HOME) to Fund Sub-Recipient Agreements with Restore Merced for Neighborhood Clean-Up Program (\$60,000), Sierra Saving Grace for the Homeless Project (\$465,000), Merced Rescue Mission for the Hope for Families Project Program (\$250,000) and County of Merced for the Continuum of Care Program; and First Technical Amendment to the 2018 Department of Housing and Urban Development Annual Action Plan

REPORT IN BRIEF

Authorizes execution of Community Development Block Grant and HOME Investment Partnership Program Sub-Grantee Agreements with Restore Merced for Neighborhood Clean-Up Program in the amount of \$60,000, Sierra Saving Grace for the Homeless Project in the amount of \$465,000, Merced Rescue Mission for the Hope for Families Project Program in the amount of \$250,000 and Continuum of Care Program in the amount of \$38,000.

RECOMMENDATION

City Council - Adopt a motion:

A. Approving agreements identified in the 2018 Department of Housing and Urban Development (HUD) Annual Plan with Community Development Block Grant (CDBG) funds from the 2018/19 Fiscal Year (Accounts 018-1301-552-17.00 / Professional Services, 018-1301-552-29.00 / Supplies and Services, and 033-1349-552-29.00 / Supplies and Services, per previous City Council recommendation for:

- 1. An agreement with Restore Merced for Neighborhood Clean-Up Program in the amount of \$60,000; and,
- 2. An agreement with Sierra Saving Grace for the Homeless Project in the amount of \$465,000; and,
- 3. An agreement with Merced Rescue Mission for the Hope for Families Project Program in the amount of \$250,000; and,
- 4. An agreement with County of Merced for the Continuum of Care Program in the amount of \$38,000; and,

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B. Authorizing the City Manager or Assistant City Manager to execute, and if necessary, make minor modifications to the agreements described above as attached to this report and all associated documents; and,

C. Authorizing the Finance Officer to make necessary budget adjustments.

ALTERNATIVES

- 1. Approve, as recommended by staff; or,
- 2. Approve, subject to conditions other than recommended by staff; or,
- 3. Deny; or,
- 4. Refer to the City Staff for reconsideration of specific items (specific items to be addressed in the motion); or,
- 5. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

Section 200 of the City of Merced Charter, City of Merced 2018 HUD Annual Plan and Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning CDBG including Subpart K of these regulations).

CITY COUNCIL PRIORITIES

As approved by City Council June 18, 2018, and budgeted for in the Fiscal Year 2018-19 Adopted Budget.

DISCUSSION

Staff is requesting Council consider approving four (4) agreements with sub-recipients to carry out acquisition of permanent supportive housing units, neighborhood cleanup program, and Continuum of Care activities within the community. These agreements are funded by a combination of Community Development Block Grant and HOME Investment Partnership Program. Staff will work with the sub-recipients to ensure the activities are carried out per the Housing and Urban Development (HUD) program guidelines.

The 2018 HUD Annual Action Plan identified and budgeted all of these activities, which meet basic HUD eligibility. Staff has worked with these sub-recipients to ensure they have sufficient time to complete the activities and provide the City with progress reports. The sub-recipients' services will be reimbursed upon submittal of an invoice and report describing their accomplishments.

Restore Merced is a community development effort focused on creating opportunities for lowmoderate income residents in Merced, CA to experience spiritual, social, and economic flourishing. The organization focuses on three primary areas of focus for community transformation neighborhood engagement, economic development, and volunteer mobilization. In all of its programming, Restore Merced's goal is to see the City of Merced transformed and become a place where all residents know they are valued and believe they have something to offer to make the City a better place for all to live.

With the CDBG funding from the City, Restore Merced will be providing weekly neighborhood clean-

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up projects in downtown, and along Bear Creek and Black Rascal Creek. The clean-up projects will provide work experience for individuals who have been formerly homeless, incarcerated, and in recovery from addiction. This work will beautify our public spaces in ways that instill a sense of pride and ownership in all residents and be a stepping stone into meaningful employment opportunities for individuals in the community who have been previously excluded from them as they seek selfsufficiency and stability.

Sierra Saving Grace Homeless Project (SSG) is a non-profit whose mission is to provide an interfaith and community-based safety net for chronically homeless individuals and families who are either underserved or not served by existing programs and services. SSG promotes a housing first approach to solving homelessness through the provision of intensive case management, advocacy, and services in recognition of the inherent worth and dignity of all persons.

With CDBG and HOME funding from the City, Sierra Saving Grace will be able to acquire multiple single family properties for their Homeless Project. The acquisition of these properties will allow SSG to provide with an affordable payment for the non-profit, and in turn we can offer affordable housing to those experiencing homelessness. The average person who is served by SSG, has a Social Security income of about \$900. These persons are not able to find affordable housing so they become homeless. Units are hard to find in this housing climate and landlords continue to increase their rents, in fact we have come across a landlord asking \$700 per month for a studio apartment. The units purchased with the CDBG funds help us to combat these issues.

The Merced Rescue Mission is a nonprofit organization whose mission is to provide hope and serve people who are homeless and needy in Merced County. In our efforts to accomplish this mission the Merced Rescue Mission provides food and multiple levels of housing which include shelter. transitional and permanent supportive housing. We provide service coordination and navigation for our participants to empower them to achieve personalized goals which will lead to stability and productivity in their lives. We are able to provide these services through donations and grants that underwrite our operations.

With CDBG funding from the City, the Merced Rescue Mission will secure a single-family property which will provide permanent supportive housing for homeless families with young children. The acquisition of the property will allow them to assist with providing housing to income eligible households for a greatly reduced amount.

The Collaborative Applicant is the business entity of the Merced City and County Continuum of Care. The Collaborative Applicant is responsible for ensuring the Continuum of Care (CoC) is implemented. The Continuum of Care is a group of government agencies and nonprofit organizations that work to prevent and reduce homelessness.

With the CDBG funding from the City of Merced, The Collaborative Applicant (Merced County) will be able to provide services in the following ways:

- 1. Provide administrative support to the Merced City and County Continuum of Care board and general membership, by developing monthly meeting agendas and producing and posting public minutes of all meeting.
- 2. Collecting monthly grantee reports for Merced City and County Continuum of Care board in

File #: 18-429 Meeting Date: 10/1/2018

order to provide grant status review.

- 3. Attend committee meetings and provide support as related to the CoC and governance structure.
- 4. Monitor grantees during grant periods, report information back to the board of any findings and provide technical support to grantees in order to maintain compliance.
- 5. Ensure the CoC and all grantees are in compliance with all HUD and ESG federal and state regulations regarding homelessness programs and or projects.
- 6. Apply for HUD notice of funding through consolidated application process, apply for the federal and state ESG funds, and research any other funding opportunities that will reside as the CoC responsibility.
- 7. Administer community meetings to collaborate and develop a county wide plan to address homelessness.

Upon receipt of progress reports and conclusion of the activity, the information will be included in the City's Consolidated Annual Performance and Evaluation Report (CAPER). The CAPER is a report HUD requires each participating jurisdiction to complete and submit at the conclusion of the previous fiscal year outlining the accomplishments of each activity.

IMPACT ON CITY RESOURCES

These agreements do not require expenditures from the General Fund. Funding used for these agreements will be from Accounts 018-1301-552-17.00 / Professional Services; 018-1301-552-29.00 / Supplies and Services; and, 033-1349-552-29.00 / Supplies and Services.

ATTACHMENTS

- 1. Agreement with Restore Merced for Neighborhood Cleanup
- 2. Agreement with Sierra Saving Grace Acquisition of Property
- 3. Agreement with Merced Rescue Mission Acquisition of a Property
- 4. Agreement with County of Merced for Continuum of Care Services

Agreement between City of Merced AND Restore Merced, Inc. For

Community Development Block Grant Neighborhood Cleanup

THIS AGREEMENT, entered this ____ day of _____, 2018, by and between the City of Merced (herein called the "Grantee") and Restore Merced, Inc. (herein called the "Subrecipient").

WHEREAS, The Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383 (B-18-MC-06-0044) under the Community Development Block Grant ("CDBG") and administered by the U.S. Department of Housing and Urban Development ("HUD") (14.218-Entitlement Grant) with a Federal Award Date of August 9, 2018; and,

WHEREAS, The Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds;

NOW, THEREFORE, in consideration of the mutual promises and covenants 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:

I. SCOPE OF SERVICE

A. Activities

The Subrecipient will be responsible for administering a CDBG Year 2018-19 Neighborhood Cleanup and Employment Training program (the "Program") which shall serve the residents residing within the community.

Activity #1: (New) Provide job experience to homeless individuals in order to assist individuals in building their resumes to show employability.

Activity #2: (New) Neighborhood Clean Up – clean up and dispose of debris from three specific areas where more than 50% of the population is Low- to Median- income and homeless individuals who are currently residing: Black Rascal Creek (Census Tract 10.03); Bear Creek (northwestern portion) (Census Tract 10.05), and a portion of Downtown (Census Tract 13.02).

Activity #3: (Expansion) Provide job training while participants are enrolled in the program, with job placement support post-program.

Activity #4: Reimbursable administrative expenses directly related to the above Activities 1-3 shall be limited to 10 percent (10%) of the total CDBG funding, or a maximum of \$6,000.

B. National Objectives

All activities funded with CDBG funds must meet one of the CDBG program's National Objectives: benefit low-and moderate-income persons; provide a job service benefit to a limited number of low- to moderate persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208. The Subrecipient certifies that the activities carried out under this Agreement will meet the National Objective to benefit low- and moderate-income persons.

In meeting this objective, all clients participating in the program will provide proof of income eligibility using **a**) income tax returns **b**) or proof they reside in a Census Tract recognized as low-and-moderate-income eligible.

C. <u>Levels of Accomplishment – Goals and Performance Measures</u> The Subrecipient agrees to provide the following levels of program services for each activity:

- 1. Database containing service provided; number of participants monthly; male and female breakdown; number of sessions; attendance; copies of entrance and post exams; and, absences.
- 2. Copy of sign in sheets
- 3. Photos of events/training
- 4. Quarterly Reporting

- 5. Furnish a copy of an entrance and post tests for each attendee
- Household Size
- 7. Household Income
- 8. Are the household members Hispanic or Latino
- 9. Race/Ethnicity (see list below)
 - White
 - Black/African American
 - Asian
 - American Indian/Alaskan Native
 - Native Hawaiian/Other Pacific Islander
 - American Indian/Alaskan Native and White
 - Asian and White
 - Black/African American and White
 - American Indian/Alaskan Native and Black/African American
 - Other Multi-Racial
- 10. Household's Average Median Income (provide specific numbers, not a range).
- 11. Is the Head of Household a Female (yes or no).
- 12. 6-month outcome (beginning with last month of assistance), when possible.

In addition to the monthly/quarterly reporting required, the sub-recipient shall provide the grantee with an end of year report, exampled below:

Levels of Accomplishme Subrecipients	ents -						
						End of Y	ear Report
			Fiscal			Grant	
Grantee Name:			Year	2018/2019		Award:	
Activity Name:						Amount Spent:	
Last Name	First Name	Gender	Household Size	Household Income	Hispanic / Latino	Race/ Ethnicity	Female Head of Household

Total Participants	0
Total Hispanic/Latino	0
Total Female H of H	0

Race Totals:

Total White	0
Total Black	0
Total Hispanic	0
Asian	0
American	0
Indian/Alaskan Native	U
Native Hawaiian/Other	0
Pacific Islander	0
American Indian/	
Alaskan Native and	0
White	
Asian and White	0
Black/African American	0
and White	U
American Indian/	
Alaskan Native and	
Black/ African	
American	
Total Other	0

Please	Enter	a Summ	ary of A	Activity	Accon	nplishm	ents:	
							,	

To show a positive outcome, Subrecipient will set goals showing number of individuals/households to be served. Final report showing goals created by subrecipient should include outcome of program including challenges and successes.

D. Performance Monitoring

The Grantee will monitor the performance of the Subrecipient against goals and performances standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, suspension or termination procedures applicable to this Agreement will be initiated.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the 1st day of July, 2018 and end on the 30th day of June, 2019. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets, including program income. All invoices shall be submitted to the City of Merced no later than June 1, 2019.

III. BUDGET

<u>Line Item</u>	Amount:
Activities #1, #2, & #3	\$54,000
Administrative Expenses	\$6,000
TOTAL	\$60,000

Any indirect costs charged must be consistent with the conditions of Paragraph VII (C) (2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$60,000. Draw-downs for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Each Draw-down request shall be accompanied with an invoice itemizing all program expenses, previously drawn program grant funds, including backup documentation supporting expenses, and amount of program funds being requested.

The Subrecipient shall meet with City of Merced Housing Division and Finance Department staff prior to commencement of this program to review and discuss: 1) requirements for reimbursement of invoices; 2) qualifying expenses; 3) allowable administration costs (/ 0 %); and 4) a determination of the maximum eligible direct and indirect costs of the project (/ b %).

Date of Meeting: September 14 2018

Finance: Name Wirty 16 Deborah Richardson Initials: All Housing: Name Mark Standardson Initials: Wife Initials: Mark Subrecipient: Name Mark St. Dury Initials: Mark Initials: Mark

The Subrecipient shall submit all applicable invoices requesting reimbursement of qualified expenses to City of Merced Housing Division staff no later than June 1, 2019.

V. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communications and details concerning this Agreement shall be directed to the following representatives of the parties:

GRANTEE

For payment & contract issues:
Mark Hamilton
Housing Program Supervisor
City of Merced
678 West 18th Street
Merced, CA 95340
(209) 385-6863

SUBRICIPIENT

For payment & contract issues:
Matt St. Pierre
Executive Director
Restore Merced, Inc.
419 W 19th Street
Merced, CA 95340
(209) 233-1418

VI. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning CDBG including Subpart K of these regulations), except that:

- (1) The Subrecipient does not assume the recipient's ("Grantee's" herein) environmental responsibilities described in 24 CFR 570.604; and,
- (2) The Subrecipient does not assume the recipient's ("Grantee's" herein) responsibility for initiating the review process under the provisions of 24 CFR Part 52.

The Subrecipient also agrees to comply with all other applicable Federal, state, and local laws, regulations, and policies governing the funds provided under this Agreement. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. <u>Independent Contractor</u>

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from

payment of all Unemployment Compensation, FICA, retirement,¹ life and/or medical insurance,² and Worker's Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, protect, defend, and indemnify the Grantee from any and all claims, actions, suits, charges, and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

E. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state, or local governmental guidelines, policies, and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

¹ Unless the services under this Agreement are provided by a former City employee who is now retired and Grantee is otherwise obligated to pay for the same.

² Unless the services under this Agreement are provided by a former City employee who is now retired and Grantee is otherwise obligated to pay for the same.

F. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

- 1. Failure to comply with any of the rules, regulations, or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies, or directives as may become applicable at any time;
- 2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
- 3. Ineffective or improper use of funds provided under this Agreement; or,
- 4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

VII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21–28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis. Misuse of Program funds is a federal offense and is subject to reimbursement and immediate cancellation of this agreement.

B. <u>Documentation and Record Keeping</u>

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken, including its location;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the neighborhood cleanup and prevention of blight accomplished with CDBG assistance, including the boundaries of the area, description of the conditions in sufficient detail to demonstrate how the area met the criteria in 270.208(b)(1);
- e. Records documenting the job training components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
- h. If the services of other businesses within the City of Merced are used in the implementation of this program, business license records of such businesses shall be provided. Subrecipient may contact either the Finance Department or Housing Division to verify current business license status.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by applicable State or Federal laws unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning Subrecipient audits and Uniform Guidance.

Organization agrees to provide City at Organization's cost, a certified audit performance by an accredited certified public account, of all funds received or utilized by Organization, including the distribution of CDBG Funds for fiscal year 2018/2019 to be delivered to City by March 31, 2020.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report quarterly all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee.

2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's

share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

D. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40–48.

3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the City Limits with funds provided under this Agreement.

E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

- 1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
- 2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period.

In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee.

VIII. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as

amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107, and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCD Act are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative

of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. <u>Equal Employment Opportunity and Affirmative Action (EEO/AA)</u> Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs VIII.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8)

units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. "Section 3" Clause

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that

to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the City Limits of Merced in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with neighborhood cleanup activities are given to low- and very low-income persons residing within the City Limits of Merced in which the CDBGfunded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with neighborhood cleanup activities to business concerns that provide economic opportunities for low- and very low-income persons residing within the City Limits of Merced in which the CDBGfunded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant,

officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

5. Lobbying

The Subrecipient hereby certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:

d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

IX. ENVIRONMENTAL CONDITIONS

A. Subrecipient shall confirm with the grantee regarding all project specific locations. The Grantee is considered the responsible entity for the community and is responsible for ensuring all required environmental documents are completed prior to disbursement of federal funds into a project, including Public Services.

1. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 7401, et seq.;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

2. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency

Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

3. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

4. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

X. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XI. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XII. WAIVER

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XIII. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic,

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

GRANTEE CITY OF MERC	ED	
A California Corporation	Charter	Municipal
BY:City M	anager	

ATTEST: Steve Carrigan, CITY CLERK	
BY:Assistant/Deputy City Clerk	
APPROVED AS TO FORM:	
BY: KOWW 9/4 City Attorney Dat	#/ /8 te
ACCOUNT DATA:	
BY: Verified by Finance Officer	
	SUBRECIPIENT: Restore Merced, Inc.
	BY: (Signature)
	Matthew St. Pierre (Typed Name)
	Its: Executive Director (Title)
	Taxpayer I.D. No.: 82-3/56923

N

419 W 19th Street

Merced, CA 95340

California

Phone:

Address:

209-233-1418

Email:

matt@restoremerced.org

Agreement between City of Merced AND

Sierra Saving Grace Homeless Project
With funds provided by
Community Development Block Grant
And Home Investment Partnership Act
For the Acquisition of a Residence
for the Homeless Project Program

THIS AGREEMENT, entered this ___ day of _____, 2018, by and between the City of Merced (herein called the "Grantee") and Sierra Saving Grace Homeless Project (herein called the "Subrecipient").

WHEREAS, The Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383 under the Community Development Block Grant (B-18-MC-06-0044) ("CDBG") and Home Investment Partnership Act (M18-MC060227) ("HOME") and administered by the U.S. Department of Housing and Urban Development ("HUD") (14.218-Entitlement Grant) with a Federal Award Date of August 9, 2018; and,

WHEREAS, The Grantee wishes to engage the Subrecipient to assist the Grantee with the purchase of a property for the Homeless Project Program ("Program") to provide housing for homeless individuals and families;

NOW, THEREFORE, in consideration of the mutual promises and covenants 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:

I. SCOPE OF SERVICE

A. Principal Tasks

The Subrecipient will be responsible for the acquisition of one or more properties consisting of existing residential unit(s) for use by the Subrecipient using CDBG/HOME funds from the Grantee. The Subrecipient will administer all tasks in connection with the aforesaid program in compliance with all applicable Federal, State, and local rules and regulations governing these funds, and in a manner satisfactory to the Grantee.

The primary goal for the Subrecipient will be to house homeless individuals at the property purchased with the funds provided, per the Subrecipient's proposal, as amended and approved by the Grantee.

B. Activities

The Subrecipient will be provided financial assistance from the City of Merced to purchase a property located within one of the City's eligible census tracts. The property will be utilized to provide housing for individuals and families that meet income eligibility requirements.

Subrecipient shall utilize dollars through other programs to fund the operating costs necessary to ensure the program can become self-sustaining. Participants shall pay a maximum of 30% of their monthly gross income to support Program costs. Of the entire 30%:

- 10% will be remitted to the City of Merced
- 80% will be used by the Subrecipient to cover utilities, electricity, and administrative costs
- 10% will be retained by the Subrecipient in a maintenance account to pay for future costs.
- As per HUD's Rules and Regulations CFR Part 92 all Program participants will be required to enter into a 1 year lease agreement.

Quarterly Reporting of this project shall include:

- Number of occupants per quarter
- Income of each head of household
- Amount paid in rent by each head of household
- Length of stay of each family/occupant
- Total amount remitted to the City of Merced
- Total amount used by Subrecipient for utilities, PG&E, etc.
- Total amount set aside by Subrecipient for maintenance fund.

Families are to be screened prior to being approved for the Program to ensure they meet eligibility requirements and will be successful in utilizing their time in the Program to obtain permanent housing. Participants will be encouraged to participate in ongoing supportive services through the Subrecipient. Referrals to other programs and/or services will be available to assist these individuals and families.

C. National Objectives

All activities funded with CDBG/HOME funds must meet one of the CDBG/HOME program National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.*

Subrecipient certifies that the activity(ies) carried out under this Agreement will meet benefit low- and moderate-income persons. The Subrecipient will meet the national objective by providing assistance to low and moderate income households for the rehabilitation of the existing structure on the property currently owned by the income eligible household.

D. <u>Levels of Accomplishment – Goals and Performance Measures</u>

The Subrecipient agrees to provide the following information for each household assisted:

- Household Size
- Household Income
- Household's Average Median Income
- Is the Head of Household a Female (yes or no)
- Was a Veteran Assisted (yes or no)
- How many in household are Hispanic or Latino
- What is the Race/Ethnicity of the household assisted as defined by HUD? Use the following list for reference:
 - White
 - Black/African American
 - Asian
 - American Indian/Alaskan Native
 - Native Hawaiian/Other Pacific Islander
 - American Indian/Alaskan Native and White
 - Asian and White
 - Black/African American and White
 - American Indian/Alaskan Native and Black/African American
 - Other Multi-Racial

To show a positive outcome, Subrecipient will set goals showing number of individuals/households to be served. Quarterly reports should include outcome of program including challenges and successes.

E. Staffing

The Subrecipient shall assign organizational staff as Key Personnel to the program. Upon approval of the agreement, the Subrecipient shall provide the grantee with an organization chart identifying staff members assigned, general program duties and amount of time allocated, in a timely fashion and in the form and content prescribed by Grantee.

Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee.

F. Performance Monitoring

The Grantee will monitor the performance of the Subrecipient against goals and performances standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, suspension or termination procedures applicable to this Agreement will be initiated.

II. METHOD OF COMPENSATION/SCHEDULE OF PAYMENTS

A. Reimbursement of Total Development Costs

Grantee will provide Subrecipient with financial assistance to purchase one (1) housing unit to be utilized for the Homeless Project Program, subject to the budget parameters set forth in Paragraph IV. In exchange, Subrecipient will execute a Promissory Note, secured by a First Deed of Trust, against the subject housing unit in the full amount of the financial assistance provided by Grantee, subject to the payment terms set forth in Paragraph V herein. Subrecipient shall be solely responsible for any and all maintenance, repairs, and expenses associated with the subject housing unit.

B. Submission of Invoices/Meeting with the Finance Division

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$465,000. Draw-downs for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Each Draw-down request shall be accompanied with an invoice itemizing all program expenses, previously drawn program grant funds, including backup documentation, supporting expenses, and amount of program funds being requested.

The Subrecipient shall meet with City of Merced Housing Division and Finance Department staff prior to commencement of this program to review and discuss: 1) requirements for reimbursement of invoices; 2) qualifying expenses; 3) allowable administration costs (__/O_%); and 4) a determination of the maximum eligible direct and indirect costs of the project (__/O_%).

Date of Meeting: September 14, 2018

Finance: Name Wark Ham Ham Ham Wood Initials: 15 1 1

Subrecipient: Name Kristin Bizzack Initials: 26

The Subrecipient shall submit all applicable invoices requesting reimbursement of qualified expenses to City of Merced Housing Division staff no later than June 1, 2019.

C. Relocation Assistance

There are no funds budgeted for relocation assistance expenses. Any relocation assistance request will need to be a separate request to the City of Merced. Relocation assistance must be provided in accordance with 24 CFR 570.606 and 49 CFR part 24.

D. Program Management Expenses

There are no CDBG/HOME funds budgeted for Program Management. All Program management costs are the responsibility of the Subrecipient.

E. Affordability Provisions [24 CFR 570. 208(a)(3)]

For activities benefiting very low- to moderate- income persons, the Subrecipient must adopt and make public the grantee's standards for determining, for rental housing assisted under the program, that the rents of units occupied by very low- to moderate-income persons are "affordable."

F. <u>Davis-Bacon requirements and other Labor Standards [24 CFR 570.603]</u> These statutes require the payment of prevailing wages for CDBG/HOME-assisted construction work, including construction or rehabilitation of residential property containing eight units or more, in excess of Two-Thousand Dollars (\$2,000). The Contract Work Hours and Safety Standards Act also apply to such activities.

G. Historic Preservation [16 U.S.C. 470 et seq. and 36 CFR Part 800]

These requirements mandate (a) consultation with specified agencies having responsibility for historic preservation to identify properties listed (or eligible for inclusion) in the National Register of Historic Places that may be subject to adverse effects by the proposed CDBG/HOME activities, and (b) compliance with procedures or other requirements to avoid or mitigate such adverse effects. The Subrecipient will address all potential historical preservation requirements through the environmental process.

H. National Flood Insurance Program [24 CFR 570.605]

If a community has had notice for more than a year that an area has been identified by FEMA as having special flood hazards, CDBG/HOME funds cannot be spent for acquisition or construction purposes within that area unless the community is participating in the National Flood Insurance Program and such insurance has been purchased for the properties in question.

I. Relocation, Real Property Acquisition, and One-For-One Housing Replacement [24 CFR 570.606]

The acquisition of real property for a CDBG/HOME-assisted project and the displacement of any person (family, individual, business, non-profit organization, or farm) as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG/HOME-assisted project must comply with 24 CFR 670.606 and 49 CFR part 24. The Subrecipient must also conduct its CDBG/HOME activities so as to minimize displacement: and, if displacement occurs, the displaced persons or entities must be provided assistance consistent with the Uniform Relocation Act, as amended, or Section 104(d), as applicable. In addition, there must be a one-for-one replacement of any occupied (or vacant, occupiable) low- and moderate-income dwelling that is demolished or converted to another use in connection with a CDBG/HOME-funded activity.

J. Lead-based Paint [24 CFR 570.608 and 24 CFR Part 35]

There is a general prohibition against the use of any lead-based paint in connection with any CDBG/HOME activities involving construction or rehabilitation of residential structures. Regardless of whether the structure was constructed prior to 1978, the tenants or purchasers must be notified of the hazards of lead-based paint poisoning; and, depending on the level of Federal assistance made available to the structure, paint inspection, risk

assessment, treatment, and/or abatement must be provided. Subrecipient shall sign and date an affidavit to be retained with official records asserting they complied with this requirement.

K. <u>K. Program Income [24 CFR 570.500; 570.503(a), (b)(3) and (b)(7); and 570.504]</u>

Grantee must approve (a) whether a Subrecipient will be allowed to retain and use program income, and (b) for what activities the program income may be used. The use of such program income must be in compliance with all other applicable program requirements and, upon the expiration of the Subrecipient Agreement, or at the end of each fiscal year, whichever occurs first. Any program income on hand or subsequently received by the Subrecipient must be returned to the Grantee.

III. <u>TIME OF PERFORMANCE</u>

Services of the Subrecipient shall commence on the date this Agreement is fully approved. The Subrecipient shall have until June 30, 2019, to expend the funds budgeted for this activity as set forth in Section IV. If the funds are not expended by June 1, 2019, this Agreement shall terminate and become null and void. If some or all of the funds are expended, this Agreement shall continue to be in effect until Subrecipient pays Grantee the full amount expended under this Agreement.

IV. BUDGET

Line Item	Amount:
Acquisition	\$215,000 (HOME: M18-MC060227)
Acquisition	\$250,000 (CDBG: B-18-MC-06-0044)
TOTAL	\$465,000 (HOME + CDBG)

Any Indirect Costs charged must be consistent with the conditions of Paragraph VIII, section C.2 of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

Prior to receipt of payment, the subrecipient shall submit to Grantee the following:

- 1. Final Settlement Statement from the Title Company
- 2. A completed NEPA Document, City Staff to Assist
- 3. A recorded notice of affordability
- 4. A recorded deed of trust showing the Note
- 5. An appraisal for the property being reimbursed

V. PAYMENT

The Promissory Note, secured by a First Deed of Trust on the subject property shall be paid as follows: Subrecipient shall submit quarterly reports as set forth in Paragraph I, Subsection B. Subrecipient shall pay to Grantee ten percent (10%) of the total income collected from Participants in the Program with respect to the subject housing unit, on a quarterly basis, for the previous quarter (October 31, January 31, April 30, and July 31). Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

Each quarterly payment by Subrecipient shall be applied to the principal balance owed under the Promissory Note, secured by a First Deed of Trust. No interest shall accrue on the principal balance. The total amount paid to Grantee shall not exceed the total amount provided to the Subrecipient for acquisition of the subject housing unit.

The full amount due under the Promissory Note, less any quarterly payments made by Subrecipient, shall be due and payable immediately upon the sale or refinance of the subject housing unit.

VI. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

Grantee

Mark Hamilton, Housing Program Supervisor City of Merced Housing Division 678 W. 18th Street Merced, CA 95340 (209) 385-6863 Subrecipient
Kristin Bizzack
Sierra Saving Grace
Homeless Project
P.O. Box 1301

Merced, CA 95340

(209) 626-5660

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG) and HOME Investment Partnerships Program (HOME)) including subpart K of these regulations, Parts 91 and 92; including subpart K of these regulations; except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties.

The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement(1), life and/or medical insurance(2), and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement. Workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee. The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

F. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

⁽¹⁾Unless the services under this Agreement are provided by a former City employee who is now retired and Grantee is otherwise obligated to pay for the same.

⁽²⁾ Unless the services under this Agreement are provided by a former City employee who is now retired and Grantee is otherwise obligated to pay for the same.

G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

- 1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
- 2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
- 3. Ineffective or improper use of funds provided under this Agreement; or,
- 4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

I. Inconsistent or Conflicting Terms in Agreement and Exhibits

In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control. Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

J. Ambiguities

This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

K. Venue

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.

L. Authority to Execute

The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

M. Counterparts

This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21–28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG/HOME programs;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG/HOME assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG/HOME program;
- f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

h. If the services of other businesses within the City of Merced are used in the implementation of this program, business license records of such businesses shall be provided. Subrecipient may contact either the Finance Department or Housing Division to verify current business license status.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by the applicable State or Federal laws unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG/HOME funds, including program income.

6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning Subrecipient audits and Uniform Guidance. Organization agrees to provide City at Organization's cost, a certified audit performance by an accredited certified public account, of all funds received or utilized by Organization, including the distribution of CDBG Funds and HOME funds for fiscal year 2018/2019 to be delivered to City by March 31, 2020.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report quarterly all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG/HOME funds made available under this contract. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. All program income received shall be

returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee.

2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee. These progress reports shall be submitted to the Grantee on a quarterly basis and shall include:

- Number of occupants per quarter/Total Served
- Income of all occupants in household
- Amount paid for primary mortgage by household
- Household Demographics per HUD guidelines
- Total amount remitted to the City of Merced/Monthly financial statements as justification for program payments

D. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40–48.

3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the city limits of Merced with funds provided under this Agreement.

E. <u>Use and Reversion of Assets</u>

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

- 1. The Subrecipient shall transfer to the Grantee any funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
- 2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG/HOME National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [If the Subrecipient fails to use CDBG/HOME-assisted real property in a manner that meets a CDBG/HOME National Objective for the

prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG/HOME funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period.

3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG/HOME program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG/HOME funds used to acquire the equipment].

IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. (The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG/HOME-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.)

X. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086. Subrecipient also agrees to comply with the provisions of the California Fair Employment and Housing Act (California Government Code Section 12900 et seq.) and the Unruh Civil Rights Act (California Civil Code Section 12101 et seq.).

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian- Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. <u>Equal Employment Opportunity and Affirmative Action (EEO/AA)</u> Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. <u>Labor Standards</u>

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti- Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. "Section 3" Clause

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to

fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG/HOME-funded project is located; where feasible, priority should be given to lowand very low-income persons within the service area of the project or the neighborhood in which the project is located, and to lowand very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG/HOME funded project is

located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG/HOME assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG/HOME assisted activity, or with respect to the proceeds from the CDBG/HOME assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

5. Lobbying

The Subrecipient hereby certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:

d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

XI. ENVIRONMENTAL CONDITIONS

A. Subrecipient shall confirm with the grantee regarding all project specific locations. The Grantee is considered the responsible entity for the community and is responsible for ensuring all required environmental documents are completed prior to disbursement of federal funds into a project, including acquisition of property.

1. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 7401, et seq.;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

2. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

3. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG/HOME assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly

notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

4. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

XII. <u>SEVERABILITY</u>

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XIII. <u>SECTION HEADINGS AND SUBHEADINGS</u>

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XIV. WAIVER

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XV. ENTIRE AGREEMENT

Verified by Finance Officer

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

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

GRANTEE
CITY OF MERCED
A California Charter Municipal Corporation

I	BY: City Manager
ATTEST: Steve Carrigan, CITY CLERK	
BY:Assistant/Deputy City Clerk	_
APPROVED AS TO FORM:	
BY: 1 Hors 9/28/1 City Attorney Date	8
ACCOUNT DATA:	

SUBRECIPIENT:

Sierra Saving Grace Homeless Project

(Signature)

Kristin Bizzack

(Typed Name)

Its: Executive Director

(Title)

Taxpayer I.D. No.: <u>27-4663143</u>

ADDRESS:

P. O. Box 1301

Merced, CA 95340

TELEPHONE:

209-626-5660 (Office)

Agreement between City of Merced AND Merced Rescue Mission With funds provided by Community Development Block Grant For the Acquisition of a Residence For the Hope For Families Project Program

THIS AGREEMENT, entered this ___ day of ____, 2018, by and between the City of Merced (herein called the "Grantee") and Merced Rescue Mission (herein called the "Subrecipient").

WHEREAS, The Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383 under the Community Development Block Grant (B-18-MC-06-0044) ("CDBG") and administered by the U.S. Department of Housing and Urban Development ("HUD") (14.218-Entitlement Grant) with a Federal Award Date of August 9, 2018; and,

WHEREAS, The Grantee wishes to engage the Subrecipient to assist the Grantee with the purchase of a property for the Homeless Project Program ("Program") to provide housing for homeless individuals and families;

NOW, THEREFORE, in consideration of the mutual promises and covenants 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:

I. SCOPE OF SERVICE

A. Principal Tasks

The Subrecipient will be responsible for the acquisition of a residence for the Program using CDBG funds from the Grantee. The Subrecipient will administer all tasks in connection with the aforesaid program in compliance with all applicable Federal, State, and local rules and regulations governing these funds, and in a manner satisfactory to the Grantee, the primary goal for the Subrecipient will be to house homeless individuals at the property purchased with the funds provided, per the Subrecipient's proposal, as amended and approved by the Grantee.

B. Activities

The Subrecipient will be provided financial assistance from the City of Merced to purchase a property located within one of the City's eligible census tracts. The property will be utilized to provide housing for individuals and families that meet income eligibility requirements.

Subrecipient shall utilize dollars through other programs to fund the operating costs necessary to ensure the program can become self-sustaining. Participants shall pay a maximum of 30% of their monthly gross income to support Program costs. Of the entire 30%:

- 10% will be remitted to the City of Merced
- 80% will be used by the Subrecipient to cover utilities, electricity, and administrative costs
- 10% will be retained by the Subrecipient in a maintenance account to pay for future costs.
- As per HUD's Rules and Regulations CFR Part 92 all Program participants will be required to enter into a 1 year lease agreement.

Quarterly Reporting of this project shall include:

- Number of occupants per quarter
- Income of each head of household
- Amount paid in rent by each head of household
- Length of stay of each family/occupant
- Total amount remitted to the City of Merced
- Total amount used by Subrecipient for utilities, PG&E, etc.
- Total amount set aside by Subrecipient for maintenance fund.

Families are to be screened prior to being approved for the Program to ensure they meet eligibility requirements and will be successful in utilizing their time in the Program to obtain permanent housing. Participants will be encouraged to participate in ongoing supportive services through the Subrecipient. Referrals to other programs and/or services will be available to assist these individuals and families.

C. National Objectives

All activities funded with CDBG funds must meet one of the CDBG program National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.*

Subrecipient certifies that the activity(ies) carried out under this Agreement will meet benefit low- and moderate-income persons. The Subrecipient will meet the national objective by providing assistance to low and moderate income households for the rehabilitation of the existing structure on the property currently owned by the income eligible household.

D. Levels of Accomplishment – Goals and Performance Measures

The Subrecipient agrees to provide the following information for each household assisted:

- Household Size
- Household Income
- Household's Average Median Income
- Is the Head of Household a Female (yes or no)
- Was a Veteran Assisted (yes or no)
- How many in household are Hispanic or Latino
- What is the Race/Ethnicity of the household assisted as defined by HUD? Use the following list for reference:
 - White
 - Black/African American
 - Asian
 - American Indian/Alaskan Native
 - Native Hawaiian/Other Pacific Islander
 - American Indian/Alaskan Native and White
 - Asian and White
 - Black/African American and White
 - American Indian/Alaskan Native and Black/African American
 - Other Multi-Racial

To show a positive outcome, Subrecipient will set goals showing number of individuals/households to be served. Quarterly reports should include outcome of program including challenges and successes.

E. Staffing

The Subrecipient shall assign organizational staff as Key Personnel to the program. Upon approval of the agreement, the Subrecipient shall provide the grantee with an organization chart identifying staff members assigned, general program duties and amount of time allocated, in a timely fashion and in the form and content prescribed by Grantee.

Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee.

F. Performance Monitoring

The Grantee will monitor the performance of the Subrecipient against goals and performances standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, suspension or termination procedures applicable to this Agreement will be initiated.

G. Submission of Invoices/Meeting with the Finance Division

Date of Meeting: September 10, 2018	
Finance: Name Julie Trujillo Debrah Richardson	Initials: AT IV
Housing: Name Mark Ham Hon y kin Nott	Initials: A
Subrecipient: Name Rruce Metcalf	Initials: RAM

The Subrecipient shall submit all applicable invoices requesting reimbursement of qualified expenses to City of Merced Housing Division staff no later than June 1, 2019.

II. METHOD OF COMPENSATION/SCHEDULE OF PAYMENTS

A. Reimbursement of Total Development Costs

Grantee will provide Subrecipient with financial assistance to purchase one (1) housing unit to be utilized for the Program, subject to the budget parameters set forth in Paragraph IV. In exchange, Subrecipient will execute a Promissory Note, secured by a First Deed of Trust, against the subject housing unit in the full amount of the financial assistance provided by Grantee, subject to the payment terms set forth in Paragraph V herein. Subrecipient shall be solely responsible for any and all maintenance, repairs, and expenses associated with the subject housing unit.

B. Relocation Assistance

There are no funds budgeted for relocation assistance expenses. Any relocation assistance request will need to be a separate request to the City of Merced. Relocation assistance must be provided in accordance with 24 CFR 570.606 and 49 CFR part 24.

C. Program Management Expenses

There are no CDBG funds budgeted for Program Management. All Program management costs are the responsibility of the Subrecipient.

D. Affordability Provisions [24 CFR 570. 208(a)(3)]

For activities benefiting very low- to moderate- income persons, the Subrecipient must adopt and make public the grantee's standards for determining, for rental housing assisted under the program, that the rents of units occupied by very low- to moderate-income persons are "affordable."

E. <u>Davis-Bacon requirements and other Labor Standards [24 CFR 570.603]</u> These statutes require the payment of prevailing wages for CDBG-assisted construction work, including construction or rehabilitation of residential property containing eight units or more, in excess of Two-Thousand Dollars (\$2,000). The Contract Work Hours and Safety Standards Act also apply to such activities.

F. Historic Preservation [16 U.S.C. 470 et seq. and 36 CFR Part 800]

These requirements mandate (a) consultation with specified agencies having responsibility for historic preservation to identify properties listed (or eligible for inclusion) in the National Register of Historic Places that may be subject to adverse effects by the proposed CDBG activities, and (b) compliance with procedures or other requirements to avoid or mitigate such adverse effects. The Subrecipient will address all potential historical preservation requirements through the environmental process.

G. National Flood Insurance Program [24 CFR 570.605]

If a community has had notice for more than a year that an area has been identified by FEMA as having special flood hazards, CDBG funds cannot be spent for acquisition or construction purposes within that area unless the community is participating in the National Flood Insurance Program and such insurance has been purchased for the properties in question.

H. Relocation, Real Property Acquisition, and One-For-One Housing Replacement [24 CFR 570.606]

The acquisition of real property for a CDBG assisted project and the displacement of any person (family, individual, business, non-profit organization, or farm) as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG-assisted project must comply with 24 CFR 670.606 and 49 CFR part 24. The Subrecipient must also conduct its CDBG activities so as to minimize displacement: and, if displacement occurs, the displaced persons or entities must be provided assistance consistent with the Uniform Relocation Act, as amended, or Section 104(d), as applicable. In addition, there must be a one-for-one replacement of any occupied (or vacant, occupiable) low- and moderate-income dwelling that is demolished or converted to another use in connection with a CDBG-funded activity.

I. Lead-based Paint [24 CFR 570.608 and 24 CFR Part 35]

There is a general prohibition against the use of any lead-based paint in connection with any CDBG activities involving construction or rehabilitation of residential structures. Regardless of whether the structure was constructed prior to 1978, the tenants or purchasers must be notified of the hazards of lead-based paint poisoning; and, depending on the level of Federal assistance made available to the structure, paint inspection, risk assessment, treatment, and/or abatement must be provided. Subrecipient shall sign and date an affidavit to be retained with official records asserting they complied with this requirement.

J. <u>Program Income [24 CFR 570.500; 570.503(a), (b)(3) and (b)(7); and 570.504</u>]

Grantee must approve (a) whether a Subrecipient will be allowed to retain and use program income, and (b) for what activities the program income may be used. The use of such program income must be in compliance with all other applicable program requirements and, upon the expiration of the Subrecipient Agreement, or at the end of each fiscal year, whichever occurs first. Any program income on hand or subsequently received by the Subrecipient must be returned to the Grantee.

III. TIME OF PERFORMANCE

Services of the Subrecipient shall commence on the date this Agreement is fully approved. The Subrecipient shall have until June 30, 2019, to expend the funds budgeted for this activity as set forth in Section IV. If the funds are not expended by June 1, 2019, this Agreement shall terminate and become null and void. If some or all of the funds are expended, this Agreement shall continue to be in effect until Subrecipient pays Grantee the full amount expended under this Agreement.

IV. BUDGET

<u>Line Item</u>	Amount:
Acquisition	\$250,000
TOTAL	\$250,000

No Indirect Costs are eligible for this program and all fees charged through the acquisition process shall be in compliance with the conditions of Paragraph VIII, section C.2 of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

Prior to receipt of payment, the subrecipient shall submit to Grantee the following:

- 1. Final Settlement Statement from the Title Company
- 2. A completed NEPA Document, City Staff to Assist
- 3. A recorded notice of affordability
- 4. A recorded deed of trust showing the Note
- 5. An appraisal for the property being reimbursed

V. PAYMENT

The Promissory Note, secured by a First Deed of Trust on the subject property shall be paid as follows: Subrecipient shall submit quarterly reports as set forth in Paragraph I, Subsection B. Subrecipient shall pay to Grantee ten percent (10%) of the total income collected from Participants in the Program with respect to the subject housing unit, on a quarterly basis, for the previous quarter (October 31, January 31, April 30, and July 31). Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

Each quarterly payment by Subrecipient shall be applied to the principal balance owed under the Promissory Note, secured by a First Deed of Trust. No interest shall accrue on the principal balance. The total amount paid to Grantee shall not exceed the total amount provided to the Subrecipient for acquisition of the subject housing unit.

The full amount due under the Promissory Note, less any quarterly payments made by Subrecipient, shall be due and payable immediately upon the sale or refinance of the subject housing unit.

VI. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

Grantee
Mark Hamilton
Housing Program Supervisor
City of Merced Housing Division
678 W. 18th Street
Merced, CA 95340
(209) 385-6863

Subrecipient
Bruce Metcalf
Merced Rescue Mission
Homeless Project
527 W. 20th Street
Merced, CA 95340
(209) 722-9269

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, Parts 91 and 92 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grant Program (CDBG)), including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties.

The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement¹, life and/or medical insurance², and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

¹Unless the services under this Agreement are provided by a former City employee who is now retired and Grantee is otherwise obligated to pay for the same.

²Unless the services under this Agreement are provided by a former City employee who is now retired and Grantee is otherwise obligated to pay for the same.

D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement. Workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee. The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

F. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

- 1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
- 2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
- 3. Ineffective or improper use of funds provided under this Agreement; or,
- 4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

I. <u>Inconsistent or Conflicting Terms in Agreement and Exhibits</u>

In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control. Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

J. Ambiguities

This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

K. Venue

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.

L. Authority to Execute

The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

M. Counterparts

This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21–28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
- h. If the services of other businesses within the City of Merced are used in the implementation of this program, business license records of such businesses shall be provided. Subrecipient may contact either the Finance Department or Housing Division to verify current business license status.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by the applicable State or Federal laws unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee concerning Subrecipient audits and Uniform Guidance. Organization agrees to provide City at Organization's cost, a certified audit performance by an accredited certified public account, of all funds received or utilized by Organization, including the distribution of CDBG Funds and HOME funds for fiscal year 2018/2019 to be delivered to City by March 31, 2020.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report quarterly all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. All program income received shall be returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee.

2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee. These progress reports shall be submitted to the Grantee on a quarterly basis and shall include:

- a. Number of occupants per quarter/Total Served
- b. Income of all occupants in household
- c. Amount paid for primary mortgage by household
- d. Household Demographics per HUD guidelines
- e. Total amount remitted to the City of Merced/Monthly financial statements as justification for program payments

D. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40–48.

3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the city limits of Merced with funds provided under this Agreement.

E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

- 1. The Subrecipient shall transfer to the Grantee any funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
- 2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [If the Subrecipient fails to use CDBG -assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non- CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period [or such longer period of time as the Grantee deems appropriate].
- 3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBGprogram or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

IX. <u>RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT</u>

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. (The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.)

X. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086. Subrecipient also agrees to comply with the provisions of the California Fair Employment and Housing Act (California Government Code Section 12900 et seq.) and the Unruh Civil Rights Act (California Civil Code Section 12101 et seq.).

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small

Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro- Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. <u>Employment Restrictions</u>

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti- Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. "Section 3" Clause

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lowand very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service

area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG assisted activity, or with respect to the proceeds from the CDBG assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

5. <u>Lobbying</u>

The Subrecipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:

d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

XI. ENVIRONMENTAL CONDITIONS

A. Subrecipient shall confirm with the grantee regarding all project specific locations. The Grantee is considered the responsible entity for the community and is responsible for ensuring all required environmental documents are completed prior to disbursement of federal funds into a project, including acquisition of property.

1. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 7401, et seq.;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

2. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

3. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

4. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

XII. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XIII. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XIV. WAIVER

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XV. ENTIRE AGREEMENT

City Attorney

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

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

	GRANTEE CITY OF MERCED A California Charter Municipal Corporation
	BY:City Manager
ATTEST: Steve Carrigan, CITY CLERK	
BY:Assistant/Deputy City Clerk	
APPROVED AS TO FORM:	
BY: KHOUR SINE	18

Date

ACCOUNT DATA:		
BY: Verified by Finance Officer		
	SUBRECIPIENT Merced Rescue M	
	BY: Signature	a Willard
	Bruce Mete (Typed Na	calf
	Its: Executive (Title)	,
	Taxpayer I.D. No.: <u>77-0284849</u>	
	ADDRESS:	527 W. 20 th Street Merced, CA 95340

TELEPHONE:

209-722-9269 (Office)

Agreement between City of Merced and the County of Merced for Continuum of Care 2018-19

THIS AGREEMENT, entered this ___ day of ____, 2018, by and between the City of Merced (herein called the "Grantee") and County of Merced. (herein called the "Subrecipient").

WHEREAS, The Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383 (B-18-MC-06-0044) under the Community Development Block Grant ("CDBG") and administered by the U.S. Department of Housing and Urban Development ("HUD") (14.218-Entitlement Grant) with a Federal Award Date of August 9, 2018; and,

WHEREAS, The Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds;

NOW, THEREFORE, in consideration of the mutual promises and covenants 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:

I. SCOPE OF SERVICE

A. Activities

- 1. Grant Inventory Worksheet (GIW) As required by the Department of Housing and Urban Development (HUD), the GIW is a snapshot of each grantee, their project information, budget line items, types of units, grant characteristics, etc. This document kicks-off the annual planning process for all homeless continuum of care (CoC).
- 2. CoC Application Outlines all planning activities, grantee performance, street count results, etc. Requirements and directions for completing this document are outlined by HUD annually through the Notice of Funding Availability (NOFA). Along with this application,

renewal and new opportunity grants are submitted. The scoring of this application determines if the grants submitted are awarded.

- 3. Homeless Count and Subpopulation Survey CoC must plan for and conduct a point-in-time count of homeless persons within its geographic area. The count must a) identify the number of homeless persons; b) identify the number of homeless persons in emergency shelters and transitional housing programs; and c) identify other requirements including subpopulation data required by HUD.
- 4. HIC/PIT/AHAR The Housing Inventory Count collects information about all of the beds and units in each CoC's homeless system, categorized by Provider Program Types (i.e. emergency shelter, transitional, permanent). The Point in Time Homeless Persons Count provides a count of sheltered and unsheltered homeless persons. Counts are further broken down into sub-population categories including counts of persons who are chronically homeless, persons with severe mental illness, chronic substance abusers, Veterans, persons with HIV/AIDS, and victims of domestic violence. The Annual Homeless Assessment Report is a report to Congress on the extent and nature of homelessness in America. The report is based primarily on HMIS data about persons who experience homelessness during a 12 month period. (It is the HMIS Grantee's responsibility to submit AHAR data).
- 5. General CoC Administration Responding to inquiries, etc.
- 6. CoC Grantee Monitoring Estimated performance period.
- 7. CoC Meetings.
- 8. 10-Year Plan Monitoring/Coordination.
- 9. Implement new HEARTH Regulations With the CoC, develop a Governance Charter, ensure the CoC Board is made up of participants required by HEARTH and facilitate development of a Coordinated Assessment.

- 10. Emergency Shelter Grant (ESG) Consultation Keep the CoC informed of ESG grant opportunities and ensure ESG applicants apply for services that are not duplicative and are in line with CoC goals.
- 11. Funding- Secure additional funding as it relates to CoC Homeless activities. Will apply for Homeless Emergency Assistance Program Funding (HEAP) and California Emergency Solutions and Housing Program Funding (CESH). Will apply all rules and regulations to disburse and monitor funds associated with the funding source as well as monitoring program objectives and outcomes.
- 12. Coordinated Entry System- Will provide direct oversight of CES performance and activities as required by HUD.
- *All performance periods are estimated since they are subject to changes by HUD.

B. Program Delivery

- 1. Subrecipient agrees to submit 2018/19 progress reports, in conjunction with quarterly invoices, demonstrating levels of work accomplished.
- 2. Subrecipient will conduct a minimum of 15 meeting and workshops over the course of contract. Meetings will focus on CoC coordination, closing gaps in homeless services and implementation of the recommendations outlined in the 10-Year Plan to End Homelessness.
- 3. In accordance with HUD requirements, Subrecipient will produce a data report based on the Homeless Count and Subpopulation Survey, which will identify the number and characteristics of homeless persons in Merced.
- 4. Subrecipients will ensure that performance standards conform to the City's Consolidated Plan obligations, as required by HUD.

- 5. Subrecipient will facilitate collaboration among local service providers to address the housing needs of those homeless subpopulations prioritized by HUD.
- 6. Subrecipient will be responsible for performing electronic submissions to HUD, such as the annual CoC application. Subrecipient will also collaborate with the HMIS administrator to assist the City with fulfilling its reporting obligations to HUD.
- 7. Subrecipient will work with the City and local partners on the following:
 - a) Coordinated intake and assessment system, as required by HUD;
 - b) Categorization of homeless persons for reporting purposes, as required by HUD;
 - c) Identification of factors linked to increased risk of homelessness;
 - d) Inventory of facilities and services for persons experiencing homelessness;
 - e) Developing strategies (10-Year Plan to End Homelessness) to reduce and end local homelessness; and
 - f) Evaluating progress in meeting objectives for reducing and ending homelessness.

C. National Objectives

All activities funded with CDBG funds must meet one of the CDBG program's National Objectives; benefit low-and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208. The Subrecipient certifies that the activities carried out under this Agreement will meet the National Objective to benefit low- and moderate-income persons.

D. <u>Levels of Accomplishment – Goals and Performance Measures</u>

Subrecipient agrees to provide quarterly progress reports to the City of Merced – Housing Division summarizing the activities associated with the Continuum of Care. The reports should include progress related to each

activity, if applicable, identify any issues, how issues were addressed and resolved, and comments to staff.

Goals and performance measures to be addressed include establishing a Continuum of Care Board that conforms to HEARTH Act requirements, creating Governance Charter that conforms to HEARTH Act requirements, and progress/updates pertaining to the goals identified in the 10-Year Plan to end Chronic Homelessness.

E. <u>Performance Monitoring</u>

The Grantee will monitor the performance of the Subrecipient against goals and performances standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on July 1, 2018, and end on June 30, 2019. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets, including program income.

III. <u>BUDGET</u>

<u>Line Item</u> <u>Amount:</u> Continuum of Care \$38,000

Any indirect costs charged must be consistent with the conditions of Paragraph VII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any

amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$38,000. Draw-downs for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Each Draw-down request shall be accompanied with an invoice itemizing all program expenses, previously drawn program grant funds, including backup documentation, supporting expenses, and amount of program funds being requested. All invoices shall be submitted to the City of Merced no later than June 1, 2018.

Finance Department staff prior to commencemen	nt of this program to
review and discuss: 1) requirements for reimburs	ement of invoices; 2)
qualifying expenses; 3) allowable administration cos	sts (%); and 4) a
determination of the maximum eligible direct and	l indirect costs of the
project (%).	
Date of Meeting:	
Finance: Name	Initials:
Housing: Name	Initials:
Subrecipient: Name	Initials:

The Subrecipient shall meet with City of Merced Housing Division and

The Subrecipient shall submit all applicable invoices requesting reimbursement of qualified expenses to City of Merced Housing Division staff no later than June 1, 2019.

V. <u>NOTICES</u>

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed

to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communications and details concerning this contract shall be directed to the following contract representatives:

GranteeSubrecipientMark Hamilton,Michelle RoeHousing Program SupervisorDeputy DirectorHousing DivisionHuman Services AgencyCity of MercedCounty of Merced

678 West 18th Street
2115 West Wardrobe Ave
Merced, CA 95340
Merced, CA 95341

209-385-6863 209-385-3000

209-388-8989 (Direct) Email: mroe@hsa.co.merced.ca.us

VI. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from

payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Worker's Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

E. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

F. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

- 1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
- 2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
- 3. Ineffective or improper use of funds provided under this Agreement; or
- 4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

G. <u>Subcontracts – Assignments</u>

Subrecipient intends to subcontract with Urban Initiatives to fulfill the terms of this Agreement. Subrecipient shall not subcontract or assign this Agreement, or any part thereof, or interest therein, directly or indirectly, voluntarily or involuntarily, to any other entity without obtaining prior written consent by Grantee. Subrecipient remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. Subrecipient shall be held responsible by Grantee for the performance of any subcontractor whether approved by Grantee or not.

H. Access to Records

Organization agrees that City or any authorized representative has access to and the right to examine all records, books, papers, or documents related to the project. Organization hereby severally warrants that all project records, books, papers, and documents will be retained for a period not less than four (4) years after the project terminates and grants City the option of retention of the project records, books, papers, and documents.

VII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21–28 and agrees to adhere to the accounting principles and procedures required therein,

utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis. Misuse of Program funds is a federal offense and is subject to reimbursement and immediate cancellation of this agreement.

B. Documentation and Record Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
- h. If the services of other businesses within the City of Merced are used in the implementation of this program, business license records of such businesses shall be provided. Subrecipient may

contact either the Finance Department or Housing Division to verify current business license status.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by the [insert applicable State of Federal law] unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The Subrecipient's obligation to the Grantee shall not end until all closeout requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning Subrecipient audits and Uniform Guidance.

Organization agrees to provide City at Organization's cost, a certified audit performance by an accredited certified public account, of all funds received or utilized by Organization, including the distribution of CDBG Funds and HOME funds for fiscal year 2018/2019 to be delivered to City by March 31, 2020.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report quarterly all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee.

2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

D. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40–48.

3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the City Limits with funds provided under this Agreement.

E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

- 1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
- 2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [or such longer period of time as the Grantee deems appropriate]. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period [or such longer period] of time as the Grantee deems appropriate].
- 3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to

the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

VIII. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. "Section 3" Clause - Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

B. Conformance to Applicable Laws.

Contractor shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons to work under this agreement because of race, color, national origin, ancestry disability, sex, or religion of such person.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or service by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Contractor hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

C. Waiver.

In the event that earlier City or Contractor 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.

D. Inconsistent or Conflicting Terms in Agreement and Exhibits.

In the event of any contradiction or inconsistency between any attached documents(s) or exhibits(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

E. Ambiguities.

This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

F. Venue.

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.

G. Amendment.

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

H. Integration.

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.

I. Authority to Execute.

The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

J. Counterparts.

This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

K. Communication.

The Subrecipient shall document their programming efforts and report to the City Council on a quarterly basis. While the details and format of the report can be mutually agreed upon after the execution of the agreement, the reports shall generally include the following information:

- The date and time of all activities offered
- * The number of participants for or at each activity.
- The number of volunteers/staff for or at each activity.
- A sign-in/sign out sheet for each activity.
- A database containing services provided.
- Photos of events/training.

In addition, on at least a six month basis, each organization contracted

with the subrecipient shall complete a short self- evaluation, answering the following questions:

- What was the best thing that happened by the COC this quarter?
- Did you accomplish your goal as stated in the agreement with the subrecipient?
- If not, why not?
- What would help make COC program better?
- Do you have any new partnerships?

IX. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

	ANTEE Y OF MERCI	ED	
A	California poration		Municipal
BY:			
	City M	anager	

ATTEST: STEVE CARRIGAN, CITY CLERK	
BY:Assistant/Deputy City Clerk	
APPROVED AS TO FORM:	
BY: Hores 9/18/1 City Attorney Date	8
ACCOUNT DATA:	
BY: Verified by Finance Officer	
	SUBRECIPIENT County of Merced
	BY:(Signature)
	Jerry O'Banion Merced County Board of Supervisors
	Its: Chairperson (Title)
	Taxpayer I.D. No.: 94-6000521
	ADDRESS: 2222 M Street Merced, CA 95340
	TELEPHONE: (209) 385-7637 FAX: (209) 385-7375

CITY OF MERCED



Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item J.9. Meeting Date: 10/1/2018

Report Prepared by: Mark E. Hamilton, Housing Program Supervisor, Department of Development Services

SUBJECT: Agreement to Negotiate Exclusively with the Richman Group of California, LLC for the Childs and B Street Affordable Housing Development

REPORT IN BRIEF

Approves the exclusive negotiating agreement with the Richman Group of California, LLC for the eventual development of an affordable housing project at Childs Avenue and B Street.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the exclusive negotiating agreement between the City of Merced and the Richman Group of California, LLC; and,
- B. Authorizing the City Manager or Assistant City Manager to execute, and if necessary, make minor modifications to the agreements described above as attached to this report and all associated documents; and,
- C. Authorizing the Finance Officer to make necessary budget adjustments.

ALTERNATIVES

- 1. Approve, as recommended by staff; or,
- 2. Approve, subject to other than recommended by staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
- 3. Deny; or,
- 4. Refer to staff for consideration of specific items (specific items to be addressed in the motion); or,
- 5. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

Charter City of Merced, Sec. 200.

CITY COUNCIL PRIORITIES

As provided for in the 2018-19 Council Priorities.

DISCUSSION

Staff is requesting City Council to consider the proposed Exclusive Negotiating Agreement (ENA) with the Richman Group of California, LLC (Developer). Staff has made contact and reviewed the **File #:** 18-465 Meeting Date: 10/1/2018

potential housing development with the developer.

The Developer has expressed a desire to attempt to complete a project on this site. In order to complete the planning necessary to complete negotiations, the developer has asked that the City execute an Exclusive Negotiating Agreement, which would guarantee that for the next 300 days, City staff would only work with this developer. The agreement provides a specific schedule that must be met in order for the project to proceed into a Disposition and Development Agreement (DDA).

The schedule includes the submission of a "Preliminary Development Package" being submitted within 150 days with following:

- Development Proposal
- Initial Estimate of development costs
- Description of the proposed method of financing
- Construction and Operating Pro-forma
- Preliminary Designs including environmental reviews
- Evidence of reasonably acceptable financial resources

Within 30 days of receipt of the "Preliminary Development Package" the City will provide an evaluation to the developer.

With the approval of the ENA, the Developer and the City will work together to ensure the entitlement and environmental review process is completed to meet certain timelines necessary for future grant and tax credit applications.

The tentative schedule for the Childs and B Street project is as follows:

- October 2018: Central California Alliance for Health (CCAH) Announces the Planning Grant recipients. The City has requested \$150,000 to support this project.
- November 2018: Environmental Reviews are finalized.
- December 2018: Entitlements secured.
- January 2019: 9% Tax-Credit Application Submitted to California Tax Credit Board.
- February 2019: Application submitted to CCAH for assistance with Permanent Supportive Housing Units.

IMPACT ON CITY RESOURCES

No appropriation of funds is needed.

ATTACHMENTS

1. Proposed Exclusive Negotiating Agreement

EXCLUSIVE NEGOTIATING AGREEMENT

THIS EXCLUSIVE NEGOTIATIN	IG AGREEMENT ("Agreement") is
made and entered into this day of	, 2018, ("Effective Date")
by and between the City of Merced, a Cal	ifornia Charter Municipal Corporation
("City") and The Richman Group of Calif	fornia, LLC, a California Limited
Liability Company ("Developer").	

WHEREAS, the City expects to acquire certain real property consisting of an approximately 5.0 acre site located in the City of Merced, County of Merced, State of California, located near the intersection of Childs Avenue and B Street or near the intersection of 18th Street and Martin Luther King Jr. Way (the "Property");

WHEREAS, the Developer acknowledges a primary objective of the City is the development of a residential project to serve the community;

WHEREAS, the City and Developer wish to negotiate with each other as to the terms and conditions of an agreement that would result in Developer acquiring the Property and covenanting to construct and operate a 100+ unit multi-family rental apartment development within the City of Merced (the "Project"). The City and Developer believe it to be in the best interest of the City for the Project to be developed on the Property;

WHEREAS, The City anticipates that following the execution of this Agreement, the City and Developer shall negotiate the terms of a Disposition and Development Agreement ("DDA") for the acquisition and redevelopment of the Property by Developer. City and Developer wish to conduct exclusive negotiations for a DDA;

WHEREAS, The City expects that following the execution of this Agreement and during negotiation of the DDA, Developer is directed to proceed with project design and entitlements so as to meet certain schedules that require project entitlement approval for potential funding source applications. Given the deadlines, requirements and limitations of the City's agreement for site control with the County of Merced, the City and Developer acknowledge the need for expeditious processing of design and property entitlements during a time in which the Developer will not have any development rights pursuant to a DDA. Therefore, this ENA contains a reimbursement commitment in Section 4 and budget ("Entitlement Budget" in Exhibit A) for Developer's design work and

pursuit of these entitlements during the ENA, all of which will be considered City work product, owned by and assignable to the City of Merced if Developer and City do not ultimately agree to terms of a DDA;

WHEREAS, during the Exclusive Negotiating Period (as defined below), the staff, consultants and attorneys of the City will devote substantial time and effort in reviewing plans, assembling and reviewing information and providing redevelopment planning and financial assistance to the Developer in connection with the proposed Project and in negotiating and preparing the DDA; and

WHEREAS, The City and Developer desire to enter into this Agreement in order to facilitate the negotiation of the DDA and to set forth the rights and obligations of the parties during the Exclusive Negotiating Period.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

- 1. EXCLUSIVE NEGOTIATING PERIOD. During the period from the Effective Date through the date that is three hundred (300) days thereafter (the "Exclusive Negotiating Period"), Developer and City shall negotiate with each other in good faith with respect to the creation of a DDA providing for the acquisition of the Property by Developer and the development of the Project.
- 2. OBLIGATIONS OF CITY. During the Exclusive Negotiating Period, the City shall have the following obligations:
 - A. The City shall not negotiate, discuss nor otherwise communicate with any other person or entity, other than Developer, regarding the lease, transfer, sale or other disposition of the Property or the development of the Project, except for entities and persons which have an interest therein pursuant to applicable law or contractual rights or obligations.
 - B. City staff shall be available to meet with Developer to discuss the Project, so that Developer shall sufficient input to prepare its full proposal for the Project.
 - C. Identification and coordination of Project funding commitments for capital subsidies associated with Project construction and operational subsidies during Project lease up and after Project completion.

- 3. OBLIGATIONS OF DEVELOPER. Within one hundred fifty (150) days of the Effective Date, the Developer shall submit to the City a "Preliminary Development Concept Package," consisting of the following:
 - A. A preliminary development proposal generally describing the Project for the site subject to City review and approval.
 - B. An initial estimate of development costs, including construction and non-construction costs, including the proposed purchase price for land.
 - C. A preliminary description of the proposed method of financing.
 - D. A proposed construction and operating pro forma which identifies all sources and uses of funds.
 - E. Submittal of preliminary design(s) (including a scaled site plan indicating building and parking layout) for the purpose of demonstrating compliance with the design requirements of the City and to assist the City in conducting a review under the California Environmental Quality Act ("CEQA") and National Environmental Policy Act ("NEPA"). This submittal is anticipated to require the Developer to invest in certain property due diligence and reports including, but not limited to: architecture, site survey, engineering reports for wet and dry utilities, phase I environmental, traffic, acoustic, green house gas emissions and legal. These expenditures are further detailed in the Entitlement Budget in Exhibit A.
 - F. Evidence reasonably acceptable to the City that the Developer and its joint venture partners (if any) have the significant financial resources necessary for development.

City staff may solicit proposals and select independent financial or design consulting firms to verify and further analyze the Preliminary Development Concept Package at the City's sole expense.

Within thirty (30) days of the date of receipt of the Preliminary Development Concept Package, the City will provide its evaluation ("Preliminary City Evaluation") to the Developer of the Preliminary Development Concept Package. Such evaluation will include the City's evaluation of items addressed in the Preliminary Development Concept Package. The Preliminary City Evaluation shall indicate City's preliminary determinations as to the appropriate level of review under CEQA and NEPA.

Following the Preliminary City Evaluation, the City and Developer shall continue to negotiate in good faith concerning the acquisition, development and use of the Property. During the Exclusive Negotiation Period, the Developer shall bear the costs of all actions and activities of the Developer, and the City shall bear the costs of all actions and activities of the City.

Prior to the termination of the Exclusive Negotiating Period, or any extension thereof, the parties shall negotiate in good faith a mutually acceptable DDA for the development of the Project. If such a DDA is not entered into during the Exclusive Negotiating Period, or any extension thereof, then all rights, duties and obligations of the parties hereto (except as otherwise provided in Section 13 hereof) shall terminate, and City shall be free to negotiate with any other party with respect to redevelopment of the Property for any purpose or use whatsoever.

4. PROJECT ENTITLEMENTS & BUDGET. The City acknowledges that Project entitlements are required to meet certain timelines associated with maintaining the City's site control, and the City is requesting Developer pursue Project entitlements during the Exclusive Negotiating Period, a period during which the ENA between Developer and City is not binding. Therefore, Developer is entitled to reimbursement from the City of its Entitlement Expenses if the City: a) is not able to provide or secure, given the good faith assistance and cooperation of the Developer, the subsidy "gap" financing to make the Project feasible; or b) is not able to maintain site control of the Property sufficient to allow the Project to proceed through no fault of Developer or Developer's reasonable pursuit of project entitlements and feasibility.

The Entitlement Expenses referred to in this section specifically exclude any internal costs incurred and expended by Developer or any of Developer's affiliates. Entitlement Budget expenses also exclude any legal costs or expenses incurred by Developer, Developer's affiliates, or third parties in negotiating the ENA and DDA. Entitlement Expenses do include third party costs by companies not affiliated with Developer for architectural work, engineering work and other studies associated with attaining Project entitlements.

Upon request by City, Developer shall provide any documentation related to Entitlement Expenses, no later than five (5) business days after receipt of such a request from City.

Any reimbursement of Entitlement Expenses is subject to a) the City's approval herein of the Entitlement Budget and b) should the Developer and City not agree to terms of a DDA, the assignability of the work product to the City. The maximum amount City will pay to Developer for reimbursement of Entitlement Expenses is One Hundred and Forty Three Thousand dollars (\$143,000). (See Exhibit A attached hereto.)

- 5. DISPOSITION AND DEVELOPMENT AGREEMENT. During the Exclusive Negotiating Period the parties shall attempt to negotiate a DDA regarding the development of the Project which contains various provisions, including, but not limited to, the following:
 - A. The design of the Project by the Developer, which design shall be subject to approval by the City.
 - B. The construction of the Project by the Developer in accordance with final plans and specifications to be provided by the Developer and approved by the City and pursuant to a detailed schedule of performance approved by the City, and in full compliance with all applicable laws including, but not limited to, those pertaining to the payment of prevailing wages should they apply.
 - C. The operation and management of the Project by the Developer in a good and professional manner and the maintenance of landscaping, buildings and improvements in good condition and state of repair so as to be attractive to the residents and to the community.
 - D. The operation of the Project by the Developer in compliance with all equal opportunity standards established by Federal and State law.
 - E. The right of the City to inspect the Project from time to time to assure compliance with the foregoing provisions.
 - F. The furnishing by the Developer to the City, upon the City's request, of conceptual drawings and schematics, final plans and working drawings for the Project and participation in presentations regarding all phases of development.
 - G. Assurances that the Project shall be of the highest quality.

- H. The terms and conditions of the acquisition and sale of the Property.
- I. The terms and conditions of financial assistance, including City residual receipts loan and other Project subsidies.
- 6. ARCHITECTURAL RENDERINGS. No more than thirty (30) days after the date on which the City provides its comments on the Preliminary Development Concept Package, the Developer shall deliver to the City architectural renderings of the Project, including, but not limited to, scaled elevations, site plan and perspective views.
- 7. EXTENSION. The Exclusive Negotiating Period may be extended by the mutual written consent of the parties for up a cumulative total of not more than three hundred (300) days. The City's City Manager may grant such extension upon receipt of an extension request and a report from Developer indicating in specific terms the efforts of Developer to date and the anticipated steps to be undertaken in the extension period for completion of the planning and negotiation phases of the Project. Prior to granting any such extension, the City shall consider all the efforts made by the Developer under and pursuant to the terms and conditions of this Agreement including tenant lease commitments and to negotiate in good faith a DDA with the City for the Project. The granting of any extension pursuant to this Section 6 shall be in the complete control and discretion of the City.
- 8. TERMINATION. Either party may terminate this Agreement (and, with it, the Exclusive Negotiating Period) if the other party fails to comply with and perform in a timely manner, to the reasonable satisfaction of the first party, all provisions hereof to be performed by the other party, or if progress is not being made in negotiations hereunder to the first party's reasonable satisfaction. The party seeking to terminate this Agreement shall give ten (10) days written notice to the other party which specifies any dissatisfaction by the first party, including the opinion that the other party is not diligently prosecuting the performance of its obligations hereunder, and the first party shall not terminate this Agreement if the other party cures the deficiency specified in the notice of the reasonable satisfaction of the first party within such ten (10) day period.
- 9. NO PREDETERMINATION OF CITY DISCRETION. The parties agree and acknowledge that, while this Agreement does provide that the parties shall negotiate in good faith, this Agreement does not obligate either the City or the

Developer to enter into a DDA, and approval of any DDA shall require the approval of both parties, with the City Council giving its approval, if at all, only after consideration of the DDA at a public meeting the City Council, and such consideration following a public hearing and all other proceedings required by law.

- 10. NO OTHER AGREEMENT. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. There are no agreements or understandings between the parties and no representations have been made by either party to the other as an inducement to enter into this Agreement, except as expressly set forth herein. All prior negotiations, written or oral, between the parties are superseded by this Agreement. This Agreement may not be altered, amended or modified except by a writing executed by both parties. Notwithstanding anything provided hereto the contrary, whether express or implied, the City shall have no obligation to enter into a DDA with Developer, and neither the City nor its respective members, officers, staff or agents have made any promises to Developer other than to exclusively negotiate with Developer during the Exclusive Negotiating Period, and no statements of the City or its respective officers, members, staff or agents as to future obligations shall be binding upon the City until a full DDA is approved and duly executed by the City.
- 11. PROHIBITION AGAINST ASSIGNMENT BY DEVELOPER. This Agreement shall not be assigned by Developer without the City's prior written consent, which consent may be withheld in its sole and absolute discretion.
- 12. PROHIBITION AGAINST TRANSFER BY CITY. The City shall not transfer the Property to third party during the Exclusive Negotiating Period.
- 13. ATTORNEYS' FEES. If either party should bring any legal proceeding relating to this Agreement, or to enforce any provision hereof. The party in whose favor judgment is rendered shall be entitled to recover reasonable attorneys' fees and expenses of litigation from the other.
- 14. INDEMNITY. Developer shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Developer or Developer's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Developer or its employees,

subcontractors, or agents, or by the quality or character of Developer's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Developer to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Developer from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Developer acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

15. NOTICES. Any notice which is required or permitted to be given hereunder shall be given in writing by certified mail, postage prepaid, and return receipt requested, or by personal deliver. Notices shall be considered given upon the earlier of (a) personal delivery or (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested. Notices shall be addressed as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given as demanded in that notice:

Developer:

The Richman Group of California, LLC

Attn: Rick Westberg 420 31st Street, B1

Newport Beach, CA 92663 Telephone: (619) 708-8797

City:

City of Merced

Attn: Steve Carrigan, City Manager

678 West 18th Street Merced, CA 95340

Telephone: (209) 385-6834

City of Merced

Attn: Mark Hamilton,

Housing Program Supervisor

678 West 18th Street Merced, CA 95340 Telephone: (209) 385-6863

- 16. NON-BINDING NATURE OF AGREEMENT. Each of the parties acknowledges and agrees that because circumstances may change, and because each of the parties have not fully considered the ramifications of their present intentions, including the proposed terms of the DDA, this Agreement shall not be construed to bind the City or the Developer to enter into a DDA. The actual covenants and agreements of the parties with respect to the disposition and development of the Property shall be set forth in the DDA to be hereafter negotiated. By its execution of this Agreement, the City is not committing itself to or agreeing to undertake (a) any acquisition of land for the Project or the disposition of land to the Developer; or (b) any other acts or activities requiring the subsequent independent exercise of discretion by the City, or any agency or department thereof. Tis Agreement does not constitute a disposition of property or exercise of control over property by the City and does not require a public hearing. Execution of this Agreement by the City is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by the City as to any DDA and all proceedings and decisions in connection therewith.
- 17. CONFIDENTIALITY. The City and Developer anticipate that during the Exclusive Negotiating Period each party shall from time to time disclose and provide to the other certain proprietary reports, correspondence and other information related to the Project. Unless otherwise required by law, no party shall disclose (except to its own and to the other party's employees, officers, directors, agents, advisors, existing and prospective lenders, investors, counsel, and consultants) information regarding or related to the Project which is not already public and which has been delivered to such party pursuant to the terms hereof.
- 18. APPLICABLE LAW. This Agreement shall be construed and interpreted under, and governed and enforced according to the laws of the State of California.
- 19. COUNTERPARTS. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

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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:		
	D1	City Manager	
ATTEST: STEVE CARRIGAN, CITY CLERK			
BY:Assistant/Deputy City Clerk			
APPROVED AS TO FORM:			
BY: 9-5-2018 City Attorney Date			
ACCOUNT DATA:			
BY:			
Verified by Finance Officer			

DEVELOPER THE RICHMAN GROUP OF CALIFORNIA, LLC A California Limited Liability Company

BY:
(Signature)
(Typed Name)
Its:
(Title)
BY:
(Signature)
(Typed Name)
Its:
(Title)
Taxpayer I.D. No
ADDDECC.
ADDRESS:
TELEPHONE:
FAX:
E-MAIL:

EXHIBIT A

The Richman Group & Central Valley Coalition for Affordable Housing Childs and B Project Projected Budget for Costs Spent Prior to Development Agreement Project Entitlement & Funding App Budget

Entitlement & Funding App	lication Budget	Amount
Architect	RFP - Developer's Risk/Pursuit	na
Architect	Entitlement submittal	50,000
Landscape	Entitlement submittal	5,000
Civil	Site survey & drainage reports for entitlement	12,500
Entitlement	CEQA & NEPA processing & coordination	15,000
AHSC Consulting	Consulting/preparation AHSC application	15,000
GHG Consulting	Consulting/preparation AHSC application	7,500
TCAC Market Study	TCAC requirement	15,000
TCAC Appraisal	TCAC requirement	10,000
Legal	Negotiation - Developer's Risk/Pursuit	na
Planning Dept Fees	Entitlement fees	deferred
Contingency (10%)	To be approved by Asst. City Manager	13,000
Subtotal		143,000

Alex Padilla California Secretary of State



Status:

Entity Mailing Address:

Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Monday, August 27, 2018. Please refer to document **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

199513610014 RICHMAN GROUP OF CALIFORNIA, LLC, THE

Registration Date: 05/16/1995

Jurisdiction: CALIFORNIA **Entity Type: DOMESTIC**

Agent for Service of Process: COGENCY GLOBAL INC. (C2003899)

> To find the most current California registered Corporate Agent for Service of Process address and authorized employee(s) information, click the link above and then select the most current 1505

Certificate.

ACTIVE

Entity Address: 340 PEMBERWICK RD

> **GREENWICH CT 06831** 340 PEMBERWICK RD

GREENWICH CT 06831

LLC Management One Manager

A Statement of Information is due EVERY ODD-NUMBERED year beginning five months before and through the end of May.

Document Type	11	File Date	17	PDF
SI-NO CHANGE		05/05/2017		
SI-COMPLETE		06/20/2016		
REGISTRATION		05/16/1995		

^{*} Indicates the information is not contained in the California Secretary of State's database.

Note: If the agent for service of process is a corporation, the address of the agent may be requested by ordering a status report.

- For information on checking or reserving a name, refer to <u>Name Availability</u>.
- If the image is not available online, for information on ordering a copy refer to Information Requests.

CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item J.10. Meeting Date: 10/1/2018

Report Prepared by: Lieutenant Alan Ward, Police

SUBJECT: Approval of a Five-Year Agreement with Environmental Compliance Resources for **Graffiti Abatement Services**

REPORT IN BRIEF

Considers approving a five (5) year agreement for graffiti abatement services between the City of Merced and Environmental Compliance Resources for \$189,500 for the first year with 1.8% increases for each subsequent year.

RECOMMENDATION

City Council - Adopt a motion approving a five-year agreement for graffiti abatement services with Environmental Compliance Resources and authorizing the City Manager or Assistant City Manager to execute all the necessary documents.

ALTERNATIVES

- 1. Approve, as recommended by staff, or,
- 2. Approve, subject to other than recommended by; or,
- 3. Deny; or,
- 4. Refer to staff for reconsideration of specific terms; or,
- 5. Continue to a future meeting (date and time to be specified in the motion.)

AUTHORITY

Charter of the City of Merced, Section 200.

CITY COUNCIL PRIORITIES

As provided in the 2018-19 Adopted Budget.

DISCUSSION

In September 2010, staff solicited for graffiti abatement services with six local companies and received two proposals for consideration. After reviewing the two proposals, the Council awarded a contract to Environmental Compliance Resources (ECR). Since that time, ECR has provided graffiti abatement services to the City of Merced. Their current contract expired July 1, 2018.

Since June of 2018, the police department solicited twice for graffiti abatement services and received only one bid proposal. ECR has submitted a proposal to continue providing the city with graffiti abatement services for the next five years.

File #: 18-442 Meeting Date: 10/1/2018

Since ECR has been providing graffiti abatement services graffiti sightings have reduced while concealment of the blight has increased, ECR is well aware of problem areas and responds to calls for service from City Staff and the public immediately. ECR and its staff have developed strong working relationships with Code Enforcement, the police department, and the public.

ECR is requesting a five year contract to ensure their ability to keep up with employee and equipment costs while ensuring their ability to provide the highest quality service. ECR's proposal is to provide their services for \$189,500.00 for the 2018-19 fiscal year which will be paid in monthly installments of \$15,791.67. ECR's proposal is to add a 1.8% COLA increase per year for the remaining four fiscal years of the contract.

The agreement with ECR's in the amount of \$189,500 is an increase of \$17,005.00 over the \$172,495 budgeted amount in the 2018-19 Adopted budget.

IMPACT ON CITY RESOURCES

This agreement is an increase of \$17,005.00 over the budgeted amount. However, there is salary savings within the 2018-19 budget that can be used to cover the increased cost of the contract.

Staff will also need to consider the COLA increases in future budget considerations if approved.

ATTACHMENTS

1. ECR Contract

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this day of	
, 2018, by and between the City of Merced, a California Charte	r
Municipal Corporation, whose address of record is 678 West 18th Street, Merc	ed,
California 95340, (hereinafter referred to as "City") and Environmental	
Compliance Resources, a California Limited Liability Company, whose addre	ss of
record is P.O. Box 598, Winton, California 95388 (hereinafter referred to as	
"Consultant").	

WHEREAS, City is undertaking a project to abate graffiti; and

WHEREAS, Consultant represents that it possesses the professional skills to provide graffiti abatement services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. SCOPE OF SERVICES. The Consultant shall furnish the following services: Consultant shall provide the graffiti abatement services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Chief of Police or designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

- 2. TIME OF PERFORMANCE. All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "A" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.
- 3. TERM OF AGREEMENT. The term of this Agreement shall commence on July 1, 2018 and shall end on June 30, 2023.

4. COMPENSATION. Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the Exhibit "A" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A". For Consultant's services rendered under this Agreement, City shall pay Consultant the following not to exceed sums:

Year	Monthly Amount	Yearly Amount
1	\$15,791.67	\$189,500.00
2	\$16,075.92	\$192,911.00
3	\$16,365.25	\$196,383.00
4	\$16,664.83	\$199,918.00
5	\$16,959.75	\$203,517.00

- 5. METHOD OF PAYMENT. Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.
- 6. RECORDS. It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.
- 7. CONSULTANT'S BOOKS AND RECORDS. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. INDEPENDENT CONTRACTOR. It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

INDEMNITY. Consultant shall indemnify, protect, defend (with 9. legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

- 10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:
- a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

- c. Automobile Insurance.
 - (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
 - (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.
 - (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.
- e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:
 - (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
 - (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).
- f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

- g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.
- 11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.
- 12. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.
- 13. CONFORMANCE TO APPLICABLE LAWS. Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 et seq.), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

- 14. WAIVER. In the event that either City or Consultant 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.
- 15. INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS. In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

- 16. AMBIGUITIES. This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.
- 17. VENUE. 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.
- 18. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.
- 19. INTEGRATION. 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.
- 20. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they

has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

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:
ATTEST: STEVE CARRIGAN, CITY CLERK	City Manager
BY:Assistant/Deputy City Clerk	
APPROVED AS TO FORM:	
BY: City Attorney Date	
ACCOUNT DATA:	
BY:	

X:\Agreements\Police\2018\PSA - Environmental Compliance Resources Re Grafitti Abatement.docx

Verified by Finance Officer

CONSULTANT ENVIRONMENTAL COMPLIANCE RESOURCES, a California Limited Liability Company

BY:
Paul Joseph Creighton
Its:
Taxpayer I.D. No
ADDRESS: P.O. Box 598 Winton, CA 95388
TELEPHONE: (209) 564-6845 FAX:
E-MAIL:

Proposal: Graffiti Abatement services for City of Merced, CA

By: Environmental Compliance Resources

PROPOSAL GRAFFITI ABATEMENT SERVICES FOR CITY OF MERCED, CALIFORNIA

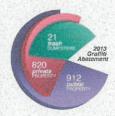
By: Environmental Compliance Resources LLC

Environmental Compliance Resources was established in 2010 by the company's owner Paul Creighton to provide a better solution for government agencies requiring a new comprehensive solution to combat graffiti vandalism community wide. Since its creation, ECR has worked with many cities and counties throughout California to remove and cover graffiti and assist in finding the source of the problem to stop graffiti, before it starts. In Merced alone, ECR has removed over 11 million square feet of Graffiti Vandalism from the streets. Mr. Creighton has become an industry leader, who's trained and assisted in graffiti vandalism crime prevention and prosecution throughout the United States and worldwide. In 2017, while studying graffiti in Europe, Mr. Creighton identified new trends related to social media and its direct link to graffiti vandalism within a micro community level. By linking social media and public transportation together to track and trace the path of vandals, response time for graffiti removal has been reduced. Mr. Creighton is also an expert witness for the court system having over seven years experience related to graffiti vandalism crimes. Working closely with the Merced Police Department and several other agencies within the City of Merced, ECR has built a reputation in providing great customer service and a team that is committed to a better Merced. The Merced Police Department has been instrumental in the success in the overall reduction and conviction of graffiti vandals city wide and working closely with ECR the future looks even brighter.

Environmental Compliance Resources uses many industry first techniques and chemicals to combat graffiti. ECR developed its own product line of environmental biodegradable friendly chemicals to remove graffiti. ECR's employees are professionally trained to identify best methods suitable for the removal of graffiti vandalism.









Services

ECR has two main methods for Graffiti Abatement: Painting and Chemical removal. We tailor the removal method to the specific surface to ensure efficient and complete removal.

Paint

Our trucks carry four stock colors in our sprayers at all times to remove graffiti on surfaces that get tagged often such as fences and buildings. We also have the ability to color match walls and fences to seamlessly cover over unsightly graffiti vandalism.

Chemical

Our Graffiti Removal unit carries a variety of chemicals that we use to remove graffiti from surfaces that cannot be painted. One of our chemicals is used to remove graffiti or stickers from street signs such as stop signs, without damaging the reflective coating.

ECR created it's own environmentally biodegradable friendly chemicals that are used to remove graffiti from brick and other surfaces that leave no damage. This is an excellent way to maintain the integrity of historical buildings and other textured walls.

SCOPE OF PROJECT

ECR is proposing to provide graffiti abatement services to include; the removal and concealment of graffiti from public and private properties, digitally record the graffiti incidents, and create weekly and monthly reports for use in reporting of incidents to the police department for tracking.

Term and Compensation: Environmental Compliance Resources, LLC is prepared to enter into a five year contract with no COLA increase the first year and the standard COLA increase included into the remaining four years starting at the rate of \$189,500 annually. Environmental Compliance Resources, LLC has been providing services at the same financial rate over the length of its term with the City of Merced and has forgone any rate increases which continued during and long after the great recession all while having the required coverage area increase over 18% with the additions of new parks and sound walls within the city. Our commitment to putting Merced first will continue as we have demonstrated in the past and look forward to the addition of more park spaces and subdivisions throughout our city.

Conflict of Interest Statement: Proposer holds no City or Agency board or committee appointment or other relationship. Under section 1090 of the California Political Reform Act, there is no conflict of interest with Environmental Compliance Resources, LLC, any of it's officers, or employees.

Local Business Enterprise Policy Statement of Compliance: The City Council of Merced has adopted a Local Business Enterprise Policy requiring service providers to make a good faith effort to include local businesses in their contract with the City or Agency. Environmental Compliance Resources, LLC for over 10 years has exclusively contracted with Sherwin Williams located in Merced by purchasing several thousand gallons of paint and sundries products. Our partnership doesn't stop there, ECR also makes every effort to locate and source all supplies and services with local Merced companies first as its business plan. ECR has a long standing relationship with businesses from fuel providers to tire repair shops and will continue to long into the future.

(Attachment 1)

Statement Confirming Ability To Execute Agreement As Presented: Environmental Compliance Resources, LLC has provided all legal documents required per this proposal and is fully committed to execute this agreement as presented. With our expert track record in providing graffiti abatement services throughout the years, it is a strong example of the work we are committed to continue long into the future.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

08/08/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Basi Insurance Services, Inc. 1491 E G Street Oakdale, CA 95361		CONTACT Annette R. Chance			
			PHONE (A/C, No, Ext): 209-847-3065 FAX (A/C, No): 209-		-848-4931
		E-MAIL ADDRESS: annette@basiinsurance.com			
Jon Mutoza		INSURER(S) AFFORDING COVERAGE		NAIC#	
		INSURER A: Insurance Company of West		27847	
Resources, Li Painting	invironmental Compliance		INSURER B : Ohio Casualty Insurance Co.		24074
	Resources, LLC dba: C-33	ainting . O. Box 598	INSURER C: Ohio Security Insurance Co.		24082
	P. O. Box 598		INSURER D:		
	Winton, CA 95388		INSURER E :		
			INSURER F:		

COVERAGES CERTIFICATE NUMBER: **REVISION NUMBER:** THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. ADDL SUBR TYPE OF INSURANCE **POLICY NUMBER** LIMITS X COMMERCIAL GENERAL LIABILITY 1,000,000 B EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) CLAIMS-MADE X OCCUR 500,000 BKO56562783 06/07/2018 06/07/2019 Y 15,000 MED EXP (Any one person) 1.000,000

PERSONAL & ADV INJURY \$ 2,000,000 GEN'L AGGREGATE LIMIT APPLIES PER: GENERAL AGGREGATE X POLICY PROJECT 2,000,000 LOC PRODUCTS - COMP/OP AGG OTHER: COMBINED SINGLE LIMIT (Ea accident) C 1,000,000 **AUTOMOBILE LIABILITY** ANY AUTO BAS56562783 06/07/2018 06/07/2019 BODILY INJURY (Per person) SCHEDULED AUTOS OWNED AUTOS ONLY X BODILY INJURY (Per accident)
PROPERTY DAMAGE
(Per accident) X X NON-OWNED AUTOS ONLY HIRED AUTOS ONLY UMBRELLA LIAB OCCUR **EACH OCCURRENCE EXCESS LIAB** CLAIMS-MADE **AGGREGATE** DED RETENTION \$ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY X PER STATUTE ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) WSA504097800 05/01/2018 05/01/2019 1,000,000 E.L. EACH ACCIDENT 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ If yes, describe under DESCRIPTION OF OPERATIONS below 1,000,000 E.L. DISEASE - POLICY LIMIT

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is listed as Additional Insured on the General Liability per the attached endorsement for the work performed by the insured.

CERTIFICATE HOLDER	CANCELLATION
City of Merced Department of Public Works 678 West 18th Street Merced, CA 95340	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

ACORD 25 (2016/03)

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY EXTENSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

A. NON-OWNED AIRCRAFT

Under Paragraph 2. Exclusions of Section I – Coverage A - Bodily Injury And Property Damage Liability, exclusion g. Aircraft, Auto Or Watercraft does not apply to an aircraft provided:

- 1. It is not owned by any insured;
- 2. It is hired, chartered or loaned with a trained paid crew;
- The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and
- It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

B. NON-OWNED WATERCRAFT

Under Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability,

Subparagraph (2) of exclusion g. Aircraft, Auto Or Watercraft is replaced by the following:

This exclusion does not apply to:

- (2) A watercraft you do not own that is:
 - (a) Less than 52 feet long; and
 - (b) Not being used to carry persons or property for a charge.

C. PROPERTY DAMAGE LIABILITY - ELEVATORS

- Under Paragraph 2. Exclusions of Section I Coverage A Bodily Injury And Property Damage Liability, Subparagraphs (3), (4) and (6) of exclusion j. Damage To Property do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.
- 2. The following is added to Section IV Commercial General Liability Conditions, Condition 4. Other Insurance, Paragraph b. Excess Insurance:

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

- Under Paragraph 2. Exclusions of Section I Coverage A Bodily Injury and Property Damage Liability:
 - a. The fourth from the last paragraph of exclusion j. Damage To Property is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:

- (i) Premises rented to you for a period of 7 or fewer consecutive days; or
- (ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in **Section III – Limits of Insurance**.

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- b. The last paragraph of subsection 2. Exclusions is replaced by the following:
 - Exclusions **c**. through **n**. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III Limits Of Insurance**.
- Paragraph 6. under Section III Limits Of Insurance is replaced by the following:
 - 6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to:
 - a. Any one premise:
 - (1) While rented to you; or
 - While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or
 - b. Contents that you rent or lease as part of a premises rental or lease agreement.
- As regards coverage provided by this provision D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage) - Paragraph 9.a. of Definitions is replaced with the following:
 - 9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

E. MEDICAL PAYMENTS EXTENSION

If Coverage C Medical Payments is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph 1. Insuring Agreement of Section I – Coverage C – Medical Payments, Subparagraph (b) of Paragraph a. is replaced by the following:

- (b) The expenses are incurred and reported within three years of the date of the accident; and
- F. EXTENSION OF SUPPLEMENTARY PAYMENTS COVERAGES A AND B
 - 1. Under Supplementary Payments Coverages A and B, Paragraph 1.b. is replaced by the following:
 - b. Up to \$3,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
 - Paragraph 1.d. is replaced by the following:
 - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
- G. ADDITIONAL INSUREDS BY CONTRACT, AGREEMENT OR PERMIT
 - Paragraph 2. under Section II Who Is An Insured is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:
 - a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or

- b. Premises or facilities rented by you or used by you; or
- The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or
- d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:
 - (1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;
 - (2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".
 - (3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:
 - a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - (b) The construction, erection, or removal of elevators; or
 - (c) The ownership, maintenance, or use of any elevators covered by this insurance.

However:

- 1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
- If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to Paragraph 1.a. above, a person's or organization's status as an additional insured under this endorsement ends when:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

With respect to Paragraph 1.b. above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph 1.c. above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph b. of Condition 2. Duties In the Event Of Occurrence, Offense, Claim Or Suit under Section IV – Commercial General Liability Conditions.

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With respect to the insurance provided by this endorsement, the following are added to Paragraph 2.
 Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:

This insurance does not apply to:

- a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.
- b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.
- "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- d. "Bodily injury" or "property damage" occurring after:
 - (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor engaged in performing operations for a principal as a part of the same project.
- Any person or organization specifically designated as an additional insured for ongoing operations by a separate ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS endorsement issued by us and made a part of this policy.
- With respect to the insurance afforded to these additional insureds, the following is added to Section III Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- Required by the contract or agreement; or
- b. Available under the applicable Limits of Insurance shown in the Declarations:

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition 4. Other Insurance of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

a. The following is added to Paragraph a. Primary Insurance:

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

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b. The following is added to Paragraph b. Excess Insurance:

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

I. ADDITIONAL INSUREDS - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

1. The following is added to Condition 2. Duties In The Event Of Occurrence, Offense, Claim or Suit:

An additional insured under this endorsement will as soon as practicable:

- Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this
 insurance to us;
- Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and
- c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.
- **d.** We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.
- The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in Section III Limits of Insurance of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.
- J. WHO IS AN INSURED INCIDENTAL MEDICAL ERRORS / MALPRACTICE
 WHO IS AN INSURED FELLOW EMPLOYEE EXTENSION MANAGEMENT EMPLOYEES

Paragraph 2.a.(1) of Section II - Who Is An Insured is replaced with the following:

- (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1) (a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1) (a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph (d)) does not apply.

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Paragraphs (a) and (b) above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision **J**. is excess over any other valid and collectable insurance available to your "employee".

K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES

Paragraph 3. of Section II - Who Is An Insured is replaced by the following:

- 3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;
 - Coverage A does not apply to "bodily injury" or "property damage" that occurred before you
 acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
 - d. Records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.

L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES

Under Section IV – Commercial General Liability Conditions, the following is added to Condition 6. Representations:

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

Under Section IV – Commercial General Liability Conditions, the following is added to Condition 2. Duties In The Event of Occurrence, Offense, Claim Or Suit:

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph 1. of Section II – Who Is An Insured or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

N. LIBERALIZATION CLAUSE

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

O. BODILY INJURY REDEFINED

Under Section V - Definitions, Definition 3. is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

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P. EXTENDED PROPERTY DAMAGE

Exclusion a. of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY is replaced by the following:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US – WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU

Under Section IV – Commercial General Liability Conditions, the following is added to Condition 8. Transfer Of Rights Of Recovery Against Others To Us:

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

- 1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and
- 2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.

Ward, Alan

From:

Paul Creighton <paul@c-33painting.com>

Sent:

Wednesday, August 15, 2018 10:27 AM

To:

Ward, Alan

Cc:

Paul Creighton (Yahoo) (paulstormwater@yahoo.com)

Subject:

Graffiti Abatement COLA Paul Creighton ECR

Proposed COLA increase for Graffiti Abatement:

Year one no COLA @ N/A	\$189,500
Year Two COLA 1.8% 3,411 @	\$192,911
Year Three COLA 1.8% 3,472 @	\$196,383
Year Four COLA 1.8% 3,535 @	\$199,918
Year Five Cola 1.8% 3,599 @	\$203,517

Thank you
Paul Creighton
CEO
Environmental Compliance Resources LLC
(209)564-6845 ph
e-mail
paulstormwater@yahoo.com
paul@c-33painting.com

MERCED

CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item J.11. Meeting Date: 10/1/2018

Report Prepared by: Alan Ward, Lieutenant, Merced Police Department

SUBJECT: Street Closure Request- 2018 Central California Band Review

REPORT IN BRIEF

Consider allowing street closures on November 10, 2018, for portions of Parsons Avenue, Dinkey Creek, Watertown Drive, and East Childs Avenue to facilitate the Central California Band Review.

RECOMMENDATION

City Council - Adopt a motion approving the street closures of Parsons Avenue, from Merced Avenue to Dinkey Creek; Dinkey Creek, from Parsons Avenue to Watertown Drive; Watertown Drive, from Dinkey Creek to East Childs Avenue; and East Childs Avenue, from Coffee Street to Carol Avenue, as requested by Golden Valley High School Band Boosters Coordinator Kirsten Shulley for the 2018 Central California Band Review scheduled Saturday, November 10, 2018. The street closures will be between 6:00 a.m. and 3:30 p.m.; subject to the conditions of the administrative staff report.

ALTERNATIVES

- 1. Approve, as recommended by Staff; or,
- 2. Approve, subject to other than recommended by Staff; or,
- 3. Deny; or,
- 4. Refer to Staff for reconsideration of specific items.

AUTHORITY

City of Merced Charter Section 200 City of Merced Municipal Code Section 12.42.010 State of California Vehicle Code Section 21101(e)

CITY COUNCIL PRIORITIES

This annual event furthers the City Council's goal of providing community and youth enrichment activities.

DISCUSSION

A request was received from Kirsten Shulley, representative for Golden Valley High School Band Boosters, to close the following streets for the 2018 Central California Band Review Parade:

- North Parsons Avenue from Merced Avenue to East Childs Avenue
- South Parsons Avenue from East Childs Avenue to East Gerard Avenue

File #: 18-488 Meeting Date: 10/1/2018

- · Dinkey Creek from South Parsons Avenue to Watertown Drive
- Watertown Drive from Dinkey Creek to East Childs Avenue
- East Childs Avenue from Coffee Street to Carol Avenue

South Parsons Avenue will be closed to north bound thru traffic at East Gerard Avenue. Residents and visitors for the Grove Apartments will be allowed to continue northbound on South Parsons Avenue from East Gerard. East Childs Avenue will be closed at Carol Avenue. Customers for the two hotels on South Parsons Avenue will be escorted into the business by Merced Police Officers. Customers going to businesses on East Childs Avenue between Carol Avenue and Parsons Avenue will be allowed access to the businesses. All other traffic will be re-routed to Highway 99.

Kirsten Shulley, representative for Golden Valley High School Band Boosters, chose this parade route due to its proximity to the Golden Valley High School, where there is adequate bus parking, and suitable buildings in which to hold the jazz band competitions, which are an additional component of the band review. The proposed street closure has been used the past nine years for this event and has worked out well for the competitors and the citizens.

The streets are requested to be closed on Saturday, November 10, 2018 between the hours of 6:00 a.m. and 3:30 p.m. The Merced Police Department will monitor this event to insure that proper traffic control procedures are followed and that traffic control devices, such as barricades, are properly placed along the street closure routes.

The Merced Police Department, along with Merced Police Department Explorer Scouts, will assist residents living within the street closure to and from their residences. The Merced Police Department, will use at minimum, the following staffing to provide traffic control for this event. Two (2) Police Sergeants, eleven (11) Police Officers, one (1) Community Service Officer and a minimum of thirty (30) Explorer scouts. The Police Sergeants and Police Officers being used will be on overtime.

The event would be held subject to the following conditions:

- 1. Event sponsors shall furnish a certificate of liability insurance with coverage of no less than \$1,000,000.00 and naming the City of Merced as additional insured.
- 2. Event sponsors shall contact all businesses and residences affected by the street closure, advising them of the hours, conditions and reason thereof. This will be done no less than thirty (30) days prior to the event.
- 3. Event sponsor shall be responsible for placing and removing all traffic barricades and posting of parking restrictions where streets are closed.
- 4. Event sponsor shall be responsible for disposing of any trash and debris generated from the event.
- 5. Event sponsor shall provide adequate supervision of the parade participants during this event as required by the Merced Police Department.
- 6. Event sponsor will provide a representative, to be positioned at the following intersections: East

File #: 18-488 Meeting Date: 10/1/2018

Childs Avenue & Parsons Avenue, South Parsons Avenue & Westfall, South Parsons Avenue & Dinkey Creek, Dinkey Creek & South Fork Avenue, Dinkey Creek & Sweetwater Avenue, Dinkey Creek & Manzanita Avenue, Dinkey Creek & Yew Court, Dinkey Creek & Yorktown Square, Dinkey Creek & Watertown Drive, Watertown Drive & Concord Drive, Watertown Drive & Concord Square. Watertown Drive & East Child Avenue and East Childs Avenue & Manzanita Avenue.

The representatives will be used to coordinate with the Merced Police Department any residents needing to enter or leave the residential area where the streets are closed.

7. Event Sponsor shall agree to indemnify and hold harmless the City, its officers, agents, and employees from any and all liability, costs, damages, or injuries to persons or damage to property which might arise out of or in any way be connected with the use of an encroachment/street closure permit for this event.

IMPACT ON CITY RESOURCES

No appropriation of funds is needed.

The Merced Police Department, along with Merced Police Department Explorer Scouts, will assist residents living within the street closure to and from their residences. The Merced Police Department, will use at minimum, the following staffing to provide traffic control for this event. Two (2) Police Sergeants, eleven (11) Police Officers, one (1) Community Service Officer and a minimum of thirty (30) Explorer scouts. The Police Sergeant and Police Officers being used will be on overtime.

ATTACHMENTS

- 1. Street Closure Application
- 2. Insurance Certificate
- 3. Route Map



STREET CLOSURE APPLICATION

REQUIRING CITY COUNCIL APPROVAL (OVER 400 FEET).



For current Fe	e, please see Planning & Development Fee Schedule	Application:Receipt:
CHECKLIST		receipt.
	tting your application, please confirm by checking () the	boxes below that all the following hav
	Have you completed the "Description of Event" below ar (Incomplete information may delay your application.)	nd signed the application on page 3?
	Have you allowed at least 8-10 weeks prior to the event for City Council agenda?	or your application to be placed on a
7	Have you obtained the required insurance and do you have with your application? (See "Insurance" section on page	
	Has the Indemnification Agreement on page 3 of this appauthorized representative of the sponsoring organization?	
After obtaining	g approval from the City, but prior to the event, please mak	te sure you have done the following:
	Have you read the conditions of approval and is your eve conditions?	nt prepared to abide by all
	Have you given public notice of the street closure to all the mile at least 72 hours prior to the event as required in Comprovided at page 6 which can be used to inform the public signed and returned to the Planning Division at least 24 hours that notice has been given per the above requirements.	ndition #2 below? A form is c. A copy of the form should be
	Have you posted "No Parking" at least 24 hours prior to the below and using the standards outlined on page 5?	ne event as required in Condition #1
	Have you arranged for "Special Event" City Refuse Servi	ice by calling 385-6800?
	Have you made arrangements for any temporary barricad the barricades for street closures.)	es? (The City does NOT provide
	Have you made arrangements for supplying any necessar (Plugging outlets into City light poles is NOT allowed un Please call City Public Works at 385-6800 for additional	less prior approval is obtained.
	If you are selling alcohol at your event, have you obtained (ABC) license or permit for this event?	d an Alcoholic Beverage Control
DESCRIPTIO	N OF EVENT:	011711
APPLICANT/E	VENT SPONSOR Merced Union High	School District
CONTACT PE		
ADDRESS E	event Figi Childs Ade Merced Co	A 9534)
DRIVER'S LIC	EENSE NO.	

STANDARD CONDITIONS FOR STREET/PARKING LOT CLOSURES/PARADES 1. Event Sponsor shall be responsible for placing and removing traffic barricades and posting of parking restrictions. "No Parking" signs shall be posted at least twenty-four (24) hours prior to towing of vehicle(s) per California Vehicle Code Section 22651(m)—see page 5. 2. Event Sponsor shall contact all businesses affected by the street/parking lot closure or parade advising them of hours, conditions and reason thereof within one-half mile of the encroachment area at least seventy-two (72) hours prior to the event. Event Sponsor shall provide the City confirmation that the proper notification was given. (A form is provided on page 6 to help the applicant with this requirement.) 3. Event Sponsor must remove all equipment, trash and debris, including "no parking" signs, generated by the event prior to the expiration of the encroachment permit. 4. Street closures shall not include major arterial streets. 5. Supervision/security shall be provided by event sponsor to ensure the safety of event participants and the public if required by the Police Department. 6. Event Sponsor shall pay for any City services required for supervision/security. 7. Alcoholic beverages may be served or sold, subject to Alcoholic Beverage Control Licensing Requirements, and subject to the Liquor Liability Insurance Policy of the City (see page 4). 8. Provisions addressed in Ordinance #1941 Chapter 12.42 (Temporary Street Closures) shall apply. 9. Event Sponsor shall be responsible for insuring that all vendors involved with the event obtain a City of Merced business license. 10. The applicant shall arrange and pay for special event City Refuse service by contacting Public Works at (209) 385-6800. 11. The applicant shall arrange and pay for special event City Refuse service by contacting Public Works at (209) 385-6800. 12. Event sponsor shall provide and maintain a minimum 22-foot-wide emergency vehicle access path into and through the closure area at all times via m	DES	SCRIPTION OF EVENT (Continued):
DATE(S) AND TIME(S) OF USE (include time for setup and takedown as well as event time): NOVEMBER 10	W 61	entral Callifornia Isand Keview at Golden Valley High what on Childs Aue at Parsons, (Parade, Jazz, Field Show & will be marching down (See attached map), putting up barrow x locations and a flootbed trailer near school parking lot,
LIST ALL STREETS PROPOSED FOR CLOSURE: Childs Alle Persons Alle Persons after University of the Common after University of the Common and Provided Persons and Provided Persons (PLEASE ATTACH A MAP TO IDENTIFY PARADE ROUTES, STREET CLOSURES, AND ANY CHURCED AND OBSTRUCTIONS TO BE PLACED WITHIN THE RIGHT-OF-WAY) STANDARD CONDITIONS FOR STREET/PARKING LOT CLOSURES/PARADES 1. Event Sponsor shall be responsible for placing and removing traffic barricades and posting of parking restrictions. "No Parking" signs shall be posted at least twenty-four (24) hours prior to towing of vehicle(s) per California Vehicle Code Section 22651(m)—see page 5. 2. Event Sponsor shall contact all businesses affected by the street/parking lot closure or parade advising them of hours, conditions and reason thereof within one-half mile of the encroachment area at least seventy-two (72) hours prior to the event. Event Sponsor shall provide the City confirmation that the proper notification was given. (A form is provided on page 6 to help the applicant with this requirement.) 3. Event Sponsor must remove all equipment, trash and debris, including "no parking" signs, generated by the event prior to the expiration of the encroachment permit. 4. Street closures shall not include major arterial streets. 5. Supervision/security shall be provided by event sponsor to ensure the safety of event participants and the public if required by the Police Department. 6. Event Sponsor shall pay for any City services required for supervision/security. Alcoholic beverages may be served or sold, subject to Alcoholic Beverage Control Licensing Requirements, and subject to the Liquor Liability Insurance Policy of the City (see page 4). 8. Provisions addressed in Ordinance #1941 Chapter 12.42 (Temporary Street Closures) shall apply. 9. Event Sponsor shall be responsible for insuring that all vendors involved with the event obtain a City of Merced business license. 10. The applicant shall comply with the Indemnification and Insurance provisions as outli	EST	TIMATED NUMBER OF PEOPLE IN ATTENDANCE (0, 500)
Mananta Childs of Arabi and MPD. Discretion interaction at tour Mananta Childs of Arabi and MPD. Discretion interaction at tour MPD. Discretion interaction at tour MPD. Childs of Arabi and MPD. Discretion interaction at tour MPD. Childs of MPD. Discretion interaction at tour MPD. Discretion interaction and tour MPD. Discretion interaction and provide the Childs of MPD. Discretion interaction and provide the Childs of MPD. Discretion interaction and provide the Childs of MPD. Standard Conditions for Street/Parking Lot Closures/Parades. 1. Event Sponsor shall be responsible for placing and removing traffic barricades and posting of parking restrictions. "No Parking" signs shall be posted at least twenty-four (24) hours prior to towing of vehicle(s) per California Vehicle Code Section 22651(m)—see page 5. 2. Event Sponsor shall contact all businesses affected by the street/parking lot closure or parade advising them of hours, conditions and reason thereof within one-half mile of the encroachment area at least seventy-two (72) hours prior to the event. Event Sponsor shall provided the City confirmation that the proper notification was given. (A form is provided on page 6 to help the applicant with this requirement.) 3. Event Sponsor must remove all equipment, trash and debris, including "no parking" signs, generated by the event prior to the expiration of the encroachment permit. 4. Street closures shall not include major arterial streets. 5. Supervision/security shall be provided by event sponsor to ensure the safety of event participants and the public if required by the Police Department. 6. Event Sponsor shall pay for any City services required for supervision/security. 7. Alcoholic beverages may be served or sold, subject to Alcoholic Beverage Control Licensing Requirements, and subject to the Liquor Liability Insurance Policy of the City (see page 4). 8. Provisions addressed in Ordinance #1941 Chapter 12.42 (Temporary Street Closures) shall apply. 9. Event Sponsor shall be responsible for insuring th	DA	TE(S) AND TIME(S) OF USE (include time for setup and takedown as well as event time): NOVEMber 10th, 2018 from 500 Am to 3 pm
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14.	13.	
	1.4	
	14.	
		(Additional conditions may be imposed as deemed necessary)

DATE (MM/DD/YYYY) 6/1/2018

CERTIFICATE OF LIABILITY COVERAGE

COVERAGE PROVIDER:

Self-Insured Schools of CA (SISC II) 2000 K Street Bakersfield CA 93301 NAMED COVERED MEMBER DISTRICT:

Merced Union High School District PO Box 2147 Merced CA 95344

THE REFERENCED MEMORANDUM OF COVERAGE(S) ("MOC") AND/OR INSURANCE POLICY(IES) EXTEND INDEMNITY PROTECTION TO THE NAMED COVERED MEMBER IN KEEPING WITH THE TERMS AND CONDITIONS OF THE COVERAGE AGREEMENTS/ POLICIES FOR THE EFFECTIVE COVERAGE DATES AND WITH THE STATED COVERAGE LIMITS. COVERAGE PROVIDED BY MOCS IS EXTENDED PURSUANT TO THE RIGHTS AND LIMITATIONS OF CALIFORNIA GOV'T CODE § 990 & 6500 ET SEQ.

CERTIFICATE NUMBER: 4

	CERTIFICATE NUMBER: 4				
TYPE OF COVERAGE	COVERAGE AFFORDED	MOC/POLICY NUMBER	EFFECTIVE DATE(S)	EXPIRATION DATE(S)	LIMITS (Each Occurrence)
GENERAL LIABILITY	General Liability Employment Practices Educators' Legal Liability	SLP 7118 19 \$1,000 Deductible	07/01/2018	07/01/2019	\$ 1,750,000
AUTOMOBILE LIABILITY	Automobile Liability (All Owned, Hired, Leased, and Borrowed)	SAP 7118 19 \$1,000 Deductible ACV COMP/COLL	07/01/2018	07/01/2019	\$ 1,750,000
WORKERS COMPENSATION AND EMPLOYERS LIABILITY	E.L. Each Accident E.L. Disease – Ea. Employee E.L. Disease – Policy Limit				
BLANKET BUILDINGS & Blanket Buildings & Contents, Replacement Cost Rental Interruption, Actual Loss Sustained		SPP 7118 19 DEDUCTIBLE \$ 2,500	07/01/2018	07/01/2019	\$ 250,000

THIS CERTIFICATE CONFERS NO RIGHT, BENEFIT, OR INTEREST IN THE REFERENCED MEMORANDUM(S) OF COVERAGE OR INSURANCE POLICY(IES). NOR DOES IT AMEND, MODIFY, ENLARGE OR ALTER THE COVERAGE AFFORDED BY SUCH DOCUMENTS. IF THE CERTIFICATE HOLDER IS CONTRACTUALLY ENTITLED TO BE NAMED AS AN ADDITIONAL COVERED MEMBER ("ACM") UNDER ANY COVERAGE AGREEMENT OR POLICY, THE CONTRACT IMPOSING THE OBLIGATION MUST BE PROVIDED TO THE NAMED COVERED MEMBER LISTED ABOVE FOR REVIEW AND APPROVAL BEFORE SUCH AN ENDORSEMENT WILL BE ISSUED; ACM COVERAGE IS NOT AUTOMATICALLY GRANTED.

Description and Date(s) of Event/Operations/Locations/Vehicle (Additional remarks/schedule may be attached if more space is needed)

*Use of facilities/streets for all schools within Merced Union High School District for the policy year, for which the City of Merced, its officers, employees, volunteers, and agents are named as additional insured.

CERTIFICATE HOLDER:

Cancellation of Coverage: If any of the policies described herein be cancelled before their expiration dates, notice will be delivered in accordance with policy provisions.

Issuer of this Certificate:

SELF-INSURED SCHOOLS OF CA (SISC II)
2000 K STREET
BAKERSFIELD CA 93301
PHONE (661) 636-4495 FAX (661) 636-4868

E-mail Address: sisc_pl@kern.org

City of Merced 678 W 18th St Merced CA 95340

movert J. Kretzmes

THIS ENDORSEMENT CHANGES THE MEMORANDUM OF COVERAGE. PLEASE READ IT CAREFULLY.

ADDITIONAL COVERED MEMBER—DESIGNATED **PERSON OR ORGANIZATION**

This endorsement modified coverage provided under the following:

GENERAL LIABILITY

Nam	e Covered Member:
Merc PO E	ed Union High School District ox 2147 ed CA 95344

SCHEDULE

Name of Additional Covered Person(s) or Organization(s)
City of Merced, its officers, employees, volunteers, and agents
RE: *Use of facilities/streets for all schools within Merced Union High School District for the policy year, for which the City of Merced, its officers, employees, volunteers, and agents are named as additional insured.
information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section III - The Definition of a Covered member is amended to include as an additional covered member the person(s) or Organization(s) shown in the Schedule, but only with respect to Liability for "bodily injury", "property damage", or "personal and Advertising injury caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf.

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented

COVERAGE IS PRIMARY AND OTHER COVERAGE MAINTAINED BY THE ADDITIONAL COVERED MEMBER SHALL BE EXCESS ONLY AND NOT CONTIBUTING WITH THIS COVERAGE.

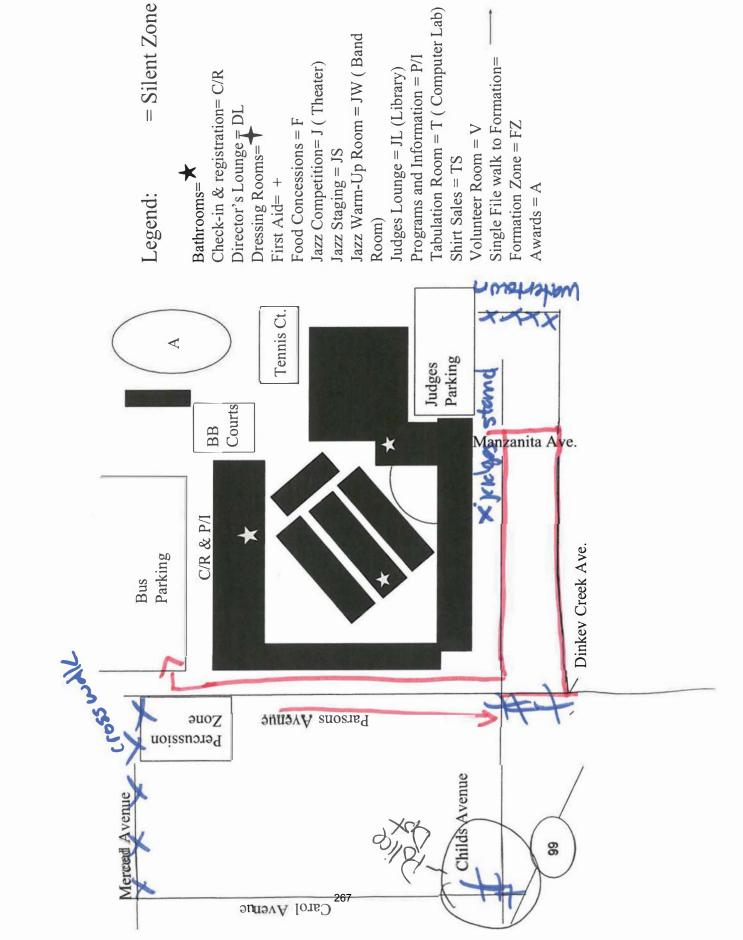
INDEMNIFICATION: Event Sponsor shall indemnify, protect, defend, (with counsel selected by the City) save and hold City, its officers, employees, agents, and volunteers harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Event Sponsor or Event Sponsor's officers, employees, agents, volunteers, and participants during performance of the Event, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Event Sponsor or its officers, employees, agents, volunteers, or participants, or resulting from the negligence of the City, its officers, employees, agents, and volunteers, except for loss caused solely by the gross negligence of the City. Acceptance by City of insurance certificates and endorsements required for this Event does not relieve Event Sponsor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

INSURANCE: Prior to engaging in the event, Event Sponsor shall complete and file with the City a special events, general liability and automobile policy of at least \$500,000 combined limit for bodily injury and property damage which covers the entire event. Said policy shall stipulate that this insurance will operate as primary insurance and that no other insurance will be called on to cover a loss covered thereunder. Additional insured endorsements evidencing this special events, general liability and automobile coverage, naming the City and its officers, agents, and employees as additional insureds, must be submitted to the City prior to the event. This certificate shall provide that thirty (30) days written notice of cancellation shall be given to the City.

REFUSAL OR REVOCATION OF PERMIT: Failure to comply with any law, rule or regulation applicable to the use of said streets shall be grounds to revoke any such permit and, in such circumstances, the Chief of Police shall immediately revoke said permit. The Event Sponsor or permit holder, in such case, shall have the right to appeal said revocation to the City Council.

The undersigned declares under penalty of perjury that he/she has the authority to sign for and bind the Event Sponsor to the conditions imposed by the City upon the granting of this Application.

	Signature:	- 1000		
	Print Name:	C III '		
	Date:	0-29-10		
		OFFICE	USE	
	APPLICATION APPRO	VED SUBJECT TO CONDITIONS		
BY.			DATE	
	Development Services I	Department (385-6858)		
BY			D. 4.500	
ВΙ.	Merced Police Departme	ent (385-6912)	DATE	
	more a rome beparting	nu (303-0712)		
BY			DATE	
_	Merced Fire Department	(385-6891)		



8

CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item K.1. Meeting Date: 10/1/2018

Report Prepared by: Julie Nelson, Associate Planner, Planning Department

SUBJECT: Continued Public Hearing - Annexation and Pre-Zoning Application #15-01, General Plan Amendment #15-04, and Pre-Annexation Development Agreement, Initiated by Louann Bianchi, and Quad LLC, Property Owners

REPORT IN BRIEF

Consider approval of the proposed annexation of 8.83 acres of land generally located at the northwest and southwest corners of North Highway 59 and Santa Fe Drive, along with changes in the General Plan designation, pre-zoning, and approval of a Pre-Annexation Development Agreement.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving **Resolution 2018-60**, a Resolution of the City Council of the City of Merced, California, approving a Mitigated Negative Declaration for Annexation #15-01, Pre-Zoning Application #15-01, and General Plan Amendment #15-04 for 7.83 acres of land generally located at the northwest corner of North Highway 59 and Santa Fe Drive and 1.0 acre of land generally located at the southwest corner of North Highway 59 and Santa Fe Drive and approving General Plan Amendment #15-05 for the 7.83 acres of land generally located at the northwest corner of North Highway 59 and Santa Fe Drive changing the General Plan land use designation from Open Space (OS) to Thoroughfare Commercial (CT); and,
- B. Approving **Resolution 2018-61**, a Resolution of the City Council of the City of Merced, California, to the Local Agency Formation Commission for the annexation of uninhabited property located at the northwest and southwest corners of North Highway 59 and Santa Fe Drive, as described herein; and,
- C. Introducing **Ordinance 2494**, an Ordinance of the City Council of the City of Merced, California, amending the official zoning map by Pre-zoning land generally located at the northwest corner of North Highway 59 and Santa Fe Drive as Thoroughfare Commercial (C-T) and the land generally located at the southwest corner of North Highway 59 and Santa Fe Drive as Light Industrial (I-L); and.
- D. Introducing **Ordinance 2495**, an Ordinance of the City Council of the City of Merced, California, approving a Pre-Annexation Development Agreement between the City of Merced and Lou Ann Bianchi for the Highway 59 and Santa Fe Annexation.

ALTERNATIVES

File #: 18-490 Meeting Date: 10/1/2018

- 1. Approve the request as recommended by the Planning Commission and staff; or,
- 2. Approve subject to modifications as conditioned by the City Council; or,
- 3. Deny the request; or,
- 4. Refer back to staff for reconsideration of specific items (specific items to be addressed in the motion); or,
- 5. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

The State of California's Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, outlines the procedures governing the annexation of uninhabited territory to local jurisdictions. Title 19 of the Merced Municipal Code outlines environmental review procedures and Title 20 of the Merced Municipal Code (Zoning) regulates the use of land within the Thoroughfare Commercial (C-T) zone. Pre-annexation development agreements are authorized by Government Code Section 65864 et seg. and Merced Municipal Code Section 20.86.150.

DISCUSSION

Project Description

This a request to annex and pre-zone approximately 8.83 acres of land generally located at the northwest and southwest corners of North Highway 59 and Santa Fe Drive (Attachment 1). The proposal also includes a General Plan Amendment for the northwest corner of North Highway 59 and Santa Fe Drive to change the General Plan land use designation from Open Space (OS) to Thoroughfare Commercial (CT). The proposed pre-zoning designations would be Light Industrial (I-L) for the southwest corner which is consistent with the current General Plan designation, and Thoroughfare Commercial (C-T) for the northwest corner which would be consistent with the General Plan designation if the proposed General Plan Amendment is approved.

The annexation area is bounded by and includes Black Rascal Creek to the north, the Burlington Northern Santa Fe (BNSF) Railroad to the south, and North Highway 59 to the east. Vacant county land is located to the west of the annexation area. The annexation area is divided by Santa Fe Drive splitting the northern portion of the annexation area (7.83 acres) from the southern portion (1.0 acre). The property located at the southwest corner of North Highway 59 and Santa Fe Drive (3065 N. Hwy 59) is developed with a wholesale/retail business (Horizon). The 7.83 acres of land at the northwest corner of North Highway 59 and Santa Fe are currently vacant. The vacant land is comprised of two separate parcels - Assessor's Parcel Number (APN): 057-200-067 contains 7.4 acres and APN: 057-200-029 contains 0.43 acres.

City Council Meeting of September 17, 2018

On September 17, 2018, the City Council heard this item and held a duly noticed public hearing. At that meeting, the Council expressed concern with Mitigation Measure (MMD) TRA-1 which requires a traffic signal be installed at the western driveway of the project site. Mitigation Measure TRA-1 requires the traffic signal be installed when warrants are met and as determined to be needed by the City Engineer. The mitigation measure does not require the traffic signal to be installed with the first phase of construction which includes the gas station, mini-market, carwash, fast-food restaurant, and **File #:** 18-490 Meeting Date: 10/1/2018

coffee kiosk located at the southeast corner of the site (refer to the revised site plan at Attachment 2). It is unlikely that the signal would be required with the first phase of development.

At the meeting staff explained that the traffic signal at the western driveway would be required to be synchronized with the traffic signal at the intersection of North Highway 59 and Santa Fe Drive/Olive Avenue. The synchronization would allow vehicles to stop and go at the same time through both lights preventing stacking between and through the intersections. The Council determined this requirement should be in the form of a condition to ensure the project is designed and constructed in this way. If the City Council wants to require the traffic signal be included with the first phase, then a condition stating so would also need to be applied.

An additional concern was with the eastern driveway. The plans indicated that the eastern driveway would allow right-turn in/out movements. However, the applicant stated they had agreed to a rightturn in only driveway at this location. Staff and Council agreed that this requirement should be memorialized in a condition.

The Council also asked for an updated site plan showing the proposed changes to the driveway and the required mitigation measures modifying Santa Fe Drive and North Highway 59. The applicant has provided a revised site plan showing the eastern driveway as an entrance only driveway (Attachment 2). City staff is working on a plan to show the off-site mitigation measures. This plan will be provided at the meeting. It should be noted that some of the mitigation measures are not required with the first phase of construction or the applicant is only required to pay a share of the improvements

In response to the above concerns, staff provided the following additional conditions of approval for this project:

- 27) The traffic signal at the western driveway and Santa Fe Drive, when warranted and required by the City Engineer, shall be synchronized with the traffic signal at the intersection of North State Highway 59 and Santa Fe Drive/Olive Avenue so as to ensure traffic stops and goes through both signals simultaneously.
- 28) The eastern driveway shall be an entrance-only drive way, allowing only right turns into the site.

If approved, these conditions would be incorporated into Planning Commission Resolution #3095.

The previous Administrative Report prepared for the September 17, 2018, meeting is available at Attachment 3, with the Pre-Annexation Development Agreement, Draft Resolutions and Ordinances deleted (Attachments 11 through 15 of Administrative Report #18-324). These documents have been replaced in Administrative Report 18-490 as follows:

- Pre-Annexation Development Agreement Attachment 1 of Draft Ordinance 2495 at Attachment 7
- The Draft Resolutions and Ordinances are found at Attachments 4 through 7.

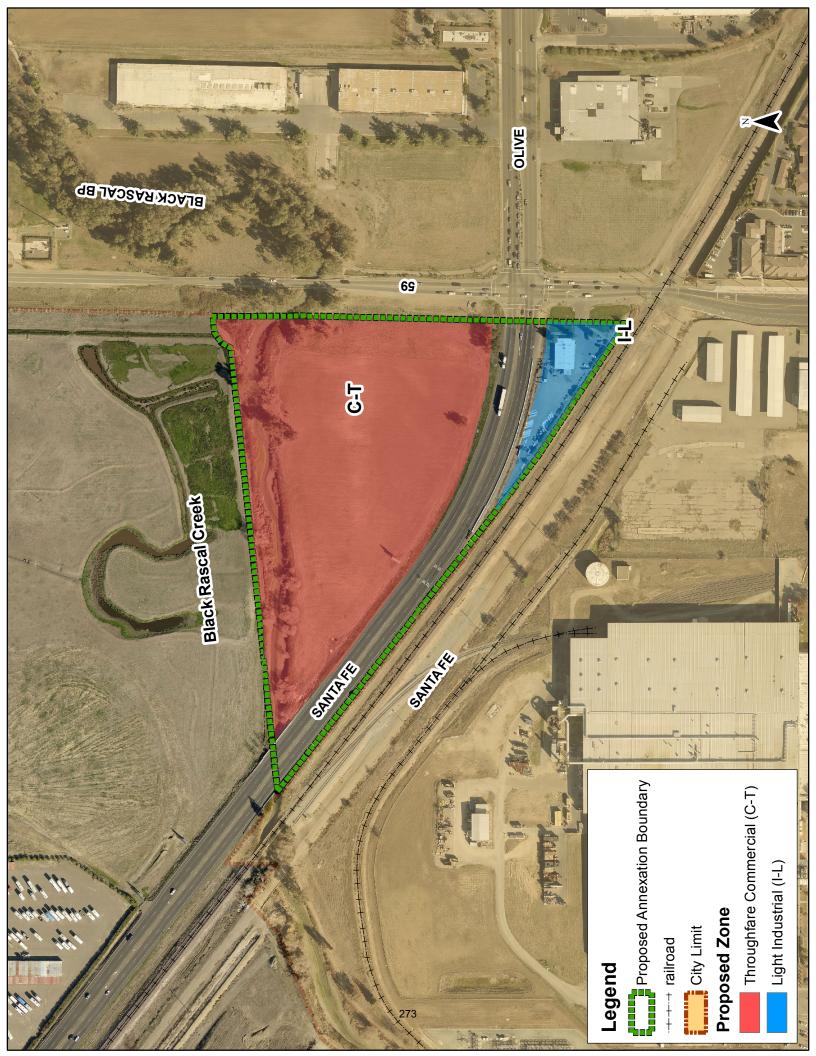
City Council Action

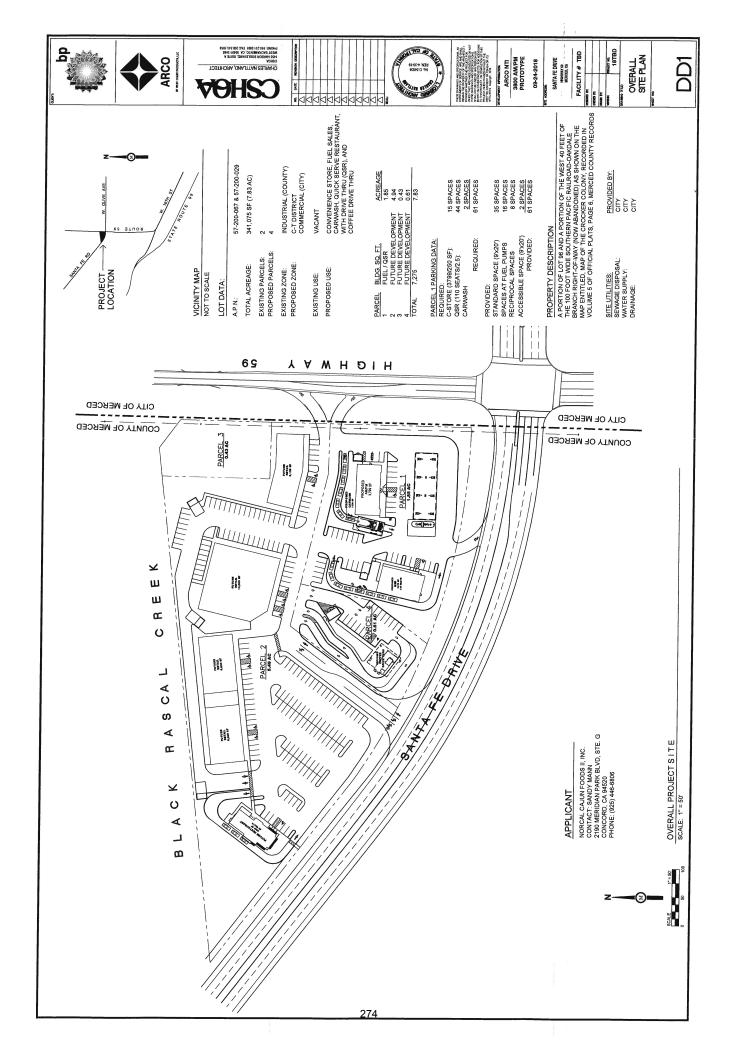
File #: 18-490 Meeting Date: 10/1/2018

The Planning Commission and Planning Staff recommend approval of Environmental Review #15-36, an application to LAFCo regarding Annexation and Pre-Zoning Applications #15-01, and General Plan Amendment #15-04. In order for the Council to approve these items, a motion should be made to adopt the Resolutions at Attachments 4 and 5 and introduce the Ordinances at Attachments 6 and 7.

ATTACHMENTS

- 1. Location Map
- 2. Revised Site Plan
- 3. Administrative Report 18-324
- 4. Draft Resolution 2018-60, including the proposed additional conditions
- 5. Draft Resolution 2018-61
- 6. Draft Ordinance 2494
- 7. Draft Ordinance 2495
- 8. Presentation





CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item K.2. Meeting Date: 9/17/2018

Report Prepared by: Julie Nelson, Associate Planner, Planning Department

SUBJECT: Public Hearing - Annexation and Pre-Zoning Application #15-01, General Plan Amendment #15-04, and Pre-Annexation Development Agreement, Initiated by Louann Bianchi, and Quad LLC, Property Owners

REPORT IN BRIEF

Considers approval of the proposed annexation of 8.83 acres of land generally located at the northwest and southwest corners of North Highway 59 and Santa Fe Drive, along with changes in the General Plan designation, pre-zoning, and approval of a Pre-Annexation Development Agreement.

RECOMMENDATION

City Council - Adopt a motion:

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ALTERNATIVES

- 1. Approve the request as recommended by the Planning Commission and staff; or,
- 2. Approve subject to modifications as conditioned by the City Council; or,
- 3. Deny the request; or,
- 4. Refer back to staff for reconsideration of specific items (specific items to be addressed in the motion); or,
- 5. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

The State of California's Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, outlines the procedures governing the annexation of uninhabited territory to local jurisdictions. Title 19 of the Merced Municipal Code outlines environmental review procedures and Title 20 of the Merced Municipal Code (Zoning) regulates the use of land within the Thoroughfare Commercial (C-T) zone. Pre-annexation development agreements are authorized by Government Code Section 65864 et seq. and Merced Municipal Code Section 20.86.150.

DISCUSSION

Project Description

This a request to annex and pre-zone approximately 8.83 acres of land generally located at the northwest and southwest corners of North Highway 59 and Santa Fe Drive (Attachment 1). The proposal also includes a General Plan Amendment for the northwest corner of North Highway 59 and Santa Fe Drive to change the General Plan land use designation from Open Space (OS) to Thoroughfare Commercial (CT). The proposed pre-zoning designations would be Light Industrial (I-L) for the southwest corner which is consistent with the current General Plan designation, and Thoroughfare Commercial (C-T) for the northwest corner which would be consistent with the General Plan designation if the proposed General Plan Amendment is approved.

The annexation area is bounded by and includes Black Rascal Creek to the north, the Burlington Northern Santa Fe (BNSF) Railroad to the south, and North Highway 59 to the east. Vacant county land is located to the west of the annexation area. The annexation area is divided by Santa Fe Drive splitting the northern portion of the annexation area (7.83 acres) from the southern portion (1.0 acre). The property located at the southwest corner of North Highway 59 and Santa Fe Drive (3065 N. Hwy 59) is developed with a wholesale/retail business (Horizon). The 7.83 acres of land at the northwest corner of North Highway 59 and Santa Fe are currently vacant. The vacant land is comprised of two separate parcels - Assessor's Parcel Number (APN): 057-200-067 contains 7.4 acres and APN: 057-200-029 contains 0.43 acres.

Proposed/Future Development

The owner of the property at the northwest corner is in contract with a developer to purchase and develop approximately 2.5 acres of the existing 7.4-acre parcel. The 7.4 acres would be subdivided into three separate parcels (refer to the Tentative Map at Attachment 2) with the developer purchasing Parcel 1 and Parcel 4 for development (Phase One). The remainder of the property would be developed in the future as Phase Two.

Phase One of the development would consist of a 3,764-square-foot convenience market (AM/PM), a gas station with 8 pumps (16 fueling positions), a car wash, and a 3,462-square-foot fast food restaurant with 110 seats and a drive-thru (refer to the Site Plan at Attachment 3). Parcel 4 would be developed with a drive-thru coffee shop/kiosk.

Phase Two could include a 2,695-square-foot fast-food restaurant at the western edge of the site on Parcel 2. The remainder of the site would be for the future development of commercial space totaling approximately 32,000 square feet. Development of Phase Two remains speculative at this time. The owner does not have a developer interested in constructing Phase Two. However, for CEQA Environmental Review purposes, uses were identified and analyzed as part of the annexation.

Uses allowed within the remainder of the development would be consistent with the Thoroughfare Commercial (C-T) zone and could include:

- Retail, General (i.e., drug stores, general merchandise stores, pet stores, department stores,
- Business Support Services
- Indoor Commercial Recreation, except multi-screen (6 or more) movie theaters
- Vehicle Sales
- Warehousing, Wholesaling, and Distribution

For a full list of permitted uses as well as conditional uses and uses allowed with Site Plan Review, refer to the Table at Attachment 4.

No development is planned for the 0.43-acre parcel (Parcel 3) at the northeast corner of the site.

The existing use at the southwest corner of North Highway 59 and Santa Fe Drive will remain unchanged. The pre-zoning designation for the site is Light Industrial (I-L) which is consistent with the current General Plan designation of Industrial (IL). For a full listing of uses allowed within the I-L zone, please refer to the table at Attachment 5.

Background

The annexation area is comprised of the northwest corner and southwest corner of North Highway 59 and Santa Fe Drive. The northwest corner of Santa Fe Drive has been vacant for many years. This property was previously identified by FEMA as an area within a floodway. Therefore, development on this property was not feasible, and the property was given a General Plan designation of Open Space (OS). However, in 2014, FEMA revised the floodway and removed the majority of this property out of the floodway making it possible to be developed (Attachment 6).

The southwest corner has been developed for many years with similar retail/wholesale businesses operating from the site.

The annexation process is a very lengthy process. It takes time to gather all the necessary documents for the environmental review process and to work out design details. City staff has been working with the applicant to obtain this information and to refine their design in order to move the

annexation forward.

General Plan Compliance/Review Criteria

General Plan Policy UE-1.3 and Implementing Action 1.3.g requires that annexation requests be evaluated against certain criteria. Below is an evaluation of the proposed annexation against those criteria:

Criteria 1

Is the area contiguous to the Current City Limits and within the City's Specific Urban Development Plan (SUDP)/Sphere of Influence (SOI)? Do the annexed lands form a logical and efficient City limit and include older areas where appropriate to minimize the formation of unincorporated peninsulas?

Evaluation

The proposed annexation area is contiguous to the existing City Limits to east and south (see map at Attachment 1). The annexation area is on the western edge of the City Limits. The annexation would form a logical and efficient boundary and does not create any new islands or peninsulas.

Criteria 2

Is the proposed development consistent with the land use classification on the General Plan Land Use Diagram (Figure 3.1)?

Evaluation

The property at the southwest corner of the annexation area is consistent with the land use classification (IND) of the General Plan diagram. The northwest corner is currently designated as Open Space. However, the proposed General Plan Amendment would change the designation to Thoroughfare Commercial (CT) which would be consistent with the proposed development on that site.

Criteria 3

Can the proposed development be served by the City water, sewer, storm drainage, fire and police protection, parks, and street systems to meet acceptable standards and service levels without requiring improvements and additional costs to the City beyond which the developer will consent to provide or mitigate?

Evaluation

The City would be able to provide all services to the annexation area. All new development within the annexation area would be required to annex into the City's Community Facilities District (CFD) for services which would cover the costs of Police and Fire protection. Public Facilities Impact Fees would also be paid that would help fund future police and fire stations, parks and street

improvements.

Criteria 4

Will this annexation result in the premature conversion of prime agricultural land as defined in the Important Farmland Map of the State Mapping and Monitoring Program? If so, are there alternative locations where this development could take place without converting prime soils?

Evaluation

The annexation area is not listed as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency.

Criteria 5

Will a non-agricultural use create conflict with adjacent or nearby agricultural uses? If so, how can these conflicts be mitigated?

Evaluation

The proposed development would not conflict with any nearby agricultural uses. The land directly to the north of the site is currently vacant. Beyond the vacant land is property planted with almond trees. Other than this use, there are no other agricultural uses nearby. Therefore, there would be no conflict with agricultural uses.

Criteria 6

Does the annexation area help the City reach one of the following goals?

- Does annexation of the area bring the City closer to annexation of the UC Merced campus and University Community?
- Does the area contain significant amounts of job-generating land uses, such as b) industrial, commercial, office, and business/research and development parks?
- Does the project provide key infrastructure facilities or other desirable amenities c) such as the extension of major roads, utility trunk lines, parks and recreational facilities, etc.?

Evaluation

- a) The proposed annexation does not bring the City closer to annexation of the UC or UC Community area. This annexation is on the western edge of the City approximately 7 miles from UC Merced.
- b) The proposed commercial development at the northwest corner of North Highway 59 and Santa Fe would generate a small number of jobs within the City. The first phase of the development would include a fast-food restaurant, gas station/mini-market/car

> wash, and drive-thru coffee kiosk. The jobs generated by these uses would typically be part-time jobs, but would include some full-time jobs. The future development of Phase Two would most likely include more retail-type uses. The exact number of jobs created is not currently available, but it is certain that new jobs would be available due to development of this site.

c) The development proposed for the northwest corner of North Highway 59 and Santa Fe Drive would be required to extend utility services across the full length of the project frontage as development occurs.

Traffic/Circulation

The proposed development at the northwest corner includes two driveways on Santa Fe Drive and one on Highway 59. A traffic analysis was prepared by Ken Anderson and Associates (KDA) which analyzed the traffic generated by the proposed uses and the proposed access to the site. The traffic analysis is available at Attachment L of the Initial Study found at Attachment 7. Caltrans reviewed the traffic analysis and is in agreement with the analysis and proposed mitigation measures.

The eastern driveway along Santa Fe Drive (serving Parcel One) was originally proposed to allow right-in/right-out movements. However, based on comments received through the Environmental Review process, it was determined this driveway should be limited to be an entrance-only access or a continuous auxiliary acceleration-deceleration lane would be required between the eastern and western driveways on Santa Fe Drive (refer to Mitigation Measure TRA-1 at Attachment O of the Initial Study found at Attachment 7). Additionally, a two-way left-turn (TWLT) lane would be required east of the western access to help improve the Level of Service by accommodating two-step left turns (Mitigation Measure TRA-1). A traffic signal may be required at the western driveway in the future if it's determined to be needed by the City Engineer based on warrants associated with preventable accidents. The cost of the traffic signal would be the responsibility of the owner/developer (Mitigation Measure TRA-1).

The driveway on Highway 59 would allow right-in/right-out turning movements. Mitigation Measure TRA-1a requires the left-turn lane on Highway 59 be lengthened to accommodate the additional traffic from the site. Caltrans reviewed the project and is in agreement with the proposed design and mitigation measures.

Other traffic-related mitigation measures include the following (Mitigation Measure TRA-1b):

- Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and,
- Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and,
- Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound and right turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes.

Public Improvements/City Services

Streets/Sidewalks/Curb/Gutter

Santa Fe Drive and North Highway 59 shall be widened to the full width along the north side of Santa Fe Drive and the west side of Highway 59 as part of the development of the retail center. All public improvements shall be installed in this area including, but not limited to, sidewalk, curb, gutter, street lights, and street trees [Condition #13 of Planning Commission Resolution #3095 (all conditions of approval are also included in the Pre-Annexation Development Agreement)]. The developer shall work with Caltrans and obtain all necessary permits for all work done within the state right of way (Condition #14 of Planning Commission Resolution #3095).

Sewer/Water

The City's current water and wastewater system is capable of handling the annexation area and future development of the proposed project at the northwest corner of North Highway 59 and Santa Fe Drive. There is an existing sewer line in Olive Avenue. The project would be required to extend the main line to their site and across the entire frontage of their property (approximately 1,000 feet) as development occurs. A sewer line also exists in Highway 59, south of Olive Avenue, that would serve the existing development in that area.

There is a water line in North Highway 59 which extends along the property frontage within the entire annexation area. This water line would serve both the existing development and future development.

Storm Drainage

Any future development within the annexation area would be required to provide on-site storm drainage facilities that would connect to the City's storm drain system (Condition #18 of Planning Commission Resolution #3095). Details regarding this system would be addressed prior to issuance of any building permits for development. Prior to the issuance of a building permit for this project, the applicant would be required to demonstrate to the City that proposed storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City's Storm Drainage Master Plan and the Post Construction Standards for the City's Phase II MS4 permit (Mitigation Measure HYD-5 and Condition #15 of Planning Commission Resolution #3095).

Police and Fire Protection

The annexation area is located within the City's Police and Fire emergency response times. All new construction within the annexation area would be required to annex into the City's Community Facilities District (CFD) for services which helps cover the cost of Police and Fire response. In addition, all new development would be required to pay the City's Public Facilities Impact Fees (PFIF) to help fund future Police and Fire stations.

Parks and Recreation

The existing use and proposed uses within the annexation area are all commercial or industrial in nature. These uses would not produce a need for additional parks and recreation facilities.

However, a portion of the PFIF fees paid go towards the development of new parks within the City.

Neighborhood Impact

Public hearing notices were mailed to all property owners within 300 feet of the annexation area. To date, no one has expressed any concerns with the proposed annexation or subsequent development.

Timeliness of Annexation

This annexation would be the first since the Mather Road Annexation in 2009. In 2016, the City and County reached an agreement for a new Revenue Sharing Agreement which paved the way for new annexations.

Pre-Annexation Development Agreement

Section 20.86.150 of the Zoning Ordinance requires a property owner to enter into a Pre-Annexation Development Agreement prior to annexation. This agreement shall not become operative unless annexation proceedings are completed by the Local Agency Formation Commission (LAFCO). The Pre-Annexation Development Agreement (Attachment 11) has been signed by the property owner on the northwest corner where future development would occur. Because the southwest corner is already developed, a Pre-annexation Development Agreement is not required. The Pre-annexation Development Agreement binds the owner and her successors to certain conditions and requirements related to the development of the land.

Environmental Clearance

The Planning staff has conducted an environmental review (Initial Study #15-36) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Draft Mitigated Negative Declaration (i.e., no significant effects in this case because of the mitigation measures and/or modifications described in Initial Study #15-36 is being recommended (Attachment 7). The Initial Study was available for review prior to the Planning Commission meeting on June 6, 2018. During that time, comments were received from the San Joaquin Valley Air Pollution Control District (SJVAPCD), the Merced County Economic and Community Development Department, and Merced County LAFCo. A response to their comments and an errata sheet of changes made to the Initial Study are found at Attachments P and Q of the Initial Study found at Attachment 7.

Planning Commission

The Planning Commission held a duly noticed public hearing on this matter on June 6, 2018. At the meeting, the project proponent spoke in favor of the project and no one spoke in opposition. The Planning Commission voted 5 ayes, 1 no (1 vacancy) to recommend approval of this project. Planning Commission Resolution #3095 may be found at Attachment 8. The Planning Commission Staff Report is available at Attachment 9 and a minutes excerpt from the Planning Commission meeting is available at Attachment 10.

City Council Action

The Planning Commission and Planning Staff recommend approval of Environmental Review #15-36, an application to LAFCo regarding Annexation and Pre-Zoning Applications #15-01, and General Plan Amendment #15-04. In order for the Council to approve these items, a motion should be made to adopt the Resolutions at Attachments 12 and 13 and introduce the Ordinances at Attachments 14 and 15.

IMPACT ON CITY RESOURCES

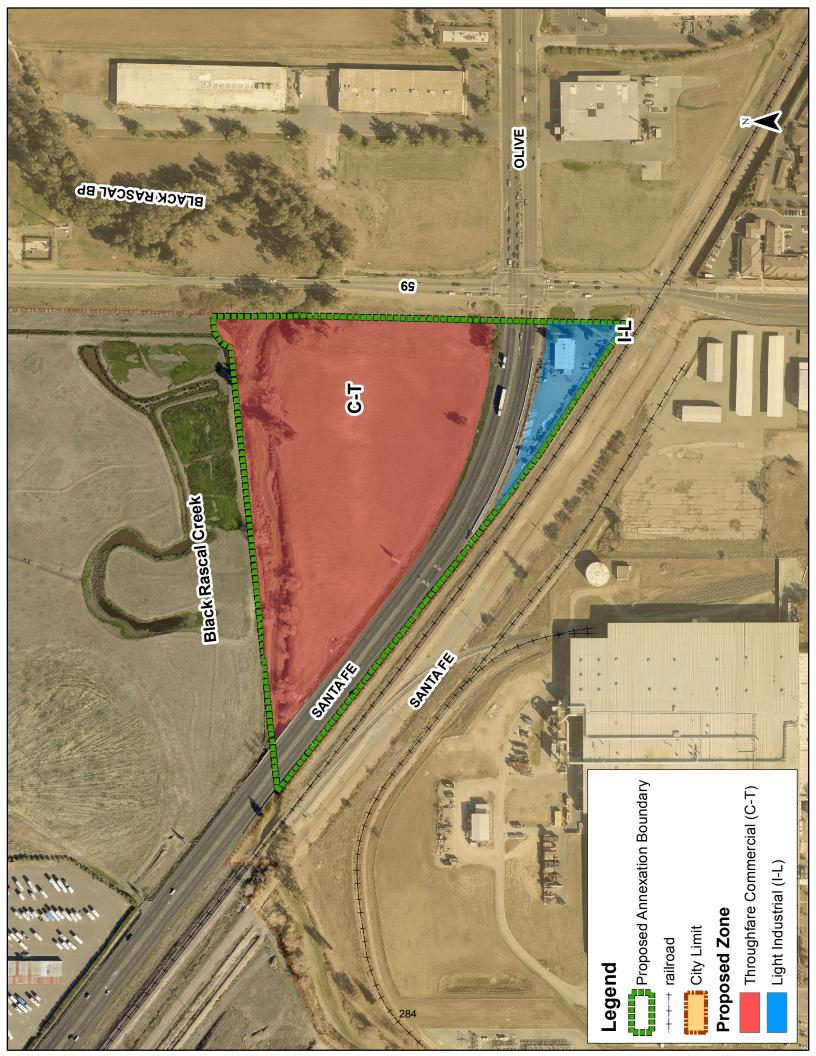
Any new development within the annexation area would be required to annex into the City's Community Facilities District (CFD) for Services to help cover the costs of Police and Fire protection, landscape maintenance, storm drain maintenance, and the costs for street lights. Additionally, all new construction pays impact fees as part of the City's Public Facilities Financing Plan, which helps pay for Police and Fire stations, parks, streets, bridges, and traffic signals.

The southwest corner would not be paying any fees at this time since they are not proposing any development.

The annexation of land into the City would increase the demand for City services. However, this area is not proposed for residential development, so the impact to sewer and water facilities would not be significant. The biggest impact would be to the Police and Fire Departments due to the increase in coverage area. The northwest corner would be contributing to these costs as development occurs. It is unlikely the southwest corner would develop any further in the near future, so there would be no cost recovery for services to this portion of the annexation area.

ATTACHMENTS

- 1. Location Map
- 2. Tentative Map
- 3. Site Plan
- 4. Zoning Table Commercial Uses
- 5. Zoning Table Industrial Uses
- 6. Flood Zone
- 7. Initial Study
- 8. Planning Commission Resolution #3095
- 9. Planning Commission Staff Report
- 10. Planning Commission Minutes Excerpt
- 11. Pre-Annexation Development Agreement
- 12. Draft Resolution Approving Applications
- 13. Draft Resolution to LAFCo
- 14. Draft Ordinance amending Zoning Map
- 15. Draft Ordinance approving Pre-Annexation Development Agreement



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Chapter 20.10 - COMMERCIAL ZONING DISTRICTS

Sections:

20.10.010 Purpose of the Commercial Zoning Districts

20.10.020 Land Use Regulations for Commercial Zoning Districts

20.10.030 Development Standards and Guidelines for Commercial Zoning Districts

20.10.010 Purpose of the Commercial Zoning Districts

- **A. Neighborhood Commercial (C-N).** The C-N zoning district provides areas for shopping centers and other commercial uses that serve the day-to-day needs of residential neighborhoods. The C-N districts shall have a minimum area of three acres and shall be located only where analysis of the residential population demonstrates that the facilities are justified.
- **B.** Shopping Center Commercial (C-SC). The C-SC zoning district provides areas for grocery stores, supermarkets, and other retail establishments selling groceries to serve local residents as well as the larger regional market. The C-SC districts shall have a minimum area of five acres.
- C. Regional/Central Commercial (C-C). The C-C zoning district provides areas for a diversity of commercial and residential land uses in the central business district and regional centers. These uses help to support a vibrant retail destination, provide jobs for residents, and accommodate commercial and service uses to meet the needs of community and regional businesses and residents.
- D. Office Commercial (C-O). The C-O zoning district provides a location for a broad range of office uses including professional offices, business offices, medical offices, and regional or "back" offices. The C-O zoning district can also accommodate limited "accessory" restaurant, retail, and service uses that cater to the needs of on-site employees and visitors.
- **E.** Thoroughfare Commercial (C-T). The C-T zoning district provides areas for auto-oriented commercial uses that accommodate the needs of people traveling on highways and local motorists. The C-T zoning district also accommodates large recreational facilities and heavy commercial uses that benefit from proximity to the highway.
- **F. General Commercial (C-G).** The C-G zoning district provides areas for heavy commercial and light industrial uses that may impact neighboring uses and often require large parcels and benefit from separation from retail uses. The C-G districts are to be established in areas of four acres or larger.
- **G. Business Park (B-P).** The B-P zoning district provides a location for employment-intensive uses within an attractive campus-like setting. The B-P zoning district shall primarily allow "back" offices, research and development businesses but also limited commercial retail uses to serve employees in the area. The B-P zoning district shall have a minimum area of five acres.

20.10.020 Land Use Regulations for Commercial Zoning Districts

A. Permitted Uses. Table 20.10-1 identifies land uses permitted in commercial zoning districts.

 Table 20.10-1
 Permitted Land Uses in the Commercial Zoning Districts

Кеу	Zoning District [1]							
P Permitted Use M Minor Use Permit Required SP Site Plan Review Permit Required C Conditional Use Permit Required								Additional
X Use Not Allowed	C-O	C-N	C-C	C-SC	C-T	C-G	В-Р	Regulations
RESIDENTIAL USES								
Group/Transitional/Supportive Housing	Х	Х	P [3]	Х	Х	Х	Х	
Live/Work Units	С	С	P [2]	Х	Х	Х	X	Sec. 20.44.080
Multiple-Family Dwellings	С	С	Р	X	X	X	X	
Residential Care Facilities, Small (6 or Less)	Х	Х	P [3]	Х	Х	Х	Х	
Residential Care Facilities, Large (More than 6 residents)	х	x	P [3]	х	х	х	х	
Single-Room Occupancy	X	Х	P [3]	Х	Х	Х	X	Sec. 20.44.120
COMMUNITY USES								
Community Assembly	С	С	С	Х	С	С	С	
Community Garden	SP	SP	SP	Х	Х	SP	Х	
Colleges and Trade Schools	С	С	С	Х	Х	С	С	
Convalescent or Nursing Homes	С	С	С	Х	Х	Х	Х	
Cultural Institutions	С	С	С	Х	С	С	С	
Day Care Centers (Children & Adults)	М	М	М	Х	Х	Х	SP	
Emergency Shelters	Х	Х	С	Х	С	Р	Х	Sec.20.44.150
Government Offices	Р	Р	Р	Х	С	С	С	
Hospitals and Surgery Centers	С	С	С	Х	Х	Х	С	
Instructional Services	Р	Р	Р	Х	Х	Х	SP	
Medical Offices and Clinics	Р	Р	Р	Х	Х	Х	С	
Parks and Recreational Facilities	С	С	С	Х	Х	Х	С	
Public Safety Facilities	SP	SP	Р	С	SP	SP	SP	
Rehabilitation Centers	Р	P [6]	P[10]	Х	Х	С	С	
Social Assistance Services	С	С	С	Х	SP	Р	Х	

Кеу	Zoning District [1]							
P Permitted Use M Minor Use Permit Required SP Site Plan Review Permit Required C Conditional Use Permit Required X Use Not Allowed	c-o	C-N	C-C	C-SC	С-Т	C-G	В-Р	Additional Regulations
COMMERCIAL USES								
Alcoholic Beverage Sales [7]	х	P [7][8]	P [7]	C [7][8]	P [7]	P [7]	SP [7]	Sec.20.44.010
Bail Bond Businesses	С	Х	C [10]	Х	С	С	С	
Bars and Nightclubs	Х	С	С	Х	С	С	С	
Banks, Retail	Р	Р	Р	P [9]	SP	SP	SP	
Bed and Breakfast	X	Х	С	Х	С	С	X	Sec.20.44.030
Building Supplies/Home Improvement	Х	Х	С	Х	SP	Р	SP	
Business Support Services	Х	С	M	Х	Р	Р	SP	
Cardrooms [5]	Х	Х	C [5]	Х	C [5]	C [5]	X	Chapter 9.08
Cemeteries and Mausoleums	Х	Х	С	Х	С	Р	Х	
Check Cashing/Payday Loan Establishments	С	Х	C [10]	Х	С	С	С	Sec.20.44.040
Commercial Recreation, Indoor (Except Below)	Х	SP	SP	Х	Р	SP	С	
Multi-Screen (6 or More) Movie Theaters	Х	С	Р	Х	С	Х	С	
Commercial Recreation, Outdoor	Х	Х	Х	Х	Р	С	С	
Drive-Through and Drive-Up Sales	С	С	SP	Х	Р	Р	SP	
Equipment Sales and Rental	Х	Х	Х	Х	Р	Р	SP	
Farmer's Market	С	SP	SP	SP	SP	SP	SP	Sec.20.50.030B
Flea Market	Х	Х	Х	Х	С	С	С	
Funeral Parlors and Mortuaries	С	С	С	Х	С	Р	С	
Gas and Service Stations/Car Washes	Х	С	SP	C [9]	Р	Р	SP	Sec.20.44.070
Hotels and Motels	Х	Х	Р	Х	Р	С	С	
Hookah Lounges	Х	С	С	Х	С	С	С	
Kennels	Х	Х	Х	Х	С	Р	С	
Maintenance and Repair Services	Х	Х	Х	Х	Р	Р	SP	
Massage Establishments	C [16]	C [16]	C [16]	Х	C [16]	C [16]	Х	Chapter 5.44
Massage Therapy—Sole Practitioner	P[17]	P[17]	P[17]	Х	C [16]	C [16]	Х	Chapter 5.44
Medical Marijuana Dispensaries	C [19]	Х	Х	Х	Х	Х	Х	Sec. 20.44.170
Mobile Food Vendors	С	С	C [10]	Х	SP [11]	SP	С	Sec. 5.54 & 20.44.020
Mobile Home Sales	Х	Х	Х	Х	Р	Р	SP	
Office, Professional	Р	Р	Р	C [9]	SP	SP	SP	

Кеу	Zoning District [1]							
P Permitted Use M Minor Use Permit Required SP Site Plan Review Permit Required C Conditional Use Permit Required X Use Not Allowed	C-O	C-N	C-C	C-SC	С-Т	C-G	B-P	Additional Regulations
COMMERCIAL USES (Continued)	C-0	C-IV	C-C	C-3C	C-I	C-0	D-F	Regulations
Pawn Shops	Х	х	C [10]	х	х	Р	х	
Personal Services	SP	Р	P	P [9]	SP	SP	SP [12]	
Retail, General	SP[12]	P	P	P [9]	P	SP	SP	
Restaurants	C [13]	P [8]	Р	C [9]	Р	M	SP [12] [13]	
Tattoo Parlors	Х	SP	М	Х	М	М	SP	
Tobacco Retailers [18]	Х	P [18]	P [18]	P [18]	P [18]	P [18]	SP[18]	Sec.20.44.160
Vehicle Parts and Accessories Sales	Х	Р	Р	Х	Р	Р	SP	
Vehicle Rentals	Х	Х	М	Х	Р	Р	SP	
Vehicle Repair and Maintenance, Major	Х	Х	Х	Х	С	Р	С	
Vehicle Repair and Maintenance, Minor	Х	SP	Р	Х	Р	Р	С	
Vehicle Sales	х	х	P [10] [14]	х	Р	Р	С	
INDUSTRIAL USES								
Manufacturing and Processing, General	Х	Х	х	х	х	М	С	
Manufacturing and Processing, Light	Х	Х	Х	Х	Х	Р	SP	
Research and Development	С	Х	С	Х	SP	SP	Р	
Warehousing, Wholesaling, and Distribution	Х	Х	SP[15]	Х	Р	Р	SP	
Wrecking & Salvage Establishments	Х	Х	Х	Х	С	С	Х	Sec.20.44.140
TRANSPORTATION, COMMUNICATION, AND	UTILITY	/ USES						
Airports	х	х	х	х	С	С	С	
Freight Terminals	Х	Х	Х	Х	С	С	С	
Heliports	С	Х	С	Х	С	С	С	
Parking Facilities	Р	Р	Р	P[9]	Р	Р	Р	
Public/Mini Storage	Х	Х	Х	Х	М	М	SP	
Recycling Collection Facilities								Sec.20.44.090
Reverse Vending Machines	Р	Р	Р	M[9]	Р	Р	P	
Small Collection Facilities	SP	SP	SP	SP[9]	SP	SP	SP	
Large Collection Facilities	Х	Х	X	Х	С	С	С	
Utilities, Major	С	С	С	Х	С	С	С	
Utilities, Minor	Р	Р	Р	P[9]	Р	P	P	
Wireless Communications Facilities				See	Chapte	er 20.58	3	

Notes:

- [1] A Site Plan Review Permit may be required per Chapter 20.32 (Interface Regulations) regardless of the uses shown in Table 20.10-1.
- [2] Residential use on the ground floor is prohibited unless it is located on the back of the property where it is not visible or approved with a Conditional Use Permit.
- [3] Prohibited as a single use. Permitted as part of a residential mixed-use project.
- [4] Use shall not exceed 20,000 square feet.
- [5] 24 hour operations limited to C-T and C-C zones per Chapter 9.08 (Gaming).
- [6] Rehabilitation centers for drug, methadone, and alcohol are prohibited.
- [7] A Conditional Use Permit is required for establishments smaller than 20,000 square feet.
- [8] A Conditional Use Permit is required for alcoholic beverage sales for on-site consumption.
- [9] Permitted only as part of a shopping center or other retail establishment with a minimum of 5,000 square feet of floor area devoted to the sale of groceries.
- [10] Prohibited in the City Center area between 19th and 16th Streets and O Street and Martin Luther King, Jr. Way, including properties fronting on either side of each of the above streets, except vehicle sales showrooms can be allowed.
- [11] Includes refreshment stands.
- [12] Permitted only as an ancillary use to serve employees, not to occupy more than 5,000 square feet.
- [13] Conditional Use Permit required unless the use is ancillary to a principal permitted use. For restaurants, Conditional Use Permit is required unless the uses are conducted in and entered from within the building with no outside advertising.
- [14] A Site Plan Review Permit is required for used vehicle sales.
- [15] Temporary warehousing and storage only is allowed per the requirements of Section 20.10.030(D).
- [16] Provided that a massage establishment permit has not been revoked at that location within 12 months of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44.
- [17] Must have valid certificate from State of California as a massage therapist or massage practitioner pursuant to the Massage Therapy Act (Business and Professions Code Section 4600 et seq.).
- [18] Prohibited within 1,000 feet of schools and other uses per Sec. 20.44.160, unless building over 20,000 square feet.
- [19] Limited to no more than 4 dispensaries. Prohibited within 600 feet of schools; 500 feet of public parks, playgrounds, and sports fields; and 500 feet of youth centers, City-owned and operated recreational center, or public library. See Section 20.44.170 for details.

20.10.030 Development Standards and Guidelines for Commercial Zoning Districts

- **A. General Standards.** Table 20.10-2 identifies development standards that apply to all parcels and structures located in commercial zoning districts. See Figure 20.10-1.
- B. Outdoor Operation of Uses.
 - The outdoor operation of a land use in the C-C and C-N zoning districts shall require approval of a Site Plan Review Permit. Outdoor dining in accordance

Chapter 20.12 - INDUSTRIAL ZONING DISTRICTS

Sections:	
20.12.010	Purpose of the Industrial Zoning Districts
20.12.020	Land Use Regulations for Industrial Zoning Districts
20.12.030	Development Standards for Industrial Zoning Districts

20.12.010 Purpose of the Industrial Zoning Districts

- **A. Light Industrial (I-L).** The I-L zoning district provides areas for manufacturing, wholesale, and storage activities that meet City standards to ensure compatibility with surrounding areas and that maintain and strengthen the economic base of the City. I-L districts shall have a minimum size of 5 acres.
- **B.** Heavy Industrial (I-H). The I-H zoning district provides areas for a full range of industrial land uses, including operations that necessitate the storage of hazardous or unsightly materials, and encourages sound industrial development by providing and protecting an environment exclusively to insure the protection of surrounding areas. I-H districts shall have a minimum size of 10 acres.

20.12.020 Land Use Regulations for Industrial Zoning Districts

A. Permitted Uses. Table 20.12-1 identifies land uses permitted in industrial zoning districts.

 TABLE 20.12-1
 PERMITTED LAND USES IN THE INDUSTRIAL ZONING DISTRICTS

Кеу	Zoning C	District ^[1]	
P Permitted Use			
M Minor Use Permit Required			
SP Site Plan Review Permit Required			
C Conditional Use Permit Required			
X Use Not Allowed	I-L	I-H	Additional Regulations
RESIDENTIAL USES			
Caretaker's Home	SP	Х	
COMMUNITY USES			
Colleges and Trade Schools	С	Х	
Instructional Services	C [2]	Х	
Public Safety Facilities	SP	С	

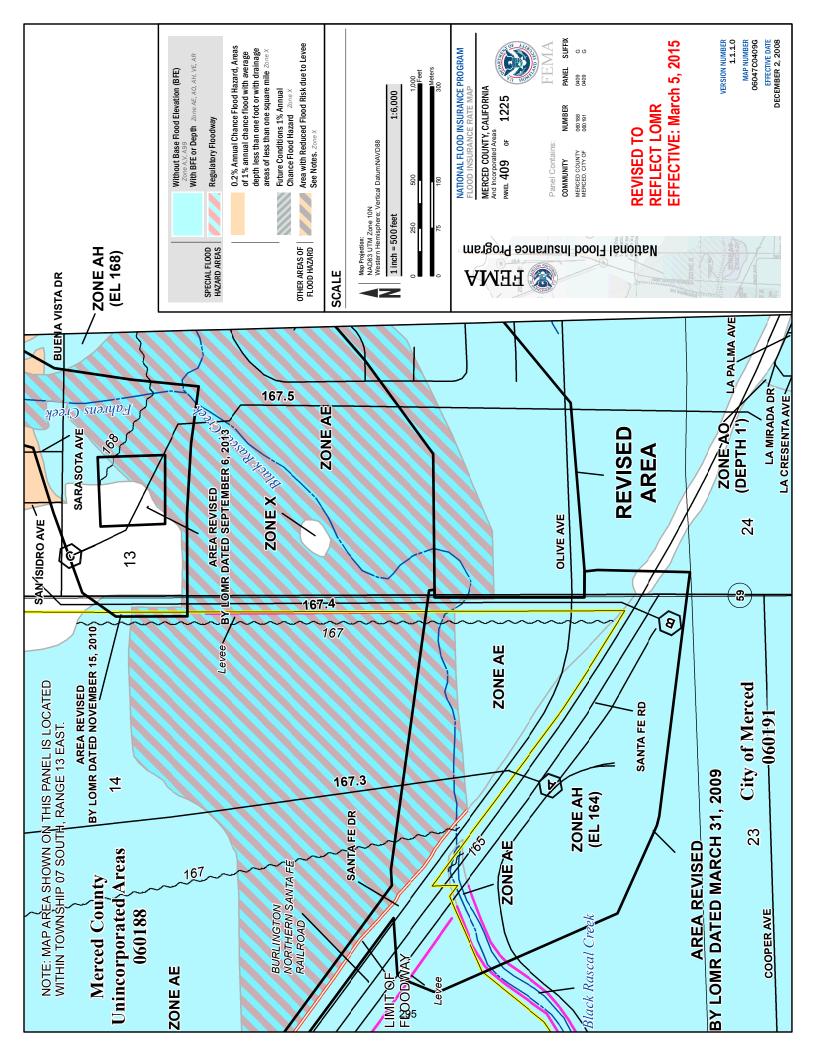
Кеу	Zoning D	District ^[1]			
P Permitted Use M Minor Use Permit Required SP Site Plan Review Permit Required C Conditional Use Permit Required X Use Not Allowed	I-L	I-H	Additional Regulations		
COMMERCIAL USES		_			
Adult Entertainment Businesses	SP	SP	Chapters 5.58 and 20.60		
Building Supplies/Home Improvement Stores	SP	Х			
Business Support Services	SP	Х			
Commercial Cannabis Businesses	Refer t	o Table 20.44	-1 in Section 20.44.170		
Equipment Sales and Rental	SP	Х			
Gas and Service Stations/Car Washes	SP [5]	SP [5]	Section 20.44.070		
Horticultural Nurseries, Retail	С	Х			
Horticultural Nurseries, Wholesale	SP	Х			
Mobile Food Vendors	С	С	Chapter 5.54 & 20.44.020		
Restaurants	C [4]	C [4]			
Retail (Products Manufactured On-site Only)	SP [3]	SP [3]			
Vehicle Repair and Maintenance	SP [5]	SP [5]			
INDUSTRIAL USES		_			
Construction and Material Yards	SP	SP			
Manufacturing and Processing, Light	SP	SP			
Manufacturing and Processing, General	SP	SP			
Manufacturing and Processing, Heavy	Х	SP [6]	Section 20.12.020.B		
Research and Development	SP	SP			
Wrecking and Salvage Establishments	Х	С	Section 20.44.140		
TRANSPORTATION, COMMUNICATION, AND UTILITY U	SES				
Freight Terminals	х	SP			
Public/Mini Storage	SP	Х			
Recycling Collection Facilities, Small	SP	Х	Section 20.44.090		
Recycling Collection Facilities, Large	SP	SP	Section 20.44.090		
Recycling Processing Facilities	SP	SP	Section 20.44.090		
Utilities, Major	С	SP			
Utilities, Minor	SP	SP			
Warehousing, Wholesaling and Distribution	SP	SP			
Wireless Communications Facilities See Chapter 20.58					

Notes:

- [1] A Site Plan Review Permit may be required per Chapter 20.32 (Interface Regulations) regardless of the uses shown in Table 20.12-1.
- [2] Limited to fitness, gymnastics, and other similar recreational sports and health facilities.
- [3] Permitted only as an ancillary showroom use for goods manufactured onsite, not to occupy more than 10 percent of the total building floor area unless a Site Plan Review Permit is obtained for additional floor area.
- [4] May be permitted only as an ancillary use to serve employees, not to occupy more than 2,500 square feet with no outside advertising, unless a Conditional Use Permit is obtained.
- [5] Limited to fleet operations only.
- [6] All manufacturing of materials listed in the Section 20.12.020.B is prohibited unless the Planning Commission determines otherwise through a Conditional Use Permit.
- B. Prohibited Uses. The manufacturing of the following materials are prohibited unless the Planning Commission determines otherwise through Conditional Use Permit process.



- 1. Asphalt, cement, charcoal, and fuel briquettes.
- 2. Aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black and bone black, creosote, hydrogen and oxygen, industrial alcohol, nitrates of an explosive nature, potash, pyroxylin, rayon yarn, and hydrochloric, nitric phosphoric, picric, and sulphuric acids.
- 3. Coal, coke, and tar products, including use in other manufacturing; explosives, fertilizers, gelatin, animal glue, and size.
- 4. Turpentine, matches, and other than water-based paint.
- Rubber and soaps, including fat rendering.
- Flour mill.
- 7. Processing of nitrating of cotton or other materials; magnesium foundry; reduction, refining, smelting and alloying of metal or metal ores; refining petroleum products, such as gasoline, kerosene, naphtha, lubricating oil, distillation of wood or bones; storage, curing or tanning of raw, green or salted hides or skins.
- 8. Stockyards or slaughterhouses, except for poultry, animal feed or sales yard, fertilizer yard; slag piles.
- Storage of fireworks or explosives, except where incidental to a permitted use.
- 10. Any other use which is determined by the Planning Commission to be of the same general character as the above uses.



INITIAL STUDY #15-36

Annexation and Pre-Zone Application #15-01 General Plan Amendment #15-04

NORTHWEST AND SOUTHWEST CORNERS OF NORTH HIGHWAY 59 & SANTA FE DRIVE

Assessor's Parcel Numbers: 057-200-067; -029; & -042



Northwest Corner of North Highway 59 & Santa Fe

Southwest Corner of North Highway 59 & Santa Fe



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CITY OF MERCED PLANNING & PERMITTING DIVISION

TYPE OF PROPOSAL: Annexation and Pre-Zone Application #15-01, General Plan

Amendment #15-04

INITIAL STUDY: #15-36

DATE RECEIVED: April 21, 2016 (date application determined to be complete)

DATE REVISED: August 22, 2018 (Originally prepared May 11, 2018)

LOCATION: City of Merced

ASSESSOR'S PARCEL NUMBERS: 057-200-067, 057-200-029, and 057-200-042

(SEE ATTACHED PUBLIC HEARING NOTICE AND MAP AT ATTACHMENTS M AND N.)

Please forward any written comments by June 6, 2018 to:

Julie Nelson, Associate Planner

City of Merced Planning & Permitting Division

678 West 18th Street Merced, CA 95340 209-385-6858

nelsonj@cityofmerced.org

Applicant Contact Information:

Applicant Owner

Norcal Cajun Foods, Inc.

Louann Bianchi
2901 Meridian Park Blvd, Ste. G

Concord, CA 94520

Lahaina, HI 96761-1969

Project Description

The proposed annexation area consists of three parcels containing approximately 8.83 acres of land. Approximately 7.83 acres is located at the northwest corner of North Highway 59 and Santa Fe Drive and the remaining 1.0 acre is located at the southwest corner of the intersection (Attachment A). The annexation area is bounded by Black Rascal Creek to the north, the Burlington Northern Santa Fe (BNSF) Railroad to the south, and North Highway 59 to the east. Vacant county land is located to the west of the annexation area. The annexation area is divided by Santa Fe Drive splitting the northern portion of the annexation area (7.83 acres) from the southern portion (1.0 acre). The property located at the southwest corner of North Highway 59 and Santa Fe Drive (3.65 N. Hwy 59) is developed with a wholesale/retail business (Horizon). The 7.83 acres of land at the northwest corner of North Highway 59 and Santa Fe is currently vacant. The vacant land is comprised of two separate parcels – Assessor's Parcel Number (APN): 057-200-067 contains 7.4 acres and APN: 057-200-029 contains 0.43 acres.

The developer for the vacant property is proposing to subdivide the 7.4 acres into three separate parcels with construction of the development being done in two phases (refer to the Tentative Map at Attachment B). Phase One of the development would be on Parcel 1 (1.91 acres) and Parcel 4

(0.61 acres). The development on Parcel 1 would consist of a 3,764-square-foot convenience market (AM/PM), a gas station with 8 pumps (16 fueling positions), a car wash, and a 3,462-square-foot fast food restaurant with 110 seats and a drive-through (refer to the Site Plan at Attachment C). Parcel 4 would be developed with a drive-thru coffee shop/kiosk.

Phase Two would include a 2,695-square-foot fast-food restaurant at the western edge of the site on Parcel 2. The remainder of the site would be for the future development of commercial space totaling approximately 32,000 square feet.

Uses allowed within the remainder of the development would be consistent with the Thoroughfare Commercial (C-T) zone and could include:

- Retail, General (i.e., drug stores, general merchandise stores, pet stores, department stores, etc.)
- Business Support Services
- Indoor Commercial Recreation, except multi-screen (6 or more) movie theaters
- Vehicle Sales
- Warehousing, Wholesaling, and Distribution

For a full list of permitted uses as well as conditional uses and uses allowed with Site Plan Review, refer to the Table at Attachment D.

No development is planned for 0.43-acre parcel at the northeast corner of the site. This area would be used for storm drain retention for the site once it's developed.

Two driveways are proposed for Santa Fe Drive. The driveway serving Parcel One would be a right-in/right-out driveway only. This driveway would be approximately 170 feet west of the intersection of North Highway 59 and Santa Fe Drive. A second full access driveway is proposed approximately 500 feet west of the intersection. An additional right-in/right-out driveway would be provided approximately 250 feet north of the intersection on Highway 59.

This Initial Study will analyze both Phase One and Phase Two development as well as impacts to the existing developed parcel at the southwest corner North Highway 59 and Santa Fe Drive.

The existing use at the southwest corner of North Highway 59 and Santa Fe Drive will remain unchanged. The pre-zoning designation for the site is Light Industrial (I-L) which is consistent with the current General Plan designation of Industrial (IL). For a full listing of uses allowed within the I-L zone, please refer to the table at Attachment E.

I. <u>Initial Findings</u>

- A. The proposal is a project as defined by CEQA Guidelines Section 15378.
- B. The project is not a ministerial or emergency project as defined under CEQA Guidelines (Sections 15369 and 15369).
- C. The project is therefore discretionary and subject to CEQA (Section 15357).
- D. The project is not Categorically Exempt.
- E. The project is not Statutorily Exempt.
- F. Therefore, an Environmental Checklist has been required and filed.

II. Checklist Findings

- A. An on-site inspection was made by this reviewer on January 3, 2017, and on April 9, 2018.
- B. The checklist was prepared on January 3, 2018.
- C. The *Merced Vision 2030 General Plan* and its associated EIR (SCH# 2008071069) were certified in January 2012. The document comprehensively examined the potential environmental impacts that may occur as a result of build-out of the 28,576-acre Merced SUDP/SOI. For those significant environmental impacts (Loss of Agricultural Soils and Air Quality) for which no mitigation measures were available, the City adopted a Statement of Overriding Considerations (City Council Resolution #2011-63). This document herein incorporates by reference the *Merced Vision 2030 General Plan*, the General Plan Program EIR (SCH# 2008071069), and Resolution #2011-63.

As a subsequent development project within the SUDP/SOI, many potential environmental effects of the Project have been previously considered at the program level and addressed within the General Plan and associated EIR. (Copies of the General Plan and its EIR are available for review at the City of Merced Planning and Permitting Division, 678 West 18th Street, Merced, CA 95340.) As a second tier environmental document, Initial Study #15-36 plans to incorporate goals, policies, and implementing actions of the *Merced Vision 2030 General Plan*, along with mitigation measures from the General Plan EIR, as mitigation for potential impacts of the Project.

Project-level environmental impacts and mitigation measures (if applicable) have been identified through site-specific review by City staff. This study also utilizes existing technical information contained in prior documents and incorporates this information into this study.

Project-level environmental impacts have been identified through site-specific review by City staff. This study also utilizes existing technical information contained in prior documents and incorporates this information into this study.

III. Environmental Impacts:

Will the proposed project result in significant impacts in any of the listed categories? Significant impacts are those which are substantial, or potentially substantial, changes that may adversely affect the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant. (Section 15372, State CEQA Guidelines. Appendix G of the Guidelines contains examples of possible significant effects.)

A narrative description of all "potentially significant," "negative declaration: potentially significant unless mitigation incorporated," and "less than significant impact" answers are provided within this Initial Study.

The California Supreme Court has clarified CEQA practice to limit the evaluation of environmental effects only to the impact of a proposed project on the environment, and not the effects of the environment on a project. Thus, adverse effects from existing environmental hazards on a proposed new use would not be assessed for CEQA purposes, and no environmental conclusions would be reached. No mitigation could be required. The exception to this general rule would be if the construction or operation of the proposed project modified a condition on the project site or affecting the project site in a way that caused new or increased environmental effects offsite, or if implementation of the project exacerbated an existing condition for offsite uses.

This revision of CEQA practice affects the following issue areas in this Initial Study:

C. Air Quality

Question 4-Exposure to Substantial Pollutant Concentrations

F. Geology and Soils

Question 1.a-Earthquake Faults

Question 1.b-Seismic Ground Shaking

Question 1.c-Ground Failure/Liquefaction

Question 1.d-Landslides

Question 4-Expansive Soils

G. Hazards and Hazardous Materials

Question 5-Public Airport Hazards

Question 6-Private Airport Hazards

Question 8-Wildland Fire Hazards

H. Hydrology and Water Quality

Question 7-Housing in Floodplain

Question 8-Structures in Floodplain

Question 9-Exposure to Flood Risk

Question 10-Inundation by Seiche

K. Noise

Question 1-Expose Persons to Offsite Noise in Excess of Standards

Question 2-Expose Persons to Offsite Vibration

Question 5-Public Airport Noise

Question 6-Private Airport Noise

However, for many environmental hazards, local agencies such as the City of Merced impose requirements to avoid or reduce hazards. Similarly, local agencies have the ability to impose conditions of project approval to avoid or reduce hazardous conditions.

A. Aesthetics

SETTING AND DESCRIPTION

This project involves the annexation of approximately 8.83 acres of land, the development of approximately 1.91 acres of land, and the development of a portion of the 5.49 acres of land. The area for development is a vacant lot at the northwest corner of North Highway 59 and Santa Fe Drive. The site is bordered on the north by Black Rascal Creek. Beyond the creek is vacant land. To the east of the site, across North Highway 59, is also vacant land and the Rascal Creek Bike Path. To the south, across Santa Fe Drive, is developed land with an industrial/wholesale-type use. To the west, also across Santa Fe Drive, is additional vacant land and Black Rascal Creek. Refer to the aerial photograph at Attachment A. Because the property on the north side of Santa Fe Drive is currently vacant, there is no light or glare generated from the site. The developed parcel on the south side of Santa Fe Drive currently has a building and generates light for security at nighttime.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
A.	Aesthetics. Will the project:				
1)	Have a substantial adverse effect on a scenic vista?				✓
2)	Substantially damage scenic resources including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				√
3)	Substantially degrade the existing visual character or quality of the site and its surrounding?			√	
4)	Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?		✓		

1) No Impact

There are no scenic vistas in this area. Although vacant land and Black Rascal Creek abut the area proposed for development, there is developed land beyond that. This area is considered an urban area and does not have any scenic vistas.

2) No Impact

There are no scenic resources on this site.

3) Less Than Significant Impact

The annexation area at the southwest corner of North Highway 59 and Santa Fe Drive is currently developed. No changes are proposed for this area. The site at the northwest corner of North Highway 59 and Santa Fe is currently vacant. However, the proposed development would not degrade the visual character. It would create a development that is consistent with the surrounding development in the area and help eliminate an area that often becomes overgrown with weeds and vegetation and looks blighted.

4) Less Than Significant Impact with Mitigation

The development of the project would create new light and glare with the construction of the proposed buildings on the site. New exterior lighting would be installed on the proposed buildings and throughout the site as it develops for safety and security purposes. Parking lot lighting, lighting under the gas canopy, and lighting from signs would add to the amount of light generated from the site due to development. In order to prevent adverse impacts from these new sources of lighting, the following mitigation measures are required:

Mitigation Measure AES-4:

Lighting should be designed to provide ambiance, safety, and security without unnecessary spillover or glare onto adjacent properties.

The quality of light, level of light (measured in foot-candles) and the type of bulb or source should be carefully addressed. Lighting levels should not be so intense as to draw attention to the flow or glare of the project site. The lighting plan should incorporate current energy-efficient fixtures and technology.

Glare from any site lighting should be shielded from adjacent properties and directed at a specific object or target area. Exposed bulbs shall not be used.

Wall-mounted light fixtures shall not extend above the height of the wall to which the fixtures are mounted.

Blinking and flashing lights used to illuminate building facades or to outline buildings shall not be used.

When security lighting is necessary, it should be recessed, hooded and located to illuminate only the intended area. Off-site glare and light trespass is prohibited.

Pedestrian areas, sidewalks, parking lots, and building entrances shall be adequately lit to provide safety and security.

All exterior lighting fixtures shall be efficient in terms of design and energy use.

Mitigation Measure AES-4a:

The project shall comply with Mitigation Measure 3.1-4 required by the Mitigation and Reporting Program for the Merced Vision 2030 General Plan EIR.

B) Agriculture Resources

SETTING AND DESCRIPTION

Merced County is among the largest agriculture producing counties in California (ranked fifth), with a gross income of more than \$2.9 billion in 2012. The County's leading agriculture commodities include milk, chickens, almonds, cattle and calves, tomatoes, and sweet potatoes.

The portion of the annexation area north of Santa Fe Drive has been used for farmland in the past, but no crops have been grown here for at least the last 20 years.

Important Farmlands

The Farmland Mapping and Monitoring Program is a farmland classification system that is administered by the California Department of Conversation. The system classifies agricultural land according to its soil quality and irrigation status. The best quality agricultural land is called "Prime Farmland." Prime Farmland is land that has the best combination of physical and chemical characteristics for the production of crops.

Important Farmland is land characterized by one or more of the following characteristics: (1) presence of prime agricultural soils; (2) presence of soils of statewide agricultural importance; and (3) active agricultural lands.

According to the 2016 Important Farmland Map for Merced County the vacant portion of the annexation area is designated as "Vacant and Disturbed Land" and area that is currently developed on the south side of Santa Fe Drive is designated as "Urban and Built-Up Land" (refer to the map at Attachment F) There are no agricultural activities taking place within the annexation area. The area surrounding the annexation area to the north of the site is classified as Farmland of Local Importance, but is not currently being farmed. Land approximately ¼-mile north of the annexation area is currently planted with almonds. This is the closest agricultural use to the annexation area.

The property immediately adjacent to the annexation area to the north is zoned as Light Manufacturing according to the Merced County Zoning Map.

Williamson Act

in 2005, Merced County elected to participate in the State of California Williamson Act agricultural land preservation program. The purpose of the Act is to preserve agricultural and open space lands by discouraging premature and unnecessary conversion to urban uses. As of 2007, there were more than 450,000 acres of the County under Williamson Act contracts, but in 2009, the Merced County Board of Supervisors elected to suspend the Act when the State elected to end tax reimbursements to the County. The annexation area is not subject to a Williamson Act contract.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
B. <u>Agriculture Resources.</u> Will the project:				
1) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non - agriculture?				√
2) Conflict with existing zoning for agricultural use, or a Williamson Act contract?				√
3) Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?				√
4) Cause development of non-agricultural uses within 1,000 feet of agriculturally zoned property (Right-to-Farm)?				✓

1) No Impact

The annexation area is not listed as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency.

2) No Impact

The annexation area is not currently zoned for agriculture activities or part of a Williamson Act contract.

3) No Impact

The closest property to the site being used for agricultural purposes in approximately ¼-mile to the north. The development of the annexation area would not impact the existing environment or cause the conversion of Farmland to non-agriculture use. The area currently being farmed remains outside of the City Limits and is not viable for uses other than farmland uses.

4) No Impact

There are no properties within 1,000 feet of the annexation area that are zoned for agricultural uses.

C. Air Quality

SETTING AND DESCRIPTION

The San Joaquin Valley Air Pollution Control District (SJVAPCD) reviews development projects to assess the impact to air quality and to establish acceptable mitigation measures. While the action of the SJVAPCD is independent of City reviews and actions, their process allows the City to review proposed mitigation measures that could affect project design and operation. Any proposed changes are subject to approval by the City.

The City of Merced is located in the San Joaquin Valley Air Basin (SJVAB), which occupies the southern half of the Central Valley and is approximately 250 miles in length and, on average, 35 miles in width. The Coast Range, which has an average elevation of 3,000 feet, serves as the western border of the SJVAB. The San Emigdio Mountains, part of the Coast Range, and the Tehachapi Mountains, part of the Sierra Nevada, are both located to the south of the SJVAB. The Sierra Nevada extends in a northwesterly direction and forms the eastern boundary of the SJVAB. The SJVAB is basically flat with a downward gradient to the northwest.

The climate of the SJVAB is strongly influenced by the presence of these mountain ranges. The mountain ranges to the west and south induce winter storms from the Pacific to release precipitation on the western slopes, producing a partial rain shadow over the valley. A rain shadow is defined as the region on the leeward side of the mountain where precipitation is noticeably less because moisture in the air is removed in the form of clouds and precipitation on the windward side. In addition, the mountain ranges block the free circulation of air to the east, resulting in the entrapment of stable air in the valley for extended periods during the cooler months.

Winter in the SJVAB is characterized as mild and fairly humid, and the summer is hot, dry, and cloudless. During the summer, a Pacific high-pressure cell is centered over the northeastern Pacific Ocean, resulting in stable meteorological conditions and a steady northwesterly wind.

The following information is an excerpt from the Air Quality/Greenhouse Gas Report prepared by BaseCamp Environmental. The full report is available at Attachment G.

The SJVAPCD has jurisdiction over most air quality matters in the Air Basin. It is tasked with implementing programs and regulations required by the federal and California Clean Air Acts. Under their respective Clean Air Acts, both the federal government and the State of California have established ambient air quality standards for six criteria air pollutants: ozone, particulate matter, carbon monoxide, nitrogen dioxide, sulfur dioxide, and lead. California has four additional pollutants for which it has established standards. The table below shows the attainment status of the Air Basin relative to federal and State ambient air quality standards.

TABLE C-1 SAN JOAQUIN VALLEY AIR BASIN ATTAINMENT STATUS

	Designation/Classification				
Criteria Pollutant	Federal Primary Standards State Standard				
Ozone – One hour	No Federal Standard	Nonattainment/Severe			
Ozone – Eight hour	Nonattainment/Extreme	Nonattainment			
PM_{10}	Attainment	Nonattainment			
PM _{2.5}	PM _{2.5} Nonattainment				
Carbon Monoxide (CO)	Attainment/Unclassified	Attainment/Unclassified			

Criteria Pollutant	Federal Primary Standards	State Standard
Nitrogen Dioxide (NO _x)	Attainment/Unclassified	Attainment
Sulfur Dioxide (SO _x)	Attainment/Unclassified	Attainment
Lead	No Designation Classification	Attainment
Hydrogen Sulfide	No Federal Standard	Unclassified
Sulfates	No Federal Standard	Attainment
Visibility Reducing Particles	No Federal Standard	Unclassified
Vinyl Chloride	No Federal Standard	Attainment

As shown in Table 2-1, the Air Basin is considered a nonattainment area for ozone under both State and federal 8-hour standards and under the State 1-hour standard, for particulate matter less than 10 micrometers in diameter (PM₁₀) under the State standard, and for particulate matter less than 2.5 micrometers in diameter (PM_{2.5}) under the federal standard. The Air Basin is in attainment of, or unclassified for, all other federal and State criteria pollutant standards.

Ozone is not directly produced by automobile fuel combustion; rather, it is a secondary pollutant that is formed from reactive organic gases (ROG) and nitrogen oxides (NO_x) in the presence of sunlight. The principal sources of ROG and NO_x (known as "ozone precursors") are the combustion of fuels and the evaporation of solvents, paints, and fuels. Ozone is a strong irritant that can cause constriction of the airways, forcing the respiratory system to work harder to provide oxygen. It also can lead to aggravated respiratory diseases and lung damage, and it can cause substantial damage to vegetation and to manmade products such as rubber and plastics. Applicable attainment plans of the SJVAPCD include the 2007 Ozone Plan and the 2013 Plan for the Revoked 1-Hour Ozone Standard for the Air Basin.

Particulate matter is a complex mixture of solids and liquids that may contain soot, smoke, metals, nitrates, sulfates, dust, water, and tire rubber. It can be directly emitted, or it can form in the atmosphere from reactions of gases such as NO_x. There are many sources of particulate matter emissions, including combustion, industrial and agricultural processes, grading and construction, and motor vehicle use. The size of the particles is directly linked to their potential for causing health problems, including respiratory, pulmonary, and cardiovascular diseases. PM_{2.5} poses the greatest health threat because it can get deep into the lungs and even enter the bloodstream. Applicable attainment plans of the SJVAPCD include the 2015 PM2.5 Plan for the 1997 federal PM_{2.5} standard, the 2012 PM2.5 Plan for the 2006 federal PM_{2.5} standard, the 2016 Moderate Area Plan for the 2012 federal PM_{2.5} standard, and the 2007 PM10 Maintenance Plan to maintain the Air Basin's attainment status of federal PM₁₀ standards.

Another criteria pollutant of concern is carbon monoxide (CO). CO is an odorless, colorless gas that is formed by incomplete combustion of fuels and is emitted directly into the air. The main source of CO in the San Joaquin Valley is on-road motor vehicles. At high concentrations, CO reduces the oxygen-carrying capacity of the blood and can cause dizziness, headaches, unconsciousness, and even death. Problems associated with CO are localized in character, so both ARB and EPA designate urban areas as CO nonattainment areas instead of the entire Air Basin (SJVAPCD 2015b). The project site is not within an urban area designated as nonattainment for CO.

In addition to the criteria pollutants, the California Air Resources Board (ARB) has identified a class of air pollutants known as toxic air contaminants (TACs) - pollutants that even at low

levels may cause acute serious, long-term health effects, such as cancer. Diesel particulate matter is the most commonly identified TAC, generated mainly as a product of combustion in diesel engines. Other TACs are less common and are typically associated with industrial activities. However, gasoline contains toxic substances such as benzene, toluene and naphthalene, among others.

Regulatory Framework

As previously noted, the SJVAPCD has jurisdiction over most air quality matters in the San Joaquin Valley Air Basin, including the City of Merced. It implements the federal and California Clean Air Acts, and the applicable attainment and maintenance plans, through local regulations. The SJVAPCD regulations that would be applicable to the project are summarized below.

Regulation VIII (Fugitive Dust PM10 Prohibitions)

Rules 8011-8081 are designed to reduce PM10 emissions (predominantly dust/dirt) generated by human activity, including construction and demolition activities, road construction, bulk materials storage, paved and unpaved roads, carryout and track out, landfill operations, etc.

Rule 4101 (Visible Emissions)

This rule prohibits emissions of visible air contaminants to the atmosphere and applies to any source operation that emits or may emit air contaminants.

Rule 9510 (Indirect Source Review)

Rule 9510, also known as the Indirect Source Rule (ISR), is intended to reduce or mitigate emissions of NO_x and PM_{10} from new development in the SJVAPCD including construction and operational emissions. This rule requires specific percentage reductions in estimated on-site construction and operation emissions, and/or payment of off-site mitigation fees for required reductions that cannot be met on the project site. ISR fees are used to provide offsetting mitigation. Construction emissions of NO_x and PM_{10} exhaust must be reduced by 20% and 45%, respectively. Operational emissions of NO_x and PM_{10} must be reduced by 33.3% and 50%, respectively. The ISR applies to commercial development projects of 2,000 square feet and larger. Based on this criteria, the project would be subject to Rule 9510.

In addition, the SJVAPCD regulates the construction and improvement of facilities with potential air toxic emissions, including gasoline stations. SJVAPCD rules applicable to gasoline stations include:

Rule 2201 (New and Modified Stationary Source Review Rule)

New stationary sources and modifications of existing stationary sources that may emit criteria pollutants must obtain an Authority to Construct and Permit to Operate the proposed facility. Emissions that exceed impact thresholds must include emission controls and may require additional mitigation.

Rule 4621 (Gasoline Transfer into Stationary Storage Containers, Delivery Vessels and Bulk Plants)

Rule 4621 prohibits the transfer of gasoline from a delivery vessel into a stationary storage container unless the container is equipped with an ARB-certified permanent submerged fill pipe and ARB certified pressure-vacuum relief valve, and utilizes an ARB-certified Phase I vapor recovery system.

Rule 4622 (Transfer of Gasoline into Vehicle Fuel Tanks)

Rule 4622 prohibits the transfer of gasoline from a stationary storage container into a motor vehicle fuel tank with a capacity greater than 5 gallons, unless the gasoline dispensing unit used to transfer the gasoline is equipped with and has in operation an ARB-certified Phase II vapor recovery system.

Significance Thresholds

According to Appendix G of the CEQA Guidelines, a project may have a significant impact on the environment if it would do the following:

- Conflict with or obstruct implementation of an applicable air quality plan.
- Violate any air quality standard or contribute substantially to an existing or projected air quality violation.
- Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard.
- Expose sensitive receptors to substantial pollutant concentrations.
- Create objectionable odors affecting a substantial number of people.

CEQA Guidelines Appendix G also states that, where available, significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make significance determinations. In 2015, the SJVAPCD adopted an updated Guide for Assessing and Mitigating Air Quality Impacts (GAMAQI). The GAMAQI defines methodology and thresholds of significance for the assessment of air quality impacts for projects within SJVAPCD's jurisdiction, along with potential mitigation measures for identified impacts.

Table 2-2 shows the significance thresholds for criteria air pollutant emissions within the SJVAPCD, both for construction emissions and emissions from project operations. As stated in the GAMAQI, the basis for the significance thresholds are the New Source Review (SJVAPCD Rule 2201) offset thresholds. The SJVAPCD's attainment plans demonstrate that project-specific emissions below these offset thresholds would have air quality impacts that are less than significant (SJVAPCD 2015b). It should be noted that a project may still have significant air quality impacts even if its estimated emissions are below significance thresholds, depending on its location and adjacent land uses.

TABLE C-2 SJVAPCD SIGNIFICANCE THRESHOLDS

Emissions (tons per year)

Pollutant	Construction	Operational
Carbon Monoxide	100	100
Nitrogen Oxides (NOx)	10	10
Reactive Organic Gases (ROG)	10	10
Sulfur Oxides (SOx)	27	27
Particulate Matter (PM ₁₀)	15	15
Fine Particulate Matter (PM _{2.5})	15	15

Source: SJVAPCD 2015b.

For CO emissions, the GAMAQI states that project operational emissions would have an impact that is less than significant if neither of the following criteria are met:

- A traffic study for the project indicates that the Level of Service (LOS) on one or more streets or at one or more intersections in the project vicinity will be reduced to LOS E or F; and,
- A traffic study indicates that the project will substantially worsen an already existing LOS F on one or more streets or at one or more intersections in the project vicinity.

If either of these criteria can be associated with any intersection affected by the project, then a CO analysis would need to be conducted to determine the significance of the project's impacts (SJVAPCD 2015b). For TACs, the GAMAQI states that carcinogenic emissions from project operations are considered to have a significant impact if the maximally exposed individual risk equals or exceeds 10 in 1 million.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
C. Air Quality. Would the project:				
1) Conflict with or obstruct implementation of the applicable air quality plan?			✓	
2) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?			√	
3) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?			√	

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
4) Expose sensitive receptors to substantial				
pollutant concentrations?			✓	
5) Create objectionable odors affecting a				
substantial number of people?			✓	

1) Less than Significant Impact

The project would be substantially below the significance thresholds adopted by the SJVAPCD Operation emissions at project buildout. The SJVAPCD's attainment plans demonstrate that project-specific emissions below New Source Review offset thresholds, which are the basis for the SJVAPCD significance thresholds, would have air quality impacts that are less than significant. On this basis, the project would be consistent with attainment plans for the Air Basin. Project impacts regarding consistency with the applicable air quality plans are considered **less than significant**.

2) Less than Significant Impact

As mentioned under Impact 1, the proposed project would have construction emissions that are substantially below the SJVAPCD significance thresholds under both phases. Project construction may generate localized dust emissions at levels above existing ambient conditions, which is of concern if "sensitive receptors" are located in proximity to the project site. As defined in the GAMAQI, sensitive receptors include residential units, schools, parks and playgrounds, day care centers, hospitals, and nursing homes. None of these land uses are near the project site. Furthermore, dust emissions would be reduced through the required implementation of SJVAPCD Regulation VIII.

The project would be subject to the ISR, which requires development projects to reduce NO_x operational emissions by 33.3%. Application of this reduction requirement would further reduce NO_x emissions that are already below the SJVAPCD significance threshold. Phase 2 NO_x emissions would be reduced further below the significance threshold. Project impacts related to air quality standards are considered **less than significant**.

3) Less than Significant Impact

Cumulative impacts of project emissions focus on operational emissions, as construction emissions cease with completion of project work. Operational emissions at project buildout would not exceed the significance thresholds established by SJVAPCD. As discussed under Impact 2, NOx emissions would be further reduced by compliance with the ISR. Cumulative project impacts on air quality are considered **less than significant**.

4) Less than Significant Impact

As noted in the discussion under Impact 2, there are no sensitive receptors in the immediate project vicinity. The nearest sensitive receptor to the project site is a residential area more than 1,000 feet to the east. At that distance, dispersion of criteria pollutant emissions would likely occur before emissions reached the residential area. For additional information

related to this impact, refer to the complete Air Quality/Greenhouse Gas Report at Attachment G.

5) Less than Significant Impact

Odors are more of a nuisance than an environmental hazard. Nevertheless, the Environmental Checklist in CEQA Guidelines Appendix G regards objectionable odors as a potentially significant environmental impact. In accordance with this, the GAMAQI states that a project should be evaluated to determine the likelihood that it would result in nuisance odors. Due to the subjective nature of odor impacts, the number of variables that can influence the potential for an odor impact, and the variety of odor sources, there are no quantitative or formulaic methodologies to determine if potential odors would have a significant impact. Rather, projects must be assessed on a case-by-case basis (SJVAPCD 2015b).

Odors that could be generated potentially at the project site include releases of gasoline vapors and cooking odors from the quick-serve restaurant. Such odors in general would be confined mainly to the project site and would readily dissipate. As discussed under Impact 4, vapor recovery systems that would limit vapor emissions would be required. Restaurants are generally not considered significant sources of objectionable odors. Future land uses that would occupy Phase 2 development generally would be retail in nature, and thus unlikely to generate odors that would be considered a nuisance. Project impacts related to odors are considered **less than significant**.

D. <u>Biological Resources</u>

SETTING AND DESCRIPTION

The City of Merced is located in the Central California Valley eco-region (Omernik 1987). This eco-region is characterized by flat, intensively farmed plains with long, hot, dry summers and cool, wet winters (14-20 inches of precipitation per year). The Central California Valley eco-region includes the Sacramento Valley to the north and the San Joaquin Valley to the south and it ranges between the Sierra Nevada Foothills to the east to the Coastal Range foothills to the west. Nearly half of the eco-region is actively farmed, and about three fourths of that farmed land is irrigated.

A Biological Assessment was prepared for this annexation by Moore Biological Consultants (Attachment H). The results of this assessment have been used to evaluate any potential impacts on biological resources within or near the annexation area. The following is partially excerpted from the Biological Assessment prepared by Moore Biological Consultants.

The site is nearly level and is at an elevation of approximately 150 feet above mean sea level. The site was likely farmed in crops in the past but has been fallow for years. The body of the site is currently disturbed weedy grassland (refer to Figure 3 and photographs in Attachment C of the Biological Assessment found at Attachment H).

Surrounding land uses in this portion of Merced County are primarily agricultural and commercial. North Highway 59 bounds the site on the east and Santa Fe Drive bounds the site on the south and west. There are open fields to the east and southeast of the site, and a commercial or industrial property to the southwest of the site. Black Rascal Creek flows along the north edge of the site and there is open grassland to the north of the site, across Black Rascal Creek.

VEGETATION

Due to the amount of disturbance from past agriculture, surrounding development, and periodic mowing and/or disking for weed abatement, vegetation on the north portion of the annexation area (north of Santa Fe Drive) is primarily annual grass and weed species. The area on the south side of Santa Fe Drive is currently developed and has grass and other landscaping.

There are trees (primarily Willow trees) near the northern property line along Black Rascal Creek on the northern portion of the annexation area. There are also a three Blue Gum Eucalyptus trees near the southeast portion of the parcel. There is a cluster of Blue Gum Eucalyptus trees on the north side of Black Rascal Creek outside of the annexation area. On the southern portion of the annexation area, south of Santa Fe Drive, there are five Pine trees scattered throughout the landscaping on the site as well as a row of trees of unknown species along the southern property line.

No elderberry shrubs are present within or adjacent to the annexation area. A full list of plant species observed on the project site is available at Table 1 (page 7) of the Biological Assessment found at Attachment H.

WILDLIFE

A variety of bird species were observed on the northern portion of the annexation area. These birds were common species found in agricultural and riparian areas of Merced County. A complete list of the wildlife species observed on the project site is available at Table 2 (page 9) of the Biological Assessment (Attachment H).

There are several potential nest trees in and near the site that are suitable for nesting raptors and other protected migratory birds, including Swainson's hawk. A few stick nests were observed within some of the trees within and near the site. Given the presence of large trees and raptor foraging habitat (i.e., open fields) in and near the site, it is likely one or more pairs of raptors, plus a variety of songbirds, nest in trees in the site each year. Further, it is considered likely that songbirds nest within the vegetation along Black Rascal Creek and in the grassland habitats in the site each year. Additional information on the wildlife found on the project site is available in the Biological Assessment.

WATERS OF THE U.S. AND WETLANDS

Black Rascal Creek is a jurisdictional Water of the U.S. subject to Section 404 of the Clean Water Act. The limit of federal jurisdiction is the ordinary high water mark. This waterway also falls under the jurisdiction of CDFW, RWQCB, and the Central Valley Flood Protection Board (CVFPB). Beyond Black Rascal Creek, other potentially jurisdictional wetlands or Water of the U.S. were observed in or adjacent to the project site.

SPECIAL STATUS SPECIES

Special-status species are plants and animals that are legally protected under the state and/or federal Endangered Species Act or other regulations. Special-status species are those which are designated rare, threatened, or endangered and candidate species for listing by the USFWS. Special-status species also include species considered rare or endangered under the conditions of Section 15380 of the California Environmental Quality Act (CEQA). Table 3 (page 14) of the Biological Assessment provides a list of special-status plant and wildlife species documented in the Merced area.

The likelihood of finding any special-status species within the annexation area is considered low. While the annexation area may have provided habitat for special-status wildlife species at some time in the past, farming and development have substantially modified natural habitats in the greater project vicinity. Of the wildlife species considered to be "special-status" species, the Swainson's hawk, tricolored blackbird, and western pond turtle are the only species that have potential to occur on the site on more than a transitory or very occasional basis.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
D.	Biological Resources. Would the project:				
1)	Have a substantial adverse effect, either directly or through habitat modification, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?		√		
2)	Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?		√		
3)	Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?		✓		
4)	Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?		✓		
5)	Conflict with any local policies or ordinance protecting biological resources, such as a tree preservation policy or ordinance?		√		

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
6) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other				
approved local, regional, or state habitat conservation plan		✓		

1) Less than Significant Impact with Mitigation

Although no special-status species was identified on the site, there is still the potential that some special-status species may exist. In order to protect any special-status species, the following mitigation measures are required to reduce this possible impact to a less than significant level:

Mitigation Measure BIO-1:

Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for nesting Swainson's hawks within 0.25 miles of the project site if construction commences between March 1 and September 15. If active nests are found, a qualified biologist shall determine the need (if any) for temporal restrictions on construction. The determination shall utilize criteria set forth by CDFW (CDFG 1994).

Mitigation Measure BIO-1a:

Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for western pond turtles and their nests if construction commences between April 1 through October 31. This survey shall include a search for nests in uplands adjacent to the creek. If nest sites are located, a 50-foot buffer area around the nest shall be established and work shall be delayed until hatching is complete and the young have left the nest site.

Mitigation Measure BIO-1b:

Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for birds protected by the Migratory Bird Treaty Act of 1918. If nesting birds are found, work in the vicinity of the nest shall be delayed until the young fledge.

2) Less than Significant Impact with Mitigation

Although it is unlikely that any protected riparian habitat or other sensitive natural community would be found on the site, the above mitigation measures would reduce any possible impacts to a less than significant level.

3) Less than Significant Impact with Mitigation

The annexation and subsequent development on the site is not proposed to involve any direct removal, filling, or hydrological interruption to Black Rascal Creek. The development, as proposed, would remain far enough away from the creek to ensure no impacts would occur to the creek. However, the following mitigation measure would

reduce any possible impacts to a less than significant level if the development plans changed.

Mitigation Measure BIO-3:

Avoidance of jurisdictional Waters of the U.S. is recommended, if possible. If complete avoidance of Black Rascal Creek is infeasible, impact shall be minimized to the maximum extent practicable, and permits from ACOE, CDFW, RWQCB, and possibly CVFPS shall be secured prior to the placement of any fill material (e.g., culverts, fill dirt, rock) within jurisdictional Waters of the U.S.

4) Less than Significant Impact with Mitigation

As explained above, it is not anticipated that the annexation and subsequent development would interfere with the movement of any native resident or migratory fish or wildlife species. However, if these species or habitat were found on the site, Mitigation Measures BIO-1 through BIO-4 would reduce any potential impacts to a less than significant level.

5) Less than Significant Impact with Mitigation

The *Merced Vision 2030 General Plan* includes policies directed at the conservation of wildlife habitats which support rare, endangered, or threatened species and preserving and enhancing creeks in their natural state. The proposed mitigation measures BIO-1 through BIO-4 would mitigate any potential impacts that might conflict with these policies.

6) Less than Significant Impact with Mitigation

There are no known conflicts with any Habitat Conservation Plan, Natural Community Conservation Plan or other approved local, regional, or state habitat conservation plan (Merced County does not have Habitat Conservation Plans, etc.). However, the above mitigation measures would reduce any possible impacts to a less than significant level.

E. <u>Cultural Resources</u>

SETTING AND DESCRIPTION

The City of Merced area lies within the ethnographic territory of the Yokuts people. The Yokuts were members of the Penutian language family which held all of the Central Valley, San Francisco Bay Area, and the Pacific Coast from Marin County to near Point Sur.

Merced County was first explored by Gabriel Moraga in 1806, when he named the Merced River, "El Rio de Nuestra Señora de la Merced." Moraga's explorations were designed to locate appropriate sites for an inland chain of missions. Moraga explored the region again in 1808 and 1810.

The project site is not known to have any cultural or historical resources.

Archaeology

Archaeological sites are defined as locations containing significant levels of resources that identify human activity. Very little archaeological survey work has been conducted within the City or its surrounding areas. Creeks, drainage, and sloughs exist in the northern expansion area of the City, and Bear Creek and Cottonwood Creek pass through the developed area. Archaeological sites in

the Central Valley are commonly located adjacent to waterways and represent potential for significant archaeological resources.

Paleontological sites are those that show evidence of pre-human existence. Quite frequently, they are small outcroppings visible on the earth's surface. While the surface outcroppings are important indications of paleontological resources, it is the geologic formations that are the most important. There are no known sectors within the project area known to contain sites of paleontological significance.

Historic Resources

In 1985, in response to community concerns over the loss of some of the City's historic resources, and the perceived threats to many remaining resources, a survey of historic buildings was undertaken in the City. The survey focused on pre-1941 districts, buildings, structures, and objects of historical, architectural, and cultural significance. The survey area included a roughly four square-mile area of the central portion of the City.

The National Register of Historic Places, the California Historical Landmarks List, and the California Inventory of Historic Resources identify several sites within the City of Merced. These sites are listed on the Merced Historical Site Survey and maintained by the Merced Historical Society.

According to the environmental review conducted for the General Plan, there are no listed historical sites and no known locations within the project area that contain sites of paleontologic or archeological significance. The General Plan (Implementation Action SD-2.1.a) requires that the City utilize standard practices for preserving archeological materials that are unearthed during construction, as prescribed by the State Office of Historic Preservation.

The project involves the annexation of 8.83 acres of land. One acre is currently developed and no new development would occur in that area. The remaining 7.83 acres would be developed in the future with a retail center consisting of a gas station/mini-market/car wash, a fast-food restaurant, a drive-thru coffee shop/kiosk, and other unknown retail uses.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
E.	<u>Cultural Resources.</u> Would the project:				
1)	Cause a substantial adverse change in the significance of a historical resource as				
	defined in \$15064.5?		✓		
2)	Cause a substantial adverse change in the				
	significance of an archaeological resource pursuant to §15064.5?		✓		
3)	Directly or indirectly destroy a unique				
	paleontological resource or site or unique geologic feature?		✓		
4)	Disturb any human remains, including those interred outside of formal cemeteries?		✓		

1) Less than Significant Impact with Mitigation

Subsurface construction activities associated with development of the northern portion of the annexation area may damage or destroy previously undiscovered historic resources. The following mitigation measure would reduce any potential impacts to currently undiscovered historic resources to less than significant.

Mitigation Measure CUL-1:

In the event that buried historic or archaeological resources are discovered during construction, operations shall stop within 50 feet of the find and a qualified archaeologist shall be consulted to evaluate the resource in accordance with CEQA Guidelines 15064.5. The applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. If the resource does not qualify as a significant resource, then no further protection or study is necessary. If the resource does qualify as a significant resource then the impacts shall be avoided by project activities. If the resource cannot be avoided, adverse impacts to the resource shall be addressed. The archaeologist shall make recommendations concerning appropriate mitigation measures that shall be implemented to protect the resource, including, but not limited to, excavation and evaluation of the finds in accordance with Section 15064.5 of the CEQA Guidelines. Any previously undiscovered resources found during construction within the project area should be recorded on appropriate Department of Parks and Recreation (DPR) 523 forms and evaluated for significance in terms of CEQA criteria.

2) Less than Significant Impact with Mitigation

Subsurface construction activities associated with development of the northern portion of the annexation area may damage or destroy previously undiscovered archeological resources. Implementation of Mitigation Measure CUL-1 would reduce any potential impacts to currently undiscovered archeological resources to less than significant.

3) Less than Significant Impact with Mitigation

Subsurface construction activities associated with development of the northern portion of the annexation area may damage or destroy previously undiscovered paleontological resources. Implementation of the following mitigation measure would reduce any potential impacts to currently undiscovered paleontological resources to less than significant.

Mitigation Measure CUL-3:

In the event that fossils or fossil-bearing deposits are discovered during construction activities, excavations within a 50-foot radius of the find shall be temporarily halted or diverted. The project contractor shall notify a qualified paleontologist to examine the discovery. The applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. The paleontologist shall document the discovery as needed in accordance with Society of Vertebrate Paleontology standards and assess the significance of the find under the criteria set forth in CEQA Guidelines Section 15064.5. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction activities are allowed to resume at the location of the find. If the applicant determines that avoidance is not feasible,

the paleontologist shall prepare an excavation plan for mitigating the effect of construction activities on the discovery. The plan shall be submitted to the City of Merced for review and approval prior to implementation, and the applicant shall adhere to the recommendations in the plan.

4) Less than Significant Impact with Mitigation

Subsurface construction activities associated with development of the northern portion of the annexation area may damage or destroy previously undiscovered human burial sites. Implementation of the following mitigation measure would reduce any potential impacts to currently undiscovered human burial sites to less than significant.

Mitigation Measure CUL-4

In the event of the accidental discovery or recognition of any human remains, CEQA Guidelines Section 15064.5, Health and Safety Code Section 7050.5, and Public Resources Code (PRC) Sections 5097.94 and 5097.98 must be followed. If during the course of project development there is accidental discovery or recognition of any human remains, the following steps shall be taken:

- 1. There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the County Coroner is contacted and determines if the remains are Native American and if an investigation of the cause of death is required. If the coroner determines the remains to be Native American, the coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours, and the NAHC shall identify the person or persons it believes to be the most likely descendant (MLD) of the deceased Native American. The MLD may make recommendations to the landowner or the person responsible for the excavation work within 48 hours, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC Section 5097.98.
- 2. Where the following conditions occur, the landowner or his or her authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity either in accordance with the recommendations of the most likely descendant or on the project site in a location not subject to further subsurface disturbance:
 - The NAHC is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 48 hours after being notified by the commission.
 - *The descendant identified fails to make a recommendation.*
 - The landowner or his authorized representative rejects the recommendation of the descendant, and mediation by the NAHC fails to provide measures acceptable to the landowner.

Additionally, California Public Resources Code Section 15064.5 requires the following with regards to Native American Remains:

When an initial study identifies the existence of, or the probable likelihood of, Native American Remains within a project, a lead agency shall work with the appropriate Native Americans as identified by the Native American Heritage Commission as provided in Public Resources Code Section 5097.98. The applicant may develop a plan for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American Burials with the appropriate Native Americans as identified by the NAHC.

F. Geology and Soils

SETTING AND DESCRIPTION

The City of Merced is located approximately 150 miles southeast of San Francisco along the west side of the southern portion of the Great Valley Geomorphic Province, more commonly referred to as the San Joaquin Valley. The valley is a broad lowlands bounded by the Sierra Nevada to the east and Coastal Ranges to the west. The San Joaquin Valley has been filled with a thick sequence of sedimentary deposits of Jurassic to recent age. A review of the geologic map indicates that the area around Merced is primarily underlain by the Pleistocene Modesto and Riverbank Formations with Holocene alluvial deposits in the drainages. Miocene-Pliocene Mehrten and Pliocene Laguna Formation materials are present in outcrops on the east side of the SUDP/SOI. Modesto and Riverbank Formation deposits are characterized by sand and silt alluvium derived from weathering of rocks deposited east of the SUDP/SOI. The Laguna Formation is made up of consolidated gravel sand and silt alluvium and the Mehrten Formation is generally a well consolidated andesitic mudflow breccia conglomerate.

Faults and Seismicity

A fault, or a fracture in the crust of the earth along which rocks on one side have moved relative to those on the other side, are an indication of past seismic activity. It is assumed that those that have been active recently are the most likely to be active in the future, although even inactive faults may not be "dead." "Potentially Active" faults are those that have been active during the past two million years or during the Quaternary Period. "Active" faults are those that have been active within the past 11,000 years. Earthquakes originate as movement or slippage occurring along an active fault. These movements generate shock waves that result in ground shaking.

Based on review of geologic maps and reports for the area, there are no known active or potentially active faults, or Alquist-Priolo Earthquake Fault Zones (formerly referred to as a Special Studies Zone) in the SUDP/SOI. In order to determine the distance of known active faults within 50 miles of the Site, the computer program EZ-FRISK was used in the General Plan update.

Soils

Soil properties can influence the development of building sites, including site selection, structural design, construction, performance after construction, and maintenance. Soil properties that affect the load-supporting capacity of an area include depth to groundwater, ponding, subsidence, shrink-swell potential, and compressibility.

The City of Merced regulates the effects of soils and geological constraints primarily through the enforcement of the California Building Code (CBC), which requires the implementation of engineering solutions for constraints to development posed by slopes, soils, and geology.

F.	Geology and Soils. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
1)	Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving: a) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of				
	a known fault?			√	
	b) Strong seismic ground shaking?c) Seismic-related ground failure, including liquefaction?			✓ ✓	
	d) Landslides?			✓	
2)	Result in substantial soil erosion or loss of topsoil?		✓		
3)	Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?			√	
4)	•		√		
5)	Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?				✓

1) Less than Significant Impact

The project site is not located within a mapped fault hazard zone, and there is no record or evidence of faulting on the project site (City of Merced General Plan Figure 11.1). Because no faults underlie the project site, no people or structures would be exposed to substantial adverse effects related to earthquake rupture.

According to the City's *Merced Vision 2030 General Plan EIR*, the probability of soil liquefaction occurring within the City of Merced is considered to be a low to moderate hazard; however, a detailed geotechnical engineering investigation would be required for the project in compliance with the California Building Code (CBC).

There would be no exposure to any geological hazards in the project area.

Ground shaking of moderate severity may be expected to be experienced on the project site during a large seismic event. All building permits are reviewed to ensure compliance with the California Building Code (CBC). In addition, the City enforces the provisions of the Alquist Priolo Special Study Zones Act that limit development in areas identified as having special seismic hazards. All new structures shall be designed and built in accordance with the standards of the California Building Code.

APPLICABLE GENERAL PLAN GOALS AND POLICIES

The City's Merced Vision 2030 General Plan contains policies that address seismic safety.

Goal Are	Goal Area S-2: Seismic Safety:				
Goal: Reasonable Safety for City Residents from the Hazards of Earthquake and Other Geologic Activity					
Policies	Policies				
S-2.1	Restrict urban development in all areas with potential ground failure characteristics.				

The project would not expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving landslides.

Landslides generally occur on slopes of 15 percent or greater. The project site's topography is generally of slopes between 0 and 3 percent, which are considered insufficient to produce hazards other than minor sliding during seismic activity.

Therefore, no hazardous conditions related to seismic ground shaking would occur with the implementation of the project. Additionally, the implementation of the project would not lead to offsite effects related to hazards related to seismic groundshaking, nor would any existing offsite hazards be exacerbated.

2) Less Than Significant Impact with Mitigation

Construction associated with the proposed project could result in temporary soil erosion and the loss of top soil due to construction activities, including clearing, grading, site preparation activities, and installation of the proposed buildings and other improvements. The City of Merced enforces a Storm Water Management Program in compliance with the Federal Clean Water Act. All construction activities are required to comply with the City's Erosion and Sediment Control Ordinance (MMC §15.50.120.B), including the implementation of Best Management Practices (BMPs) to limit the discharge of sediment into natural waterways and storm water drainage facilities.

Implementation of the following mitigation measures would reduce potential impacts to a less than significant level.

Mitigation Measure GEO-2

Prior to the approval of a tentative subdivision map or building permit, the City shall review plans for drainage and storm water run-off control systems and their component facilities to ensure that these systems are non-erosive in design.

Mitigation Measure GEO-2a:

Upon completion of phased construction, subsequent phases shall re-vegetate all exposed soil surfaces within 30 days, or as otherwise approved by the City, to minimize potential topsoil erosion. Reasonable alternatives to re-vegetation may be employed, especially during peak high temperature periods or to avoid negative impacts to nearby agricultural activities, subject to the approval of the City.

3) Less than Significant Impact

The City of Merced is located in the Valley area of Merced County and is, therefore, less likely to experience landslides than other areas in the County. The probability of soil liquefaction actually taking place anywhere in the City of Merced is considered to be a low to moderate hazard. According to the *Merced Vision 2030 General Plan EIR*, no significant free face failures were observed within the SUDP/SOI and the potential for lurch cracking and lateral spreading is, therefore, very low within the SUDP/SOI area.

4) Less than Significant Impact with Mitigation

Expansive soils are those possessing clay particles that react to moisture changes by shrinking (when they dry) or swelling (when they become wet). Expansive soils can also consist of silty to sandy clay. The extent of shrinking and swelling is influenced by the environment, extent of wet or dry cycles, and by the amount of clay in the soil. This physical change in the soils can react unfavorably with building foundations, concrete walkways, swimming pools, roadways, and masonry walls.

Implementation of General Plan Policies, adherence to the Alquist-Priolo Act, and enforcement of the California Building Code (CBC) Standards would reduce the effect of this hazard on new buildings and infrastructure associated with the project. Additionally, the mitigation measure below requires a geotechnical study prior to the issuance of a building permit.

Mitigation Measure GEO-4:

A geotechnical study shall be provided prior to the issuance of a building or grading permit for this site. All recommendations for addressing expansive soils and site grading shall be implemented as well as any other recommendations determined relevant by the Chief Building Official or City Engineer.

5) No Impact

The project site would not have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater. However, the proposed project would be served by the City's sewer system. No new septic systems are allowed within the City Limits.

G. <u>Hazards and Hazardous Materials</u>

SETTING AND DESCRIPTION

Hazardous Materials

A substance may be considered hazardous due to a number of criteria, including toxicity, ignitability, corrosivity, or reactivity. The term "hazardous material" is defined in law as any material that, because of quantity, concentration, or physical, or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment.

Wildland and Urban Fire Hazards

Both urban and wildland fire hazard potential exists in the City of Merced and surrounding areas, creating the potential for injury, loss of life, and property damage. Urban fires primarily involve the uncontrolled burning of residential, commercial, or industrial structures due to human activities. Wildland fires affect grassland, brush or woodlands, and any structures on or near these fires. Such fires can result from either human made or natural causes.

Urban fires comprise the majority of fires in the City of Merced. The site is adjacent to undeveloped ag land which could be a source for a wildland fire. However, the City of Merced Fire Department has procedures in place to address the issue of wildland fires, so no additional mitigation would be necessary.

Airport Safety

The City of Merced is impacted by the presence of two airports-Merced Regional Airport, which is in the southwest corner of the City, and Castle Airport (the former Castle Air Force Base), located approximately eight miles northwest of the subject site.

The continued operation of the Merced Regional Airport involves various hazards to both flight (physical obstructions in the airspace or land use characteristics which affect flight safety) and safety on the ground (damage due to an aircraft accident). Growth is restricted around the Regional Airport in the southwest corner of the City due to the noise and safety hazards associated with the flight path.

Castle Airport also impacts the City. Portions of the northwest part of the City's SUDP/SOI and the incorporated City are within Castle's safety zones. The primary impact is due to noise (Zones C and D), though small areas have density restrictions (Zone B2). The military discontinued operations at Castle in 1995. One important criterion for determining the various zones is the noise factor. Military aircraft are designed solely for performance, whereas civilian aircraft have extensive design features to control noise.

Potential hazards to flight include physical obstructions and other land use characteristics that can affect flight safety, which include: visual hazards such as distracting lights, glare, and sources of smoke; electronic interference with aircraft instruments or radio communications; and uses which may attract flocks of birds. In order to safeguard an airport's long-term usability, preventing encroachment of objects into the surrounding airspace is imperative.

Railroad

Hazardous materials are regularly shipped on the BNSF and SP/UP Railroad lines that pass through the City. While unlikely, an incident involving the derailment of a train could result in the

spillage of cargo from the train in transporting. The spillage of hazardous materials could have devastating results. The City has little to no control over the types of materials shipped via the rail lines. There is also a safety concern for pedestrians along the tracks and vehicles utilizing at-grade crossings. The design and operation of at-grade crossings allows the City some control over rail-related hazards. Ensuring proper gate operation at the crossings is the most effective strategy to avoid collision and possible derailments.

Public Protection and Disaster Planning

Hospitals, ambulance companies, and fire districts provide medical emergency services. Considerable thought and planning have gone into efforts to improve responses to day-to-day emergencies and planning for a general disaster response capability.

The City's Emergency Plan and the County Hazardous Waste Management Plan both deal with detailed emergency response procedures under various conditions for hazardous materials spills. The City also works with the State Department of Health Services to establish cleanup plans and to monitor the cleanup of known hazardous waste sites within the City.

Project Characteristics

The annexation area is bounded to the south by the BNSF Railroad line. No construction near the lines is expected as part of the annexation and future development. All new construction is proposed on the north side of Santa Fe Drive. The project would include the construction of a gas station/mini-market/car wash, a fast-food restaurant, and drive-thru coffee shop/kiosk. Other retail uses would eventually develop on the site, but those uses are unknown at this time.

Adverse effects of hazards and hazardous materials tend to be localized; therefore, the area near the project area would be most affected by project activities. There are no residential uses within 1,000 feet of the site. There are several industrial uses that employee a large number of people on the south side of the railroad tracks.

The Merced Regional Airport is located approximately 2 miles south of the annexation area. The Castle Airport is located approximately 5-6 miles west of the site.

Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
	Significant Impact	Potentially Significant with Significant Impact Incorporated	Potentially Significant with Mitigation Impact

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
 Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions 				
involving the release of hazardous materials into the environment?			✓	
3) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				<
4) Be located on a site which is included on a list of hazardous materials site compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?			√	
5) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?		√	,	
6) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?			√	
7) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				✓
8) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?			√	

1) Less Than Significant

Hazards and hazardous materials are extensively regulated at the federal, state, and local levels. The only known land use at this time that would involve the use of a large amount of a hazardous material would be the gas station. However, as previously mentioned, there are federal and state regulations that govern the use and delivery of gasoline.

Construction activities associated with the proposed project would involve the use, storage, transport, and disposal of oil, gasoline, diesel fuel, paints, solvents, and other hazardous materials. Once constructed, the project would be required to adhere to all applicable federal and state health and safety standards. Construction activity must also be in compliance with the California Occupational Safety and Health Administration regulations (Occupational Safety and Health Act of 1970). Compliance with these requirements would reduce the risk of hazards to the public to a **less than significant** level.

2) Less Than Significant

There are no residential uses within 1,000 feet of the project site and the nearest industrial use would be over 500 feet away across Santa Fe Drive and over the railroad track. Construction on the project site would be reviewed for the use of hazardous materials at the building permit stage. Implementation of Fire Department and Building Code regulations for hazardous materials, as well as implementation of federal and state requirements, would reduce any risk caused by a future use on the site from hazardous materials to a less than significant level.

APPLICABLE GENERAL PLAN GOALS AND POLICIES:

The City of Merced Vision 2030 General Plan contains policies that address hazardous materials.

Goal Area	Goal Area S-7: Hazardous Materials					
Goal						
Hazardo	us Materials Safety for City Residents					
Policies						
S-2.1	Prevent injuries and environmental contamination due to the uncontrolled					
	release of hazardous materials.					
Impleme	nting Actions:					
7.1.a	Support Merced County in carrying out and enforcing the Merced County					
	Hazardous Waste Management Plan.					
7.1.b	7.1.b Continue to update and enforce local ordinances regulating the permitted					
	use and storage of hazardous gases, liquids, and solids.					
7.1.d	Provide continuing training for hazardous materials enforcement and					
	response personnel.					

The Merced Vision 2030 General Plan contains policies that address disaster preparedness.

Goal Area	a S-1: Disaster Preparedness					
Goal	Goal					
General l	Disaster Preparedness					
Policies						
S-1.1	Develop and maintain emergency preparedness procedures for the City.					
Implemen	Implementing Actions:					
1.1.a	Keep up-to-date through annual review the City's existing Emergency Plan					
	and coordinate with the countywide Emergency Plan.					

1.1.b	Prepare route capacity studies and determine evacuation procedures and routes for different types of disasters, including means for notifying residents of a need to evacuate because of a severe hazard as soon as possible.
7.1.d	Provide continuing training for hazardous materials enforcement and response personnel.

3) No Impact

There are no schools within one-quarter mile of the school. Therefore, there is no impact.

4) Less than Significant Impact

According to a California Department of Toxic Substances Control EnviroStor database search, the project site is not listed as a hazardous waste site. The operation of the gas station could result in the release of hazardous materials that could affect the public or the environment. However, the gas station is required to comply with all federal, state, and local laws for gas. Therefore this impact would be less than significant.

5) Less than Significant with Mitigation

The project site is identified as being located in Zone C (refer to map at Attachment I) of the Merced County Airport Land Use Compatibility Plan (ALUCP). As such, development on the site would be required to adhere to any regulations set forth in the ALUCP regarding the number of people per building and uses on the site. The following mitigation measure will ensure compliance with those regulations and reduce this potential impact to a less than significant level.

Mitigation Measure HAZ-5

Prior to the issuance of any subsequent land use entitlement for construction of a building or the issuance of a building permit, the developer shall demonstrate compliance with the requirements of the Merced County Airport Land Use Compatibility Plan (ALUCP). If compliance is not feasible, the development plan shall be modified to make compliance possible.

6) Less than Significant

The project site is not located within the vicinity of a private air strip. However the site is approximately 2 miles from the Merced Regional Airport and approximately 5-6 miles from the Castle Airport. The project site is not located within a safety zone for either airport. Therefore, this impact is less than significant.

7) No Impact

The proposed project would not adversely affect any adopted emergency response plan or emergency evacuation plan. No additional impacts would result from the development of the project area over and above those already evaluated by the EIR prepared for the *Merced Vision 2030 General Plan*. Refer to the General Plan Policy S-1 above.

8) Less than Significant Impact

According to the Cal Fire website, the Merced County Fire Hazard Severity Zone Map shows the project site is designated as a "Local Area of Responsibility" (LRA) with a Hazard Classification of "Moderate."

The City of Merced Fire Department would become the responsible agency for responding to fires at the subject site once annexed. The annexation area may be split and serviced by two different Fire Districts. The northern portion of the annexation area would most likely be served by Fire District #53, with the nearest Fire Station located at 800 Loughborough Drive. The southern portion of the annexation area would be served by District #51 with the nearest Fire Station located at 99 East 16th Street. However, the City is currently performing a Standards of Coverage study. The results of this study might modify the station responsible for serving the annexation area.

The site is adjacent to ag land that could be susceptible to wildland fires. However, the City of Merced Fire Department has procedures in place to address the issue of wildland fires, so no additional mitigation would be necessary. This potential impact is less than significant.

H. Hydrology and Water Quality

SETTING AND DESCRIPTION

Water Supplies and Facilities

The City's water supply system consists of 22 wells and 14 pumping stations equipped with variable speed pumps that attempt to maintain 45 to 50 psi (pounds per square inch) nominal water pressure. The City is required to meet State Health pressure requirements, which call for a minimum of 20 psi at every service connection under the annual peak hour condition and maintenance of the annual average day demand plus fire flow, whichever is stricter. The first phase of the construction project once annexation is complete (the gas station, mini-market, etc. near the corner of Santa Fe Drive and Highway 59) would be serviced by an existing line in North Highway 59. Subsequent phases of construction may be required to extend the lines down Santa Fe Drive in order to provide service to the site.

Storm Drainage/Flooding

In accordance with the adopted <u>City of Merced Standard Designs of Common Engineering Structures</u>, percolation/detention basins are designed to temporarily collect run-off so that it can be metered at acceptable rates into canals and streams which have limited capacity. Storm drain lines would have to be extended to serve the project area. Additionally, a drainage basin would need to be provided on-site to hold storm water generated from the site. The project would be required to comply with all Post Construction Standards for the City's MS IV Permit.

The project site is bounded to the north by Black Rascal Creek. This creek is used for irrigation purposes by the Merced Irrigation District. The creek would not be modified by the project nor would storm drainage enter the creek. All storm drainage would be collected into the City's stormwater system.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Н.	Hydrology and Water Quality.				
	Would the project:				
1)	Violate any water quality standards or waste discharge requirements?		✓		
2)	Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?			√	
3)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?				
4)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?			·	
5)	Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?		✓		
6)	Otherwise substantially degrade water quality?			√	
7)	Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				√
8)	Place within a 100-year flood hazard area structures which would impede or redirect flood flows?		✓		

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
9) Expose people or structures to a significant				
risk of loss, injury or death involving				
flooding, including flooding as a result of				
the failure of a levee or dam?		✓		
10) Inundation by seiche, tsunami, or mudflow?			✓	

1) Less Than Significant Impact with Mitigation

Short-Term Water Quality

The annexation and General Plan Amendment are not expected to violate any water quality standards or waste discharge requirements. However, the subsequent development of the northwest corner would involve grading, building and construction, and paving activities. Because development would occur in phases, the initial phase would occur at the southeast corner of the site and the western edge of the site. During development of the project there would be the potential for surface water to carry sediment from on-site erosion and other pollutants into the stormwater system and local waterways, specifically Black Rascal Creek.

Construction of the project would also require the use of gasoline- and diesel-powered heavy equipment such as bulldozers, backhoes, water pumps, and air compressors. Chemicals such as gasoline, diesel fuel, lubricating oil, hydraulic oil, lubricating grease, automatic transmission fluid, paints, solvents glues, and other substances would be utilized during construction. An accidental release of any of these substances could degrade the water quality of the surface water runoff and add additional sources of pollution into the drainage system.

The National Pollutant Discharge Elimination System (NPDES) stormwater permitting is required by the State Water Board's Construction General Stormwater permit (General Permit). The General Permit regulates stormwater discharges from construction sites. Under the General Permit, the preparation and implementation of a Storm Water Pollution Prevention Plan (SWPPP) is required for construction activities of 1 acre in area. The SWPPP must identify potential sources of pollution that may be reasonably expected to affect the quality of stormwater discharges as well as identify and implement BMP's that ensure the reduction of these pollutants during stormwater discharges.

Mitigation Measure HYD-1 requires that the project applicant prepare and implement an SWPPP. The implementation of this plan would ensure the potential short-term impacts are reduced to a **less than significant level.**

Long-Term Water Quality

The northwest corner of the annexation area is currently undeveloped and doesn't contain any storm drainage facilities. The southwest corner is currently developed, but does not have any stormwater facilities onsite other. Currently runoff within the annexation area either ponds onsite or sheet flows to Black Rascal Creek.

The proposed development on the north side of the annexation area would result in the development of new commercial buildings and infrastructure on the 7.83-acre parcel. The proposed project would increase the amount of impervious surface area on the project site and would create the potential for discharge of urban pollutants into Black Rascal Creek and downstream waterways. Such pollutants would include sediment and turbidity, nutrients, organic compounds, oxygen demanding substances, trash and debris, bacteria and viruses, oil and grease, pesticides, and metals.

As discussed above, the City will require the project applicant to prepare a Storm Water Mitigation Plan for review and approval that identifies BMP's necessary to control stormwater pollution from operational activities and facilities, and provide for appropriate maintenance over time. The SWMP would include design concepts that are intended to accomplish a "first flush" objective that would remove contaminants from the first 2 inches of stormwater before it enters area waterways. To ensure that stormwater quality measures are implemented Mitigation Measures HYD-1B is proposed which would require the project applicant to prepare and submit an SWMP to the City of Merced for review and approval. The implementation of the mitigation measure would ensure that potential, long-term, operational water quality impacts are reduced to a level of **less than significant**.

Mitigation Measure HYD-1a

Prior to the issuance of grading permits, the project applicant shall file a Notice of Intent with and obtain a facility identification number from the State Water Resources Control Board. The project applicant shall also submit a Stormwater Pollution Prevention Plan (SWPPP) to the City of Merced that identifies specific actions and Best Management Practices (BMPs) to prevent stormwater pollution during construction activities. The SWPPP shall identify a practical sequence for BMP implementation, site restoration, contingency measures, responsible parties, and agency contacts. The SWPPP shall include, but not be limited to, the following elements:

- Comply with the requirements of the State of California's most current Construction Stormwater Permit.
- Temporary erosion control measures shall be implemented on all disturbed areas.
- Disturbed surfaces shall be treated with erosion control measures during the October 15 to April 15 rainy season.
- Sediment shall be retained on-site by a system of sediment basins, traps, or other BMPs.
- The construction contractor shall prepare Standard Operating Procedures for the handling of hazardous materials on the construction site to eliminate discharge of materials to storm drains.
- BMP performance and effectiveness shall be determined either by visual means where applicable (e.g., observation of above-normal sediment release), or by actual water sampling in cases where verification of contaminant reduction or elimination (such as inadvertent petroleum release) is required by the Central Valley Regional Water Quality Control Board to determine adequacy of the measure.

• In the event of significant construction delays or delays in final landscape installation, native grasses or other appropriate vegetative cover shall be established on the construction site as soon as possible after disturbance, as an interim erosion control measure throughout the wet season.

Mitigation Measure HYD-1b

Prior to the issuance of building permits, the project applicant shall submit a final Storm Water Mitigation Plan (SWMP) to the City of Merced for review and approval. The plan shall be developed using the California Stormwater Quality Association's "New Development and Redevelopment Handbook." The SWMP shall identify pollution prevention measures and BMPs necessary to control stormwater pollution from operational activities and facilities, and provide for appropriate maintenance over time. The SWMP shall include design concepts that are intended to accomplish a "first flush" objective that would remove contaminants from the first 2 inches of stormwater before it enters area waterways. The project applicant shall also prepare and submit an Operations and Maintenance Agreement to the City identifying procedures to ensure that stormwater quality control measures work properly during operations.

APPLICABLE GENERAL PLAN GOALS AND POLICIES:

The *Merced Vision 2030 General Plan* contains policies that address Water Quality and Storm Drainage.

Goal Ar	Goal Area P-5: Storm Drainage and Flood Control					
Goal: A	an Adequate Storm Drainage Collection and Disposal System in Merced					
Policies	}					
P-5.1	Provide effective storm drainage facilities for future development.					
P-5.2	Integrate drainage facilities with bike paths, sidewalks, recreation facilities, agricultural activities, groundwater recharge, and landscaping.					
Implen	nenting Actions:					
5.1.a	Continue to implement the City's Storm Water Master Plan and the Storm Water Management Plan and its control measures.					
5.1.c	Continue to require all development to comply with the Storm Water Master Plan and any subsequent updates.					

2) Less Than Significant Impact

The City of Merced is primarily dependent on groundwater sources that draw from the San Joaquin aquifer. The City has 22 active well sites with one under construction, and 14 pumping stations, which provide service to meet peak hour urban level conditions and the average daily demand plus fire flows.

According to the City of Merced Draft Water Master Plan, the estimated average peak water demand in 2012 was 23.1 mgd.

The proposed project is estimated to use approximately 750 gallons of water per day. This would represent 0.0032% of the estimated average daily water consumption in 2012. Although development of the site would restrict onsite recharge where new impervious

surface areas are created, all alterations to groundwater flow would be captured and routed to the stormwater percolation ponds or pervious surfaces with no substantial net loss in recharge potential anticipated. This reduces this impact to a **less than significant level**.

3) Less Than Significant Impact

The proposed project would result in modifications to the existing drainage pattern on the site. The project will be designed to capture all surface water runoff onsite and then drain into the City's existing storm drainage system. Drainage would not go directly to Black Rascal Creek to the north of the site.

The project site is currently vacant and consists of pervious surfaces. The proposed project would create impervious surfaces over a large portion of the project site, thereby preventing precipitation from infiltrating and causing it to pond or runoff. However, stormwater flows would be contained on-site and piped or conveyed to the City's stormwater system, there would be no potential for increased erosion or sedimentation.

Developed storm drainage facilities in the area are adequate to handle this minor increase in flows. The project would not result in a substantial alteration of drainage in the area, and no offsite uses would be affected by the proposed changes. All potential impacts are **less than significant.**

4) Less Than Significant Impact

The proposed project would alter the existing drainage pattern of the site, but not in a manner that would result in flooding. The site is currently vacant and any construction on the site would alter the drainage pattern and reduce the absorption capability of the site. There are no streams or rivers that would be affected. Black Rascal Creek to the north of the site would also not be affected. All storm runoff would be captured onsite and conveyed through pipes to the City's stormwater system. Any changes to the site would drain into the City's existing storm drain system which would prevent any onsite or offsite flooding. This potential impact is **less than significant**.

5) Less Than Significant Impact with Mitigation

Construction of the development at the northwest corner of Highway 59 and Santa Fe Drive would install a storm drainage system designed to connect to the City's existing storm drain system. Storm drain lines currently existing in Olive Avenue to the east of the site. These lines would be extended to the site to serve the future development. A storm drain basin would be constructed at the northeast corner of the site to provide on-site retention of storm water before it is discharged to the City's storm drain system. The developer would be required to comply with the City's Post-Construction Standards for the City's Phase II MS4 Permit and provide all documentation required by the City Engineer to confirm the proposed basin is of sufficient capacity to serve the development. The following mitigation measure would ensure any impacts are reduced to a **less than** significant level.

Mitigation Measure Hyd-5

Prior to the issuance of a building permit for this project, the applicant shall demonstrate to the City that proposed storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City's Storm Drainage Master Plan and the Post Construction Standards for the City's Phase II MS4 permit.

6) Less Than Significant Impact

The proposed project would not substantially degrade water quality. The proposed project would be served by the City's water system and all water runoff will be contained onsite then directed out to the City's storm drain system. The construction of the project would not affect the water quality and would not degrade water quality in the area. This potential impact is **less than significant**.

7) No Impact

There are no homes within the proposed annexation area and no homes are proposed with the future development.

8) Less than Significant Impact with Mitigation

The Flood Insurance Rate Map shows the annexation area within Flood Zone "AE" (100-year) (see the LOMR and revised Flood Insurance Rate Map at Attachment J). The northwest corner of North Highway 59 and Santa Fe Drive was previously in a floodway. However, in 2015, FEMA approved a LOMR for this area which revised the flood zone to an AE zone instead of a floodway. Areas within the AE Flood Zone are areas that have a 1% probability of flooding every year (also known as the "100-year floodplain"), and where predicted flood water elevations above mean sea level have been established. Properties in Zone AE are considered to be at high risk of flooding under the National Flood Insurance Program (NFIP).

In order to build within this flood zone, certification must be provided that the finished floor of all structures are above the base flood elevation (BFE) established for the area (167.4).

In addition to FEMA flood zone requirements, the State of California has adopted the Urban Level of Flood Protection (ULOP) Criteria in response to the Central Valley Flood Protection Act of 2008. These criteria were adopted to help strengthen the link between flood management and land use within California's Central Valley by protecting development from a 200-year flood event. In order to study the impacts of a 200-year event in accordance with the ULOP, a study was prepared by River Focus (Attachment K).

The ULOP study resulted in the following mitigation measures being imposed to ensure the development of the project at the northwest corner of North Highway 59 and Santa Fe Drive is protected from a 200-year flood event as described in the ULOP. Implementation of this mitigation measure would reduce the impacts from all flooding to a **less than significant level.**

Mitigation Measure HYD-8

Development of the site is required to provide fill dirt to raise the elevation of the site and achieve protection from flooding. The fill must be elevated above the computed 200-year flood elevation and freeboard is highly recommended by DWR (note: freeboard is the difference between the fill elevation and the computed flood elevation).

A freeboard of 1-foot or greater will help to account for the inherent uncertainty in estimating peak flood discharges and the computed flood elevations. A summary of

proposed fill elevations is provided in the Table below. The required fill elevation ranges from 168.4 ft. to 168.7 ft. (NAVD88 vertical datum).

Proposed Fill Elevations – Project Site

	200-year Water		E:11 E1
	Surface Elevation		Fill Elevation
Location	(ft. NAVD88)	Freeboard Height (ft)	(ft, NAVD88)
Downstream			
(Northwest) End of			
Project Site	167.4	1	168.4
Upstream (East)			
End of Project Site	167.7	1	168.7

9) Less than Significant Impact with Mitigation

Refer to the discussion in item #8 above and Mitigation Measure HYD-8

10) Less than Significant Impact

The proposed project is located approximately 80 miles from the Pacific Ocean, distant from any large lakes, and not within the inundation zones for Lake Yosemite or Bear Reservoir at an elevation ranging from approximately 173 feet above MSL. According to the City's General Plan Safety Element, the City of Merced is not subject to inundation by tsnami, seiche, or mudflow. This potential impact is **less than significant**.

I. Land Use and Planning

SETTING AND DESCRIPTION

The annexation area is located at the intersection of North Highway 59 and Santa Fe Drive. A 7.83-acre property lies on the northwest corner and a 1.0-acre site at the southwest corner. The northwest corner of the site is vacant and has a General Plan designation of Open Space due to previous flood plain issues (see Section H).

The proposed annexation would not change the land use at the southwest corner of North Highway 59 and Santa Fe Drive. The Pre-Zoning for this area would be for Light Industrial (I-L). The existing wholesale/retail business would remain and the existing General Plan designation of Industrial would be consistent with the existing land use and proposed zoning.

The proposed Pre-Zoning for the northwest corner of North Highway 59 and Santa Fe Drive would be Thoroughfare Commercial (C-T). The proposed General Plan Amendment would amend the designation this area from Open Space (OS) to Thoroughfare Commercial (CT). The proposed development in this area would be consistent with the General Plan and Zoning designations of Thoroughfare Commercial.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
I.	Land Use and Planning.				
	Would the project:				
	1) Physically divide an established community?				✓
	2) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				✓
	3) Conflict with any applicable habitat conservation plan or natural community conservation plan?				✓

1) No Impact

The annexation of this area would not divide an established community. As shown on the location map at Attachment A, the southern and eastern boundaries of the annexation area are adjacent to the current City Limits.

2) No Impact

Upon approval of the annexation, the project site would comply with the City's General Plan. Part of the annexation process includes pre-zoning the site to Thoroughfare Commercial (C-T) and amending the General Plan designation from Open Space (OS) to Thoroughfare Commercial (CT). The project would not conflict with any other plans.

3) No Impact

The project site is not part of any habitat conservation plan or natural community conservation plan. Therefore, there are no impacts.

J. <u>Mineral Resources</u>

SETTING AND DESCRIPTION

The City of Merced and its SUDP/SOI do not contain any mineral resources that require managed production, according to the State Mining and Geology Board. Based on observed site conditions and review of geological maps for the area, economic deposits of precious or base metals are not expected to underlie the Merced SUDP/SOI. According to the California Geological Survey, Aggregate Availability in California - Map Sheet 52, Updated 2006, minor aggregate production occurs west and north of the City of Merced, but economic deposits of aggregate minerals are not mined within the immediate vicinity of the SUDP/SOI. Commercial deposits of oil and gas are not known to occur within the SUDP/SOI or vicinity.

			Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
J.		Mineral Resources. Would the project:				
	1)	Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				√
	2)	Result in the loss of availability of a locally- important mineral resource recovery site delineated on a local general plan, specific				
		plan, or other land use plan?				✓

1) No Impact

The project site does not support mineral extraction operations and would not result in the loss of availability of any known mineral resource.

2) No Impact

The project site does not support mineral extraction operations and would not result in the loss of availability of any known mineral resource.

K. Noise

SETTING AND DESCRIPTION

Potential noise impacts of the proposed project can be categorized as those resulting from construction and those from operational activities. Construction noise would have a short-term effect; operational noise would continue throughout the lifetime of the project.

Some land uses are considered more sensitive to noise levels than other uses. Sensitive land uses can include residences, schools, nursing homes, hospitals, and some public facilities, such as libraries. The noise level experienced at the receptor depends on the distance between the source and the receptor, the presence or absence of noise barriers and other shielding devices, and the amount of noise attenuation (lessening) provided by the intervening terrain. For line sources such as motor or vehicular traffic, noise decreases by about 3.0 to 4.5A –weighted decibels (dBA) for every doubling of the distance from the roadway.

No residential uses are proposed within this annexation area. The property to the south of Santa Fe Drive is currently developed and no additional expansion is expected. On the north side of Santa Fe Drive, commercial uses including fast-food restaurants, a gas station/mini-market, and other retail uses are proposed. The nearest sensitive uses to the site (i.e., residential) are approximately 1,000 to 1,500 feet away.

Noise from Other Existing Sources

Vehicular noise from North Highway 59 and Santa Fe Drive along with railroad noise from the BNSF Railroad would be the primary existing noise sources at the project site. According to the *Merced Vision 2030 General Plan*, the acceptable noise level for outdoor uses such as a playground

or park is 70db/CNEL for roadways and railroads and 75db/CNEL for aircraft. The General Plan does not address outdoor uses such as outdoor dining associated with a restaurant or pumping gas at a gas station. These uses would typically expose a person to the noise level from the roads, railroad, and aircraft for a much more brief period of time than someone visiting a park or attending an outdoor recreation event. For the purposes of this analysis, 70 db/CNEL and 75 db/CNEL will be used to as a threshold roadway, railroad, and aircraft noise.

According to the *Merced Vision 2030 General Plan*, the existing noise level at a distance of 100 feet from Santa Fe Drive is 66 dB. At a distance of 54 feet from the road, the noise level would reach 70 dB. At 100 feet from North Highway 59, the noise level is 69.3 dB. At a distance of 89 feet, the noise level would increase to 70 dB.

The *Merced Vision 2030 General Plan* states that the noise level from the BNSF railroad is 72 dB at distance of 100 feet from the railroad. At 137 feet the noise level is 70 dB.

The Castle Airport is approximately 5 miles to the west and the Merced Regional Airport is approximately 3.2 miles to the south. The site is located outside the 60db/CNEL for the Castle Airport and outside of the 55db/CNEL for the Merced Regional Airport.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
K.	<u>Noise.</u> Would the project result in:				
1)	Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?		√		
2)	Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?			√	
3)	A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?			√	
4)	A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?		√		
5)	For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				√

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
6) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to				
excessive noise levels?				✓

1) Less Than Significant with Mitigation

Construction Noise

Although no sensitive uses are located adjacent to the site, it is still possible for construction-related noise to impact the residences. In an effort to minimize any impact on those residences the Mitigation Measure NOI 1 is required.

Mitigation Measure NOI 1

The construction contractor shall limit all noise-producing construction activities, including deliveries and warming up of equipment, to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No such work shall be permitted on Sundays or federal holidays without prior approval from the City.

Operational Noise

The proposed uses would not generate a large amount of noise to the area. However, given the location, the roads, railroad, and aircraft may have an effect on any outdoor uses. Therefore, Mitigation Measure NOI 2 is required.

Mitigation Measure NOI 2

Any outdoor dining areas or other outdoor uses shall have the following setbacks to maintain an acceptable noise level of 70 dB for outdoor uses:

Road/Railroad	Required Setback
Santa Fe Drive	54 Ft.
North Highway 59	89 Ft.
BNSF Railroad	137 Ft.

2) Less than Significant Impact

Construction activity can create groundborne vibration and groundborne noise. However, given the distance of the sensitive uses (residences) to the site, the level of groundborne vibration and noise would be less than significant.

3) Less than Significant Impact

Implementation of the project after annexation would introduce new noise sources to the area. Commercial uses such as a fast-food restaurant, gas station/mini-market, car wash, and drive-through coffee shop/kiosk would replace the vacant lot at the northwest corner of Santa Fe Drive and North Highway 59. It is likely that traffic to this area would increase and the uses themselves would generate a certain amount of noise during daily operations.

Given the distance of the sensitive uses to the site, this impact would be less than significant.

4) Less Than Significant with Mitigation

Temporary or periodic noise levels would increase with construction of the project. Construction noise was analyzed under item #1 above. Implementation of Mitigation Measure NOI 1 would reduce this impact to a less than significant level.

Mitigation Measure NOI 1

See description above.

5) No Impact

The project site is not located within two miles of a public airport or public use airport, therefore, there is no impact.

6) No Impact

The project site is not located within the vicinity of a private airstrip, therefore, there is no impact.

L. Population and Housing

SETTING AND DESCRIPTION

The proposed annexation would add area to the City Limit of the City of Merced. No residential uses exist or are proposed within the annexation area. The project proposed for the northwest corner of Highway 59 and Santa Fe Drive would include commercial uses which would generate new jobs within the City of Merced.

Expected Population and Employment Growth

According to the State Department of Finance, the City of Merced's population in 2018 was estimated to be 86,750. Population projections estimate that the Merced SUDP/SOI area will have a population of 159,900 by the Year 2030. According to the *Merced Vision 2030 General Plan*, the City of Merced is expected to experience significant employment growth by the Year 2030.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
L. <u>Population and Housing.</u>				
Would the project:				
1) Induce substantial population growth in an area either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension				
of roads or other infrastructure)?				✓

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
2) Displace substantial numbers of existing				
housing, necessitating the construction of				
replacement housing elsewhere?				✓
3) Displace substantial numbers of people,				
necessitating the construction of				
replacement housing elsewhere?				✓

1) No Impact

The annexation area does not include any residential uses nor does the proposed commercial project for the northwest corner. The project does not include the construction or extension of any new roads, but water, sewer, and storm drain lines would be extended across the full frontage of the property. The extension of these lines would not produce an increase in the population of the City. Therefore, there is no impact.

2) No Impact

There are no housing units within the annexation or the future project area. No one would be displaced by this project.

3) No Impact

See item 2.

M. Public Services

SETTING AND DESCRIPTION

Fire Protection

The City of Merced Fire Department provides fire protection, rescue, and emergency medical services from five fire stations throughout the urban area. The City's Central Fire Station (Station 51) is located in the downtown area at 16th and G Streets. There are four other stations within the City: Station 52 is located at the Merced Regional Airport on Falcon Way; Station 53 is located on Loughborough Drive between M and R Streets, just north of the Merced Mall; Station 54 is on East 21st Street; and Station 55 is located at the intersection of Parsons and Silverado Avenues in North Merced.

The annexation area would be served by Station 53 on Loughborough Drive. This station is approximately 1.5 miles from the annexation area.

Police Protection

The City of Merced Police Department provides police protection for the entire City. The Police Department employs a mixture of sworn officers, non-sworn officer positions (clerical, etc.), and unpaid volunteers (VIP's). The service standard used for planning future police facilities is approximately 1.37 sworn officers per 1,000 population, per the Public Facilities Financing Plan.

The Police Department has two stations: the Main Station located at 611 West 22nd Street, and the South Station located at 470 West 11th Street.

Schools

The public school system in Merced is served by three districts: 1) Merced City School District (elementary and middle schools); 2) Merced Union High School District (MUHSD); and, 3) Weaver Union School District (serving a small area in the southeastern part of the City with elementary schools). The districts include various elementary schools, middle (junior high) schools, and high schools.

Parks

The City of Merced has a well-developed network of parks and recreation facilities throughout the City. A Class III bike path is located on the east side of Highway 59 that connects the annexation area to the north/northeast and central portions of the city.

Project Characteristics

The annexation area is located at the northwest corner of North Highway 59 and Santa Fe Drive. There is an existing retail/wholesale business at the southwest corner of North Highway 59 and Santa Fe Drive and a vacant lot at the northwest corner. A commercial development is proposed for the northwest corner once annexation is complete. Refer to the project description section of this document for details.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
M.	<u>Public Services.</u> Would the project:				
1) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services:					
a) Fire Protection?				✓	
b) Police Protection?				✓	
c) Schools?				✓	
	d) Parks?			✓	
	e) Other Public Facilities?			✓	

1) Less than Significant Impact

a) Fire Protection

The proposed annexation area and subsequent commercial project would be served by the Station 53 on Loughborough Drive. This station would be able to adequately serve the

annexation area and maintain the Fire Department's goal of a 4-6 minute response time for the first crew to arrive at a fire or medical emergency. The proposed annexation and subsequent development of the vacant parcel would not significantly affect fire protection services, and no new or modified fire facilities would be needed. Construction within the annexation area would be required to meet all requirements of the California Fire Code and the Merced Municipal Code. Compliance with these requirements would reduce any future impacts to a less than significant level.

At the time a building permit is issued, the developer would be required to pay the fees required by the Public Facility Financing Plan (PFFP). A portion of this fee goes to cover the City's costs for fire protection such as fire stations, etc. In addition, the developer would be required to annex into the City's Community Facilities District for Services (CFD #2003-2). This would result in an assessment paid with property taxes in which a portion of the tax would go to pay for fire protection services.

Compliance with all Fire, Building, and Municipal Code requirements as well as payment of the Impact Fees required by the Public Facilities Financing Program, and annexation into the City's CFD for services would reduce any potential impacts to a **less than significant level**).

b) Police Protection

The proposed annexation area and subsequent commercial project would be adequately served by the City's Police Department. The same requirements for paying Public Facility Impact Fees and annexation into the City's Community Facilities District for Services (CFD #2003-2) would apply with a portion of the fees and taxes collected going toward the costs for police protection. Therefore, this potential impact is reduced to a **less than significant** level.

c) Schools

The public school system in Merced is served by three districts: 1) Merced City School District (elementary and middle schools); 2) Merced Union High School District (MUHSD); and, 3) Weaver Union School District (serving a small area in the southeastern part of the City with elementary schools). The districts include various elementary schools, middle (junior high) schools, and high schools. The Project site falls within the Merced City School District and Merced Union High School District (MUHSD).

As the City grows, new schools will need to be built to serve our growing population. According to the Development Fee Justification Study for the MUHSD, Merced City Schools students are generated by new multi-family development at the following rate:

Student Generation Rates					
Commercial/Industrial	Commercial/Industrial Elementary (K-8) High School (9-12)				
Category	(Students per 1,000 sq.ft.)	(Students per 1,000 sq.ft.)			
Retail	0.13	0.038			
Restaurants	0.00	0.157			
Offices	0.28	0.048			
Services	0.06	0.022			
Wholesale/Warehouse	0.19	0.016			
Industrial	0.30	0.147			
Multi-Family	0.559 (per unit)	0.109 (per unit)			

Based on the table above, the proposed commercial project would add 2.33 high school students and 4.66 K-8 students. This change would not create a significant impact on the school system. Therefore, this impact is less than significant.

d) Parks

Payment of the fees required under the Public Facilities Financing Program (PFFP) as described above would be required at time of building permit issuance to help fund future parks and maintenance of existing parks as well as the payment of fees in lieu of land dedication for future parks would be required at the building permit stage. The proposed amenities onsite and the payment of fees would reduce this potential impact to **less than significant**.

e) Other Public Facilities

The development of the project could impact the maintenance of public facilities and could generate impacts to other governmental services. Payment of the fees required under the Public Facilities Financing Program (PFFP) as described above would mitigate these impacts to a **less than significant** level.

N. Recreation

SETTING AND DESCRIPTION

The City of Merced has a well-developed network of parks and recreation facilities. Fahrens Park and Carol Gabriault Park are both located within a one-mile radius of the annexation area. Additionally, a Class III bike path runs along the east side of North Highway 59 connecting the area to the north/northeast and central portions of the city.

No residential development is proposed within the annexation area.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
N.	Recreation. Would the project:				
1)	Increase the use of neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?			√	
2)	Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?				✓

1) Less Than Significant Impact

The annexation and commercial project do not include the addition of any dwelling units. It is unlikely that the use of parks would increase due to the annexation or subsequent project. The use of the bike path might increase due to the new commercial uses, but it is unlikely that the increase would be substantial. Therefore, this impact would be less than significant.

2) No Impact

The project is not responsible for the construction or expansion of any recreational facilities. However, as described above, new construction would pay impact fees required under the PFFP, a portion of which goes to fund parks facilities.

O. Transportation/Traffic

SETTING AND DESCRIPTION

This project is for the annexation of 8.83 acres of land at the northwest and southwest corners of North Highway 59 and Santa Fe Drive. North Highway 59 in this area is a two-lane state highway and Santa Fe Drive is currently a 4-lane road (two east-bound and two west-bound lanes). Santa Fe Drive is the extension of Olive Avenue (east of North Highway 59), which is a 6 lane road with three lanes in each direction. The number 3 west-bound lane becomes a dedicated right-turn lane at the intersection of Olive Avenue and North Highway 59.

There is a signalized intersection at the corner of North Highway 59 and Santa Fe Drive/Olive Avenue. Just south of the intersection is a railroad crossing for the BNSF railroad.

The proposed annexation would not change the layout of the road. However, the subsequent development on the north side of Santa Fe Drive would require improvements such as curb, gutter, and sidewalk along the project frontage on Santa Fe Drive and North Highway 59. The project also proposes two driveways on Santa Fe Drive and one driveway on North Highway 59 (refer to the site plan at Attachment C).

A Traffic Impact Analysis was prepared by KD Anderson & Associates, Inc. (Attachment L). A revised Executive Summary for this analysis was provided based on comments received from the Merced County Community and Economic Development Department and LAFCo of Merced County. This revised Executive Summary is provided at Attachment L with the full Traffic Impact Analysis. This analysis was reviewed by Caltrans due to the proximity of the project to a state highway. Caltrans concurs with the analysis and has no additional comments.

The traffic analysis analyzed the development of approximately 42,800 s.f. of retail commercial uses, including a gasoline station with a convenience store, fast food restaurants, coffee kiosk, and other retail uses.

The traffic analysis included traffic conditions occurring on weekday a.m. and p.m. commute periods. The analysis addressed the operation of seven (7) existing intersections:

- 1. SR 59/Yosemite Avenue Traffic Signal
- 2. SR 59/Buena Vista Drive Traffic Signal
- 3. SR 59/Santa Fe Drive/W. Olive Avenue Traffic Signal

- 4. W. Olive Avenue/Loughborough Drive Traffic Signal
- 5. W. Olive Avenue/Austin Avenue Traffic Signal
- 6. SR 59/Cooper Avenue/Willowbrook Drive Traffic Signal
- 7. SR 59/W. 16th Street All-Way Stop

The analysis also addresses conditions on SR 59, Olive Avenue, and Santa Fe Drive based on daily traffic volumes.

The analysis considers the following scenarios:

- Existing Conditions
- Existing Conditions Plus Project Build out with access as proposed
- Year 2035 Cumulative Conditions without the Project
- Year 2035 Cumulative Conditions with Project Build Out

Existing Conditions

The City establishes Level of Service (LOS) D as the minimum acceptable standard for intersections and roadways.

Traffic counts were conducted in 2017 to establish existing conditions. Two safety intersection improvement projects are pending and are expected to be completed before the proposed project proceeds. These improvements are included in the analysis of existing conditions at the SR 59/Olive Avenue/Santa Fe Drive intersection and the SR 59/W. 16th Street intersection.

With anticipated improvements, all study intersections operate at LOS D or better during the study hours. However, SR 59 between W. 16th Street and Olive Avenue carries daily traffic volumes that are indicative of LOS F conditions.

The existing system of pedestrian and bicycle facilities in this area includes limited sidewalks and Class I bike paths, but pedestrians and bicycles use paved shoulders elsewhere. A gap exists in the pedestrian system on the west side of SR 59 between Cooper Avenue and Santa Fe Drive, and right of way would need to be acquired to improve the situation in this area.

Alternative Transportation

Public Transportation

The City of Merced is served by the Merced Transit System known as "The Bus." This system includes a number of fixed routes throughout the City. The project site would be part of the M1-Merced West Route. This route originates at the Merced Transportation Center in downtown Merced and covers the southwest and northwest areas of the City.

Bicycles

The City of Merced General Plan includes a Bicycle Master Plan which identifies existing and planned facilities. A Class 1 bike path exists on the east side of Highway 59 and extends to the northeastern section of the City as well as the central part of the City.

Pedestrians

Sidewalks would be installed as part of the development of the northwest corner of North Highway 59 and Santa Fe Drive. Sidewalks would be required to be installed along the property frontage on Santa Fe Drive and North Highway 59.

Currently, there are no sidewalks on Highway 59 from Olive Avenue south to the railroad tracks. However, the City is currently working on a project that would provide a safe pedestrian crossing at the railroad tracks as well as sidewalks.

Sidewalks exists on the south side of Olive Avenue all the way to the intersection with North Highway 59. On the north side of Olive Avenue, the sidewalk stops approximately 400 feet west of the intersection.

Truck Access

The proposed development at the northwest corner would require truck access for delivery of fuel and other goods. As proposed trucks would have access to enter and exit the site from one of the two driveways on Santa Fe Drive or the driveway on North Highway 59. The eastern driveway on Santa Fe Drive and the driveway on Highway 59 are both right-in/right-out driveways. If a truck is leaving the site and wants to go eastbound, they would have to use the western driveway to make a left turn out of the site. Access to Highway 99 is available from North Highway 59. Most truck traffic will most likely use the Highway 59 driveway to exit the site and either continue on Highway 59 or use Highway 59 to access Highway 99.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
0.	Transportation/Traffic.				
	Would the project:				
1)	Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant component of the circulation system including, but not limited to, intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?		✓		

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
2) Conflict with an applicable congestion management program including but not limited to, level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?				
highways? 3) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?		→		
4) Substantially increase hazards due to a design feature (e.g. sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?		✓		
5) Result in inadequate emergency access? 6) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g. bus turnouts, bicycle racks)?		√	✓	

1) Less than Significant with Mitigation

The threshold of significance for this impact is a project ADT (Average Daily Trips) contribution equal or greater than 5% of the current ADT for an "arterial roadway" that is, or will be operating at an unacceptable LOS "E" or "F."

The threshold of significance for a collector road is an amount where the Project contributes more than 20% of the current ADT on roads carrying at least 3,000 ADT. Thus, a significant impact would occur if a Project adds 601 ADT to a collector road that currently has 3,000 ADT.

All the roadway segments studied (SR 59, Santa Fe Drive, and Olive Avenue) are arterial roadways. Thus, the threshold of significance would be the addition of 5% of the current ADT for roadways operating at LOS "E" or "F." As shown in the table below, SR 59 from Olive Avenue to W. 16th Street is currently operating at LOS F.

Existing Roadway Segments Volumes and Levels of Service					
Street	From	To	Daily Volume	LOS	
	Buena Vista Dr.	W. Olive Ave	13,379	D	
SR 59	W. Olive Ave.	BNSF RR	21,954	F	
	BNSF RR	W. 16 th St.	20,462	F	
Santa Fe Dr.	Beachwood Dr.	SR 59	19,733	С	
W. Olive Ave	SR 59	Loughborough Dr.	25,131	С	

Phase One of the proposed development at the northwest corner of North Highway 59 and Santa Fe Drive would add approximately 1,116 daily trips to the area. Phase Two would add an additional 1,924 trips for a total of 4,040 daily trips at full build-out of the project. The table on the following page shows the comparison of the existing traffic volumes to the expected traffic volumes with build-out of the project. As shown, the additional traffic generated from the project would not decrease the level of service for these roadway segments below the existing LOS. As shown below, no segment of the SR 59 that currently operates at LOS F exceeds a 5% increase in traffic volume. Therefore the project would not result in a significant impact.

E	Existing Roadway Segments Plus Project Volumes and Levels of Service						
Street	From	To	Existing	Project	Total	Percent	LOS
			Daily	Daily	Daily	Increase	
			Volume	Volume	Volume		
	Buena Vista	W. Olive Ave	13,379	1,010	14,749	7.0%	D
	Dr.						
SR 59	W. Olive	BNSF RR	21,954	808	22,762	3.7%	F
	Ave.						
	BNSF RR	W. 16 th St.	20,462	404	20,866	2.0%	F
Santa	Beachwood	SR 59	19,733	606	20,339	3.1%	С
Fe Dr.	Dr.						
W.	SR 59	Loughborough	25,131	2,015	27,146	8.0%	С
Olive		Dr.					
Ave							

<u>Intersections</u>

Although SR 59 between Olive Avenue and W. 16th Street would continue to operate at an LOS F, the existing off-site intersections studied would all operate at an LOS D. However, the proposed western driveway is forecasted to operate at an LOS F in the p.m. peak hour (4-6 p.m.) In order to improve this condition, mitigation measures are proposed (see Mitigation Measure TRA-1 below).

Similarly, the SR 59 access is expected to occasionally be blocked by the queue of southbound traffic extending from the Santa Fe Drive traffic signal. Alternative measures to alleviate this issue are also noted, along with their ramifications on the site. The traffic analysis recommends Alternative #1 as the preferred mitigation measure for this impact.

SR 59 Access Alternatives

Alternative	Ramification
Lengthen southbound left turn lane.	Facilitates access but does not shorten queues (mitigation recommended by traffic analysis).
Move access to the north.	Affects Black Rascal Creek as well as property not included in project.
Close SR 59 access.	Exacerbates issues at western access and makes site untenable as a retail center.

The additional traffic on the roadways does not reach the level of significance since the amount of traffic added to the sections of road currently operating at LOS F are less than 5%. However the on-site impacts described above would require mitigation to reduce them to a less than significant level (see Mitigation Measures TRA 1 and TRA 1a).

Cumulative Conditions

The analysis of the Cumulative Plus Project analysis determined that in order to improve the level of service at SR 59 and Olive Avenue, improvements would be needed. As mitigation for the project's proportional impact on this roadway segment, the analysis determined the development should contribute its fair share to the cost of intersection improvements. Therefore, the following mitigation measure TRA-1b is recommended to bring this impact to a **less than significant level.**

Mitigation Measure TRA-1

The following improvements shall be incorporated into the development of the northwest corner of North Highway 59 and Santa Fe Drive. These improvements are the sole responsibility of the property owner/developer.

- 1. Restripe Santa Fe Drive to create a two-way left-turn (TWLT) lane east of the western access. This will improve the Level of Service by accommodating two-step left turns,
- 2. Modify the layout of the access to Santa Fe Drive to either prohibit outbound right turns from the eastern driveway or provide a continuous auxiliary acceleration-deceleration lane between the driveways. These measures will address the horizontal curve on the alignment of Santa Fe Drive as it relates to the western driveway.

A traffic signal may be required at the western-most driveway. Traffic conditions at the western access shall be monitored and a traffic signal shall be installed if determined to be needed by the City Engineer based on warrants associated with preventable accidents. The cost of the traffic signal shall be the responsibility of the owner/developer.

Mitigation Measure TRA-1a

The southbound left-turn lane on SR 59 shall be lengthened as determined by the City Engineer and approved by Caltrans.

Mitigation Measure TRA-1b

The development shall contribute its fair share to the cost of improvements for the intersection of SR 59 and Olive Avenue:

- Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59: and,
- Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and,
- Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound and right turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes.

The additional traffic on the roadways does not reach the level of significance since the amount of traffic added to the sections of road currently operating at LOS F are less than 5%. However the on-site impacts described above would require mitigation to reduce them to a **less than significant level.**

2) Less Than Significant with Mitigation

Refer to item #1 above.

3) Less Than Significant with Mitigation

The project site is identified as being located in Zone C (refer to map at Attachment I) of the Merced County Airport Land Use Compatibility Plan (ALUCP). As such, development on the site would be required to adhere to any regulations set forth in the ALUCP regarding the number of people per building and uses on the site. Mitigation Measure HAZ-5 will ensure compliance with those regulations and reduce this potential impact to a less than significant level.

4) Less than Significant with Mitigation

The proposed project on the northwest corner North Highway 59 and Santa Fe Drive proposes right-turn only access to North Highway 59 north of Olive Avenue, as well as two driveways on Santa Fe Drive. The operation of the driveways as it relates to sight distance, intersection spacing, and weaving between driveways was considered, and measures to ensure the long term feasibility of these access points has been identified. Mitigation Measure TRA-1 would reduce this impact to a **less than significant level.**

5) Less than Significant

The proposed development has access from two driveways on Santa Fe Drive and one on North Highway 59. Typically, the Fire Department requires a minimum of two access points to serve a site. This project meets that minimum. Emergency services can access the site from the north via Highway 59, from the south also via Highway 59, and from the

east and west via Santa Fe Drive and Olive Avenue, respectively. This impact is **less than significant.**

6) Less Than Significant with Mitigation

The project site is served by the M-1 bus route and would be easily accessible to the City's existing bike path. The City's Design Standards provide standards for constructing streets with bicycle facilities and the Zoning Ordinance requires on-site bicycle parking facilities. Compliance with these requirements and the implementation of the following mitigation measure would reduce any impacts to a **less than significant level**.

TRA -6

Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR 59.

P. <u>Utilities and Service Systems</u>

SETTING AND DESCRIPTION

Water

The City's water system is composed of 23 groundwater production wells located throughout the City, approximately 350 miles of main lines, and 4 water tower tanks for storage. Well pump operators ensure reliability and adequate system pressure at all times to satisfy customer demand. Diesel powered generators help maintain uninterrupted operations during power outages. The City of Merced water system delivered more than 24 million gallons of drinking water per day in 2013 to approximately 20,733 residential, commercial, and industrial customer locations. The City is required to meet State Health pressure requirements, which call for a minimum of 20 psi at every service connection under the annual peak hour condition and maintenance of the annual average day demand plus fire flow, whichever is stricter. The City of Merced Water Division is operated by the Public Works Department.

The City of Merced's wells have an average depth of 414 feet and range in depth from 161 feet to 800 feet. The depth of these wells would suggest that the City of Merced is primarily drawing water from a deep aquifer associated with the Mehrten geologic formation. Increasing urban demand and associated population growth, along with an increased shift by agricultural users from surface water to groundwater and prolonged drought have resulted in declining groundwater levels due to overdraft. This condition was recognized by the City of Merced and the Merced Irrigation District (MID) in 1993, at which time the two entities began a two-year planning process to assure a safe and reliable water supply for Eastern Merced County through the year 2030. Integrated Regional Water Planning continues today through various efforts.

Wastewater

Wastewater (sanitary sewer) collection and treatment in the Merced urban area is provided by the City of Merced. The wastewater collection system handles wastewater generated by residential, commercial, and industrial uses in the City.

The City Wastewater Treatment Plant (WWTP), located in the southwest part of the City about two miles south of the airport, has been periodically expanded and upgraded to meet the needs of the City's growing population and new industry. The City's wastewater treatment facility has a capacity of 11.5 million gallons per day (mgd), with an average 2006 flow of 8.5 mgd. The City has recently completed an expansion project to increase capacity to 12 mgd and upgrade to tertiary treatment with the addition of filtration and ultraviolet disinfection. Future improvements would add another 8 mgd in capacity (in increments of 4 mgd), for a total of 20 mgd. This design capacity can support a population of approximately 174,000. The collection system will also need to be expanded as development occurs.

Treated effluent is disposed of in several ways depending on the time of year. Most of the treated effluent (75% average) is discharged to Hartley Slough throughout the year. The remaining treated effluent is delivered to a land application area and the on-site City-owned wetland area south of the treatment plant.

Storm Drainage

The Draft *City of Merced Storm Drainage Master Plan* addresses the collection and disposal of surface water runoff in the City's SUDP. The study addresses both the collection and disposal of storm water. Systems of storm drain pipes and catch basins are laid out, sized, and costed in the plan to serve present and projected urban land uses.

It is the responsibility of the developer to ensure that utilities, including storm water and drainage facilities, are installed in compliance with City regulations and other applicable regulations. Necessary arrangements with the utility companies or other agencies will be made for such installation, according to the specifications of the governing agency and the City (Ord. 1342 § 2 (part), 1980: prior code § 25.21(f)). The City requires the construction of storm water percolation/detention basins with new development. Percolation basins are designed to collect storm water and filter it before it is absorbed into the soil and reaches groundwater tables. Detention basins are designed to temporarily collect runoff so it can be metered at acceptable rates into canals and streams which have limited capacity. The disposal system is mainly composed of MID facilities, including water distribution canals and laterals, drains, and natural channels that traverse the area.

The City of Merced has been involved in developing a Storm Water Management Plan (SWMP) to fulfill requirements of storm water discharges from Small Municipal Separate Storm Sewer System (MS4) operators in accordance with Section 402(p) of the Federal Clean Water Act (CWA). The SWMP was developed to also comply with General Permit Number CAS000004, Water Quality Order No. 2003-0005-DWQ.

Solid Waste

The City of Merced is served by the Highway 59 Landfill and the Highway 59 Compost Facility, located at 6040 North Highway 59, one and one-half miles north of Old Lake Road. The County of Merced is the contracting agency for landfill operations and maintenance, while the facilities are owned by the Merced County Association of Governments. The City of Merced provides services for all refuse pick-up within the City limits and franchise hauling companies collect in the unincorporated areas. In addition to these two landfill sites, there is one private disposal facility, the Flintkote County Disposal Site, at SR 59 and the Merced River. This site is restricted to concrete and earth material.

Project Characteristics

The new construction portion of the annexation area would be required to connect to the City's water, sewer, and storm drain system. All lines would be required to run along the full length of the project frontage. The existing business at the southwest corner of North Highway 59 and Santa Fe Drive would not be required to connect to City services at this time. However, if in the future, the water well or septic tank failed, they would be required to connect to the City's services at that time. Additionally, if the owner of the property proposed a large remodel or new construction on the site, connection to City services would then be required.

A 16-inch diameter water line exists in North Highway 59 which would be sufficient to serve the annexation area. A 21-inch sewer line exists in Olive Avenue, east of North Highway 59. In order to serve the proposed new construction site, this line would have to be extended down Santa Fe Drive. The same is true for the storm drain system. A line exists in Olive Avenue, but would have to be extended in order to serve the project site.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
P.	Utilities and Service Systems.				
	Would the project:				
1)	Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?			✓	
2)	Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?			√	
3)				√	
4)	Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?			√	
5)	Result in a determination by the wastewater treatment provider which serves or may serve the project, that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?			√	

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
6) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?			√	
7) Comply with federal, state, and local statues and regulations related to solid waste?			√	

1) Less Than Significant Impact

The project site would be served by the City sewer system. There is sufficient capacity for serving this project. This potential impact is **less than significant.**

2) Less Than Significant Impact

The City's current water and wastewater system is capable of handling this project and other future developments within the City of Merced. There is an existing sewer line in Olive Avenue. The project would be required to extend the main line to their site and across the entire frontage of their property (approximately 1,000 feet). However, this extension would be done within an existing roadway and no significant environmental impacts would result from the extension of the line. A water line currently exists in North Highway 59 along the property frontage. No new construction for water facilities would be required. This potential impact is **less than significant**.

3) Less Than Significant Impact

The project would be required to provide storm drainage facilities that would capture storm water onsite and be routed to the City's storm drain system. There are existing storm drain lines in Olive Avenue east of the project site. Extension of the storm drain lines would be done within an existing roadway and no significant environmental impacts would result from the extension of the line. This potential impact is **less than significant**.

4) Less Than Significant Impact

As explained above, no new water facilities are needed for this project. The existing water system is sufficient to serve the development. Potential impacts are **less than significant**.

5) Less Than Significant Impact

Refer to item 2 above.

6) Less Than Significant Impact

The City of Merced uses the Highway 59 Landfill. Sufficient capacity is available to serve the future project. According to the *Merced Vision 2030 General Plan DEIR*, the landfill has capacity to serve the City through 2030. Potential impacts are **less than significant**.

7) Less Than Significant Impact

All construction on the site would be required to comply with all local, state, and federal regulations regarding solid waste, including recycling. Potential impacts are **less than significant**.

Q. Mandatory Findings of Significance

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Q.	Mandatory Findings of Significance.				
	Would the project:				
2)	Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? Have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects?) Have environmental effects which will			✓	
	cause substantial adverse effects on human beings, either directly or indirectly?				
				✓	

1) Less than Significant

As previously discussed in this document, the project does not have the potential to adversely affect biological resources or cultural resources because such resources are lacking on the project site, and any potential impacts would be avoided with implementation of the mitigation measures and other applicable codes identified in this report. Also, the project would not significantly change the existing urban setting of the project area. Thus, this impact would be **less than significant**.

2) Less Than Significant Impact

The Program Environmental Impact Report conducted for the *Merced Vision 2030 General Plan, the General Plan Program EIR* (SCH# 2008071069), has recognized that future development and build-out of the SUDP/SOI will result in cumulative and unavoidable impacts in the areas of Air Quality and Loss of Agricultural Soils. In conjunction with this conclusion, the City has adopted a Statement of Overriding Considerations for these impacts (Resolution #2011-63) which is herein incorporated by reference.

The certified General Plan EIR addressed and analyzed cumulative impacts resulting from changing agricultural use to urban uses. No new or unaddressed cumulative impacts will result from the Project that have not previously been considered by the certified General Plan EIR or by the Statement of Overriding Considerations, or mitigated by this Expanded Initial Study. This Initial Study does not disclose any new and/or feasible mitigation measures which would lessen the unavoidable and significant cumulative impacts.

The analysis of impacts associated with the project will contribute to the cumulative impacts identified in the General Plan EIR. The nature and extent of these impacts, however, falls within the parameters of impacts previously analyzed in the General Plan EIR. No individual or cumulative impacts will be created by the Project that have not previously been considered at the program level by the General Plan EIR or mitigated by this Initial Study.

3) Less Than Significant Impact

Development anticipated by the *Merced Vision 2030 General Plan* will have significant adverse effects on human beings. These include the incremental degradation of air quality in the San Joaquin Basin, the loss of prime agricultural soils, the incremental increase in traffic, and the increased demand on natural resources, public services, and facilities. However, consistent with the provisions of CEQA previously identified, the analysis of the Project is limited to those impacts which are peculiar to the Project site or which were not previously identified as significant effects in the prior EIR. The previously-certified General Plan EIR and the Statement of Overriding Considerations addressed those cumulative impacts; hence, there is no requirement to address them again as part of this Project.

This previous EIR has concluded that these significant adverse impacts are accounted for in the mitigation measures incorporated into the General Plan EIR. In addition, a Statement of Overriding Considerations has been adopted by City Council Resolution #2011-63 that indicates that the significant impacts associated with development of the Project are offset by the benefits that will be realized in providing necessary jobs for residents of the City. The analysis and mitigation of impacts has been detailed in the Environmental Impact Report prepared for the *Merced Vision 2030 General Plan*, which are incorporated into this document by reference.

While this issue was addressed and resolved with the General Plan EIR in an abundance of caution, in order to fulfill CEQA's mandate to fully disclose potential environmental consequences of projects, this analysis is considered herein. However, as a full disclosure document, this issue is repeated in abbreviated form for purposes of disclosure, even though it was resolved as a part of the General Plan.

Potential impacts associated with the Project's development have been described in this Initial Study. All impacts were determined to be no impact or less than significant.

R. Greenhouse Gas Emissions

SETTING AND DESCRIPTION

The issue of project-generated Greenhouse Gas (GHG) Emissions is a reflection of the larger concern of Global Climate Change. While GHG emissions can be evaluated on a project level, overall, the issue reflects a more regional or global concern. CEQA requires all projects to discuss a project's GHG contributions. However, from the standpoint of CEQA, GHG impacts on global climate change are inherently cumulative. The quantity of GHGs that it takes to ultimately result in climate change is not precisely known; however, it can safely be assumed that existing conditions do not measurably contribute to a noticeable incremental change in the global climate.

THRESHOLDS OF SIGNIFICANCE

The proposed project would result in a significant impact on the environment if it would:

- Generate GHG emissions either directly or indirectly, that may have a significant impact on the environment;
- Conflict with any applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of GHGs.

A study on the impacts of greenhouses gases as a result of this project was prepared by BaseCamp Environmental (Attachment G). The information contained in this section is based on this study.

R.	Greenhouse Gas Emissions. Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
1)	Generate greenhouse gas emission, either directly or indirectly, that may have a significant impact on the environment?			√	
2)	Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?			✓	

1) Less Than Significant Impact

Based on results from the CalEEMod run (see Appendix A of Attachment G), total construction GHG emissions (Phase 1 and Phase 2) from the proposed project would be approximately 233.77 metric tons CO₂e. Unmitigated (business-as-usual) operational GHG

emissions, mainly from vehicle use, are estimated to generate approximately 3,642.57 metric tons CO₂e annually. With incorporation of project features that would reduce GHG emissions, the total operational GHG emissions would be 2,354.89 metric tons CO₂e annually. This would be a reduction of approximately 35.3% from unmitigated levels, which exceeds the reduction target set by the City of Merced. Based on this, project impacts related to GHG emissions are considered **less than significant**.

2) Less Than Significant Impact

As noted above, GHG emissions associated with the project would be reduced by an amount that would exceed the City's GHG reduction target. Because of this, the project would be consistent with the GHG reduction objectives of the City's Climate Action Plan (CAP). It is also consistent with the 29% GHG reduction target established by the SJVAPCD in its Climate Change Action Plan. Project impacts related to GHG reduction plans are considered **less than significant.**

S. Environmental Determination

On the basis of this initial environmental evaluation:

I find that the project could have a significant effect on the environment, and that a MITIGATED NEGATIVE DECLARATION HAS BEEN PREPARED for public review.

May	14,	201	8

Julie Nelson.	Associate Planner	

Scott McBride, Director of Development Services

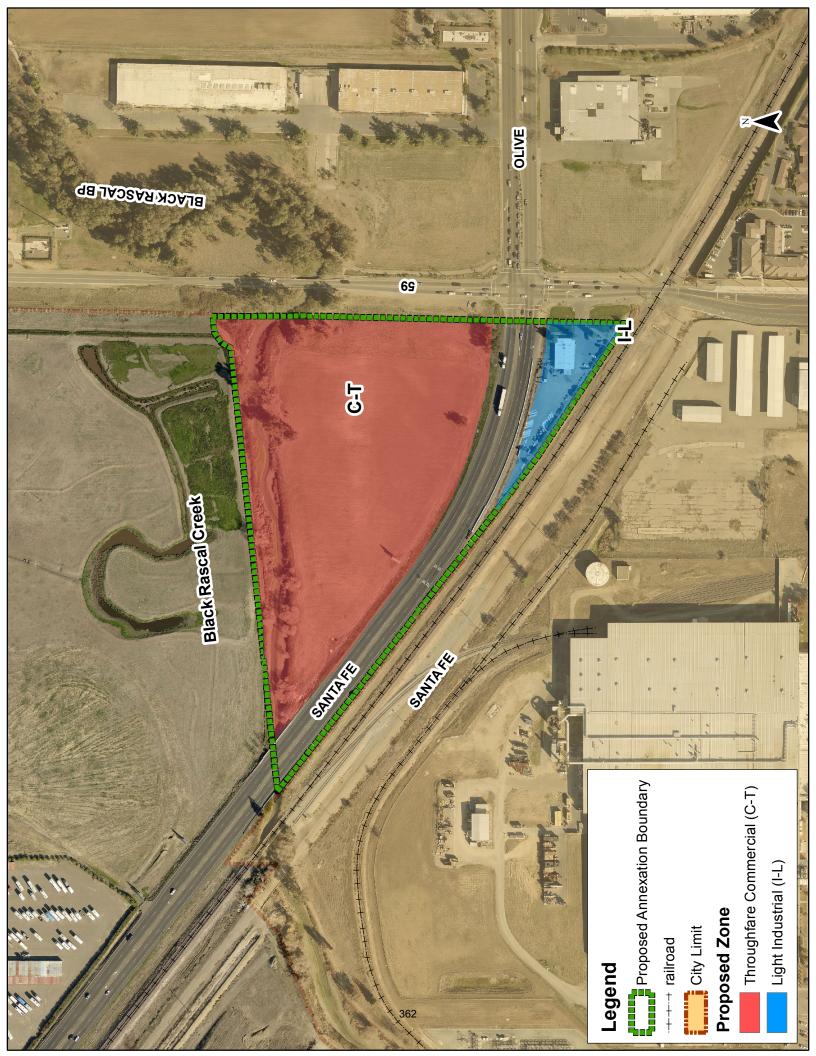
Environmental Coordinator City of Merced

Distributed for Public Review: May 17, 2018

Attachments:

- A) Location Map
- B) Tentative Map
- C) Site Plan
- D) C-T Zoning
- E) I-L Zone
- F) Important Farmland Map
- G) Air Quality/Greenhouse Gas Report

- H) Biological Assessment
- I) Airport Compatibility Zone Map
- J) Flood Zone Map
- K) Urban Level of Flood Protection Study
- L) Traffic Study
- M) Public Hearing Notice
- N) Map of Notice Area
- O) Mitigation Monitoring Program (Revised Per Comments Received)
- P) Response to Comments
- Q) Errata Sheet



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Chapter 20.10 - COMMERCIAL ZONING DISTRICTS

Sections:

20.10.010 Purpose of the Commercial Zoning Districts

20.10.020 Land Use Regulations for Commercial Zoning Districts

20.10.030 Development Standards and Guidelines for Commercial Zoning Districts

20.10.010 Purpose of the Commercial Zoning Districts

- A. Neighborhood Commercial (C-N). The C-N zoning district provides areas for shopping centers and other commercial uses that serve the day-to-day needs of residential neighborhoods. The C-N districts shall have a minimum area of three acres and shall be located only where analysis of the residential population demonstrates that the facilities are justified.
- **B.** Shopping Center Commercial (C-SC). The C-SC zoning district provides areas for grocery stores, supermarkets, and other retail establishments selling groceries to serve local residents as well as the larger regional market. The C-SC districts shall have a minimum area of five acres.
- C. Regional/Central Commercial (C-C). The C-C zoning district provides areas for a diversity of commercial and residential land uses in the central business district and regional centers. These uses help to support a vibrant retail destination, provide jobs for residents, and accommodate commercial and service uses to meet the needs of community and regional businesses and residents.
- D. Office Commercial (C-O). The C-O zoning district provides a location for a broad range of office uses including professional offices, business offices, medical offices, and regional or "back" offices. The C-O zoning district can also accommodate limited "accessory" restaurant, retail, and service uses that cater to the needs of on-site employees and visitors.
- **E.** Thoroughfare Commercial (C-T). The C-T zoning district provides areas for auto-oriented commercial uses that accommodate the needs of people traveling on highways and local motorists. The C-T zoning district also accommodates large recreational facilities and heavy commercial uses that benefit from proximity to the highway.
- **F. General Commercial (C-G).** The C-G zoning district provides areas for heavy commercial and light industrial uses that may impact neighboring uses and often require large parcels and benefit from separation from retail uses. The C-G districts are to be established in areas of four acres or larger.
- **G. Business Park (B-P).** The B-P zoning district provides a location for employment-intensive uses within an attractive campus-like setting. The B-P zoning district shall primarily allow "back" offices, research and development businesses but also limited commercial retail uses to serve employees in the area. The B-P zoning district shall have a minimum area of five acres.

20.10.020 Land Use Regulations for Commercial Zoning Districts

A. Permitted Uses. Table 20.10-1 identifies land uses permitted in commercial zoning districts.

Table 20.10-1 Permitted Land Uses in the Commercial Zoning Districts

Кеу	Zoning District [1]							
P Permitted Use M Minor Use Permit Required SP Site Plan Review Permit Required C Conditional Use Permit Required X Use Not Allowed	c-o	C-N	C-C	C-SC	С-Т	C-G	В-Р	Additional Regulations
RESIDENTIAL USES								
Group/Transitional/Supportive Housing	Х	Х	P [3]	Х	Х	Х	х	
Live/Work Units	С	С	P [2]	Х	Х	Х	Х	Sec. 20.44.080
Multiple-Family Dwellings	С	С	Р	Х	Х	Х	Х	
Residential Care Facilities, Small (6 or Less)	Х	Х	P [3]	Х	Х	Х	Х	
Residential Care Facilities, Large (More than 6 residents)	х	х	P [3]	х	х	х	х	
Single-Room Occupancy	Х	X	P [3]	X	X	Х	Х	Sec. 20.44.120
COMMUNITY USES								
Community Assembly	С	С	С	Х	С	С	С	
Community Garden	SP	SP	SP	Х	Х	SP	Х	
Colleges and Trade Schools	С	С	С	Х	Х	С	С	
Convalescent or Nursing Homes	С	С	С	Х	Х	Х	Х	
Cultural Institutions	С	С	С	Х	С	С	С	
Day Care Centers (Children & Adults)	М	М	М	Х	Х	Х	SP	
Emergency Shelters	Х	Х	С	Х	С	Р	Х	Sec.20.44.150
Government Offices	Р	Р	Р	Х	С	С	С	
Hospitals and Surgery Centers	С	С	С	Х	Х	Х	С	
Instructional Services	Р	Р	Р	Х	Х	Х	SP	
Medical Offices and Clinics	Р	Р	Р	Х	Х	Х	С	
Parks and Recreational Facilities	С	С	С	Х	Х	х	С	
Public Safety Facilities	SP	SP	Р	С	SP	SP	SP	
Rehabilitation Centers	Р	P [6]	P[10]	Х	Х	С	С	
Social Assistance Services	С	С	С	Х	SP	Р	Х	

Key		Zoning District [1]						
P Permitted Use M Minor Use Permit Required SP Site Plan Review Permit Required C Conditional Use Permit Required X Use Not Allowed	C-O	C-N	C-C	C-SC	С-Т	C-G	В-Р	Additional Regulations
COMMERCIAL USES								
Alcoholic Beverage Sales [7]	х	P [7][8]	P [7]	C [7][8]	P [7]	P [7]	SP [7]	Sec.20.44.010
Bail Bond Businesses	С	X	C [10]	X	С	С	С	
Bars and Nightclubs	Х	С	С	X	С	С	С	
Banks, Retail	Р	Р	Р	P [9]	SP	SP	SP	
Bed and Breakfast	Х	X	С	X	С	С	X	Sec.20.44.030
Building Supplies/Home Improvement	Х	X	С	X	SP	Р	SP	
Business Support Services	Х	С	M	X	P	P	SP	
Cardrooms [5]	Х	X	C [5]	Х	C [5]	C [5]	X	Chapter 9.08
Cemeteries and Mausoleums	Х	X	С	Х	С	P	X	
Check Cashing/Payday Loan Establishments	С	X	C [10]	X	С	С	С	Sec.20.44.040
Commercial Recreation, Indoor (Except Below)	Х	SP	SP	Х	Р	SP	С	
Multi-Screen (6 or More) Movie Theaters	Х	С	Р	Х	С	Х	С	
Commercial Recreation, Outdoor	Х	Х	Х	Х	Р	С	С	
Drive-Through and Drive-Up Sales	С	С	SP	Х	Р	Р	SP	
Equipment Sales and Rental	Х	Х	Х	Х	Р	P	SP	
Farmer's Market	С	SP	SP	SP	SP	SP	SP	Sec.20.50.030B
Flea Market	Х	Х	Х	Х	С	С	С	
Funeral Parlors and Mortuaries	С	С	С	Х	С	Р	С	
Gas and Service Stations/Car Washes	Х	С	SP	C [9]	Р	Р	SP	Sec.20.44.070
Hotels and Motels	Х	Х	Р	X	Р	С	С	
Hookah Lounges	Х	С	С	Х	С	С	С	
Kennels	Х	X	Х	Х	С	Р	С	
Maintenance and Repair Services	Х	Х	Х	Х	Р	Р	SP	
Massage Establishments	C [16]	C [16]	C [16]	Х	C [16]	C [16]	Х	Chapter 5.44
Massage Therapy—Sole Practitioner	P[17]	P[17]	P[17]	Х	C [16]	C [16]	Х	Chapter 5.44
Medical Marijuana Dispensaries	C [19]	Х	Х	Х	Х	Х	Х	Sec. 20.44.170
Mobile Food Vendors	С	С	C [10]	Х	SP [11]	SP	С	Sec. 5.54 & 20.44.020
Mobile Home Sales	Х	Х	Х	Х	Р	Р	SP	
Office, Professional	Р	Р	Р	C [9]	SP	SP	SP	

Кеу		Zoning District [1]						
P Permitted Use M Minor Use Permit Required SP Site Plan Review Permit Required C Conditional Use Permit Required X Use Not Allowed	C-O	C-N	C-C	C-SC	С-Т	C-G	В-Р	Additional Regulations
COMMERCIAL USES (Continued)								
Pawn Shops	Х	Х	C [10]	х	Х	Р	Х	
Personal Services	SP	Р	Р	P [9]	SP	SP	SP [12]	
Retail, General	SP[12]	Р	Р	P [9]	Р	SP	SP	
Restaurants	C [13]	P [8]	Р	C [9]	Р	М	SP [12] [13]	
Tattoo Parlors	Х	SP	М	Х	М	М	SP	
Tobacco Retailers [18]	Х	P [18]	P [18]	P [18]	P [18]	P [18]	SP[18]	Sec.20.44.160
Vehicle Parts and Accessories Sales	Х	Р	Р	Х	Р	Р	SP	
Vehicle Rentals	Х	Х	М	Х	Р	Р	SP	
Vehicle Repair and Maintenance, Major	Х	Х	Х	Х	С	Р	С	
Vehicle Repair and Maintenance, Minor	Х	SP	Р	Х	Р	Р	С	
Vehicle Sales	Х	х	P [10] [14]	х	Р	Р	С	
INDUSTRIAL USES								
Manufacturing and Processing, General	Х	Х	х	х	х	М	С	
Manufacturing and Processing, Light	Х	Х	Х	Х	Х	Р	SP	
Research and Development	С	Х	С	Х	SP	SP	Р	
Warehousing, Wholesaling, and Distribution	Х	Х	SP[15]	Х	Р	Р	SP	
Wrecking & Salvage Establishments	Х	Х	Х	Х	С	С	Х	Sec.20.44.140
TRANSPORTATION, COMMUNICATION, AND	UTILITY	/ USES						
Airports	Х	Х	Х	х	С	С	С	
Freight Terminals	Х	Х	Х	Х	С	С	С	
Heliports	С	Х	С	Х	С	С	С	
Parking Facilities	Р	Р	Р	P[9]	Р	Р	Р	
Public/Mini Storage	Х	Х	Х	Х	М	М	SP	
Recycling Collection Facilities								Sec.20.44.090
Reverse Vending Machines	Р	Р	Р	M[9]	Р	Р	Р	
Small Collection Facilities	SP	SP	SP	SP[9]	SP	SP	SP	
Large Collection Facilities	X	Х	X	X	С	С	С	
Utilities, Major	С	С	С	Х	С	С	С	
Utilities, Minor	Р	Р	Р	P[9]	Р	Р	Р	
Wireless Communications Facilities	See Chapter 20.58							

Notes:

- [1] A Site Plan Review Permit may be required per Chapter 20.32 (Interface Regulations) regardless of the uses shown in Table 20.10-1.
- [2] Residential use on the ground floor is prohibited unless it is located on the back of the property where it is not visible or approved with a Conditional Use Permit.
- [3] Prohibited as a single use. Permitted as part of a residential mixed-use project.
- [4] Use shall not exceed 20,000 square feet.
- [5] 24 hour operations limited to C-T and C-C zones per Chapter 9.08 (Gaming).
- [6] Rehabilitation centers for drug, methadone, and alcohol are prohibited.
- [7] A Conditional Use Permit is required for establishments smaller than 20,000 square feet.
- [8] A Conditional Use Permit is required for alcoholic beverage sales for on-site consumption.
- [9] Permitted only as part of a shopping center or other retail establishment with a minimum of 5,000 square feet of floor area devoted to the sale of groceries.
- [10] Prohibited in the City Center area between 19th and 16th Streets and O Street and Martin Luther King, Jr. Way, including properties fronting on either side of each of the above streets, except vehicle sales showrooms can be allowed.
- [11] Includes refreshment stands.
- [12] Permitted only as an ancillary use to serve employees, not to occupy more than 5,000 square feet.
- [13] Conditional Use Permit required unless the use is ancillary to a principal permitted use. For restaurants, Conditional Use Permit is required unless the uses are conducted in and entered from within the building with no outside advertising.
- [14] A Site Plan Review Permit is required for used vehicle sales.
- [15] Temporary warehousing and storage only is allowed per the requirements of Section 20.10.030(D).
- [16] Provided that a massage establishment permit has not been revoked at that location within 12 months of the application for a conditional use permit and a massage establishment permit is obtained pursuant to Chapter 5.44.
- [17] Must have valid certificate from State of California as a massage therapist or massage practitioner pursuant to the Massage Therapy Act (Business and Professions Code Section 4600 et seq.).
- [18] Prohibited within 1,000 feet of schools and other uses per Sec. 20.44.160, unless building over 20,000 square feet.
- [19] Limited to no more than 4 dispensaries. Prohibited within 600 feet of schools; 500 feet of public parks, playgrounds, and sports fields; and 500 feet of youth centers, City-owned and operated recreational center, or public library. See Section 20.44.170 for details.

20.10.030 Development Standards and Guidelines for Commercial Zoning Districts

- **A. General Standards.** Table 20.10-2 identifies development standards that apply to all parcels and structures located in commercial zoning districts. See Figure 20.10-1.
- B. Outdoor Operation of Uses.
 - The outdoor operation of a land use in the C-C and C-N zoning districts shall require approval of a Site Plan Review Permit. Outdoor dining in accordance

Chapter 20.12 - INDUSTRIAL ZONING DISTRICTS

Sections:	
20.12.010	Purpose of the Industrial Zoning Districts
20.12.020	Land Use Regulations for Industrial Zoning Districts
20.12.030	Development Standards for Industrial Zoning Districts

20.12.010 Purpose of the Industrial Zoning Districts

- **A. Light Industrial (I-L).** The I-L zoning district provides areas for manufacturing, wholesale, and storage activities that meet City standards to ensure compatibility with surrounding areas and that maintain and strengthen the economic base of the City. I-L districts shall have a minimum size of 5 acres.
- **B.** Heavy Industrial (I-H). The I-H zoning district provides areas for a full range of industrial land uses, including operations that necessitate the storage of hazardous or unsightly materials, and encourages sound industrial development by providing and protecting an environment exclusively to insure the protection of surrounding areas. I-H districts shall have a minimum size of 10 acres.

20.12.020 Land Use Regulations for Industrial Zoning Districts

A. Permitted Uses. Table 20.12-1 identifies land uses permitted in industrial zoning districts.

 TABLE 20.12-1
 PERMITTED LAND USES IN THE INDUSTRIAL ZONING DISTRICTS

Кеу	Zoning C	District ^[1]	
P Permitted Use			
M Minor Use Permit Required			
SP Site Plan Review Permit Required			
C Conditional Use Permit Required			
X Use Not Allowed	I-L	I-H	Additional Regulations
RESIDENTIAL USES			
Caretaker's Home	SP	Х	
COMMUNITY USES	_		
Colleges and Trade Schools	С	Х	
Instructional Services	C [2]	Х	
Public Safety Facilities	SP	С	

Кеу	Zoning D	District ^[1]			
P Permitted Use M Minor Use Permit Required SP Site Plan Review Permit Required C Conditional Use Permit Required X Use Not Allowed	I-L	I-H	Additional Regulations		
COMMERCIAL USES					
Adult Entertainment Businesses	SP	SP	Chapters 5.58 and 20.60		
Building Supplies/Home Improvement Stores	SP	Х			
Business Support Services	SP	Х			
Commercial Cannabis Businesses	Refer to	o Table 20.44	-1 in Section 20.44.170		
Equipment Sales and Rental	SP	Х			
Gas and Service Stations/Car Washes	SP [5]	SP [5]	Section 20.44.070		
Horticultural Nurseries, Retail	С	Х			
Horticultural Nurseries, Wholesale	SP	Х			
Mobile Food Vendors	С	С	Chapter 5.54 & 20.44.020		
Restaurants	C [4]	C [4]			
Retail (Products Manufactured On-site Only)	SP [3]	SP [3]			
Vehicle Repair and Maintenance	SP [5]	SP [5]			
INDUSTRIAL USES					
Construction and Material Yards	SP	SP			
Manufacturing and Processing, Light	SP	SP			
Manufacturing and Processing, General	SP	SP			
Manufacturing and Processing, Heavy	Х	SP [6]	Section 20.12.020.B		
Research and Development	SP	SP			
Wrecking and Salvage Establishments	Х	С	Section 20.44.140		
TRANSPORTATION, COMMUNICATION, AND UTILITY U	SES				
Freight Terminals	х	SP			
Public/Mini Storage	SP	Х			
Recycling Collection Facilities, Small	SP	Х	Section 20.44.090		
Recycling Collection Facilities, Large	SP	SP	Section 20.44.090		
Recycling Processing Facilities	SP	SP	Section 20.44.090		
Utilities, Major	С	SP			
Utilities, Minor	SP	SP			
Warehousing, Wholesaling and Distribution	SP	SP			
Wireless Communications Facilities	See Chapter 20.58				

Notes:

- [1] A Site Plan Review Permit may be required per Chapter 20.32 (Interface Regulations) regardless of the uses shown in Table 20.12-1.
- [2] Limited to fitness, gymnastics, and other similar recreational sports and health facilities.
- [3] Permitted only as an ancillary showroom use for goods manufactured onsite, not to occupy more than 10 percent of the total building floor area unless a Site Plan Review Permit is obtained for additional floor area.
- [4] May be permitted only as an ancillary use to serve employees, not to occupy more than 2,500 square feet with no outside advertising, unless a Conditional Use Permit is obtained.
- [5] Limited to fleet operations only.
- [6] All manufacturing of materials listed in the Section 20.12.020.B is prohibited unless the Planning Commission determines otherwise through a Conditional Use Permit.
- B. Prohibited Uses. The manufacturing of the following materials are prohibited unless the Planning Commission determines otherwise through Conditional Use Permit process.



- 1. Asphalt, cement, charcoal, and fuel briquettes.
- 2. Aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black and bone black, creosote, hydrogen and oxygen, industrial alcohol, nitrates of an explosive nature, potash, pyroxylin, rayon yarn, and hydrochloric, nitric phosphoric, picric, and sulphuric acids.
- 3. Coal, coke, and tar products, including use in other manufacturing; explosives, fertilizers, gelatin, animal glue, and size.
- 4. Turpentine, matches, and other than water-based paint.
- Rubber and soaps, including fat rendering.
- Flour mill.
- 7. Processing of nitrating of cotton or other materials; magnesium foundry; reduction, refining, smelting and alloying of metal or metal ores; refining petroleum products, such as gasoline, kerosene, naphtha, lubricating oil, distillation of wood or bones; storage, curing or tanning of raw, green or salted hides or skins.
- 8. Stockyards or slaughterhouses, except for poultry, animal feed or sales yard, fertilizer yard; slag piles.
- Storage of fireworks or explosives, except where incidental to a permitted use.
- 10. Any other use which is determined by the Planning Commission to be of the same general character as the above uses.

2016 IMPORTANT FARMLAND MAP



REVISED AIR QUALITY/GREENHOUSE GAS REPORT

FOR

ANNEXATION/PRE-ZONE #15-01, NORTH HIGHWAY 59 AND SANTA FE

Merced, CA

June 19, 2018

Prepared for:

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BaseCamp Environmental

1.0 INTRODUCTION

1.1 Report Summary

This report contains an analysis of the air quality and greenhouse gas (GHG) emission impacts of the proposed Annexation/Pre-Zone #15-01, North Highway 59 and Santa Fe Project (project). The project proposes to annex 8.83 acres into the City of Merced and subsequently develop the site for commercial uses. The development would occur in two phases. The first phase would consist of an ARCO AM/PM gasoline station and convenience store with an automated car wash, and a quick-serve restaurant. The second phase would consist of additional retail buildings and another quick-serve restaurant. Figures 1 and 2 show the location of the project site, and Figure 3 depicts the site plan for the project at buildout.

An analysis of the air quality and GHG impacts of the project was conducted using the CalEEMod computer model and comparing model results with impact significance thresholds established by the City of Merced, the San Joaquin Valley Air Pollution Control District (SJVAPCD), and the State CEQA Guidelines. The results of the analysis indicated that the project would have no significant impacts on air quality at buildout. The project would have no significant impact relative to GHG emissions and their impacts on global climate change.

1.2 Project Description

The project site is located northwest of the intersection of SR 59 and West Olive Avenue/Santa Fe Avenue in western Merced. The site is on a property that is currently in Merced County but is proposed for annexation by the City of Merced. This property consists of three parcels totaling 8.83 acres. Only one of the parcels, totaling 7.4 acres, would be used for the project. This 7.4-acre parcel is proposed to be subdivided into two parcels - one approximately 1.91 acres in size, and the other 5.49 acres. The parcels are currently zoned by Merced County as M-1, Light Manufacturing. Upon annexation, the City would zone the parcels as Thoroughfare Commercial (C-T). The City of Merced General Plan has designated the project site as General Commercial. The project site is located north of an industrial park and northwest of a shopping center with a Walmart. Residential land uses are located nearby and to the east.

The project proposes two phases of development. Phase 1 of the project proposes to construct a commercial development on the proposed 1.91-acre parcel, located adjacent to the intersection. The Phase 1 development would consist of two buildings totaling 7,333 square feet in floor area. One building, approximately 3,764 square feet in floor area, would accommodate an ARCO AM/PM gasoline station and convenience store with an automated car wash. The gasoline station would have eight pumps with two fueling positions each, for a total of 16 fueling positions. The pumps would be sheltered beneath a canopy installed south of the convenience store building. The car wash, approximately 1,130 square feet in surface area, would be installed adjacent to the convenience store building, and a drive-through lane would direct cars to the car wash. The other building, approximately 3,462 square feet in floor area, would accommodate a quick-serve restaurant with drive-through service. The restaurant would have 110 seats in its indoor dining area.

Phase 2 of the project proposes to construct 34,833 square feet of retail commercial space on the proposed 5.49-acre parcel adjacent to and northwest of the Phase 1 development site. No specific tenants have been identified for this space to date. For illustrative purposes, the project site plan shows 32,138 square feet of general retail space and a 2,695-square-foot quick-serve restaurant with a drive-through that would have 60 seats indoors. The proposed Thoroughfare Commercial zone allows the following as permitted uses on these parcels (for a complete list, please refer to the Merced Zoning Ordinance Table 20.10-1):

- Retail, General (i.e., drug stores, general merchandise stores, pet stores, department stores, etc.)
- Business Support Services
- Indoor Commercial Recreation, except multi-screen (6 or more) movie theaters
- Outdoor Commercial Recreation
- Drive-Through and Drive-Up Sales
- Equipment Sales and Rental
- Gas Station/Car Wash
- Hotel/Motel
- Maintenance and Repair Services
- Mobile Home Sales
- Restaurants
- Vehicle Parts and Accessories Sales
- Vehicle Rentals
- Minor Vehicle Repair and Maintenance
- Vehicle Sales
- Warehousing, Wholesaling, and Distribution

For the purposes of this report, the 32,138 square feet of Phase 2 commercial space will be analyzed as general retail. The proposed restaurant space will be analyzed as a quick-serve restaurant. Both types of land uses are consistent with the proposed Thoroughfare Commercial zoning designation. The proposed Phase 1 land uses also are consistent with the Thoroughfare Commercial designation.

The proposed development would have three access points. The primary entrance/exit for the Phase 1 development would be a right-in/right-out driveway on Santa Fe Drive approximately 200 feet west of the intersection. An additional right-in/right-out driveway is proposed along SR 59 approximately 230 feet north of the intersection. Access to Phase 2 development would involve the installation of a full-access driveway on Santa Fe Drive, approximately 475 feet west of the intersection. Vehicle and pedestrian circulation would be provided on-site by using striped drive aisles, parking stalls, and pedestrian walkways. Parking spaces would be installed for both Phase 1 and Phase 2 land uses as development occurs, in accordance with City of Merced parking requirements.

1.3 Approach to the Project Analysis

The project's potential environmental effects on air quality and GHG emissions are evaluated in Chapter 2.0. The evaluation is based on environmental impact considerations included in the Air Quality and Greenhouse Gas Emissions sections of the Environmental Checklist in CEQA Guidelines Appendix G. For each question, Chapter 2.0 determines whether the project would involve: 1) a Potentially Significant Impact, 2) a Less Than Significant Impact with Mitigation Incorporated, 3) a Less Than Significant Impact, or 4) No Impact, defined as follows:

A <u>Potentially Significant Impact</u> occurs when there is substantial evidence that the project would involve a substantial adverse change to the physical environment, i.e., that the environmental effect may be significant, and mitigation measures have not been defined that would reduce the impact to a less than significant level. If there are one or more Potentially Significant Impact entries in the Initial Study, an EIR is required.

An environmental effect that is <u>Less Than Significant with Mitigation Incorporated</u> is a Potentially Significant Impact that can be avoided or reduced to a level that is less than significant with the application of mitigation measures.

A <u>Less Than Significant Impact</u> occurs when the project would involve effects on a particular resource, but the project would not involve a substantial adverse change to the physical environment, and no mitigation measures are required.

A determination of No Impact is self-explanatory.

An environmental evaluation ordinarily would prescribe mitigation measures for any potentially significant environmental effects of the project. Mitigating requirements that are established in law, regulation, and practice are taken into consideration in the analysis.

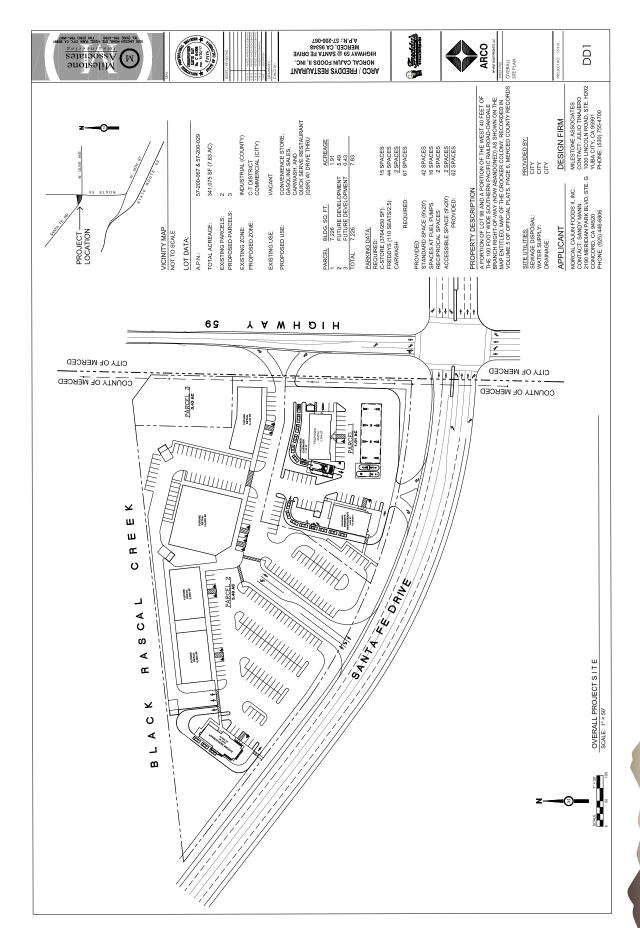




SOURCE: Google Maps



Figure 2 VICINITY MAP



2.0 IMPACT ANALYSIS

This chapter presents BaseCamp's analysis of the air quality and GHG impacts of the proposed project. The analysis of air quality impacts is presented in Section 2.1, and the analysis of GHG impacts is presented in Section 2.2.

2.1 Air Quality Impacts

2.1.1 Environmental Setting

The project site is located within the San Joaquin Valley Air Basin, which includes the City of Merced. The SJVAPCD has jurisdiction over most air quality matters in the Air Basin. It is tasked with implementing programs and regulations required by the federal and California Clean Air Acts. Under their respective Clean Air Acts, both the federal government and the State of California have established ambient air quality standards for six criteria air pollutants: ozone, particulate matter, carbon monoxide, nitrogen dioxide, sulfur dioxide, and lead. California has four additional pollutants for which it has established standards. Table 2-1 shows the attainment status of the Air Basin relative to federal and State ambient air quality standards.

TABLE 2-1 SAN JOAQUIN VALLEY AIR BASIN ATTAINMENT STATUS

Designation/Classification

Federal Primary Standards	State Standards
No Federal Standard	Nonattainment/Severe
Nonattainment/Extreme	Nonattainment
Attainment	Nonattainment
Nonattainment	Nonattainment
Attainment/Unclassified	Attainment/Unclassified
Attainment/Unclassified	Attainment
Attainment/Unclassified	Attainment
No Designation/Classification	Attainment
No Federal Standard	Unclassified
No Federal Standard	Attainment
No Federal Standard	Unclassified
No Federal Standard	Attainment
	No Federal Standard Nonattainment/Extreme Attainment Nonattainment Attainment/Unclassified Attainment/Unclassified Attainment/Unclassified No Designation/Classification No Federal Standard No Federal Standard No Federal Standard

Note – federal primary standards established to protect human health.

Source: SJVAPCD 2015a.

As shown in Table 2-1, the Air Basin is considered a nonattainment area for ozone under both State and federal 8-hour standards and under the State 1-hour standard, for particulate matter less than 10 micrometers in diameter (PM_{10}) under the State standard, and for particulate matter less than 2.5 micrometers in diameter ($PM_{2.5}$) under the federal standard. The Air Basin is in attainment of, or unclassified for, all other federal and State criteria pollutant standards.

Ozone is not directly produced by automobile fuel combustion; rather, it is a secondary pollutant that is formed from reactive organic gases (ROG) and nitrogen oxides (NO_x) in the presence of sunlight. The principal sources of ROG and NO_x (known as "ozone precursors") are the combustion of fuels and the evaporation of solvents, paints, and fuels. Ozone is a strong irritant that can cause constriction of the airways, forcing the respiratory system to work harder to provide oxygen. It also can lead to aggravated respiratory diseases and lung damage, and it can cause substantial damage to vegetation and to manmade products such as rubber and plastics. Applicable attainment plans of the SJVAPCD include the 2007 Ozone Plan and the 2013 Plan for the Revoked 1-Hour Ozone Standard for the Air Basin.

Particulate matter is a complex mixture of solids and liquids that may contain soot, smoke, metals, nitrates, sulfates, dust, water, and tire rubber. It can be directly emitted, or it can form in the atmosphere from reactions of gases such as NO_x. There are many sources of particulate matter emissions, including combustion, industrial and agricultural processes, grading and construction, and motor vehicle use. The size of the particles is directly linked to their potential for causing health problems, including respiratory, pulmonary, and cardiovascular diseases. PM_{2.5} poses the greatest health threat because it can get deep into the lungs and even enter the bloodstream. Applicable attainment plans of the SJVAPCD include the 2015 PM2.5 Plan for the 1997 federal PM_{2.5} standard, the 2012 PM2.5 Plan for the 2006 federal PM_{2.5} standard, the 2016 Moderate Area Plan for the 2012 federal PM_{2.5} standard, and the 2007 PM10 Maintenance Plan to maintain the Air Basin's attainment status of federal PM₁₀ standards.

Another criteria pollutant of concern is carbon monoxide (CO). CO is an odorless, colorless gas that is formed by incomplete combustion of fuels and is emitted directly into the air. The main source of CO in the San Joaquin Valley is on-road motor vehicles. At high concentrations, CO reduces the oxygen-carrying capacity of the blood and can cause dizziness, headaches, unconsciousness, and even death. Problems associated with CO are localized in character, so both ARB and EPA designate urban areas as CO nonattainment areas instead of the entire Air Basin (SJVAPCD 2015b). The project site is not within an urban area designated as nonattainment for CO.

In addition to the criteria pollutants, the California Air Resources Board (ARB) has identified a class of air pollutants known as toxic air contaminants (TACs) - pollutants that even at low levels may cause acute serious, long-term health effects, such as cancer. Diesel particulate matter is the most commonly identified TAC, generated mainly as a product of combustion in diesel engines. Other TACs are less common and are typically associated with industrial activities. However, gasoline contains toxic substances such as benzene, toluene and naphthalene, among others.

2.1.2 Regulatory Framework

As previously noted, the SJVAPCD has jurisdiction over most air quality matters in the San Joaquin Valley Air Basin, including the City of Merced. It implements the federal and California Clean Air Acts, and the applicable attainment and maintenance plans, through local regulations. The SJVAPCD regulations that would be applicable to the project are summarized below.

Regulation VIII (Fugitive Dust PM10 Prohibitions)

Rules 8011-8081 are designed to reduce PM10 emissions (predominantly dust/dirt) generated by human activity, including construction and demolition activities, road construction, bulk materials storage, paved and unpaved roads, carryout and track out, landfill operations, etc.

Rule 4101 (Visible Emissions)

This rule prohibits emissions of visible air contaminants to the atmosphere and applies to any source operation that emits or may emit air contaminants.

Rule 9510 (Indirect Source Review)

Rule 9510, also known as the Indirect Source Rule (ISR), is intended to reduce or mitigate emissions of NO_x and PM_{10} from new development in the SJVAPCD including construction and operational emissions. This rule requires specific percentage reductions in estimated onsite construction and operation emissions, and/or payment of off-site mitigation fees for required reductions that cannot be met on the project site. ISR fees are used to provide offsetting mitigation. Construction emissions of NO_x and PM_{10} exhaust must be reduced by 20% and 45%, respectively. Operational emissions of NO_x and PM_{10} must be reduced by 33.3% and 50%, respectively. The ISR applies to commercial development projects of 2,000 square feet and larger. Based on this criteria, the project would be subject to Rule 9510.

In addition, the SJVAPCD regulates the construction and improvement of facilities with potential air toxic emissions, including gasoline stations. SJVAPCD rules applicable to gasoline stations include:

Rule 2201 (New and Modified Stationary Source Review Rule)

New stationary sources and modifications of existing stationary sources that may emit criteria pollutants must obtain an Authority to Construct and Permit to Operate the proposed facility. Emissions that exceed impact thresholds must include emission controls and may require additional mitigation.

Rule 4621 (Gasoline Transfer into Stationary Storage Containers, Delivery Vessels and Bulk Plants)

Rule 4621 prohibits the transfer of gasoline from a delivery vessel into a stationary storage container unless the container is equipped with an ARB-certified permanent submerged fill pipe and ARB certified pressure-vacuum relief valve, and utilizes an ARB-certified Phase I vapor recovery system.

Rule 4622 (Transfer of Gasoline into Vehicle Fuel Tanks)

Rule 4622 prohibits the transfer of gasoline from a stationary storage container into a motor vehicle fuel tank with a capacity greater than 5 gallons, unless the gasoline dispensing unit used to transfer the gasoline is equipped with and has in operation an ARB-certified Phase II vapor recovery system.

2.1.3 Significance Thresholds

According to Appendix G of the CEQA Guidelines, a project may have a significant impact on the environment if it would do the following:

- Conflict with or obstruct implementation of an applicable air quality plan.
- Violate any air quality standard or contribute substantially to an existing or projected air quality violation.
- Result in a cumulatively considerable net increase of any criteria pollutant for which the
 project region is non-attainment under an applicable federal or state ambient air quality
 standard.
- Expose sensitive receptors to substantial pollutant concentrations.
- Create objectionable odors affecting a substantial number of people.

CEQA Guidelines Appendix G also states that, where available, significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make significance determinations. In 2015, the SJVAPCD adopted an updated Guide for Assessing and Mitigating Air Quality Impacts (GAMAQI). The GAMAQI defines methodology and thresholds of significance for the assessment of air quality impacts for projects within SJVAPCD's jurisdiction, along with potential mitigation measures for identified impacts.

Table 2-2 shows the significance thresholds for criteria air pollutant emissions within the SJVAPCD, both for construction emissions and emissions from project operations. As stated in the GAMAQI, the basis for the significance thresholds are the New Source Review (SJVAPCD Rule 2201) offset thresholds. The SJVAPCD's attainment plans demonstrate that project-specific emissions below these offset thresholds would have air quality impacts that are less than significant (SJVAPCD 2015b). It should be noted that a project may still have significant air quality impacts even if its estimated emissions are below significance thresholds, depending on its location and adjacent land uses.

TABLE 2-2 SJVAPCD SIGNIFICANCE THRESHOLDS

Emissions (tons per year)

Pollutant	Construction	Operational
Carbon Monoxide	100	100
Nitrogen Oxides (NOx)	10	10
Reactive Organic Gases (ROG)	10	10
Sulfur Oxides (SOx)	27	27
Particulate Matter (PM ₁₀)	15	15
Fine Particulate Matter (PM _{2.5})	15	15

Source: SJVAPCD 2015b.

For CO emissions, the GAMAQI states that project operational emissions would have an impact that is less than significant if neither of the following criteria are met:

 A traffic study for the project indicates that the Level of Service (LOS) on one or more streets or at one or more intersections in the project vicinity will be reduced to LOS E or F: and • A traffic study indicates that the project will substantially worsen an already existing LOS F on one or more streets or at one or more intersections in the project vicinity.

If either of these criteria can be associated with any intersection affected by the project, then a CO analysis would need to be conducted to determine the significance of the project's impacts (SJVAPCD 2015b). For TACs, the GAMAQI states that carcinogenic emissions from project operations are considered to have a significant impact if the maximally exposed individual risk equals or exceeds 10 in 1 million.

2.1.4 Environmental Impacts and Mitigation Measures

The proposed project is expected to generate air pollutant emissions, mainly from vehicles entering and exiting the project site. Project construction would also generate emissions, mainly through the use of heavy equipment powered by diesel or other internal combustion engines. The occupation of terminal buildings would also involve air emissions from heating and ventilating systems, known as "area emissions."

Project emissions were estimated using the CalEEMod computer program, a modeling program recommended by SJVAPCD. The CalEEMod results are shown in Appendix A of this report and summarized in Table 2-3 below. Construction emissions were estimated for the entire construction period, while operational emissions are annual emissions. The CalEEMod run incorporated the following site conditions and laws and regulations that would mitigate environmental impacts:

- The project would be located near an existing transit stop.
- The project would construct sidewalks that would become part of an existing sidewalk network in the vicinity, as well as other improvements with the effects of calming traffic, such as crosswalks.
- The project would be constructed in an area with a mix of land uses, including commercial and residential.
- In accordance with SBX7-7, the project would implement water conservation measures that lead to a 20% reduction in indoor and outdoor water use.
- In accordance with AB 341, the project would divert 75% of its solid waste stream through recycling and other measures.
- Dust control measures during construction are implemented per SJVAPCD Regulation VIII.

For mobile emissions, the CalEEMod run for the project utilized trip generation figures from the project traffic study (KD Anderson and Associates 2018). In running the CalEEMod program for the project, it was discovered that the default fleet mix values overstated the amount of truck traffic in the area. A review of truck traffic volumes on SR 59 at the West Olive Avenue/Santa Fe Drive intersection indicated that the percentage of traffic comprised by all trucks was approximately 6.5% (Caltrans 2015). By contrast, the CalEEMod defaults assumed approximately 15% of vehicles were heavy trucks alone. The vehicle fleet mix in CalEEMod was adjusted to reflect truck traffic percentages based on the Caltrans figures.

TABLE 2-3
PROJECT AIR POLLUTANT EMISSIONS

	ROG	NOx	CO	SOx	PM10	PM2.5
Phase 1						
Construction Emissions (total tons) ¹	0.17	1.14	0.93	< 0.01	0.08	0.07
Operational Emissions (tons/yr)	1.20	4.17	6.34	0.01	0.57	0.16
Phase 2						
Construction Emissions (total tons) ²	0.17	0.92	0.70	< 0.01	0.06	0.05
Operational Emissions (tons/yr)	0.86	2.80	4.69	0.01	0.71	0.20
Total Operational Emissions (tons/yr)	2.06	6.97	11.03	0.02	1.28	0.36

¹Construction emissions for Phase 1 based on construction period of 120 working days.

Source: CalEEMod Version 2016.3.1.

POTENTIAL AIR QUALITY IMPACT 1: AIR QUALITY PLAN CONSISTENCY

As indicated in Table 2-3, project construction air pollutant emissions under both Phase 1 and Phase 2 would be substantially below the significance thresholds adopted by the SJVAPCD. Operational emissions at project buildout also would be below SJVAPCD significance thresholds. As noted in Section 2.1.2, the SJVAPCD's attainment plans demonstrate that project-specific emissions below New Source Review offset thresholds, which are the basis for the SJVAPCD significance thresholds, would have air quality impacts that are less than significant. On this basis, the project would be consistent with attainment plans for the Air Basin. Project impacts regarding consistency with the applicable air quality plans are considered **less than significant**.

POTENTIAL AIR QUALITY IMPACT 2: VIOLATION OF AIR QUALITY STANDARDS

As mentioned under Impact 1 and as indicated in Table 2-3, the proposed project would have construction emissions that are substantially below the SJVAPCD significance thresholds under both phases. Project construction may generate localized dust emissions at levels above existing ambient conditions, which is of concern if "sensitive receptors" are located in proximity to the project site. As defined in the GAMAQI, sensitive receptors include residential units, schools, parks and playgrounds, day care centers, hospitals, and nursing homes. None of these land uses are near the project site. Furthermore, dust emissions would be reduced through the required implementation of SJVAPCD Regulation VIII, which contains the following dust emission control measures:

- Air emissions related to the project shall be limited to 20% opacity (opaqueness, lack of transparency) or less, as defined in SJVAPCD Rule 8011. The dust control measures specified below shall be applied as required to maintain the Visible Dust Emissions standard.
- The contractor shall pre-water all land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill, and phase earthmoving.
- The contractor shall apply water, chemical/organic stabilizer/suppressant, or vegetative ground cover to all disturbed areas, including unpaved roads, throughout the period of soil

²Construction emissions for Phase 2 based on construction period of 180 working days.

disturbance.

- The contractor shall restrict vehicular access to the disturbance area during periods of inactivity.
- The contractor shall apply water or chemical/organic stabilizers/suppressants, construct wind barriers and/or cover exposed potentially dust-generating materials.
- When materials are transported off-site, the contractor shall stabilize and cover all materials to be transported and maintain six inches of freeboard space from the top of the container.
- The contractor shall remove carryout and trackout of soil materials on a daily basis unless it extends more than 50 feet from site; carryout and trackout extending more than 50 feet from the site shall be removed immediately. The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions. Use of blower devices is expressly forbidden. If the project would involve more than 150 construction vehicle trips per day onto the public street, additional restrictions specified in Section 5.8 of SJVAPCD Rule 8041 would apply.

As previously noted, operational emissions at project buildout would not exceed SJVAPCD significance thresholds. The GAMAQI states that, when assessing the significance of project-related impacts on air quality, impacts may be significant when on-site emission increases from construction activities or operational activities exceed the 100 pounds per day screening level of any criteria pollutant after implementation of all enforceable mitigation measures (SJVAPCD 2015b). Based on the CalEEMod results, neither construction nor operational emissions of any pollutants would exceed the 100 pounds per day screening level.

The project would be subject to the ISR, which requires development projects to reduce NO_x operational emissions by 33.3%. Application of this reduction requirement would further reduce NO_x emissions that are already below the SJVAPCD significance threshold. Phase 2 NO_x emissions would be reduced further below the significance threshold. Project impacts related to air quality standards are considered **less than significant**.

POTENTIAL AIR QUALITY IMPACT 3: CUMULATIVE EMISSIONS

Cumulative impacts of project emissions focus on operational emissions, as construction emissions cease with completion of project work. As indicated in Table 2-3 above, operational emissions at project buildout would not exceed the significance thresholds established by SJVAPCD. As discussed under Impact 2, NOx emissions would be further reduced by compliance with the ISR. Cumulative project impacts on air quality are considered **less than significant**.

POTENTIAL AIR QUALITY IMPACT 4: EXPOSURE OF SENSITIVE RECEPTORS

As noted in the discussion under Impact 2, there are no sensitive receptors in the immediate project vicinity. The nearest sensitive receptor to the project site is a residential area more than 1,000 feet to the east. At that distance, dispersion of criteria pollutant emissions would likely occur before emissions reached the residential area.

CO in high concentrations would have adverse health impacts, as previously described. The project site is located adjacent to the intersection of SR 59 and West Olive Avenue/Santa Fe Avenue, a major intersection in the area. According to the City of Merced General Plan, the intersection operated at LOS F in 2010 (City of Merced 2012a), so the project could potentially contribute to

that LOS with its attendant CO impacts. As previously noted, there are no sensitive receptors in the vicinity of the intersection, so no sensitive receptors would be exposed to CO emissions, either with or without the project.

Project construction emissions would likely include diesel particulate matter, which is classified as a TAC. Diesel particulate emissions can have adverse health effects on residents if they experience long-term exposure. Construction emissions of diesel particulate matter would cease once construction is completed and would not result in any long-term exposure for sensitive receptors, the closest of which is more than 1,000 feet away. Project construction emissions of diesel particulate matter would not have a significant health effect.

As previously described, gasoline contains toxic substances such as benzene, toluene and naphthalene. Gasoline vapor emissions may contain some of these substances, some of which are considered carcinogens. Projects that could emit substantial amounts of carcinogens are required to submit a Health Risk Assessment (HRA) if there are nearby sensitive receptors (e.g., residences or schools) that could be exposed to carcinogenic emissions.

The California Air Pollution Control Officers Association (CAPCOA) prepared a Gasoline Service Station Industrywide Risk Assessment Guidelines for the State's Air Toxics "Hot Spots" Program. The CAPCOA Guidelines were based on modeling results indicating that benzene in gasoline can cause a cancer risk to people living near gasoline stations greater than 10 in 1 million when large amounts of gasoline are dispensed (CAPCOA 1997). A risk assessment procedure described in the CAPCOA Guidelines has resulted in the development of tables that provide a risk score based on the location of the station (urban or rural), the type of station, and the distance to the nearest sensitive receptor. Based on Table 2B in Appendix E of the CAPCOA Guidelines, the cancer risk posed by the project would be 0.74 per 1 million, which is below the SJVAPCD significance threshold.

As noted, SJVAPCD Rules 4621 and 4622 require the installation of vapor recovery systems, which would limit the amount of vapors that would be emitted into the atmosphere. This would further reduce potential impact related to gasoline vapors. Overall, project impacts related to exposure of sensitive receptors to emissions are considered **less than significant**.

POTENTIAL AIR QUALITY IMPACT 5: ODORS

Odors are more of a nuisance than an environmental hazard. Nevertheless, the Environmental Checklist in CEQA Guidelines Appendix G regards objectionable odors as a potentially significant environmental impact. In accordance with this, the GAMAQI states that a project should be evaluated to determine the likelihood that it would result in nuisance odors. Due to the subjective nature of odor impacts, the number of variables that can influence the potential for an odor impact, and the variety of odor sources, there are no quantitative or formulaic methodologies to determine if potential odors would have a significant impact. Rather, projects must be assessed on a case-by-case basis (SJVAPCD 2015b).

Odors that could be generated potentially at the project site include releases of gasoline vapors and cooking odors from the quick-serve restaurant. Such odors in general would be confined mainly to the project site and would readily dissipate. As discussed under Impact 4, vapor recovery systems that would limit vapor emissions would be required. Restaurants are generally not considered significant sources of objectionable odors. Future land uses that would occupy Phase 2 development generally would be retail in nature, and thus unlikely to generate odors that would be considered a nuisance. Project impacts related to odors are considered **less than significant**.

2.2 Greenhouse Gas Emissions

2.2.1 Environmental Setting

Greenhouse gases (GHGs) are gases that absorb and emit radiation within the thermal infrared range, trapping heat in the earth's atmosphere. GHGs are both naturally occurring and are emitted by human activity. GHGs include carbon dioxide (CO_2), the most abundant GHG, as well as methane, nitrous oxide and other gases. GHG emissions in California in 2014 were estimated at 441.5 million metric tons carbon dioxide equivalent (CO_2e) – a decrease of 9.4% from the peak level in 2004. Major GHG sources in California include transportation (36%), industrial (21%), electric power generation (20%), commercial and residential (9%), and agriculture (8%) (ARB 2016).

In 2008, total GHG emissions from the City of Merced were 405,748 metric tons CO₂e (City of Merced 2012b). Of the total emissions, approximately 36% were transportation-related emissions. Another 36% were emissions from commercial/industrial uses, and 26% were from residential uses (City of Merced 2011).

Increased atmospheric concentrations of GHGs are considered a main contributor to global climate change, which is a subject of concern for the State of California. Potential impacts of global climate change in California include reduced Sierra Nevada snowpack, more intensive storms and runoff, increased wildfire hazards, greater number of hot days with associated decreases in air quality, and potential decreases in agricultural production (Climate Action Team 2010).

Unlike the criteria air pollutants, GHGs have no "attainment" standards established by the federal or State government. In fact, GHGs are not generally thought of as traditional air pollutants because their impacts are global in nature, while criteria air pollutants and TACs are of regional and local concern (SJVAPCD 2015b). Nevertheless, the U.S. Environmental Protection Agency (EPA) has found that GHG emissions endanger both the public health and public welfare under Section 202(a) of the Clean Air Act due to their impacts associated with climate change (EPA 2009).

2.2.2 Regulatory Framework

The State of California has implemented GHG emission reduction programs through AB 32, the Global Warming Solutions Act of 2006, which requires total statewide GHG emissions to reach the 1990 level by 2020, or an approximately 29% reduction from the 2004 level of GHG emissions. In compliance with AB 32, the State adopted the Climate Change Scoping Plan in 2008 and updated the plan in 2014. Primary strategies addressed in the original Scoping Plan included new industrial and emission control technologies; alternative energy generation technologies; advanced energy conservation in lighting, heating, cooling and ventilation; fuels with reduced carbon content; hybrid and electric vehicles; and methods for improving vehicle mileage (ARB 2008). As part of the Scoping Plan, California adopted the Low Carbon Fuel Standard, which requires a 10% reduction in the carbon content of gasoline and diesel fuels by 2020. The 2014 update highlighted California's progress toward meeting the 2020 GHG emission reduction goal and established a broad framework for continued emission reductions beyond 2020, on the path to 80% below the 1990 level by 2050 (ARB 2014).

In 2016, the State Legislature passed and Governor Brown signed SB 32, which extends the state's greenhouse gas reduction program initiated by AB 32. SB 32 codifies the 2030 GHG reduction target of Executive Order B-30-15, which is 40% below 1990 emission levels. The ARB has recently released for public review a draft Scoping Plan that sets forth strategies for achieving the SB 32 target. The draft Scoping Plan proposes to continue many of the strategies that were part of

the previous Scoping Plans, including the cap-and-trade program, low-carbon fuel standards, renewable energy, and methane reduction strategies. It also would require a 20% reduction in GHG emissions from refineries by 2030 and would address for the first time GHG emissions from the natural and working lands of California, including the agriculture and forestry sectors (ARB 2017).

The SJVAPCD adopted a Climate Change Action Plan in 2008 and issued guidance for development project compliance with the plan in 2009. The guidance adopted an approach that relies on the use of Best Performance Standards to reduce GHG emissions. Projects implementing Best Performance Standards would be determined to have a less than cumulatively significant impact. For projects not implementing Best Performance Standards, demonstration of a 29% reduction in project-specific (i.e., operational) GHG emissions from business-as-usual conditions is required to determine that a project would have a less than cumulatively significant impact (SJVAPCD 2009).

The City of Merced adopted a Climate Action Plan (CAP) in 2012. The goal of the CAP is to reduce City emissions to 1990 levels by 2020, consistent with the goal of AB 32. This would mean a reduction in the City's emission levels to 349,981 metric tons CO2e – a reduction of approximately 29.7% from "business as usual" levels (City of Merced 2012b). The CAP sets forth strategies designed to meet its emission reduction goal. According to the CAP, approximately 30% of the GHG emissions targeted for reduction will be accomplished through energy conservation habits and equipment, 23% through utilization of renewable resources, and 21% through enhanced mobility programs and projects (City of Merced 2012b). The remaining reductions will be accomplished through strategies related to sustainable community design, water conservation and technology, protection of air resources, waste reduction, and public outreach and involvement. Of the 156 actions recommended in the CAP, 73 are business-related, with most of these based on incentives, improved communication, and encouragement by the City (City of Merced 2012b).

2.2.3 Significance Thresholds

According to Appendix G of the CEQA Guidelines, a project may have a significant impact on the environment if it would do the following:

- Generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment.
- Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases.

CEQA Guidelines Appendix G states that, where available, significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make significance determinations. Aside from the 29.7% reduction in GHG emissions, the City of Merced has not established any significance thresholds.

2.2.4 Environmental Impacts and Mitigation Measures

The proposed project is expected to generate GHG emissions, mainly from vehicles entering and exiting the project site. Other potential GHG sources include building energy use and waste sent to a landfill. Project construction would also generate emissions, mainly through the use of heavy equipment powered by diesel or other internal combustion engines.

Project GHG emissions were estimated using the CalEEMod computer program. The CalEEMod results are shown in Appendix A of this report and summarized in Table 2-4 below. Construction emissions were estimated for the entire construction period, while operational emissions are annual emissions. For the mitigated GHG emissions, the CalEEMod run incorporated the same site conditions, laws and regulations, and mitigation measures used in estimating air pollutants emissions in Section 2.1.4 of this report. None of these conditions or mitigation measures were applied to estimate unmitigated, or business-as-usual, GHG emissions.

TABLE 2-4 PROJECT GHG EMISSIONS

Emission Types	GHG Emissions
Phase 1	
Construction Emissions (total tons) ¹	122.92
Operational Emissions (tons/yr)	
Unmitigated	1,841.60
Mitigated	1,164.23
Phase 2	
Construction Emissions (total tons) ²	110.85
Operational Emissions (tons/yr)	
Unmitigated	1,800.97
Mitigated	1,190.66
Total Operational Emissions (tons/yr)	
Unmitigated	3,642.57
Mitigated	2,354.89

¹Construction emissions for Phase 1 based on construction period of 120 working days.

Source: CalEEMod Version 2016.3.1.

POTENTIAL GHG IMPACT 1: PROJECT GHG EMISSIONS

Based on results from the CalEEMod run (see Appendix A), total construction GHG emissions (Phase 1 and Phase 2) from the proposed project would be approximately 233.77 metric tons CO₂e. Unmitigated (business-as-usual) operational GHG emissions, mainly from vehicle use, are estimated to generate approximately 3,642.57 metric tons CO₂e annually. With incorporation of project features that would reduce GHG emissions, the total operational GHG emissions would be 2,354.89 metric tons CO₂e annually. This would be a reduction of approximately 35.3% from unmitigated levels, which exceeds the reduction target set by the City of Merced. Based on this, project impacts related to GHG emissions are considered **less than significant**.

POTENTIAL GHG IMPACT 2: CONSISTENCY WITH GHG REDUCTION PLANS

As noted above, GHG emissions associated with the project would be reduced by an amount that would exceed the City's GHG reduction target. Because of this, the project would be consistent with the GHG reduction objectives of the City's CAP. It is also consistent with the 29% GHG

²Construction emissions for Phase 2 based on construction period of 180 working days.

reduction target established by the SJVAPCD in its Climate Change Action Plan. Project impacts related to GHG reduction plans are considered **less than significant**.

3.0 CONCLUSION AND REFERENCES

3.1 Conclusion

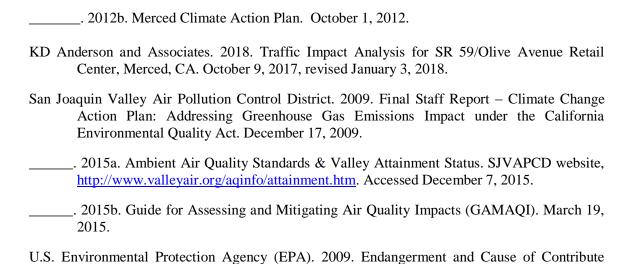
This report analyzed the potential air quality and GHG emission impacts of proposed future development of an 8.83-acre site that is proposed for annexation to the City of Merced. The project proposes two phases of development. The first phase would consist of an ARCO AM/PM gasoline station and convenience store with an automated car wash, and a quick-serve restaurant. The second phase would consist of a retail center with a quick-serve restaurant, as indicated on the site plan.

The project would generate air pollutant and GHG emissions, mainly from vehicle traffic. Estimates of these emissions were developed using CalEEMod, with inputs based on project information and County recommendations. The results of the CalEEMod runs indicate that the project would not generate air pollutant emissions that would exceed the significance thresholds established by SJVAPCD. The project would not generate any significant amounts of TACs or odors. Project impacts on air quality are considered less than significant.

The project would generate GHG emissions that would be less than business-as-usual levels by approximately 35.3%. This reduction would exceed the reduction targets set by the City of Merced in its CAP and by the SJVAPCD in its Climate Change Action Plan. GHG impacts of the project are considered less than significant.

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Register Vol. 74, No. 239, pp. 66496-66546. December 15, 2009.

MOORE BIOLOGICAL CONSULTANTS

July 17, 2017

Mr. Charlie Simpson

BaseCamp Environmental

115 South School Street, Ste.14

Lodi, CA 95240

Subject: "ANNEXATION/PRE-ZONE #15-01, NORTH HIGHWAY 59 &

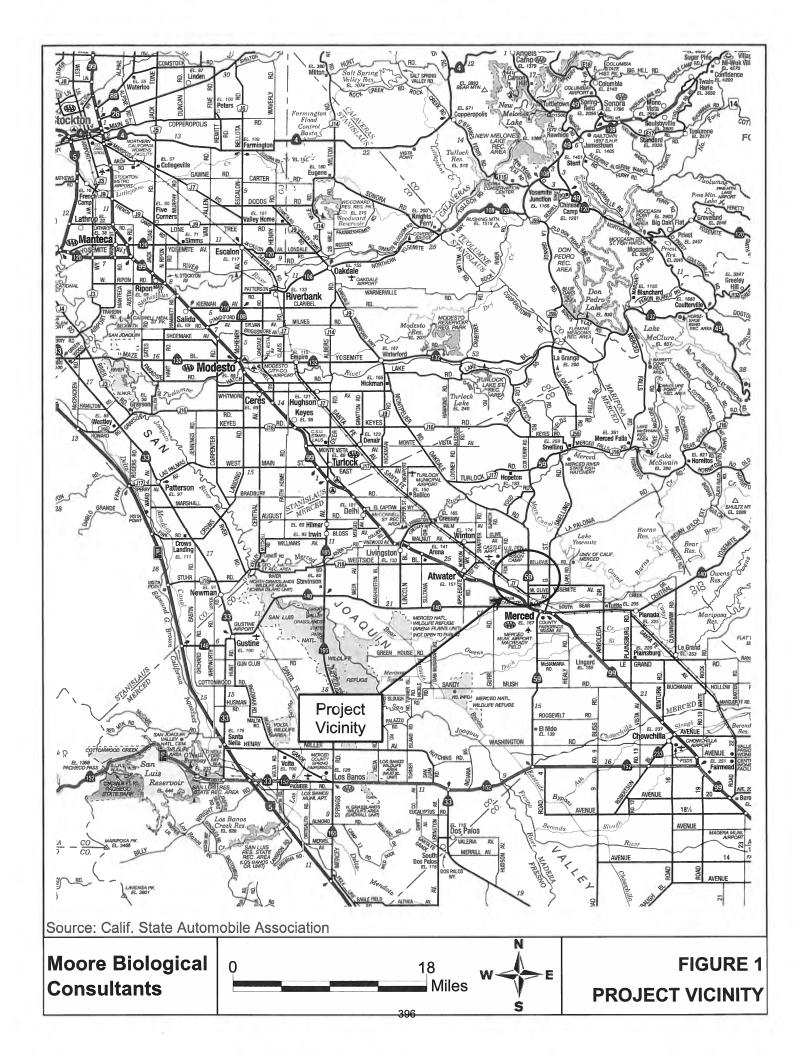
SANTA FE", MERCED, CALIFORNIA: BIOLOGICAL ASSESSMENT

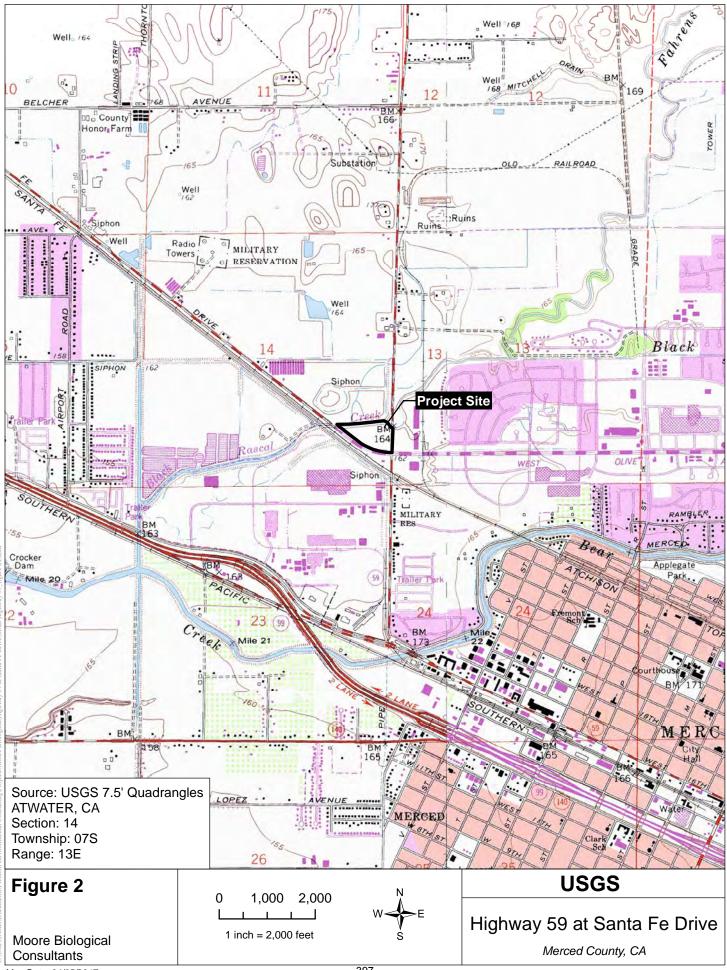
Dear Charlie:

Thank you for asking Moore Biological Consultants to prepare this biological assessment for the Annexation/Pre-Zone #15-01 at North Highway 59 and Santa Fe Drive project in Merced County, California (Figures 1 and 2). The purpose of this assessment is to describe existing biological resources in the site, identify potentially significant impacts to biological resources from commercial development, and provide recommendations for how to reduce those impacts to a less-than-significant level. The work involved reviewing databases, aerial photographs, and documents, and conducting a field survey to document vegetation communities, potentially jurisdictional Waters of the U.S. and/or wetlands, and potentially suitable habitat for or presence of special-status species. This report details the methodology and results of our investigation.

Project Overview

The proposed commercial project consists of annexing 3 parcels totaling approximately 8.83 acres of land and a portion of Black Rascal Creek from Merced County to the City of Merced (see Tentative Map and Site Plan in Attachment A). Phase 1 of the project will include construction of a 7,333-square-foot retail project on approximately 1.78 acres of the 7.4-acre parcel 057-200-067 located at the northwest corner of North Highway 59 and Santa Fe





Drive. Phase 2 of the project would involve of an additional 34,833 square feet of retail development on the remaining 5.62 acres of the same parcel. The 1.0-acre parcel, located at the southwest corner of the intersection, would be annexed but is not proposed for development; this parcel has an existing business that would remain.

The proposed retail center would have three access points. The primary entrance/exit for Phase 1, the proposed gas station, car wash, convenience market, and restaurant on the 1.78 acres at the corner of the site, would be located on Santa Fe Drive approximately 200 feet west of the intersection. The driveway would be right-in/right-out only. Access for Phase 2 would involve development of a full access driveway into the future commercial area from Santa Fe Drive, which would be located 475 feet west of the intersection. An additional right-in/right-out driveway is proposed along North Highway 59 approximately 230 feet north of the intersection as part of Phase 1.

Methods

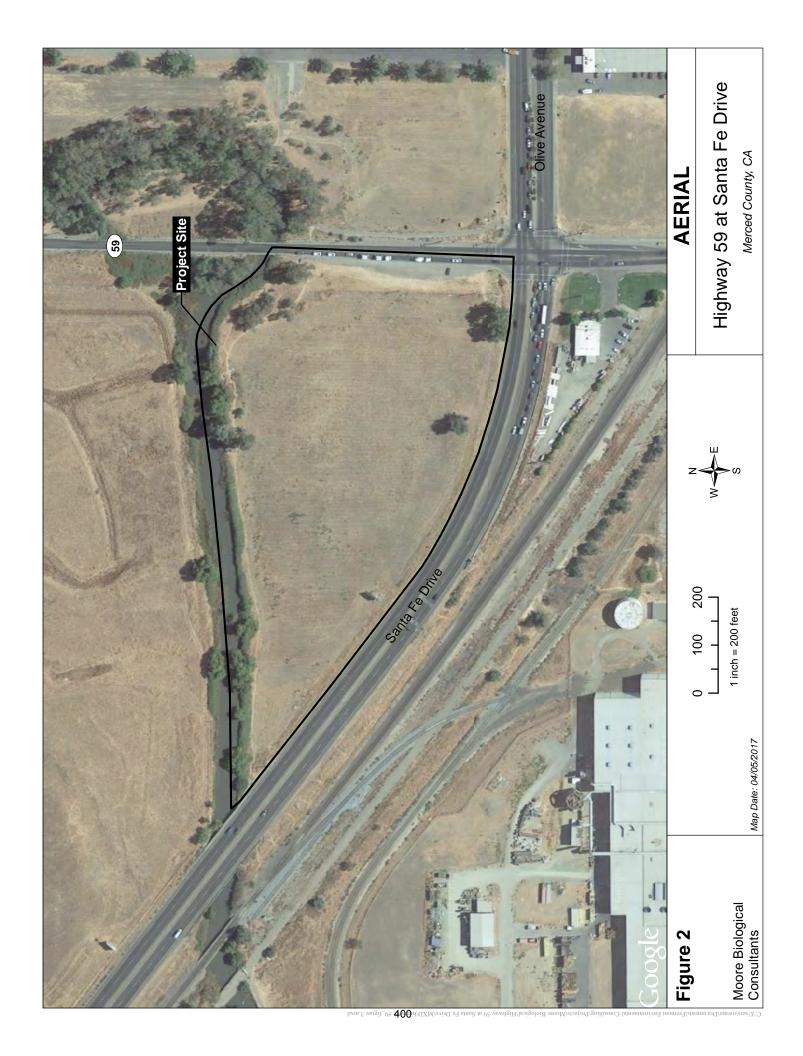
Prior to the field survey, we conducted a search of California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDB, 2017). The CNDDB search was conducted on the USGS 7.5-minute Atwater and Merced topographic quadrangles, encompassing approximately 120+/- square miles surrounding the site (Attachment B). The United States Fish and Wildlife Service (USFWS) IPaC Trust Resource Report of Federally Threatened and Endangered species that may occur in or be affected by projects in the project vicinity was also reviewed (Attachment B). This information was used to identify special-status wildlife and plant species that have been previously documented in the vicinity or have the potential to occur based on suitable habitat and geographical distribution. Additionally, the CNDDB depicts the locations of sensitive habitats. The USFWS on-line-maps of designated critical habitat in the area were also downloaded.

A field survey of the site was conducted on April 27, 2017. The survey consisted of driving and walking throughout the site making observations of habitat conditions and noting surrounding land uses, habitat types, and plant and wildlife species. The fieldwork included an assessment of potentially jurisdictional Waters of the U.S. and wetlands as defined by the U.S. Army Corps of Engineers (ACOE, 1987; 2008) and a search for special-status species and suitable habitat for special-status species (e.g., blue elderberry shrubs, vernal pools). Trees in and near the site were assessed for the potential use by nesting raptors, especially Swainson's hawk (*Buteo swainsoni*). The cropland and grasslands in the site and adjacent areas visible from the site were searched for burrowing owls (*Athene cunicularia*) or ground squirrel burrows with evidence of past occupancy.

Results

GENERAL SETTING: The project site is located just north of Merced, in Merced County, California (Figure 1). The site is in Section 14, Township 7 South, Range 13 East of the USGS 7.5-minute Atwater topographic quadrangle (Figure 2). The site is nearly level and is at an elevation of approximately 160 feet above mean sea level. The site was likely farmed in crops in the past, but has been fallow for years. The body of the site is currently disturbed weedy grassland (Figure 3 and photographs in Attachment C).

Surrounding land uses in this portion of Merced County are primarily agricultural and commercial. North Highway 59 bounds the site on the east and Santa Fe Drive bounds the site on the south and west. There are open fields to the east and southeast of the site, and a commercial or industrial property to the southwest of the site (Figure 3 and photographs in Attachment C). Black Rascal Creek flows along the north edge of the site, and there is open grassland to the north of the site, across Black Rascal Creek.



VEGETATION: Due to the amount of disturbance from past agriculture, surrounding development, and periodic mowing and/or disking for weed abatement, vegetation in the project site is primarily annual grass and weed species. California annual grassland series (Sawyer and Keeler-Wolf, 1995) best describes the disturbed grassland vegetation. Grasses including oats (*Avena sp.*), soft chess brome (*Bromus hordeaceus*), ripgut brome (*Bromus diandrus*), foxtail barley (*Hordeum murinum*), and perennial ryegrass (*Lolium perenne*) are dominant grass species. Other grassland species such as black mustard (*Brassica nigra*), hairy fleabane (*Conyza bonariensis*), prickly lettuce (*Lactuca serriola*), yellow star-thistle (*Centaurea solstitialis*), filaree (*Erodium botrys*), and common mallow (*Malva neglecta*) are intermixed with the grasses. Table1 is a list of plant species observed in the site.

The only trees in the body of the site are along Black Rascal Creek; there are also three blue gum (*Eucalyptus* sp.) in the southeast part of the site (Figure 3 and photographs in Attachment C). The trees along the creek corridor are primarily willows (*Salix* sp.); there is also a cluster of blue gums just south of the creek near North Highway 59.

No blue elderberry (Sambucus mexicana) shrubs were observed in or adjacent to the site.

WILDLIFE: A variety of bird species were observed during the field survey; all of these are common species found in agricultural and riparian areas of Merced County (Table 2). Red-tailed hawk (*Buteo jamaicensis*), turkey vulture (*Cathartes aura*), American crow (*Corvus brachyrhynchos*), mourning dove (*Zenaida macroura*), northern mockingbird (*Mimus polyglottos*), western kingbird (*Tyrannus verticalis*), and red-winged blackbird (*Agelaius phoeniceus*) are representative of the avian species observed in the site.

TABLE 1 PLANT SPECIES OBSERVED IN THE PROJECT SITE

Amsinckia menziesii rancher's fireweed

Avena fatua wild oat

Brassica nigra black mustard
Bromus diandrus ripgut brome

Bromus hordeaceus soft chess brome

Carduus pycnocephalus Italian thistle

Centaurea solstitialis yellow star-thistle

Cerastium glomeratum mouse-eared chickweed

Chamomilla suaveolens pineapple weed

Cirsium vulgare bull thistle

Conium maculatum poison hemlock
Convolvulus arvensis morning glory
Conyza bonariensis hairy fleabane
Conyza canadensis horseweed

Cynodon dactylon Bermuda grass
Cyperus eragrostis umbrella sedge

Datura innoxia datura

Eremocarpus setigerus dove weed

Erodium botrys filaree
Eucalyptus sp. blue gum

Grindelia squarrosa curlycup gumweed

Hordeum marinum Mediterranean barley

Hordeum murinum foxtail barley
Lactuca serriola prickly lettuce

Lolium perenne perennial ryegrass

Malva neglecta common mallow

Molilotus officinalis yellow sweet cloves

Melilotus officinalis yellow sweet clover

TABLE 1 (continued) PLANT SPECIES OBSERVED IN THE PROJECT SITE

Plantago lanceolata plantain

Polygonum lapathifolium water smartweed

Polygonum persicaria lady's thumb

Polypogon monspeliensis rabbit's foot grass

Raphanus sativus wild radish

Rosa californica California wild rose

Rubus discolor Himalayan blackberry

Rumex crispus curly dock

Salix exigua narrow-leaved willow

Salix sp. willow

Salsola iberica Russian thistle

Scirpus acutus tule

Senecio vulgaris common groundsel

Silybum marianum milk thistle

Sonchus asper prickly sow thistle

Trifolium hirtum rose clover

Typha sp. cattail

Vicia americana winter vetch

There are several potential nest trees in and near the site that are suitable for nesting raptors and other protected migratory birds, including Swainson's hawk. A few stick nests were observed within some of the trees within and near the site. Given the presence of large trees and raptor foraging habitat (i.e., open fields) in and near the site, it is likely one or more pairs of raptors, plus a variety of songbirds, nest in trees in the site each year. Further, it is considered likely that songbirds nest within the vegetation along Black Rascal Creek and in the grassland habitats in the site each year.

TABLE 2 WILDLIFE SPECIES DOCUMENTED IN THE PROJECT SITE

Birds

Turkey vulture Cathartes aura

Red-tailed hawk Buteo jamaicensis

American kestrel Falco sparverius

Killdeer Charadrius vociferous

Mourning dove Zenaida macroura

Western scrub jay Aphelocoma coerulescens

Western kingbird Tyrannus verticalis

American crow Corvus brachyrhynchos

Northern mockingbird Mimus polyglottos

Red-winged blackbird Agelaius phoeniceus

Brewer's blackbird Euphagus cyanocephalus

House finch Carpodacus mexicanus

Mammals

Black-tailed hare Lepus californicus

Raccoon Procyon lotor

Reptiles

Western fence lizard Sceloporus occidentalis

A limited variety of mammals common to agricultural areas likely occur in the project site. Black-tailed hare (*Lepus californicus*) was the only mammal observed during the recent survey; sign of raccoon (*Procyon lotor*) was also observed. Coyote (*Canis latrans*), striped skunk (*Mephitis mephitis*), desert cottontail (*Sylvilagus audubonii*), and Virginia opossum (*Didelphis virginiana*) are expected to occur in the project site on occasion. California ground squirrels

(Spermophilus beecheyi) are common in the area and may occur on-site. No California ground squirrels or their burrows were observed during the recent survey.

Due to lack of suitable habitat, few amphibians and reptiles are expected to use habitats in the site. Western fence lizard (*Sceloporus occidentalis*) was the only reptile observed in the site; no amphibians were observed. Common species such as Pacific chorus frog (*Pseudacris regilla*) and western terrestrial garter snake (*Thamnophis elegans*) may occur in the site on occasion. Black Rascal Creek also provides suitable habitat for western pond turtle (*Emmys marmorata*).

WATERS OF THE U.S. AND WETLANDS: Waters of the U.S., including wetlands, are broadly defined under 33 Code of Federal Regulations (CFR) 328 to include navigable waterways, their tributaries, and adjacent wetlands. State and federal agencies regulate these habitats and Section 404 of the Clean Water Act requires that a permit be secured prior to the discharge of dredged or fill materials into any waters of the U.S., including wetlands. ACOE, CDFW, and the California Regional Water Quality Control Board (RWQCB) have jurisdiction over modifications to riverbanks, lakes, stream channels and other wetland features.

"Waters of the U.S.", as defined in 33 CFR 328.4, encompasses Territorial Seas, Tidal Waters, and Non-Tidal Waters; Non-Tidal Waters includes interstate and intrastate rivers and streams, as well as their tributaries. The limit of federal jurisdiction of Non-Tidal Waters of the U.S. extends to the "ordinary high water mark". The ordinary high water mark is established by physical characteristics such as a natural water line impressed on the bank, presence of shelves, destruction of terrestrial vegetation, or the presence of litter and debris.

Jurisdictional wetlands are vegetated areas that meet specific vegetation, soil, and hydrologic criteria defined by the ACOE *Wetlands Delineation Manual* and Regional Supplement (ACOE, 1987; 2008). Jurisdictional wetlands are usually

adjacent to or hydrologically associated with Waters of the U.S; isolated wetlands are outside federal jurisdiction.

Jurisdictional wetlands and Waters of the U.S. include, but are not limited to, perennial and intermittent creeks and drainages, lakes, seeps, and springs; emergent marshes; riparian wetlands; and seasonal wetlands. Wetlands and Waters of the U.S. provide critical habitat components, such as nest sites and a reliable source of water, for a wide variety of wildlife species.

Black Rascal Creek is a jurisdictional Water of the U.S. subject to Section 404 of the Clean Water Act. The limit of federal jurisdiction is the ordinary high water mark. This waterway also falls under the jurisdiction of CDFW, RWQCB, and the Central Valley Flood Protection Board (CVFPB). Riparian wetlands and woodlands along the bank of Black Rascal Creek are also jurisdictional due to their adjacency to the river.

There is a short section of a shallow constructed ditch in the southeast corner of the parcel that conveys water from the east side of North Highway 59 and directs the water west and into a culvert under Santa Fe Drive (see photographs in Attachment C). This ditch appears to have been constructed in uplands for the purpose of draining areas to the east of the site and possibly also collects water from the adjacent roads. Under this scenario, the ditch does not meet the technical and regulatory criteria of jurisdictional Waters of the U.S.

Beyond Black Rascal Creek, no other potentially jurisdictional wetlands or Waters of the U.S. were observed in or adjacent to the project site. The body of the site is vegetated with upland grasses and weeds.

SPECIAL-STATUS SPECIES: Special-status species are plants and animals that are legally protected under the state and/or federal Endangered Species Act or other regulations. The Federal Endangered Species Act (FESA) of 1973 declares that all federal departments and agencies shall utilize their authority to conserve

endangered and threatened plant and animal species. The California Endangered Species Act (CESA) of 1984 parallels the policies of FESA and pertains to native California species.

Special-status species also include other species that are considered rare enough by the scientific community and trustee agencies to warrant special consideration, particularly with regard to protection of isolated populations, nesting or denning locations, communal roosts, and other essential habitat. The presence of species with legal protection under the Endangered Species Act often represents a major constraint to development, particularly when the species are wide-ranging or highly sensitive to habitat disturbance and where proposed development would result in a take of these species.

Special-status plants are those which are designated rare, threatened, or endangered and candidate species for listing by the USFWS. Special-status plants also include species considered rare or endangered under the conditions of Section 15380 of the California Environmental Quality Act Guidelines, such as those plant species identified on Lists 1A, 1B and 2 in the Inventory of Rare and Endangered Vascular Plants of California (CNPS, 2017). Finally, special-status plants may include other species that are considered sensitive or of special concern due to limited distribution or lack of adequate information to permit listing or rejection for state or federal status, such as those included on CNPS List 3.

The likelihood of occurrence of listed, candidate, and other special-status species in the site is generally low. Table 3 provides a summary of the listing status and habitat requirements of special-status species that have been documented in the greater project vicinity or for which there is potentially suitable habitat in the greater project vicinity. This table also includes an assessment of the likelihood of occurrence of each of these species in the site. The evaluation of the potential for occurrence of each species is based on the distribution of regional occurrences (if any), habitat suitability, and field observations.

TABLE 3

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Common Name	Scientific Name	Federal Status ¹	State Status ¹	CNPS List ²	Habitat	Likeliness of Occurrence in the Project Site
PLANTS						
Vernal pool smallscale	Atriplex persistens	None	None	1 B	Alkaline vernal pools.	Unlikely: there is no suitable habitat in the site for vernal pool smallscale. The nearest occurrence of this species in the CNDDB (2017) search area is approximately 4 miles southwest of the site.
Round-leaved filaree	California macrophylla	None	None	6	Cismontane woodland and valley and foothill grassland.	Unlikely: due to historical farming and routine disking, the site does not provide suitable habitat for round-leaved filaree. The nearest occurrence of this species in the CNDDB (2017) search area is approximately 1 mile southeast of the project site.
Succulent owl's clover	Castilleja campestris ssp. succulenta	⊢	ш	6	Vernal pools.	Unlikely: there are no vernal pools or seasonal wetlands in the site. The nearest occurrence of succulent owl's clover in the CNDDB (2017) search area is approximately 2 miles northeast of the site. The site is not in designated critical habitat for this species (USFWS, 2005a).
Dwarf downingia	a Downingia pusilla	None	None	7	Vernal pools.	Unlikely: there are no vernal pools or seasonal wetlands in the site. The nearest occurrence of dwarf downingia in the CNDDB (2017) search area is approximately 6 miles northeast of the site.
Spiny-sepaled button-celery	Eryngium spinosepalum	None	None	6	Vernal pools or valley and foothill grassland.	Unlikely: there is no suitable habitat in the site for spiny-sepaled button-celery. The nearest occurrence of this species in the CNDDB (2017) search area is approximately 6 miles northeast of the site.
Forked hareleaf	Lagophylla dichotoma	None	None	1	Cismontane woodland, valley and foothill grassland; sometimes on clay.	Unlikely: due to historical farming and periodic disking, the project site does not provide suitable habitat for this species. The nearest occurrence of forked hareleaf in the CNDDB (2017) search area is approximately 1.5 miles southeast of the site.

TABLE 3

Likeliness of Occurrence in the Project Site	Unlikely: due to historical farming and periodic disking, the project site does not provide suitable habitat for shining narvarretia. The site is also below the known elevation range of this species (CNPS, 2017). The nearest occurrence shining narvarretia in the CNDDB (2017) search area is approximately 4 miles northeast of the site.	Unlikely: there are no vernal pools or seasonal wetlands in the site. The nearest occurrence of Colusa grass in the CNDDB (2017) search area is approximately 4 miles northeast of the site. The site is not in designated critical habitat for Colusa grass (USFWS 2005a).	Unlikely: there are no vernal pools or seasonal wetlands in the site. The nearest occurrence of San Joaquin Valley Orcutt grass in the CNDDB (2017) search area is approximately 6.5 miles northeast of the site. The site is not in designated critical habitat this species (USFWS 2005a).	Unlikely: there are no vernal pools or seasonal wetlands in the site. The nearest occurrence of hairy Orcutt grass in the CNDDB (2017) search area is approximately 3 miles northeast of the site. The site is not in designated critical habitat this species (USFWS 2005a).	Low: Black Rascal Creek provides potentially suitable aquatic habitat for Sanford's arrowhead. The nearest occurrence of this species in the CNDDB (2017) search area is approximately 2.5 miles northeast of the site.
Habitat	Cismontane woodland, valley and foothill grassland, vernal pools, usually in clay soils.	Large, deep vernal pools.	Vernal pools.	Vernal pools.	Standing or slow moving freshwater ponds, marshes and ditches.
CNPS List ²	18	6	1	6	4
Federal State Status ¹ Status ¹	None	ш	ш	ш	None
Federal Status ¹ §	None	⊢	-	ш	None
Scientific Name	Navarretia nigelliformis ssp. radians	Neostapfia colusana	ey Orcuttia inaequalis	s Orcuttia pilosa	Sagittaria sanfordii
Common Name	Shining narvarretia	Colusa grass	San Joaquin Valley <i>Orcuttia</i> Orcutt grass <i>inaequal</i>	Hairy Orcutt grass	Sanford's arrowhead

TABLE 3

፟	ECIAL-STATUS F	LANI AL		LIFE SPI	CIES DOCUMENTED IN 1	SPECIAL-STATUS PLANT AND WILDLIFE SPECIES DOCUMENTED IN THE GREATER PROJECT VICINITY
Common Name	Scientific Name	Federal Status ¹	Federal State Status ¹ Status ¹	CNPS List ²	Habitat	Likeliness of Occurrence in the Project Site
WILDLIFE BIRDS						
Burrowing owl	Athene cunicularia	None	None	K/Z	Open, dry annual or perennial grasslands, deserts and scrublands characterized by low- growing vegetation.	Unlikely: while the site provides suitable foraging habitat for burrowing owls, no ground squirrels or their burrows were observed in the site. The nearest occurrence of burrowing owl in the CNDDB (2017) search area is approximately 3 miles south of the site
Swainson's hawk	k Buteo swainsoni	None	-	N/A	Nesting: large trees, usually within riparian corridors. Foraging: agricultural fields and annual grasslands.	Unlikely: the site provides marginally suitable foraging habitat and large trees in and near the site could be used for nesting. Due to periodic disking, it is unlikely Swainson's hawks forage in the site intensively, but they may use it on an occasional basis. The nearest occurrence of nesting Swainson's hawks in the CNDDB (2017) search area is approximately 2.5 miles northwest of the site.
Tricolored blackbird	Agelaius tricolor	None	CE/SC	Y/Z	Nests in dense brambles and emergent wetland vegetation associated with open water habitat.	Unlikely: the emergent wetland and scrub shrub vegetation in and along Black Rascal Creek is suitable suitable nesting habitat. This species may occasionally fly over or forage in the area. The nearest occurrence of tricolored blackbird in the CNDDB (2017) search area is approximately 1 mile southeast of the site.
Bald eagle	Haliaeetus Ieucocephalus	None	ш	A/N	Nests in large trees along rivers, ocean shores, and lake margins.	Unlikely: bald eagles were not observed at the project site during the recent surveys but could conceivably fly over the site on occasion. The nearest occurrence of this species approximately 1 mile southeast of the site at Yosemite Lake (CNDDB, 2017).

Common Name S	Scientific Name	Federal State Status ¹ Status	State Status ¹	CNPS List ²	Habitat	Likeliness of Occurrence in the Project Site
Mountain plover	Charadrius alexandrinus nivosus	⊢	SC	N/A	Winters in agricultural lands in the Central Valley.	Unlikely: mountain plover may occasionally fly over or forage in the project site. The nearest occurrence of this species in the CNDDB (2017) search area is approximately 6.5 miles southeast of the site.
San Joaquin kit fox	Vulpes macrotis mutica	ш	⊢	₹ Z	Annual grasslands or grassy open stages with scattered shrubby vegetation.	Unlikely: the grassland in the site provides potentially suitable foraging habitat for San Joaquin kit fox. However, this species is not known from the Merced region. The only occurrence of San Joaquin kit fox in the CNDDB (2017) search area is an observation approximately 6 miles northwest of the site along a canal in Atwater.
Western mastiff bat <i>Eumops perotis</i>	at Eumops perotis californicus	None	SC	Y/Z	Open, dry habitats with crevices in cliff faces, high buildings, trees and tunnels for roosting.	Unlikely: there is no suitable roosting habitat in the site for western mastiff bat. This species may occasionally fly over or forage in the site. The nearest occurrence of western mastiff bat in the CNDDB (2017) search area is approximately 1.5 miles southeast of the site.
AMPHIBIANS AND REPTILES Giant garter snake <i>Thamnophi</i> gigas	D REPTILES Thamnophis gigas	⊢	⊢	ď Z	Freshwater marsh and low gradient streams; adapted to drainage canals and irrigation ditches, primarily for dispersal or migration.	Unlikely: Black Rascal Creek provides marginally suitable aquatic habitat for giant garter snake. However, this species is not known from the Merced region. The only occurrence of giant garter snake in the CNDDB (2017) search area is an historical (1908) occurrence mapped nonspecifically in downtown Merced, approximately 1.5 miles southeast of the site.
Blunt-nosed leopard lizard	Gambelia sila	ш	ш	A/A	Sparsely vegetated alkali and desert scrub habitats in areas of low topographic relief. Requires small mammal burrows for cover.	Unlikely: the site does not contain suitable habitat for blunt-nosed leopard lizard. There are no occurrences of this species recorded in the CNDDB (2017) search area.

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TABLE 3

uo	-	Federal	် လ	CNPS		tate CNPS
Name	Scientific Name	Status ¹ Status ¹	Status ¹	List ²	Habitat	Likeliness of Occurrence in the Project Site
California tiger salamander	Ambystoma califomiense	⊢	⊢	₹ Z	Breeds in seasonal water bodies such as deep vernal pools or stock ponds. Requires small mammal burrows for summer refugia.	Unlikely: there are no potentially suitable breeding ponds for California tiger salamander in the site and the disked grassland throughout the site is not suitable for aestivation. The nearest occurrence of this species in the CNDDB (2017) search area is in vernal pool grasslands approximately 5 miles northeast of the site. The site is not within designated critical habitat for California tiger salamander (USFWS, 2005b).
California red- legged frog	Rana aurora draytonii	-	S	Y.Y	Lowlands and foothills in or near permanent sources of water with vegetation.	Unlikely: Black Rascal Creek provides marginally suitable aquatic habitat for California red-legged frog, however this species is restricted to foothill streams and is not present in creeks on the Central Valley floor. There are no occurrences of California red-legged frog in the CNDDB (2017) search area. The site is not in designated for California red-legged frog critical habitat (USFWS, 2006).
Western pond turtle	<i>Emys</i> marmorata	None	S	N/A	Permanent or semipermanent water bodies; require basking sites such as logs.	Low: Black Rascal Creek provides potentially suitable habitat for western pond turtle and the onsite grasslands could be used for nesting. The nearest occurrence of this species in the CNDDB (2017) search area is approximately 3.5 miles northwest of the site.
FISH Central Valley steelhead	Oncorhynchus mykiss	⊢	None	₹ Z	Riffle and pool complexes with adequate spawning substrates within Central Valley drainages.	Unlikely: Black Rascal Creek does not provide suitable habitat for Central Valley steelhead. There are no occurrences of this species recorded in the CNDDB (2017) within the search area. The site is not within designated critical habitat for Central Valley steelhead (NOAA, 2005).

Likeliness of Occurrence in the Project Site	None: there is no suitable habitat in the site for delta smelt. There are no occurrences of this species recorded in the CNDDB (2017) within the search area. The site is not within designated critical habitat for delta smelt (USFWS, 1994).	Unlikely: there are no vernal pools or seasonal wetlands in the site. The nearest occurrence of vernal pool fairy shrimp in the CNDDB (2017) search area is approximately 1 mile north of the site. The site is not in designated critical habitat of this species (USFWS, 2005a).	Unlikely: there are no vernal pools or seasonal wetlands in the site. The nearest occurrence of Conservancy fairy shrimp in the CNDDB (2017) search area is approximately 6.5 miles northeast of the site. The site is not in designated critical habitat of this species (USFWS, 2005a).	Unlikely: there are no vernal pools or seasonal wetlands in the site. The nearest occurrence of vernal pool tadpole shrimp in the CNDDB (2017) search area is approximately 6.5 miles northeast of the site. The site is not in designated critical habitat of this species (USFWS, 2005a).	Unlikely: no blue elderberry shrubs were observed in the site. There are no occurrences of valley elderberry longhorn beetle recorded in the CNDDB (2017) within the search area.
ij	Spe spe se se cr		See See		Unli in elde
Habitat	Shallow lower delta waterways with submersed aquatic plants and other suitable refugia.	Vernal pools and seasonally inundated depressions in the Central Valley.	Vernal pools	Vernal pools and seasonally wet depressions within the Central Valley	Elderberry shrubs in the Central Valley and surrounding foothills
CNPS List ²	N/A	Ž Z	N/A	Ž Z	Z Z
Federal State Status ¹ Status ¹	⊢	None	None	None	None
Federal Status ¹	⊢	⊢	ш	ш	⊢
Scientific Name	Hypomesus transpacificus	Branchinecta Iynchi	Branchinecta conservatio	Lepidurus packardi	Desmocerus californicus dimorphus
Common Name Sc	Delta smelt	Vernal pool fairy shrimp	Conservancy fairy	Vernal pool tadpole shrimp	Valley elderberry Ionghorn beetle

¹ T= Threatened; E = Endangered; CE = Candidate for Endangered Status; SC = Species of Special Concern per California Department of Fish and Wildlife.
2 CNPS List 1B includes species that are rare, threatened, or endangered in California and elsewhere; List 2 includes plants that are rare, threatened or endangered in California but are more common elsewhere.

habitat in the greater project vicinity. This table also includes an assessment of the likelihood of occurrence of each of these species in the site. The evaluation of the potential for occurrence of each species is based on the distribution of regional occurrences (if any), habitat suitability, and field observations.

SPECIAL-STATUS PLANTS: Special-status plants identified in the CNDDB (2017) search include vernal pool smallscale (*Atriplex persistens*), round-leaved filaree (*California macrophylla*), succulent owl's clover (*Castilleja campestris ssp. succulenta*), dwarf downingia (*Downingia pusilla*), spiny-sepaled button-celery (*Eryngium spinosepalum*), forked hareleaf (*Lagophylla* dichotoma), ahining narvarretia (*Navarretia nigelliformis ssp. radians*), Colusa grass (*Neostapfia colusana*), San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*), hairy Orcutt grass (*Orcuttia pilosa*), and Sanford's arrowhead (*Sagittaria sanfordii*) (Table 3 and Attachment B). The USFWS IPaC Trust Report contains a few of these same species.

Special-status plants generally occur in relatively undisturbed areas in vegetation communities such as vernal pools, marshes and swamps, seasonal wetlands, riparian scrub, and areas with unusual soils. The ruderal grassland in the body of the site is highly disturbed and does not provide suitable habitat for any of the plants in Table 3 or other special-status plants. Black Rascal Creek provides potentially suitable aquatic habitat for Sanford's arrowhead, and this species is documented in the CNDDB (2017) in a tributary to Black Rascal Creek, approximately 2.5 miles northeast of the site. Due to lack of suitable habitat, no other special-status plant species are expected to occur in the site.

SPECIAL-STATUS WILDLIFE: The potential for intensive use of habitats within the project site by special-status wildlife species is generally low. Special-status wildlife species that have been recorded in greater project vicinity in the CNDDB (2017) include Swainson's hawk, burrowing owl, tricolored blackbird (*Agelaius tricolor*), bald eagle (*Haliaeetus leucocephalus*), mountain plover (*Charadrius alexandrinus nivosus*), San Joaquin kit fox (*Vulpes macrotis mutica*), western

mastiff bat (*Eumops perotis californicus*), California tiger salamander (*Ambystoma californiense*), giant garter snake (*Thamnophis gigas*), western pond turtle (*Emys marmorata*), vernal pool fairy shrimp (*Branchinecta lynchi*), Conservancy fairy shrimp (*Branchinecta conservatio*), and vernal pool tadpole shrimp (*Lepidurus packardi*). Although not included in the CNDDB within the search area, California red-legged frog (*Rana aurora draytonii*), blunt-nosed leopard lizard (*Gambelia sila*), Sacramento Central Valley steelhead (*Oncorhynchus mykiss*), delta smelt (*Hypomesus transpacificus*), and valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) were added to Table 3 because they are included in the USFWS IPaC Trust Resource Report (Attachment B).

While the project site may have provided habitat for special-status wildlife species at some time in the past, farming and development have substantially modified natural habitats in the greater project vicinity. Of the wildlife species identified in the CNDDB, Swainson's hawk, tricolored blackbird, and western pond turtle are the only species that have potential to occur in the site on more than a transitory or very occasional basis. Other special-status birds including burrowing owl and mountain plover may fly over or forage in the area on occasion, but would not be expected to nest in or immediately adjacent to the project site.

SWAINSON'S HAWK: The Swainson's hawk is a migratory hawk listed by the State of California as a Threatened species. The Migratory Bird Treaty Act and Fish and Game Code of California protect Swainson's hawks year-round, as well as their nests during the nesting season (March 1 through September 15). Swainson's hawk are found in the Central Valley primarily during their breeding season, a population is known to winter in the San Joaquin Valley.

Swainson's hawks prefer nesting sites that provide sweeping views of nearby foraging grounds consisting of grasslands, irrigated pasture, hay, and wheat crops. Most Swainson's hawks are migratory, wintering in Mexico and breeding in

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California and elsewhere in the western United States. This raptor generally arrives in the Central Valley in mid-March, and begins courtship and nest construction immediately upon arrival at the breeding sites. The young fledge in early July, and most Swainson's hawks leave their breeding territories by late August.

The site is within the nesting range of Swainson's hawks and the CNDDB (2017) contains a few records of nesting Swainson's hawks in the greater project vicinity (Attachment B). The nearest occurrence of nesting Swainson's hawks in the CNDDB (2017) search area is approximately 2.5 miles northwest of the site.

Swainson's hawks were not observed in or near the site during the recent survey, which was conducted during the heart of the Swainson's hawk nesting season. The weedy grassland in the site provides marginal Swainson's hawk foraging habitat. Due to periodic disking, it is unlikely Swainson's hawks forage in the site intensively, but they may use it on an occasional basis when there are expansive alfalfa and hay fields in the region providing higher quality foraging habitat.

TRICOLORED BLACKBIRD: The tricolored blackbird is a State of California Species of Concern, is also a candidate for listing as an endangered species at the state level, and is also protected by the federal Migratory Bird Treaty Act (MBTA). This species is endemic to California. Tricolored blackbirds are colonial nesters requiring very dense stands of emergent wetland vegetation and/or dense thickets of wild rose or blackberries for nesting. Preferred nesting substrates are expansive stands of cattails and tules adjacent to open water. They forage in annual grasslands and croplands.

Tricolored blackbirds were not observed in the site during the recent survey, although the tules (*Scirpus acutus*), cattails (*Typha* sp.), and other emergent wetland vegetation along Black Rascal Creek provide suitable nesting habitat for this species. Patches of blackberry brambles and wild rose growing along the creek are also suitable for nesting. Tricolored blackbirds are common in

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agricultural lands in Merced County and may forage and nest in the project site during some years. The nearest occurrence of tricolored blackbird in the CNDDB (2017) search area is approximately 1 mile southeast of the site (Attachment B).

WESTERN POND TURTLE: The western pond turtle is a state species of concern but is not listed at either the state or federal level. Western pond turtles are associated with permanent or nearly permanent bodies of water with adequate basking sites such as logs, rocks or open mud banks. Pond turtles construct nests in sandy banks along slow moving streams and ponds in the spring and the young usually hatch in 2 to 3 months.

Black Rascal Creek provides suitable habitat for western pond turtles and this species is documented in the CNDDB (2017) in a tributary to Black Rascal Creek, approximately 3.5 miles northwest of the site. If western pond turtles are present in Black Rascal Creek, it is possible they utilize grasslands in the site for nesting.

OTHER SPECIAL-STATUS SPECIES: The body of the site does not provide suitable aquatic habitat for any type of fish, giant garter snake, California tiger salamander, or California red-legged frog. There is no alkali sink scrub habitat in the site for blunt-nosed leopard lizard. There are no blue elderberry shrubs in the site, precluding the potential occurrence of valley elderberry longhorn beetle. There are no vernal pools or seasonal wetlands in the site for vernal pool branchiopods (i.e., fairy and tadpole shrimp).

The ruderal grassland in the site provides potentially suitable foraging habitat for San Joaquin kit fox, but there is no suitable denning habitat in the site for this species. However, this species is not known from the Merced region. The only occurrence of San Joaquin kit fox in the CNDDB (2017) search area is an observation approximately 6 miles northwest of the site along a canal in Atwater. Special-status bats may fly over or forage in the site and may also roost in trees in and near the site.

CRITICAL HABITAT: The site is not within designated critical habitat for California red-legged frog (USFWS, 2006), California tiger salamander (USFWS, 2005a), federally listed vernal pool shrimp or plants (USFWS, 2005b), delta smelt (USFWS, 1994), valley elderberry longhorn beetle (USFWS, 1980), or Central Valley steelhead (NOAA, 2005).

Conclusions and Recommendations

- The body of the site is disturbed grassland vegetated with ruderal grasses and weeds. The body of the site has been routinely mowed and/or disked for years. There are no sensitive habitats in the body of the site.
- Development of the proposed project will result in the removal of a few eucalyptus trees. From a wildlife habitat perspective, the proposed removal of trees is a less than significant impact.
- Black Rascal Creek is the only potentially jurisdictional Water of the U.S. or wetland in the site.
- Avoidance of jurisdictional Waters of the U.S. is recommended, if possible. It is not known if the project will involve work in Black Rascal Creek, such as construction of a storm drain outfall. If complete avoidance of Black Rascal Creek is infeasible, impacts should be minimized to the maximum extent practicable, and permits from ACOE, CDFW, RWQCB, and possibly CVFPB should be secured prior to the placement of any fill material (e.g., culverts, fill dirt, rock) within jurisdictional Waters of the U.S.

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- Due to high levels of disturbance and a lack of suitable habitat, it is unlikely that special-status plants occur in the body of the site. Although considered unlikely, Sanford's arrowhead could potentially occur in Black Rascal Creek.
- Only a few special-status wildlife species have potential to occur in or near the site on more than a very occasional or transitory basis. Swainson's hawk could potentially nest in trees in or near the site and tricolored blackbird may nest along Black Rascal Creek. Both of these birds may use the site for foraging. However, the weedy grassland in the site provides marginal foraging habitat and use of the site by either Swainson's hawk or tricolored blackbird is expected to be limited.
- Pre-construction surveys for nesting Swainson's hawks within 0.25 miles of the project site are recommended if construction commences between March 1 and September 15. If active nests are found, a qualified biologist should determine the need (if any) for temporal restrictions on construction. The determination should utilize criteria set forth by CDFW (CDFG, 1994).
- Pre-construction surveys for western pond turtles and their nests are recommended for construction between April 1 through October 31. This will involve a search for nests in uplands adjacent to the creek. If nest sites are located, a 50foot buffer area around the nest is recommended and work should be delayed until hatching is complete and the young have left the nest site.
- Trees, shrubs, and grasslands in the site could be used by other birds protected by the Migratory Bird Treaty Act of 1918. If

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construction survey for nesting birds is recommended. If active nests are found, work in the vicinity of the nest should be delayed until the young fledge.

We hope this information is useful. Please call me at (209) 745-1159 with any questions.

Sincerely,

Diane S. Moore, M.S.

Principal Biologist

References and Literature Consulted

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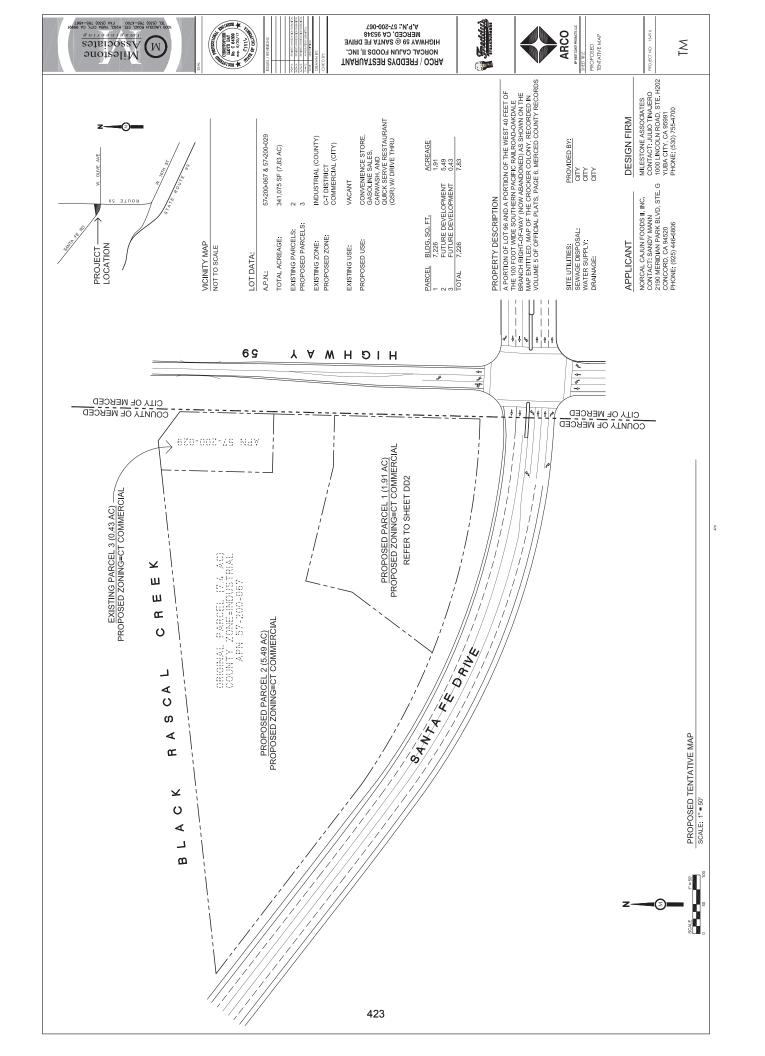
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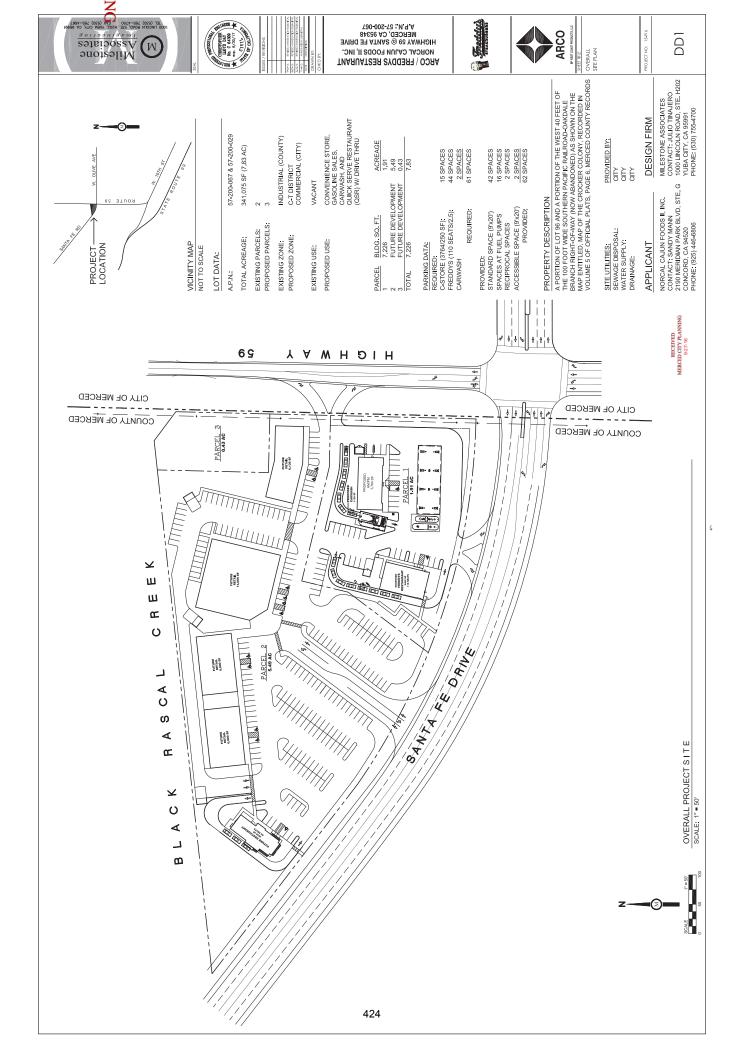
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USFWS. 2006. Part II, Department of the Interior, Fish and Wildlife Service. 50 CFR Part 17: Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for California Red-Legged Frog, and Special Rule Exemption Associated with Final Listing for Existing Routine Ranching Activities, Final Rule. Federal Register Vol. 71, No. 71, April 13.

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Attachment A Tentative Map and Site Plan





Attachment B CNDDB Summary Report and Exhibits & USFWS Species List



Selected Elements by Scientific Name

California Department of Fish and Wildlife California Natural Diversity Database



Query Criteria: Quad IS (Merced (3712034) OR Atwater (3712035))

Species	Element Code	Federal Status	State Status	Global Rank	State Rank	Rare Plant Rank/CDFW SSC or FP
Agelaius tricolor	ABPBXB0020	None	Candidate	G2G3	S1S2	SSC
tricolored blackbird	7.5. 27.500 <u>2</u> 0		Endangered	0200	0.02	
Ambystoma californiense	AAAAA01180	Threatened	Threatened	G2G3	S2S3	WL
California tiger salamander	7 8 8 8 8 10 1 100			0200	0200	
Athene cunicularia	ABNSB10010	None	None	G4	S3	SSC
burrowing owl						
Atriplex persistens	PDCHE042P0	None	None	G2	S2	1B.2
vernal pool smallscale						
Branchinecta conservatio	ICBRA03010	Endangered	None	G2	S2	
Conservancy fairy shrimp		J				
Branchinecta lynchi	ICBRA03030	Threatened	None	G3	S3	
vernal pool fairy shrimp						
Branchinecta mesovallensis	ICBRA03150	None	None	G2	S2S3	
midvalley fairy shrimp						
Buteo regalis	ABNKC19120	None	None	G4	S3S4	WL
ferruginous hawk						
Buteo swainsoni	ABNKC19070	None	Threatened	G5	S3	
Swainson's hawk						
California macrophylla	PDGER01070	None	None	G3?	S3?	1B.2
round-leaved filaree						
Castilleja campestris var. succulenta	PDSCR0D3Z1	Threatened	Endangered	G4?T2T3	S2S3	1B.2
succulent owl's-clover						
Charadrius montanus	ABNNB03100	None	None	G3	S2S3	SSC
mountain plover						
Downingia pusilla	PDCAM060C0	None	None	GU	S2	2B.2
dwarf downingia						
Emys marmorata	ARAAD02030	None	None	G3G4	S3	SSC
western pond turtle						
Eryngium spinosepalum	PDAPI0Z0Y0	None	None	G2	S2	1B.2
spiny-sepaled button-celery						
Eumops perotis californicus	AMACD02011	None	None	G5T4	S3S4	SSC
western mastiff bat						
Haliaeetus leucocephalus	ABNKC10010	Delisted	Endangered	G5	S3	FP
bald eagle						
Lagophylla dichotoma	PDAST5J070	None	None	G2	S2	1B.1
forked hare-leaf						
Lepidurus packardi	ICBRA10010	Endangered	None	G4	S3S4	
vernal pool tadpole shrimp						
Linderiella occidentalis	ICBRA06010	None	None	G2G3	S2S3	
California linderiella						



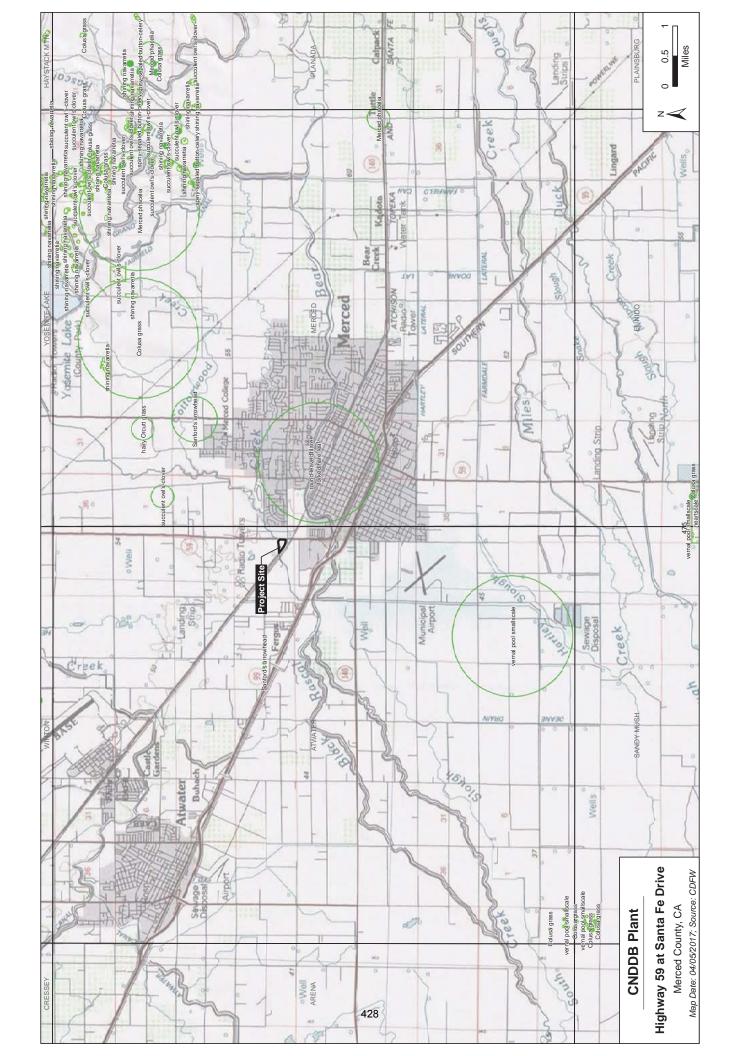
Selected Elements by Scientific Name

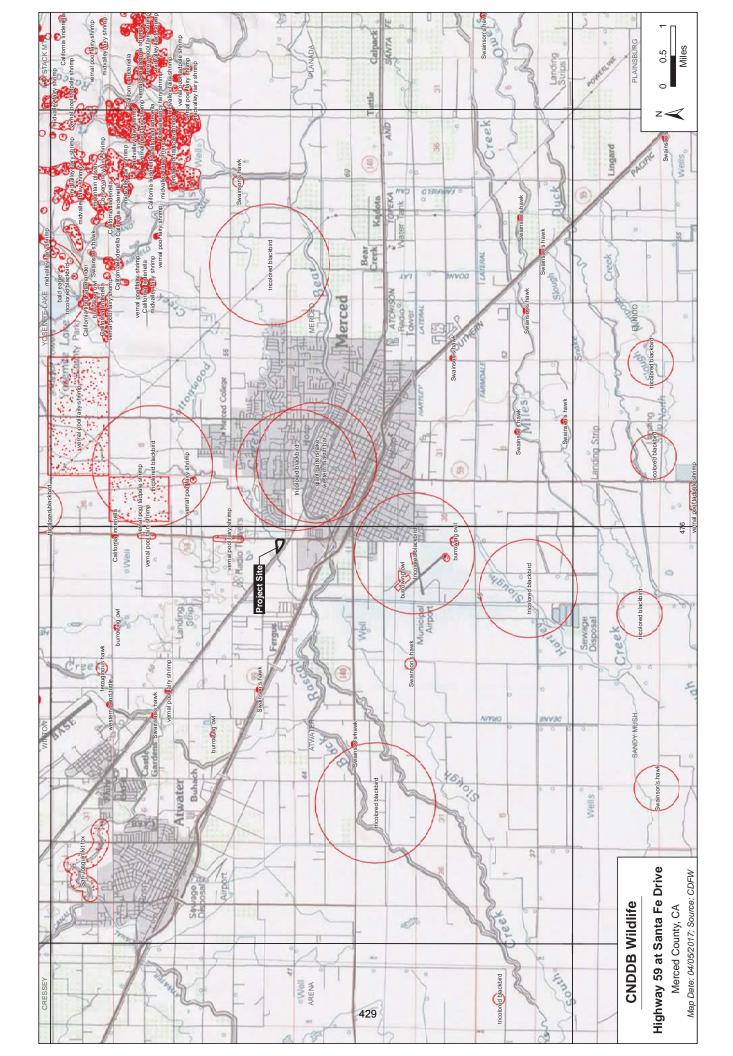
California Department of Fish and Wildlife California Natural Diversity Database



Species	Element Code	Federal Status	State Status	Global Rank	State Rank	Rare Plant Rank/CDFW SSC or FP
Navarretia nigelliformis ssp. radians	PDPLM0C0J2	None	None	G4T2	S2	1B.2
shining navarretia						
Neostapfia colusana	PMPOA4C010	Threatened	Endangered	G1	S1	1B.1
Colusa grass						
Orcuttia inaequalis	PMPOA4G060	Threatened	Endangered	G1	S1	1B.1
San Joaquin Valley Orcutt grass						
Orcuttia pilosa	PMPOA4G040	Endangered	Endangered	G1	S1	1B.1
hairy Orcutt grass						
Phacelia ciliata var. opaca	PDHYD0C0S2	None	None	G5TH	SH	3.2
Merced phacelia						
Sagittaria sanfordii	PMALI040Q0	None	None	G3	S3	1B.2
Sanford's arrowhead						
Thamnophis gigas	ARADB36150	Threatened	Threatened	G2	S2	
giant gartersnake						
Vulpes macrotis mutica	AMAJA03041	Endangered	Threatened	G4T2	S2	
San Joaquin kit fox						

Record Count: 28





IPaC
U.S. Fish & Wildlife Service

IPaC resource list

This report is an automatically generated list of species and other resources such as critical habitat (collectively referred to as *trust resources*) under the U.S. Fish and Wildlife Service's (USFWS) jurisdiction that are known or expected to be on or near the project area referenced below. The list may also include trust resources that occur outside of the project area, but that could potentially be directly or indirectly affected by activities in the project area. However, determining the likelihood and extent of effects a project may have on trust resources typically requires gathering additional site-specific (e.g., vegetation/species surveys) and project-specific (e.g., magnitude and timing of proposed activities) information.

Below is a summary of the project information you provided and contact information for the USFWS office(s) with jurisdiction in the defined project area. Please read the introduction to each section that follows (Endangered Species, Migratory Birds, USFWS Facilities, and NWI Wetlands) for additional information applicable to the trust resources addressed in that section.

Location

Merced County, California



for consultation

Local office

Sacramento Fish And Wildlife Office

4 (916) 414-6600

(916) 414-6713

Federal Building 2800 Cottage Way, Room W-2605 Sacramento, CA 95825-1846

Endangered species

This resource list is for informational purposes only and does not constitute an analysis of project level impacts.

The primary information used to generate this list is the known or expected range of each species. Additional areas of influence (AOI) for species are also considered. An AOI includes areas outside of the species range if the species could be indirectly affected by activities in that area (e.g., placing a dam upstream of a fish population, even if that fish does not occur at the dam site, may indirectly impact the species by reducing or eliminating water flow downstream). Because species can move, and site conditions can change, the species on this list are not guaranteed to be found on or near the project area. To fully determine any potential effects to species, additional site-specific and project-specific information is often required.

Section 7 of the Endangered Species Act **requires** Federal agencies to "request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action" for any project that is conducted, permitted, funded, or licensed by any Federal agency. A letter from the local office and a species list which fulfills this requirement can **only** be obtained by requesting an official species list from either the Regulatory Review section in IPaC (see directions below) or from the local field office directly.

For project evaluations that require USFWS concurrence/review, please return to the IPaC website and request an official species list by doing the following:

- 1. Draw the project location and click CONTINUE.
- 2. Click DEFINE PROJECT.
- 3. Log in (if directed to do so).
- 4. Provide a name and description for your project.

5. Click REQUEST SPECIES LIST.

Listed species ¹ are managed by the <u>Ecological Services Program</u> of the U.S. Fish and Wildlife Service.

1. Species listed under the Endangered Species Act are threatened or endangered; IPaC also shows species that are candidates, or proposed, for listing. See the <u>listing status page</u> for more information.

The following species are potentially affected by activities in this location:

M	la	m	m	a	lς

NAME	STATUS
San Joaquin Kit Fox Vulpes macrotis mutica No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/2873	Endangered

Reptiles NAME

NAME	STATUS
Blunt-nosed Leopard Lizard Gambelia silus No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/625	Endangered
Giant Garter Snake Thamnophis gigas No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/4482	Threatened

Amphibians NAME

NAME	STATUS
California Red-legged Frog Rana draytonii There is a final <u>critical habitat</u> designated for this species. Your location is outside the designated critical habitat. https://ecos.fws.gov/ecp/species/2891	Threatened
California Tiger Salamander Ambystoma californiense There is a final <u>critical habitat</u> designated for this species. Your location is outside the designated critical habitat. https://ecos.fws.gov/ecp/species/2076	Threatened

Fishes

NAME	STATUS
Delta Smelt Hypomesus transpacificus There is a final <u>critical habitat</u> designated for this species. Your location is outside the designated critical habitat. https://ecos.fws.gov/ecp/species/321	Threatened
Steelhead Oncorhynchus (=Salmo) mykiss There is a final <u>critical habitat</u> designated for this species. Your location is outside the designated critical habitat. https://ecos.fws.gov/ecp/species/1007	Threatened

Insects

NAME	STATUS
Valley Elderberry Longhorn Beetle Desmocerus californicus dimorphus There is a final <u>critical habitat</u> designated for this species. Your location is outside the designated critical habitat. https://ecos.fws.gov/ecp/species/7850	Threatened
Crustacoans	

Crustaceans

NAME	STATUS

Conservancy Fairy Shrimp Branchinecta conservatio

There is a final <u>critical habitat</u> designated for this species. Your location is outside the designated critical habitat.

https://ecos.fws.gov/ecp/species/8246

Endangered

Vernal Pool Fairy Shrimp Branchinecta lynchi

There is a **final** <u>critical habitat</u> designated for this species. Your location is outside the designated critical habitat.

https://ecos.fws.gov/ecp/species/498

Threatened

Vernal Pool Tadpole Shrimp Lepidurus packardi

There is a **final** <u>critical habitat</u> designated for this species. Your location is outside the designated critical habitat.

https://ecos.fws.gov/ecp/species/2246

Endangered

STATUS

Flowering Plants

Colusa Grass Neostapfia colusana
There is a final critical habitat designated for this species. Your location is outside the designated critical habitat.
https://ecos.fws.gov/ecp/species/5690

Fleshy Owl's-clover Castilleja campestris ssp. succulenta
There is a final critical habitat designated for this species. Your location is outside the designated
Threatened

There is a **final** <u>critical habitat</u> designated for this species. Your location is outside the designated critical habitat.

https://ecos.fws.gov/ecp/species/8095

Endangered

Hairy Orcutt Grass Orcuttia pilosa

There is a **final** <u>critical habitat</u> designated for this species. Your location is outside the designated critical habitat.

https://ecos.fws.gov/ecp/species/2262

Threatened

San Joaquin Orcutt Grass Orcuttia inaequalis

There is a **final** <u>critical habitat</u> designated for this species. Your location is outside the designated critical habitat.

https://ecos.fws.gov/ecp/species/5506

Critical habitats

Potential effects to critical habitat(s) in this location must be analyzed along with the endangered species themselves.

THERE ARE NO CRITICAL HABITATS AT THIS LOCATION.

Migratory birds

Certain birds are protected under the Migratory Bird Treaty Act¹ and the Bald and Golden Eagle Protection Act².

Any activity that results in the take (to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) of migratory birds or eagles is prohibited unless authorized by the U.S. Fish and Wildlife Service³. There are no provisions for allowing the take of migratory birds that are unintentionally killed or injured.

Any person or organization who plans or conducts activities that may result in the take of migratory birds is responsible for complying with the appropriate regulations and implementing appropriate conservation measures.

- 1. The Migratory Birds Treaty Act of 1918.
- 2. The Bald and Golden Eagle Protection Act of 1940.
- 3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

Additional information can be found using the following links:

Birds of Conservation Concern http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php

- Conservation measures for birds http://www.fws.gov/birds/management/project-assessment-tools-and-guidance/conservation-measures.php
- Year-round bird occurrence data http://www.birdscanada.org/birdmon/default/datasummaries.jsp

The migratory birds species listed below are species of particular conservation concern (e.g. <u>Birds of Conservation Concern</u>) that may be potentially affected by activities in this location. It is not a list of every bird species you may find in this location, nor a guarantee that all of the bird species on this list will be found on or near this location. Although it is important to try to avoid and minimize impacts to all birds, special attention should be made to avoid and minimize impacts to birds of priority concern. To view available data on other bird species that may occur in your project area, please visit the <u>AKN Histogram Tools</u> and <u>Other Bird Data Resources</u>. To fully determine any potential effects to species, additional site-specific and project-specific information is often required.

NAME	SEASON(S)
Allen's Hummingbird Selasphorus sasin https://ecos.fws.gov/ecp/species/9637	Migrating
Bald Eagle Haliaeetus leucocephalus https://ecos.fws.gov/ecp/species/1626	Wintering
Black Rail Laterallus jamaicensis https://ecos.fws.gov/ecp/species/7717	Breeding
Burrowing Owl Athene cunicularia https://ecos.fws.gov/ecp/species/9737	Year-round
Calliope Hummingbird Stellula calliope https://ecos.fws.gov/ecp/species/9526	Migrating
Costa's Hummingbird Calypte costae https://ecos.fws.gov/ecp/species/9470	Year-round
Fox Sparrow Passerella iliaca	Wintering
Lesser Yellowlegs Tringa flavipes https://ecos.fws.gov/ecp/species/9679	Wintering
Lewis's Woodpecker Melanerpes lewis https://ecos.fws.gov/ecp/species/9408	Wintering
Loggerhead Shrike Lanius ludovicianus https://ecos.fws.gov/ecp/species/8833	Year-round
Long-billed Curlew Numenius americanus https://ecos.fws.gov/ecp/species/5511	Wintering
Marbled Godwit Limosa fedoa https://ecos.fws.gov/ecp/species/9481	Wintering
Nuttall's Woodpecker Picoides nuttallii https://ecos.fws.gov/ecp/species/9410	Year-round
Oak Titmouse Baeolophus inornatus https://ecos.fws.gov/ecp/species/9656	Year-round
Peregrine Falcon Falco peregrinus https://ecos.fws.gov/ecp/species/8831	Wintering
Rufous Hummingbird selasphorus rufus https://ecos.fws.gov/ecp/species/8002	Migrating
Short-eared Owl Asio flammeus https://ecos.fws.gov/ecp/species/9295	Wintering

Snowy Plover Charadrius alexandrinus

Swainson's Hawk Buteo swainsoni
https://ecos.fws.gov/ecp/species/1098

Tricolored Blackbird Agelaius tricolor
https://ecos.fws.gov/ecp/species/3910

Western Grebe aechmophorus occidentalis
https://ecos.fws.gov/ecp/species/6743

Williamson's Sapsucker Sphyrapicus thyroideus
https://ecos.fws.gov/ecp/species/8832

Yellow-billed Magpie Pica nuttalli Year-round https://ecos.fws.gov/ecp/species/9726

What does IPaC use to generate the list of migratory bird species potentially occurring in my specified location?

Landbirds:

Migratory birds that are displayed on the IPaC species list are based on ranges in the latest edition of the National Geographic Guide, Birds of North America (6th Edition, 2011 by Jon L. Dunn, and Jonathan Alderfer). Although these ranges are coarse in nature, a number of U.S. Fish and Wildlife Service migratory bird biologists agree that these maps are some of the best range maps to date. These ranges were clipped to a specific Bird Conservation Region (BCR) or USFWS Region/Regions, if it was indicated in the 2008 list of Birds of Conservation Concern (BCC) that a species was a BCC species only in a particular Region/Regions. Additional modifications have been made to some ranges based on more local or refined range information and/or information provided by U.S. Fish and Wildlife Service biologists with species expertise. All migratory birds that show in areas on land in IPaC are those that appear in the 2008 Birds of Conservation Concern report.

Atlantic Seabirds:

Ranges in IPaC for birds off the Atlantic coast are derived from species distribution models developed by the National Oceanic and Atmospheric Association (NOAA) National Centers for Coastal Ocean Science (NCCOS) using the best available seabird survey data for the offshore Atlantic Coastal region to date. NOAANCCOS assisted USFWS in developing seasonal species ranges from their models for specific use in IPaC. Some of these birds are not BCC species but were of interest for inclusion because they may occur in high abundance off the coast at different times throughout the year, which potentially makes them more susceptible to certain types of development and activities taking place in that area. For more refined details about the abundance and richness of bird species within your project area off the Atlantic Coast, see the Northeast Ocean Data Portal. The Portal also offers data and information about other types of taxa that may be helpful in your project review.

About the NOAANCCOS models: the models were developed as part of the NOAANCCOS project: Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf. The models resulting from this project are being used in a number of decision-support/mapping products in order to help guide decision-making on activities off the Atlantic Coast with the goal of reducing impacts to migratory birds. One such product is the Northeast Ocean Data Portal, which can be used to explore details about the relative occurrence and abundance of bird species in a particular area off the Atlantic Coast.

All migratory bird range maps within IPaC are continuously being updated as new and better information becomes available.

Can I get additional information about the levels of occurrence in my project area of specific birds or groups of birds listed in IPaC?

Landbirds:

The <u>Avian Knowledge Network (AKN)</u> provides a tool currently called the "Histogram Tool", which draws from the data within the AKN (latest, survey, point count, citizen science datasets) to create a view of relative abundance of species within a particular location over the course of the year. The results of the tool depict the frequency of detection of a species in survey events, averaged between multiple datasets within AKN in a particular week of the year. You may access the histogram tools through the <u>Migratory Bird Programs AKN Histogram Tools</u> webpage.

The tool is currently available for 4 regions (California, Northeast U.S., Southeast U.S. and Midwest), which encompasses the following 32 states: Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North, Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

In the near future, there are plans to expand this tool nationwide within the AKN, and allow the graphs produced to appear with the list of trust resources generated by IPaC, providing you with an additional level of detail about the level of occurrence of the species of particular concern potentially occurring in your project area throughout the course of the year.

Atlantic Seabirds:

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the Northeast Ocean Data Portal. The Portal also offers data and information about other taxa besides birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the NOAANCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf project webpage.

Facilities

Wildlife refuges

Any activity proposed on National Wildlife Refuge lands must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGES AT THIS LOCATION.

Fish hatcheries

THERE ARE NO FISH HATCHERIES AT THIS LOCATION.

Wetlands in the National Wetlands Inventory

Impacts to <u>NWI wetlands</u> and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local <u>U.S. Army Corps of Engineers District</u>.

This location overlaps the following wetlands:

FRESHWATER POND

PUBFx

A full description for each wetland code can be found at the National Wetlands Inventory website: https://ecos.fws.gov/ipac/wetlands/decoder

Data limitations

The Service's objective of mapping wetlands and deepwater habitats is to produce reconnaissance level information on the location, type and size of these resources. The maps are prepared from the analysis of high altitude imagery. Wetlands are identified based on vegetation, visible hydrology and geography. A margin of error is inherent in the use of imagery; thus, detailed on-the-ground inspection of any particular site may result in revision of the wetland boundaries or classification established through image analysis.

The accuracy of image interpretation depends on the quality of the imagery, the experience of the image analysts, the amount and quality of the collateral data and the amount of ground truth verification work conducted. Metadata should be consulted to determine the date of the source imagery used and any mapping problems.

Wetlands or other mapped features may have changed since the date of the imagery or field work. There may be occasional differences in polygon boundaries or classifications between the information depicted on the map and the actual conditions on site.

Data exclusions

Certain wetland habitats are excluded from the National mapping program because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters. Some deepwater reef communities (coral or tuberficid worm reefs) have also been excluded from the inventory. These habitats, because of their depth, go undetected by aerial imagery.

Data precautions

Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local government or to establish the geographical scope of the regulatory programs of government agencies. Persons intending to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.

Attachment C
Photographs



Disked ruderal grassland in the east part of the site, looking west; 04/27/17.



Disked ruderal grassland in the norhtwest part of the site, looking northwest; 04/27/17.



Disked ruderal grassland in the west part of the site, looking south; 04/27/17.



Eucalyptus trees in the southeast part of the site, looking south; 04/27/17.



North Highway 59 along the east edge of the site, looking south; 04/27/17.



Black Rascal Creek along the northedge of the site, looking west; 04/27/17.



Black Rascal Creek, looking northwest from the North Highway 59 bridge; 04/27/17.



Black Rascal Creek, looking east from the Santa Fe Drive bridge; 04/27/17.

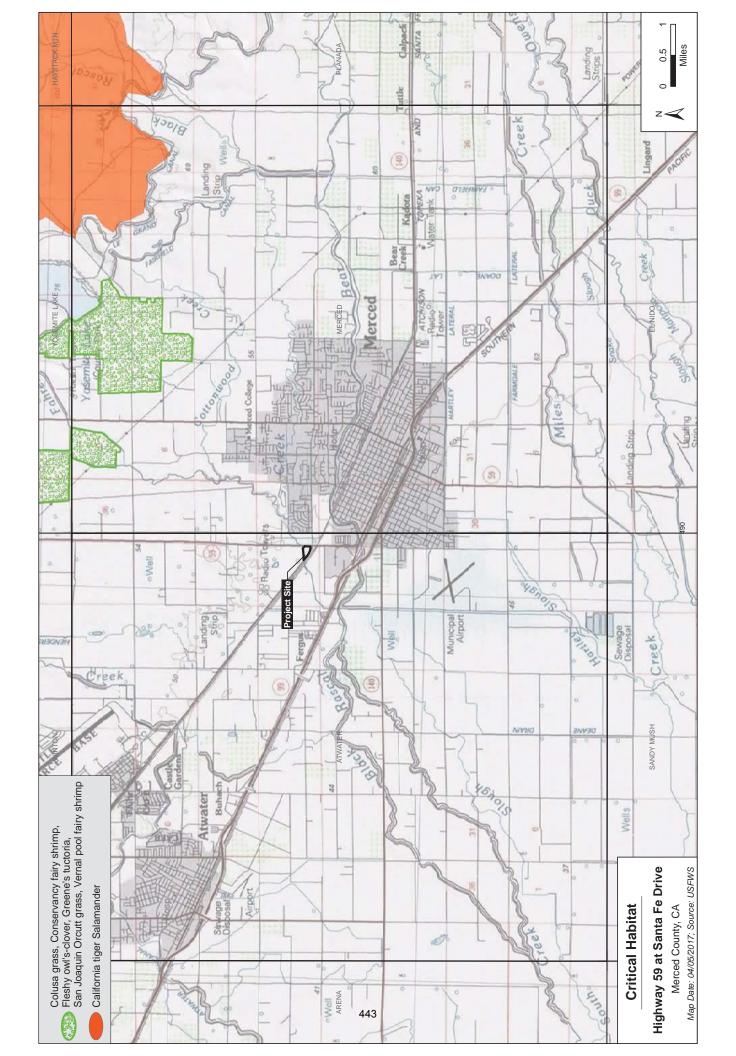


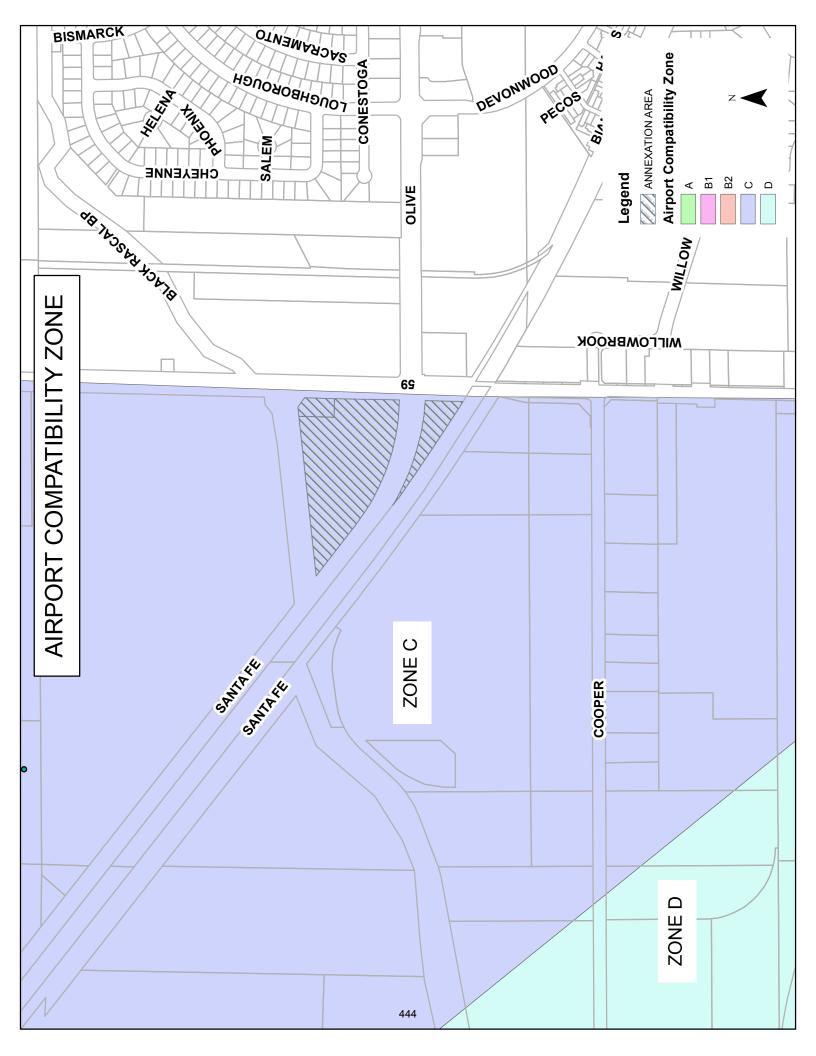
Constructed ditch in the southeast corner of the site, looking east; 04/27/17. Water in this ditch flows from the east under North Highway 59 and leaves the site under Santa Fe Drive.

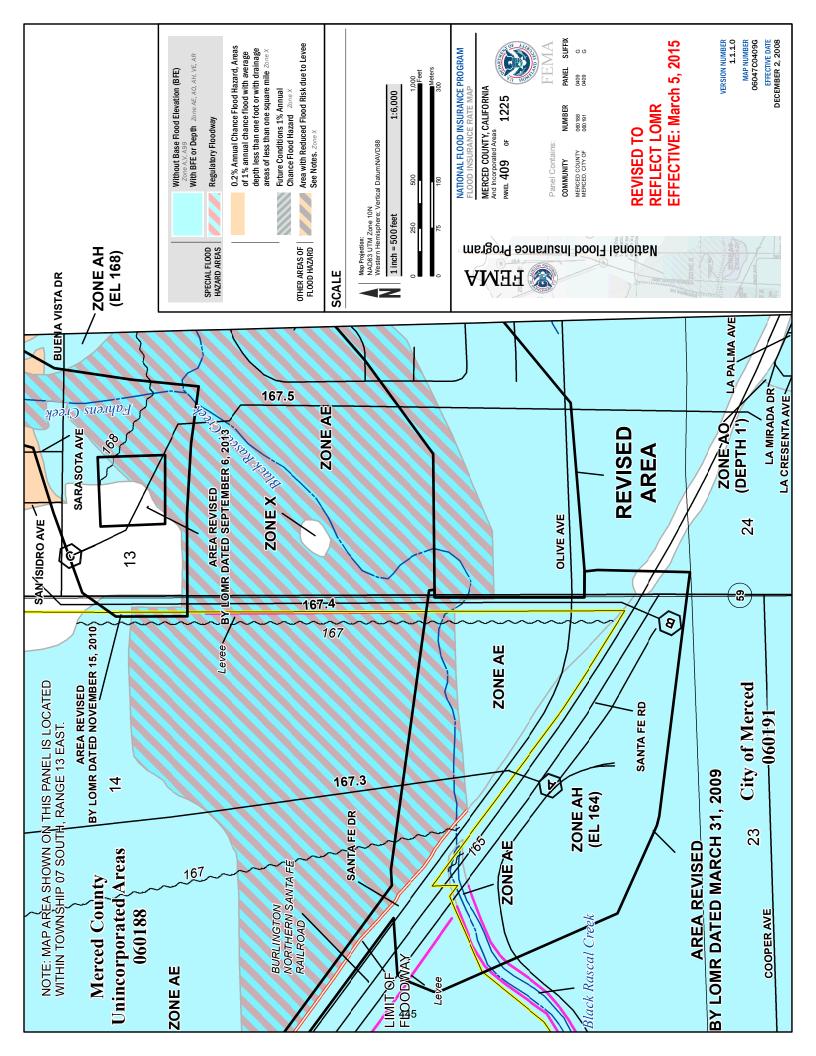


Same ditch as shown above, looking west from the North Highway 59 culvert; 04/27/17. The section of ditch in the corner of the site is approximately 100 feet long.

Attachment D Designated Critical Habitat

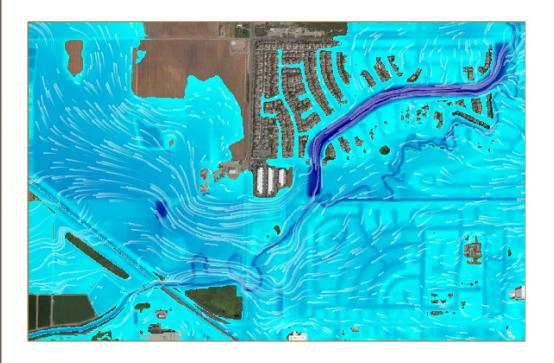






Highway 59 Retail Center Merced County, California

Black Rascal Creek Urban Level of Flood Protection (ULOP) Study



January 2018

Final Report

Prepared for:

59 Petroleum LLC

Prepared by:



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River Focus, Inc. www.riverfocus.com



A. Jake Gusman, P.E. Project Manager, River Focus

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1 INTRODUCTION

The proposed Highway 59 Retail Center Project is located on an undeveloped 10-acre parcel bounded by Santa Fe Drive, State Highway 59, and Black Rascal Creek. The triangular-shaped parcel is currently in unincorporated Merced County, but is slated for annexation by the City of Merced. A location map showing the study area and project site is provided in Figure 1-1.



Figure 1-1. Study Area Location Map

1.1 Study Purpose

Before annexation and development approval can occur, a floodplain study must be performed based on the California Department of Water Resources' Urban Level of Flood Protection (ULOP) Criteria (DWR, 2013). The proposed project must be shown to provide the level of protection required to withstand a 0.5-percent annual chance exceedance (200-year) flood event. In this case, fill will be placed on the site to provide the required level of protection. The purpose of this study is to (1) establish the 200-year flood elevations along the project site using the latest hydrology and hydraulic modeling and (2) determine the required fill elevations to protect the project site from the 200-year flood event.

1.2 FEMA Floodplain Mapping

The project site is located within a FEMA Special Flood Hazard Area—the Zone AE (100-year) floodplain from Black Rascal Creek. The FEMA regulatory floodway for the creek is generally located just north of the site based on the March 31, 2009, FEMA Letter of Map Revision (LOMR) for the project area (Case No. 09-09-1124P). River Focus requested and obtained the FEMA Flood Insurance Study (FIS) backup data from the FEMA Project Library, which included the effective HEC-2 hydraulic model for the study reach.

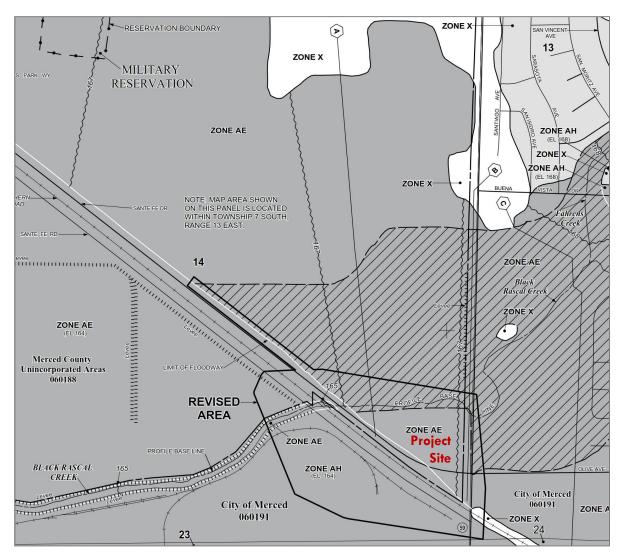


Figure 1-2. FEMA Flood Insurance Rate Map (LOMR Case No. 09-09-1124P)

1.3 Urban Level of Flood Protection Requirements

The State of California's Urban Level of Flood Protection (ULOP) Criteria were developed in 2013, in response to the Central Valley Flood Protection Act of 2008, with the purpose of strengthening the link between flood management and land use in the Central Valley. According to the August 2017 Central Valley Flood Protection Plan Update (DWR, 2017), no updates have been made to ULOP Criteria since November 2013.

Specific requirements from the ULOP Criteria that are applicable to the study area are shown below.

FND-1: Cities and counties shall make a finding related to an urban level of flood protection or the national FEMA standard of flood protection based on substantial evidence in the record for one of the following before approving any affected land-use decisions:

 That the imposed conditions by the city or county on a property, development project, or subdivision are sufficient to provide the required level of flood protection (California Government Code Sections 65865.5, 65962, and 66474.5).

EVD-2: Substantial evidence in the record to support a finding related to an urban level of flood protection based on imposed conditions shall include the following, at a minimum:

- A list of the conditions imposed by the city or county that is consistent with existing codes and regulations, responsible entities for implementing the conditions, and a plan and schedule by which the imposed conditions will be met.
- A report prepared by a Professional Civil Engineer registered in California to document the data and analyses for demonstrating the imposed conditions will result in the property, development project, or subdivision having an urban level of flood protection.
- Any additional data and information that cities or counties use to make the finding.

This study report has been prepared by a Professional Civil Engineer registered in California and documents the data and analysis used to demonstrate that the imposed conditions (i.e., fill) will result in the development project having an urban level of flood protection.

2 HYDROLOGY

The project reach is impacted by two main flooding sources: (1) a potential levee breach from the Black Rascal Creek Diversion Channel, located approximately 7 miles east of the project site, and (2) Fahrens Creek, which joins Black Rascal Creek approximately 2000 feet east of the project site.

2.1 Black Rascal Creek Diversion - Levee Breach

Flow from the Black Rascal Creek watershed is diverted toward Bear Creek via the Black Rascal Creek Diversion Channel. The California Department of Water Resources (DWR), through their contractor RBF Consulting, developed levee breach hydrographs for the Black Rascal Creek Diversion Channel (DWR Task Order No. 32).

Three potential breach locations were modeled in the DWR study using the U.S. Army Corps of Engineers' HEC-RAS (River Analysis System) program. Breach Location 2, which provides the largest of the three breach hydrographs in terms of peak flow and volume, was used for the current ULOP study. Figure 2-1 shows the 0.5% annual chance exceedance (200-year) hydrograph for Breach Location 2. The peak discharge of the levee breach is 5,938 cfs.

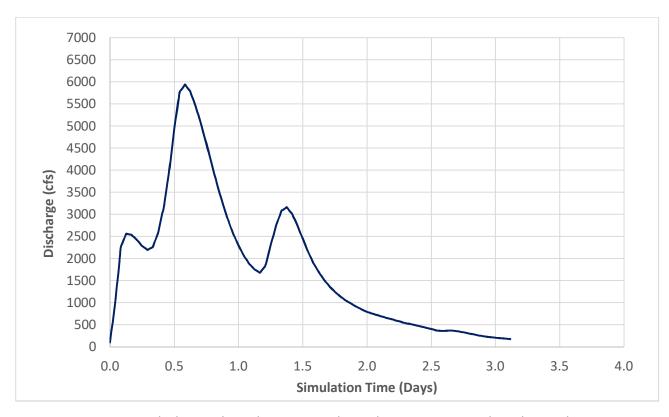


Figure 2-1. Black Rascal Creek Diversion Channel – 200-year Breach Hydrograph

2.2 Fahrens Creek

The 0.5% annual chance exceedance (200-year) peak discharge for Fahrens Creek was computed based on FEMA peak discharges provided in the Flood Insurance Study (FEMA, 2008) and summarized in Table 2-1.

The ratio of the Fahrens Creek 100-year peak discharges at Cottonwood Creek vs. at the confluence with Black Rascal Creek was used—along with the other peak discharges at Cottonwood Creek—to compute the missing peak discharges at the Confluence. Values were then plotted on a Log-Probability scale to estimate a 200-year peak discharge of 6,370 cfs for Fahrens Creek at its confluence with Black Rascal Creek.

8)
8

	Peak Discharge (cfs)		
Recurrence Interval	Fahrens Creek @ Cottonwood Creek (Area = 29.2 mi²)	Fahrens Creek @ Confluence of Black Rascal Creek (Area = 38.5 mi²)	
10-year	1,140	n/a	
50-year	2,850	n/a	
100-year	3,800	5,400	
500-year	6,300	n/a	

The Fahrens Creek hydrograph (shown in Figure 2-2) was developed by scaling the main section of the Black Rascal Creek hydrograph to the computed 200-year peak discharge of 6,370 cfs for Fahrens Creek. Because the Fahrens Creek watershed is larger than the Black Rascal Creek watershed, the peak discharge is expected to arrive later. The peak of the Fahrens Creek hydrograph was set at 9 hours after the levee breach hydrograph.

Flow from the Black Rascal Creek Diversion Channel levee breach has farther to travel through the city to reach the project area. As a result, it is reasonable for the peak flows from the two flooding sources, i.e., the levee breach and Fahrens Creek, to reach the project area at a similar time.

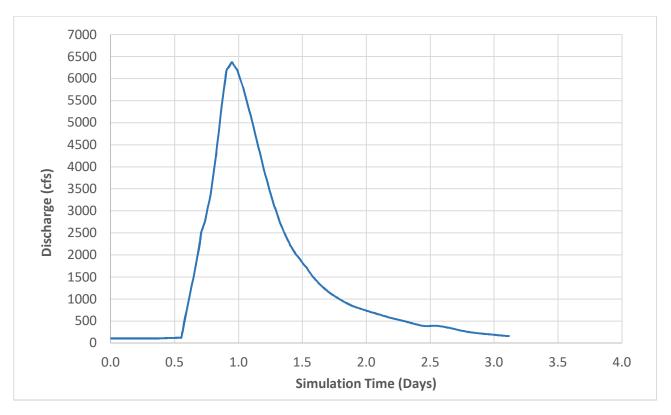


Figure 2-2. Fahrens Creek – 200-year Hydrograph

2.3 Summary

Table 2-2 provides a summary of the peak discharges for each of two flooding sources for the project reach.

Table 2-2. Peak Discharge Comparison

	Peak Discharge (cfs)	
Recurrence Interval	Black Rascal Creek Diversion Levee Breach ¹	Fahrens Creek
200-year	5,938	6,370

1. Peak discharge at levee breach location

3 HYDRAULIC MODELING

3.1 Effective FEMA Model

River Focus reviewed the FEMA effective hydraulic model and found the following:

- The effective model was created using the old DOS-based HEC-2 program. Although FEMA still accepts models using the legacy HEC-2 program, the U.S. Army Corps of Engineers replaced HEC-2 with HEC-RAS more than 20 years ago.
- As is the case with all HEC-2 models, the model cross sections are not georeferenced (i.e., they do not have spatial location information).
- Flow conditions within the floodplain of Black Rascal Creek floodplain is highly twodimensional (2-D) rather than the one-dimensional (1-D) flow assumed by the effective model.

To produce a more defensible Urban Level of Flood Protection determination for the project site, a 2-D hydraulic model was created for Black Rascal Creek using HEC-RAS (River Analysis System), Version 5.0.3 (HEC, 2016).

3.2 Hydraulic Model Data/Parameters

Model Mesh and Cross Sections

The Black Rascal Creek and Fahrens Creek 2-D model mesh is shown in Figure 3-2. In general, a 100-ft by 100-ft cell size was used, with additional detail for portions of the channel and adjacent to berms and levees. The 2-D modeling approach in HEC-RAS allows for larger mesh sizes, while preserving cell face and storage information.

Vertical Datum and Horizontal Projection

All elevations in this report and in the HEC-RAS model are referenced to the NAVD88 vertical datum. The projection/coordinate system used for this study is NAD 1983 State Plane California IV (FIPS 0404 feet). As-built plan data for the Santa Fe Drive Bridge and the Highway 59 culvert were in the older NGVD29 vertical datum; a conversion factor of +2.454 ft was used to convert the data from NGVD29 to NAVD88.

Topographic Data

High-quality LiDAR topographic data developed for DWR's Central Valley Floodplain Evaluation and Delineation (CVFED) Program was used for the hydraulic model terrain.

Field Reconnaissance

River Focus personnel (Jake Gusman and Darren Bertrand) conducted a field reconnaissance visit on October 20, 2017, to examine creek and overbank conditions and evaluate hydraulic model parameters, bridges, and other structures. Figure 3-1 shows Black Rascal Creek upstream of Highway 59.



Figure 3-1. Black Rascal Creek Upstream of Highway 59 (Facing Downstream)

Manning's Roughness

The channel and overbank roughness (Manning's n) values used in the hydraulic model ranged between 0.030 and 0.500, as described in Table 3-1. The Manning's roughness layer is shown in Figure 3-3. The selected n values were based on field observations, aerial imagery, engineering references (e.g., Chow, 1959; Engineers Australia, 2014), and engineering judgment.

Table 3-1. Manning's Roughness Values

	1	
Manning's n	Description / Notes	
Value	Description / Notes	
Channel		
0.030	Fahrens Creek, grass-lined channel	
0.040	Bear Creek	
0.040 to 0.055	Black Rascal Creek	
0.055 Fahrens Creek, original creek		
Floodplain		
0.022	Open water, pond/basin	
0.025	Parking lot	
0.030	Vacant land, cultivated areas (no crop)	
0.040	Field crops	
0.045	Parks, urban landscape	
0.050	Grain and hay crops	
0.090	Deciduous fruits and nuts	
0.120	Agricultural residence	
0.150	Urban/residential	
0.200	Industrial/commercial	
0.500	Buildings (individual)	

January 2018

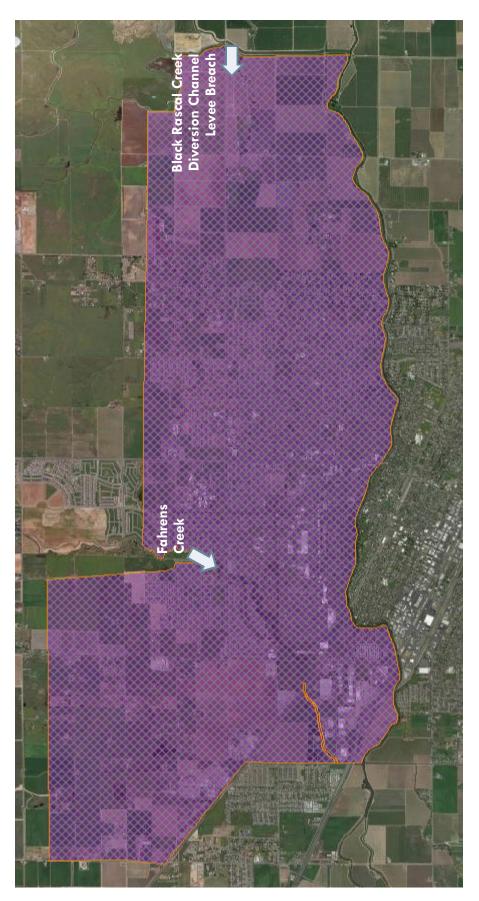


Figure 3-2. HEC-RAS 2-D Mesh with Model Inflow Locations

January 2018



Figure 3-3. Manning's Roughness Layer

Boundary Conditions

Normal depth was used for the downstream boundary conditions along the 2D model mesh.

Existing Bridges and Culverts

Bridge and culvert data were provided by DWR. There are three modeled bridges in the study area (from upstream to downstream): Santa Fe Road Drive, Railroad Bridge, and Santa Fe Road Bridge. Because bridges cannot be directly modeled in 2-D portion of HEC-RAS, a short 1-D model reach was added for the channel from just upstream of the Santa Fe Drive Bridge to just downstream of the Santa Fe Road Bridge. The 2-D model mesh includes a 2-D connection with the existing Highway 59 box culvert at Black Rascal Creek.

Project Site

The ground elevation within the project site was raised to simulate the presence of fill.

3.3 Model Output

Due to the existing contours, floodwaters leaving Black Rascal Creek between the upstream levee breach and the project site will be distributed throughout the floodplain. This results in a lower peak flow by the time it reaches the project site. The computed peak discharge reaching Highway 59 near the project area—from the levee breach and Fahrens Creek—is approximately 9,500 cfs, as shown in Figure 3-4.

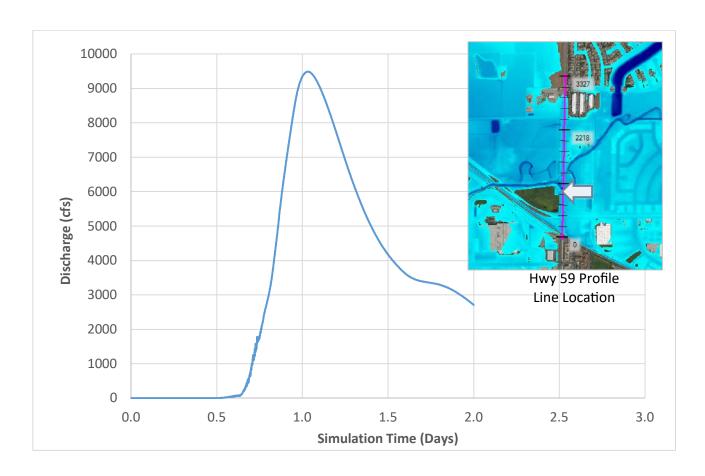


Figure 3-4. HEC-RAS Computed Hydrograph at Highway 59

The computed maximum 200-year flood depths for the entire study area are shown in Figure 3-5, while the maximum 200-year water surface elevations are shown in Figure 3-6.

Figure 3-7 shows a model flow trace, showing flow direction at a snapshot during the model simulation. The computed 200-year water surface elevation and flood depth in the vicinity of the project site are shown in Figure 3-8. The 200-year water surface elevation along the project site ranges from approximately 167.4 to 167.7 feet (NAVD88 vertical datum).

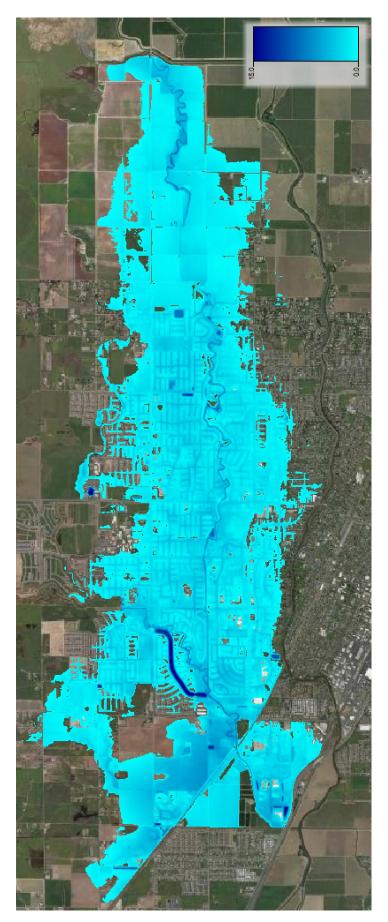


Figure 3-5. HEC-RAS Maximum 200-year Flood Depth

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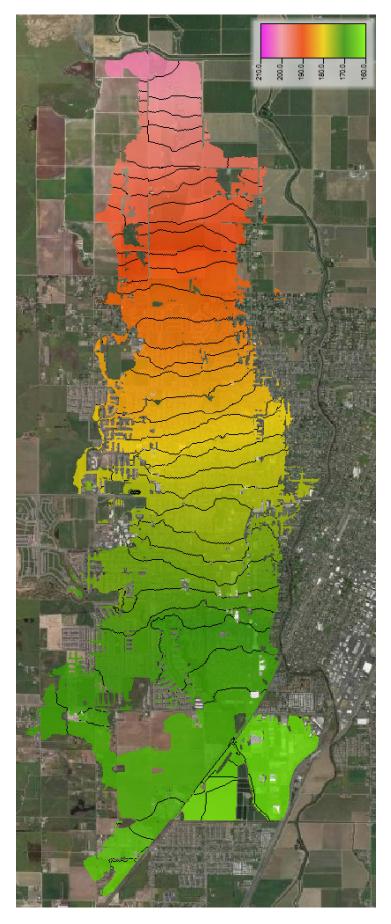


Figure 3-6. HEC-RAS Maximum 200-year Water Surface Elevation (1-ft Contours Shown)

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January 2018

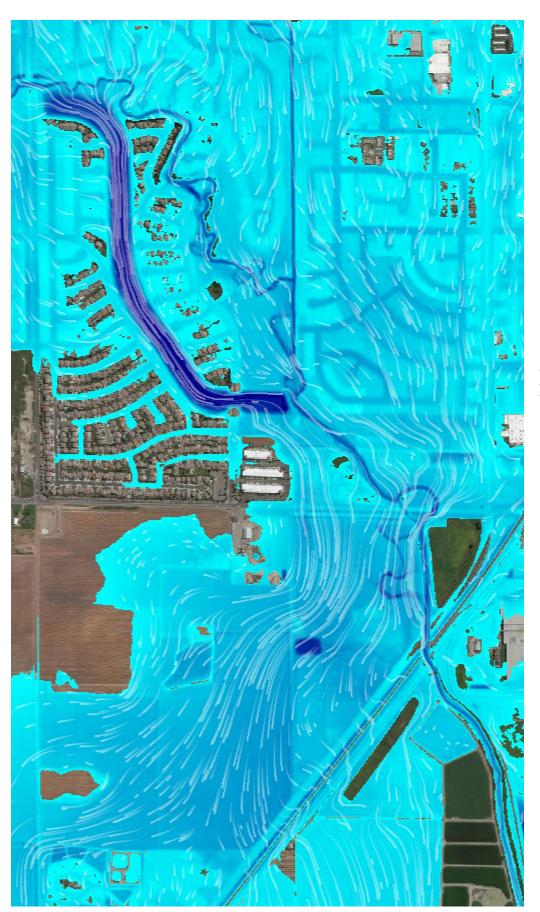


Figure 3-7. HEC-RAS 200-year Model Flow Trace

January 2018

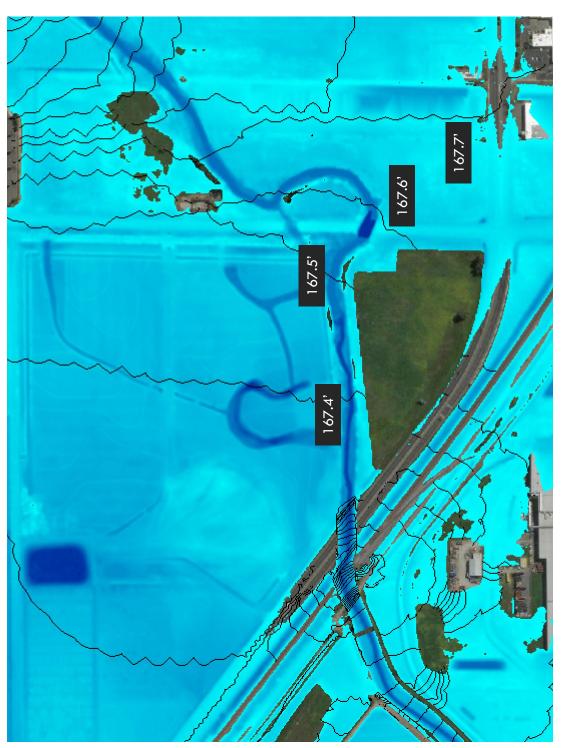


Figure 3-8. Maximum 200-year Flood Elevation— 0.1-ft Contours near Project Site (with Flood Depth)

4 ULOP IMPOSED CONDITIONS

An imposed condition in the form of fill is required for the project development to achieve an urban level of flood protection. The fill must be elevated above the computed 200-year flood elevation and freeboard is highly recommended by DWR (note: freeboard is the difference between the fill elevation and the computed flood elevation).

A freeboard of 1 foot or greater will help to account for the inherent uncertainty in estimating peak flood discharges and the computed flood elevations. A summary of proposed fill elevations is provided in Table 4-1. The required fill elevation ranges from 168.4 ft to 168.7 ft (NAVD88 vertical datum).

Table 4-1. Proposed Fill Elevations – Project Site

Location	200-year Water Surface Elevation (ft, NAVD88)	Freeboard Height (ft)	Fill Elevation (ft, NAVD88)
Downstream (Northwest) End of Project Site	167.4	1	168.4
Upstream (East) End of Project Site	167.7	1	168.7

5 ULOP CERTIFICATION

5.1 Certification Conditions

This certification is provided to the City of Merced and Merced County for the sole purpose of supporting the finding that the imposed conditions on the project site will achieve an urban level of flood protection.

This certification is made in accordance with the requirements of the Urban Level of Flood Protection Criteria (DWR, 2013). This certification does not constitute a warranty or guarantee of performance, expressed or implied.

5.2 Certification Statement

Certification of Data and Information

The data and information contained in this report are accurate to the best of my knowledge.

Certification of Analysis

The analyses were performed in accordance with sound engineering practice in a manner consistent with the degree of skill and care ordinarily exercised by members of the civil engineering profession currently practicing in the same locality under similar conditions.

I, <u>Andreas Jake Gusman, PE</u>, a Professional Registered Civil Engineer in the State of California, certify that the imposed conditions for the Highway 59 Retail Center Project will provide an urban level of flood protection.



6 REFERENCES

Chow, V.T. (1959). Open Channel Hydraulics. New York: McGraw-Hill Publishing Company.

DWR (2013). *Urban Level of Flood Protection Criteria*, FloodSafe California, November 2013. California Department of Water Resources.

DWR (2017). *Central Valley Flood Protection Plan Update, 2017 Update.* August 2017. California Department of Water Resources.

Engineers Australia (2014). Australian Rainfall & Runoff. Project 15: Two Dimensional Modelling in Urban and Rural Floodplains. Stage 1&2 Report P15/S1/009. November 2012.

FEMA (2008). Flood Insurance Study – Merced County, California and Incorporated Areas. Federal Emergency Management Agency (FEMA) Flood Insurance Study Number 06047CV000B. Effective December 2, 2008.

HEC (2016). HEC-RAS River Analysis System – User's Manual, Version 5.0, February 2016, U.S. Army Corps of Engineers, Hydrologic Engineering Center (HEC), Davis, California.

7 ACKNOWLEDGMENTS

This study was performed by River Focus, Inc., for 59 Petroleum, LLC. The Project Manager for 59 Petroleum, LLC was Surina Mann. The River Focus study team included Jake Gusman, PE (Project Manager) and Darren Bertrand (Senior Hydrologist).

July 31, 2018

Ms. Julie Nelson, Associate Planner **City of Merced - Planning Department** 678 West 18th Street Merced, CA 95340

RE: ADDENDUM TO TRAFFIC IMPACT ANALYSIS FOR SR 59 / OLIVE AVENUE RETAIL CENTER, MERCED, CALIFORNIA

Dear Ms. Nelson:

As requested I have reviewed the comments received on the Traffic Impact Analysis for the SR 59 / Olive Avenue Retail Center IS/MND. This letter addresses the comments from LAFCO and Stanislaus County by clarifying traffic study conclusions and identifying the preferred project access mitigation strategy, as shown in the revised Executive Summary which is attached. As requested, changes to the original summary have been identified in Red and-strikeout.

As we have discussed, we met with County staff to discuss their concerns, and worked with City staff to refine the site plan in a manner that might normally not occur until the project goes through site design review. The revised mitigations relating to the site will reduce project impacts to a less than significant level.

Please feel free to contact me if you have any questions.

Sincerely Yours,

KDAnderson & Associates, Inc.

Kenneth D. Anderson, P.E.

President

Attachment: Revised Executive Summary

SR 59 – Olive Retail RTC.ltr

REVISED EXECUTIVE SUMMARY

Project Description

The SR 59 / Olive Avenue Retail Center project is a proposed convenience commercial development that will occupy 8 acres on the northwest corner of the intersection of State Route 59 (SR 59) and Olive Avenue - Santa Fe Drive. The project site is in Merced County but will be annexed into the City of Merced. The proposed development plans includes roughly 42,000 sf of retail commercial uses, including a gasoline station with convenience store, fast food restaurants and other retail uses.

Access. The project proposes right-turn only access to SR 59 north of Olive Avenue, as well as two driveways on Santa Fe Drive. The location and operation of this access has been evaluated by Caltrans District 10 as part of their review of the project. Full access is proposed at the western driveway, and the eastern driveway near SR 59 is limited to right turns only. The operation of the driveways as it relates to sight distance, intersection spacing and weaving between driveways was considered, and measures to ensure the long term feasibility of these access points has been identified within the context of original mitigation options.

Trip Generation. Based on approved trip generation rates that account for the specific land uses included in the project, the project is expected to generate approximately 3,859 new daily trips, with 269 new trips generated in the a.m. peak hour and 312 new trips occurring in the weekday p.m. peak hour.

Improvements. The project is assumed to complete frontage improvements on SR 59 and Santa Fe Drive that are consistent with the City's Arterial Street standard. Separate right turn deacceleration treatments are assumed at the project driveways. Work required along SR 59 would be conducted under an encroachment permit acquired through Caltrans.

Study Scope

This analysis addresses traffic conditions occurring on weekday a.m. and p.m. commute periods. The analysis addresses the operation of seven (7) existing intersection in the west Merced area that were identified during the scoping process in consultation with City and Caltrans staff.

- 1. SR 59 / Yosemite Avenue Traffic Signal
- 2. SR 59 / Buena Vista Drive Traffic Signal
- 3. SR 59 / Santa Fe Drive / W. Olive Avenue Traffic Signal
- 4. W. Olive Avenue / Loughborough Drive Traffic Signal
- 5. W. Olive Avenue / Austin Avenue Traffic Signal
- 6. SR 59 / Cooper Avenue / Willowbrook Drive Traffic Signal
- 7. SR 59 / W. 16th Street All-Way Stop

The analysis also addresses conditions on SR 59, Olive Avenue and Santa Fe Drive based on daily traffic volumes.



At City of Merced direction, the traffic study considers the following scenarios:

- Existing Conditions
- Existing Conditions Plus Project Build Out with access as proposed
- Year 2035 Cumulative Conditions without the Project
- Year 2035 Cumulative Conditions with Project Build Out

Existing Traffic Conditions

The City establishes Level of Service (LOS) D as the minimum acceptable standard for intersections and roadways.

Traffic counts were conducted in 2017 to established existing conditions. Two safety intersection improvement projects are pending and are expected to be completed before the proposed project proceeds. These improvements are included in the analysis of existing conditions at the SR 59 / Olive Avenue / Santa Fe Drive intersection and at the SR 59 / W. 16th Street intersection.

With anticipated improvements all study intersections operate at LOS D or better during the study hours. However, SR 59 between W. 16th Street and Olive Avenue carries daily traffic volumes that are indicative of LOS F conditions.

The existing system of pedestrian and bicycle facilities in this area includes limited sidewalks and Class I bike paths, but pedestrians and bicycles use paved shoulder elsewhere. A gap exists in the pedestrian system on the west side of SR 59 between Cooper Avenue and Santa Fe Drive, and right of way would need to be acquired to improve the situation in this area.

Existing Plus SR 59 / Olive Avenue Retail Center with Access As Proposed

The impacts of SR 59 / Olive Avenue Retail Center were identified by superimposing project trips onto the current background traffic volume levels. The directional distribution of project trips was identified using the Merced County Association of Governments (MCAG) regional traffic model, and that analysis tool indicated that the majority of project trips will arrive and depart via SR 59 to north and Olive Avenue to the east under short term future conditions.

Impacts. If no improvements to the area circulation system are made all off-site study intersections would continue to operate with LOS D or better conditions, but access is problematic from two standpoints. The western access on Santa Fe Drive is forecast to operate at LOS F in the p.m. peak hour. As noted in Table A1 conditions at this location could be improved by either by creating a Two-Way Left-Turn lane on Santa Fe Drive, by restricting access or by installing a traffic signal. However, each alternative has ramifications on the project layout as noted. The preferred improvement option identified in consultation with City staff will:

- 1. Restripe Santa Fe Drive to create a TWLT lane east of the western access. This will improve the Level of Service by accommodating two-step left turns,
- 2. Monitor traffic conditions at the western access and install a traffic signal if/when



- required by the City of Merced in response to any potential safety problems as evidenced by an appreciable increase in the number of collisions. While implementation will result in two closely spaced signals, their operation can be adequate because the western driveway is only a "tee" intersection. Coordination with the SR 59 signal will be required; and,
- 3. Modify the layout of the access to Santa Fe Drive to either prohibit outbound right turns from the eastern driveway or provide a continuous auxiliary acceleration—lane between the driveways. These measures will address the horizontal curve on the alignment of Santa Fe Drive as it relates to the western driveway.

Similarly, the SR 59 access is expected to occasionally be blocked by the queue of southbound traffic extending from the Santa Fe Drive traffic signal. Alternative measures to alleviate this issue are also noted, along with their ramifications on the site. One alternative (lengthening the southbound left turn lane on SR 59) is feasible. The other two alternatives are not feasible as closing the access will make the site untenable as a retail center and moving the access to the north is not possible due to the impact on Black Rascal Creek and lack of right of way.





		TABLE A1 REVISED MITIGATION SUMMARY	
Location	Impact	Mitigation	Ramification
	EXI	EXISTING PLUS PROJECT CONDTIONS	
Western Santa Fe Drive Access	LOS F during p.m. peak hour	Create TWLT lane on Santa Fe Drive PROPOSED	Required moving driveway or reconstructing SR 59 intersection—Restripe Santa Fe Drive to provide TWLT lane east of the access
		Or Prohibit outbound left turns NOT PROPOSED	Exacerbates problem at SR 59 driveway
		Or Install traffic signal <i>if determined to be</i> needed by the City Engineer based on	Location is problematic and likely require moving driveway
		warrants associated with preventable	
		accidents. The cost of the traffic signal shall be the responsibility of the	
		owner/developer. PROPOSED	
	Operational issues	Prohibit outbound right turns from the	
		eastern driveway, OR	
		Keep right turns and Construct a continuous	
		auxiliary acceleration -deceleration lane	
		between the two driveways	
SR 59 Access	Access blocked by Southbound Queues	Lengthen southbound left turn lane PROPOSED	Facilities access but does not shorten queues. Recommended Mitigation
		Move access to the north	Affects Black Rascal Creek as well as property not
		NOT PROPOSED	included in project. Not feasible
		Close SR 59 access	Exacerbates issues at western access, and make site
		NOT PROPOSED	untenable as a retail center
	CUM	CUMULATIVE PLUS PROJECT CONDTIONS	
SR 59 / Olive Avenue /		Fair share contribution to intersection improvements including:	vements including:
Santa Fe Drive	conditions during a.m. and p.m.	 Reconstruct westbound Olive Ave to pr 	Reconstruct westbound Olive Ave to provide dual left turn lanes onto Southbound SR 59.
	peak hours	 Reconfigure the westbound right turn la 	Reconfigure the westbound right turn lane to create a combination through & right turn lane,
		and extend that through lane across SR 59 along the project's frontage.	59 along the project's frontage.
		 Reconstruct the existing northbound rig 	Reconstruct the existing northbound right turn lane as a "free" right turn with median island
		separating eastbound and right turning traffic.	raffic.
		 Reconstruct the Eastbound Santa Fe Dri 	Reconstruct the Eastbound Santa Fe Drive approach to provide dual left turn lane.

<u>Year 2035 Cumulative Plus SR 59 / Olive Avenue Retail Center with Access as Proposed Conditions</u>

Basis for Traffic Volumes. The Merced County Association of Governments (MCAG) Year 2035 travel demand forecast model was refined and used to develop background traffic volume projections that assume the SR 59 / Olive Avenue Retail Center Project is developed as proposed. A portion of the City of Atwater's approved Ferrari Ranch Annexation was assumed to be developed by 2035.

Assumed Improvements. The following regional improvements were assumed for this cumulative analysis:

- 2015 RTP improvement assumed in the MCAG traffic model
- Widen SR 59 to 4-lanes from W. 16th Street to Olive Avenue
- Campus Parkway extend to Yosemite Avenue
- AME remains terminated at Green Sands Avenue

Impacts. If SR 59 / Olive Avenue Retail Center and other Merced area development proceeds as anticipated by the Year 2035, but no additional improvements are made, then two off-site intersections will operate at LOS F.

The SR 59 / Olive Avenue / Santa Fe Drive intersection will operate at LOS F with and without the project. The project's cumulative impact is significant based on the change in overall delay at the intersection. As noted in Table A1 intersection improvements that are consistent with the Circulation Element have been identified, and the project would contribute its fair share to the cost of these improvements. With that contribution the project's impact is not significant.

The SR 59 / W. 16th Street intersection would operate at LOS F with and without the project, but the project's incremental change in delay is less than the increment permitted by the City. This impact is not significant and mitigation is not required.

Mainline SR 59 from to Yosemite Avenue is projected to operate at LOS F with and without the project. However, the incremental increase in volume contributed by the project is less than the 5% increase permitted under City guidelines. As a result, the project's impact is not significant and mitigation is not required.

TRAFFIC IMPACT ANALYSIS

FOR

SR 59 / OLIVE AVENUE RETAIL CENTER

Merced, CA

Prepared For:

BASE CAMP

115 South School Street, Suite 14 Lodi, CA 95240

Prepared By:

KD Anderson & Associates, Inc.

3853 Taylor Road, Suite G Loomis, California 95650 (916) 660-1555

Revised January 3, 2018 October 9, 2017

0780-06

SR 59 / Olive Avenue Retail Center TIA 10-9-17.rpt



TRAFFIC IMPACT ANALYSIS FOR SR 59 / OLIVE AVENUE RETAIL CENTER

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TRAFFIC IMPACT ANALYSIS FOR SR 59 / OLIVE AVENUE RETAIL CENTER

Merced, California

EXECUTIVE SUMMARY

Project Description

The SR 59 / Olive Avenue Retail Center project is a proposed convenience commercial development that will occupy 8 acres on the northwest corner of the intersection of State Route 59 (SR 59) and Olive Avenue - Santa Fe Drive. The project site is in Merced County but will be annexed into the City of Merced. The proposed development plans includes roughly 42,800 sf of retail commercial uses, including a gasoline station with convenience store, fast food restaurants, coffee kiosk and other retail uses.

Access. The project proposes right-turn only access to SR 59 north of Olive Avenue, as well as two driveways on Santa Fe Drive. Full access is proposed at the western driveway, and the eastern driveway near SR 59 is limited to right turns only.

Trip Generation. Based on approved trip generation rates that account for the specific land uses included in the project, the project is expected to generate approximately 3,859 new daily trips, with 269 new trips generated in the a.m. peak hour and 312 new trips occurring in the weekday p.m. peak hour.

Improvements. The project is assumed to complete frontage improvements on SR 59 and Santa Fe Drive that are consistent with the City's Arterial Street standard. Separate right turn deceleration treatments are assumed at the project driveways. Work required along SR 59 would be conducted under an encroachment permit acquired through Caltrans.

Study Scope

This analysis addresses traffic conditions occurring on weekday a.m. and p.m. commute periods. The analysis addresses the operation of seven (7) existing intersection in the west Merced area that were identified during the scoping process in consultation with City and Caltrans staff.

- 1. SR 59 / Yosemite Avenue Traffic Signal
- 2. SR 59 / Buena Vista Drive Traffic Signal
- 3. SR 59 / Santa Fe Drive / W. Olive Avenue Traffic Signal
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- 6. SR 59 / Cooper Avenue / Willowbrook Drive Traffic Signal
- 7. SR 59 / W. 16th Street All-Way Stop

The analysis also addresses conditions on SR 59, Olive Avenue and Santa Fe Drive based on daily traffic volumes.

At City of Merced direction, the traffic study considers the following scenarios:



- Existing Conditions
- Existing Conditions Plus Project Build Out with access as proposed
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The City establishes Level of Service (LOS) D as the minimum acceptable standard for intersections and roadways.

Traffic counts were conducted in 2017 to established existing conditions. Two safety intersection improvement projects are pending and are expected to be completed before the proposed project proceeds. These improvements are included in the analysis of existing conditions at the SR 59 / Olive Avenue / Santa Fe Drive intersection and at the SR 59 / W. 16th Street intersection.

With anticipated improvements all study intersections operate at LOS D or better during the study hours. However, SR 59 between W. 16th Street and Olive Avenue carries daily traffic volumes that are indicative of LOS F conditions.

The existing system of pedestrian and bicycle facilities in this area include limited sidewalks and Class I bike paths, but pedestrians and bicycles use paved shoulder elsewhere. A gap exists in the pedestrian system on the west side of SR 59 between Cooper Avenue and Santa Fe Drive, and right of way would need to be acquired to improve the situation in this area.

Existing Plus SR 59 / Olive Avenue Retail Center with Access As Proposed

The impacts of SR 59 / Olive Avenue Retail Center were identified by superimposing project trips onto the current background traffic volume levels. The directional distribution of project trips was identified using the Merced County Association of Governments (MCAG) regional traffic model, and that analysis tool indicated that the majority of project trips will arrive and depart via SR 59 to north and Olive Avenue to the east under short term future conditions.

Impacts. If no improvements to the area circulation system are made all off-site study intersections would continue to operate with LOS D or better conditions, but access is problematic from two standpoints. The western access on Santa Fe Drive is forecast to operate at LOS F in the p.m. peak hour. As noted in Table A1 conditions at this location could be improved either by creating a Two-Way Left-Turn lane on Santa Fe Drive, by restricting access or by installing a traffic signal. However, each alternative has ramifications on the project layout as noted.

Similarly, the SR 59 access is expected to occasionally be blocked by the queue of southbound traffic extending from the Santa Fe Drive traffic signal. Alternative measures to alleviate this issue are also noted, along with their ramifications on the site. One alternative (lengthening the southbound left turn lane on SR 59) is feasible. The other two alternatives are not feasible as closing the access will make the site untenable as a retail center and moving the access to the north is not possible due to the impact on Black Rascal Creek and lack of right of way.



		TABLE A1	
•			9
Location	Impact	Mitigation	Kamification
	EXIST	EXISTING PLUS PROJECT CONDTIONS	
Western Santa Fe Drive	LOS F during p.m. peak hour	Create TWLT lane on Santa Fe Drive	Required moving driveway or reconstructing SR 59 intersection
Access		Or Prohibit outbound left turns	Exacerbates problem at SR 59 driveway
		Or Install traffic signal	Location is problematic and likely require moving driveway
SR 59 Access	Access blocked by Southbound	Lengthen southbound left turn lane	Facilities access but does not shorten queues.
			Recommended Mitigation
		Move access to the north	Affects Black Rascal Creek as well as property not included in project. Not feasible
		Close SR 59 access	Exacerbates issues at western access, and make site
			untenable as a retail center
	CUMUL	CUMULATIVE PLUS PROJECT CONDTIONS	
SR 59 / Olive Avenue /	Significantly exacerbate LOS F	Fair share contribution to intersection improvements including:	nprovements including:
Santa Fe Drive	conditions during a.m. and p.m.		
	peak hours	 Reconstruct westbound Olive Ave SR 59. 	Reconstruct westbound Olive Avenue to provide dual left turn lanes onto Southbound SR 59.
		Reconfigure the westbound right to	Reconfigure the westbound right turn lane to create a combination through & right turn
		lane, and extend that through lane	lane, and extend that through lane across SR 59 along the project's frontage.
		 Reconstruct the existing northboun 	Reconstruct the existing northbound right turn lane as a "free" right turn with median
		island separating eastbound and right turning traffic.	ght turning traffic.
		 Reconstruct the Eastbound Santa F 	Reconstruct the Eastbound Santa Fe Drive approach to provide dual left turn lane.

Year 2035 Cumulative Plus SR 59 / Olive Avenue Retail Center with Access as Proposed Conditions

Basis for Traffic Volumes. The Merced County Association of Governments (MCAG) Year 2035 travel demand forecast model was refined and used to develop background traffic volume projections that assume the SR 59 / Olive Avenue Retail Center Project is developed as proposed. A portion of the City of Atwater's approved Ferrari Ranch Annexation was assumed to be developed by 2035.

Assumed Improvements. The following regional improvements were assumed for this cumulative analysis:

- 2015 RTP improvement assumed in the MCAG traffic model
- Widen SR 59 to 4-lanes from W. 16th Street to Olive Avenue
- Campus Parkway extend to Yosemite Avenue
- AME remains terminated at Green Sands Avenue

Impacts. If SR 59 / Olive Avenue Retail Center and other Merced area development proceeds as anticipated by the Year 2035, but no additional improvements are made, then two off-site intersections will operate at LOS F.

The SR 59 / Olive Avenue / Santa Fe Drive intersection will operate at LOS F with and without the project. The project's cumulative impact is significant based on the change in overall delay at the intersection. As noted in Table A1 intersection improvements that are consistent with the Circulation Element have been identified, and the project would contribute its fair share to the cost of these improvements. With that contribution the project's impact is not significant.

The SR 59 / W. 16th Street intersection would operate at LOS with and without the project, but the project's incremental change in delay is less than the increment permitted by the City. This impact is not significant and mitigation is not required.

Mainline SR 59 from to Yosemite Avenue is projected to operate at LOS F with and without the project. However, the incremental increase in volume contributed by the project is less than the 5% increase permitted under City guidelines. As a result, the project's impact is not significant and mitigation is not required.



TRAFFIC IMPACT ANALYSIS FOR SR 59 / OLIVE AVENUE RETAIL CENTER PROJECT

Merced, California

INTRODUCTION

Project Description

The SR 59 / Olive Avenue Retail Center project is a proposed convenience commercial development that will occupy 8 acres abutting State Route 59 (SR 59) at its intersection with Olive Avenue and Santa Fe Drive, as noted in Figure 1. The project site is in Merced County but will be annexed into the City of Merced. As noted in Figure 2 (site plan), the proposed development plans includes roughly 42,000 sf of retail commercial uses, including a gasoline station with convenience store, fast food restaurants and other retail uses.

Access to the site is a primary consideration of this traffic study. As presented in the site plan, the project includes a right-turn only driveway on SR 99 and two driveways on Santa Fe Drive, one of which will permit full access.

Traffic Study Scope

This analysis is intended to evaluate the relative traffic impacts of the project within a range of relevant scenarios as required under City of Merced guidelines and requested by Caltrans. The analysis considers traffic conditions occurring during weekday a.m. and p.m. peak hours.

At City of Merced direction, the traffic study considers the following scenarios:

- Existing Conditions
- Existing Conditions Plus Project Build Out
- Year 2035 Cumulative Conditions no development on the site
- Year 2035 Cumulative Conditions with Project Build Out

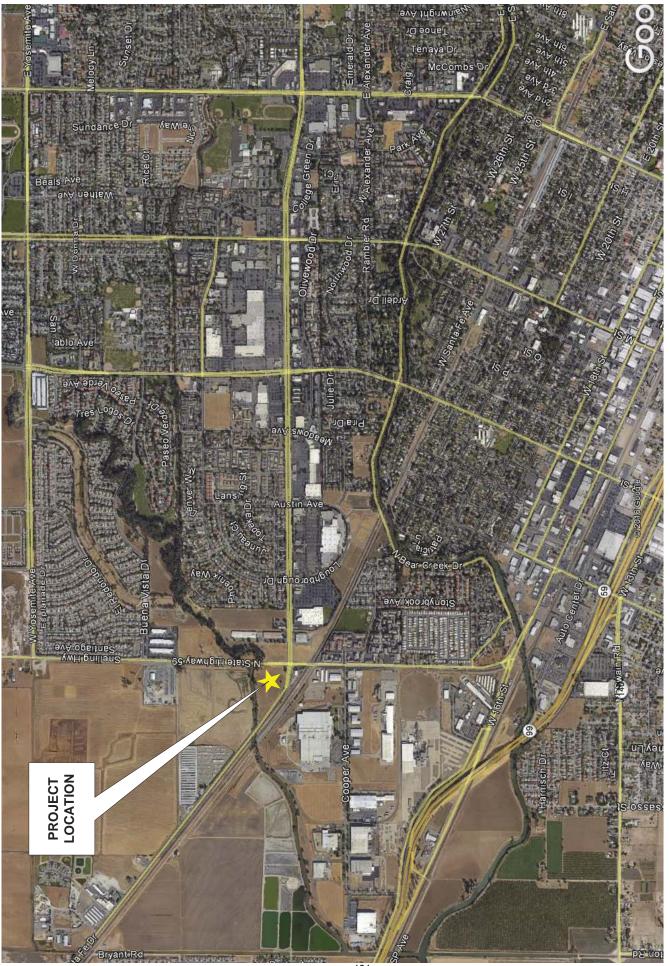
Two scenarios typically evaluated under City and Caltrans guidelines were not addressed:

- Existing Plus Approved Projects (EPAP) Conditions without the proposed Project
- EPAP Conditions with Project Build Out with Circulation as proposed

These scenarios were omitted because no approved projects were identified in the area of the proposed project by the City of Merced, Merced County or the City of Atwater. Thus, the project's impacts under EPAP background conditions would be the same as those identified under Existing Plus Project conditions.

The traffic analysis also addresses project impacts to alternative transportation modes.





VICINITY MAP

528

SITE PLAN

529

KD Anderson & Associates, Inc.

Transportation Engineers

0780-06 RA 1/3/2018

EXISTING SETTING

This portion of this traffic impact study presents a description of the existing transportation system in the vicinity of the proposed project site.

Study Area - Roadways

The following is a description of roadways that provide access to the proposed SR 59 / Olive Avenue Retail Center project.

State Route 99 (**SR 99**). SR 99 is the primary north-south route through the San Joaquin Valley and the major point of access to the City of Merced. SR 99 is generally a controlled access freeway with local connections limited to grade separated interchanges. SR 99 has 4 to 6 mainline travel lanes at various locations in Merced County but is a four lane roadway in the immediate area of the proposed project. The speed limit on SR 99 is posted at 65 mph.

The most recent traffic volume counts published by Caltrans reveal an *Annual Average Daily Traffic (AADT)* volume of 59,000 vehicles per day in the area of the project north of the V Street interchange (2015). Trucks comprise roughly 27% of the daily traffic volume on SR 99 in this area.

Four roadways provide regional access to the project.

State Route 59 (**SR 59**). SR 59 is an important route through Merced County which links the City of Merced with SR 152 at the Madera County line and extends north to the Snelling area of northern Merced County. SR 59 is a Major Arterial in the Merced General Plan (128' ROW). In the vicinity of the proposed project, SR 59 is a two lane conventional highway which is being incrementally widened to a four lane section as adjoining development occurs. Implementation of improvements to SR 59 is constrained by two key physical features. The highway crosses the UPRR at a two lane at-grade crossing roughly midway between the Olive Avenue and Cooper Avenue – Willowbrook Drive intersection. The highway also crosses Rascal Creek on a two lane structure just north of the proposed project. SR 59 is designated an STAA Terminal Access route.

Traffic count information (2015) provided by Caltrans indicates a daily volume of 17,200 AADT in the area between 16th Street and W. Olive Avenue with the volume dropping to 8,700 AADT north of Olive Avenue. Trucks comprise 5% to 6% of the daily traffic volume on SR 59 in this area.

Santa Fe Drive is an east-west Principal Arterial roadway across Merced County that connects the project with the Atwater area to the west. Santa Fe Drive enters Merced County east of Turlock and extends across the northern Atwater area past the project site to an intersection in the City of Merced on State Route 59 at Olive Drive. In the area of the project Santa Fe Drive is a four lane street with a continuous center Two-Way Left-Turn (TWLT) lane. There are no



sidewalks along Santa Fe Drive, but the roadway has paved shoulders. The BN&SF railroad runs parallel to and south of Santa Fe Drive and limits the number of connections to Santa Fe Drive from the south. Today the posted speed limit on Santa Fe Drive is 55 mph.

Olive Avenue. Olive Avenue is a major east-west route through Olive Avenue begins at the SR 59 / Santa Fe Drive intersection and continues easterly beyond the City limits into rural Merced County. In the area of the project W. Olive Avenue is a six lane facility with a raised landscaped median. Sidewalk has been provided along W. Olive Avenue in the commercial area east of the project but is missing in the immediate vicinity of SR 59 where development has not occurred. The posted speed limit on W. Olive Avenue is 45 mph.

16th Street. 16th Street is an element of the City's downtown grid street system running parallel to and north of SR 99. 16th Street originates at on and off ramps from southbound SR 99 about ¾ mile west of the SR 59 intersection and continues easterly to the SR 99 / SR 140 interchange in eastern Merced. SR 59 follows the segment of 16th Street west of V Street. In the area of the project W. 16th Street is a four lane facility. The posted speed limit on W. 16th Street is 40 mph.

Other roadways link the project with Merced neighborhoods.

Yosemite Avenue. Yosemite Avenue is an east-west Major Arterial street that traverses Merced in the area roughly a mile north of Olive Avenue. Today the portion of Yosemite Avenue between SR 59 and San Augustine Avenue is two lanes, but Yosemite Avenue has been widened to a four lane section from San Augustine Avenue easterly. Ultimately, this portion of Yosemite Avenue will be a four lane roadway, but widening is not expected until the property north of Yosemite Avenue is annexed to the city and developed. The posted speed limit on Yosemite Avenue is 45 mph.

Buena Vista Drive. Buena Vista Drive is a two-lane collector street aligned in an east-west direction. Buena Vista Drive extends east from an intersection on SR 59 across R Street to an intersection on M Street in central Merced. Access to Buena Vista Drive is somewhat limited, as commercial properties near SR 59 have driveways on Buena Vista Drive, but only public street intersections are permitted in the area between the project and R Street. The posted speed limit is 35 mph. Buena Vista Drive is designated a *Primary Emergency Response Route* in the City's Neighborhood Traffic Calming Guidelines.

Cooper Avenue. Cooper Avenue is a local two-lane collector street that provides access to the City's industrial area west of SR 59 and north of SR 99. Cooper Avenue intersects SR 59 roughly 1,000 feet south of W. Olive Avenue and continues westerly for about a mile to an intersection on Ashby Road. The posted speed limit on Cooper Avenue is 40 mph.

Willowbrook Drive. Willowbrook Drive is a two lane local street that extends east from the SR 59 / Cooper Avenue intersection to provide access to the residential area between SR 59 and Bear Creek. A prima facie 25 mph speed limit exists on Willowbrook Drive.



Loughborough Drive. Loughborough Drive is a two lane street that provides access to the retail commercial area south of W. Olive Avenue and continues to the northeast parallel to W. Olive Avenue to M Street. The portion of Loughborough Drive north of W. Olive Avenue is designated a collector street. The posted speed limit is 30 mph.

Austin Avenue. Austin Avenue is a local street that extends north and south from W. Olive Avenue to provide access to existing retail commercial and residential areas.

Study Area - Intersections

The quality of traffic flow is typically governed by the operation of major intersections. Based on direction from City and Caltrans staff seven (7) existing intersections were analyzed for this traffic study. The locations of the study intersections are shown on Figure 3. The study area will also include the project's three driveways that do not exist today.

- 1. SR 59 / Yosemite Avenue Traffic Signal
- 2. SR 59 / Buena Vista Drive Traffic Signal
- 3. SR 59 / Santa Fe Drive / W. Olive Avenue Traffic Signal
- 4. W. Olive Avenue / Loughborough Drive Traffic Signal
- 5. W. Olive Avenue / Austin Avenue Traffic Signal
- 6. SR 59 / Cooper Avenue / Willowbrook Drive Traffic Signal
- 7. SR 59 / W. 16th Street All-Way Stop

The geometric configuration of each intersection and its traffic controls are described in the text which follows. Pending improvement projects currently being pursued by the City of Merced and Caltrans and are reasonably certain to be completed when the proposed project opens are also described. These improvement projects have been assumed in subsequent analysis of current traffic conditions

The **SR 59** / **Yosemite Avenue intersection** is a "tee" controlled by a traffic signal. The intersection is configured with separate left turn lanes on each approach, and the northbound SR 59 approach and westbound Yosemite Avenue approach have separate right turn lanes. Crosswalks are striped across the northern and eastern legs of the intersection.

The **SR 59** / **Buena Vista Drive intersection** is a "tee" controlled by a traffic signal. The intersection is configured with a separate southbound left turn lane and a separate northbound right turn lane. The westbound Buena Vista Drive approach is striped as a single lane but is generally wide enough to allow right turns around the queue of traffic waiting to turn left. Crosswalks are striped across the north and east legs of the intersection.

The **SR 59** / **Santa Fe Drive** / **W. Olive Avenue intersection** is controlled by a traffic signal, and Caltrans is currently preparing plans for a safety improvement project at the intersect. Each approach has separate left turn lanes, and the pending Caltrans project will lengthen the eastbound Santa Fe Drive left turn lane. The northbound, westbound and eastbound approaches



have separate right turn lanes, and the Caltrans safety project will add a southbound right turn lane as well. Today crosswalks exist on all four legs of the intersection, and the Caltrans safety project will provide landing pads and detectable warning surface incorporated into the shoulder area for pedestrians/bicyclists.

The **W. Olive Avenue / Loughborough Drive intersection** is controlled by a traffic signal. The intersection has separate left turn lanes on each approach, and the northbound Loughborough Drive approach also provide a combined left turn and through lane. The eastbound W. Olive Avenue and northbound Loughborough Drive approaches have separate right turn lanes. Crosswalks are striped across all four legs of the intersection.

The W. Olive Avenue / Austin Avenue intersection is controlled by a traffic signal. The intersection has separate left turn lanes on each approach, and the eastbound W. Olive Avenue has a separate right turn lane. Crosswalks are striped across all four legs of the intersection.

The **SR 59** / **Cooper Avenue** / **Willowbrook Drive intersection** is controlled by a traffic signal. This intersection has been widened to provide two through southbound lanes on SR 59, although these lanes do not extend to adjoining signalized intersections. Each approach has a separate left turn and right turn lane. Crosswalks are striped on all four legs of the intersection.

Today the **SR 59** / **W. 16**th **Street intersection** is controlled by an all-way stop, but the pending City of Merced improvements project will reconfigure the intersection and install a traffic signal. Today the southbound SR 59 approach has as short right turn lane, and that lane will be lengthened with the improvement project. The westbound W. 16th Street approach has two through lanes and a separate right turn lane, and a longer merging area for the right turn lane will be provided on SR 59. The eastbound W. 16th Street approach will continue to include a through lane and separate left turn lane. Crosswalks do not exist at the intersection today, but will be provided with the safety project.

Level of Service Analysis Procedures

Level of Service (LOS) analysis provides a basis for describing existing traffic conditions and for evaluating the significance of project traffic impacts. Level of Service measures the quality of traffic flow and is represented by letter designations from A to F, with a grade of A referring to the best conditions, and F representing the worst conditions. The characteristics associated with the various LOS for intersections are presented in Table 1.



	TABLE 1 LEVEL OF SERVICE D	DEFINITIONS
Level of Service	Signalized Intersection	Unsignalized Intersection
A	Uncongested operations, all queues clear in a single-signal cycle. Delay \le 10.0 \text{ sec}	Little or no delay. Delay ≤ 10 sec/vehicle
В	Uncongested operations, all queues clear in a single cycle. Delay > 10.0 sec and ≤ 20.0 sec	Short traffic delays. Delay > 10 sec/vehicle and ≤ 15 sec/vehicle
С	Light congestion, occasional backups on critical approaches. Delay > 20.0 sec and ≤ 35.0 sec	Average traffic delays. Delay > 15 sec/vehicle and ≤ 25 sec/vehicle
D	Significant congestions of critical approaches but intersection functional. Cars required to wait through more than one cycle during short peaks. No long queues formed. Delay > 35.0 sec and ≤ 55.0 sec	
Е	Severe congestion with some long standing queues on critical approaches. Blockage of intersection may occur if traffic signal does not provide for protected turning movements. Traffic queue may block nearby intersection(s) upstream of critical approach(es). Delay > 55.0 sec and ≤ 80.0 sec	congestion.
F	Total breakdown, stop-and-go operation. Delay > 80.0 sec	Intersection blocked by external causes. Delay > 50 sec/vehicle
Source: Tra	Insportation Research Board 2010.	

Intersection Level of Service Methodology. Intersection Level of Service was calculated for this traffic impact study using the methodology contained in the *Highway Capacity Manual 2010* (Transportation Research Board 2010) (HCM 2010) using Synchro 9.0 software. HCM techniques identify the average length of delays and use that information to determine the operating Level of Service. An overall average delay and Level of Service is determined for intersections controlled by traffic signals or all-way stops. At locations controlled by side street stops, delays can be determined for each movement that must yield the right of way, and the "worst case" delay is employed for analysis.

Roadway Segment Level of Service Methodology. The Merced General Plan presents daily traffic volume Level of Service thresholds than can be employed on a planning level basis (GP Table 4.3), and these values are presented in Table 2.



LEVEL OI	F SERVICE THE	TABLE 2 RESHOLDS FO	R ROADWAY S	EGMENTS						
	Da	ily Roadway Sea	gment Level of S	ervice Threshol	ds					
Roadway Type	LOS A LOS B LOS C LOS D LOS E									
6 lane Freeway	25,900	42,600	57,800	68,400	76,000					
4 lane Freeway	40,000	65,800	89,200	105,600	117,400					
2 lane Arterial	-	-	11,600	16,000	16,800					
4 lane Arterial	-	4,100	26,800	33,700	35,400					
6 lane Arterial	-	6,600	41,800	50,700	53,200					
2 lane Collector	-	-	4,800	10,300	13,200					
4 lane Collector		_	11,300	22,200	26,400					

Standards of Significance. The methods employed to determine the significance of Level of Service are noted in the General Plan and in Merced's traffic study guidelines.

Implementing Action T-1.8.b of the *Merced Vision 2030 General Plan* (City of Merced 2010) establishes an acceptable LOS of D for intersections and roadways. Action T-1.8.b states:

"1.8.b Use peak-hour Level of Service "D" ("Tolerable Delays") as the design standard for new streets and intersections in new growth areas.

"The preferred LOS levels are typically "C" and "D," particularly for larger roads and major intersections. With LOS C the road provides stable operation but is still underutilized to some degree. LOS D represents a fine balance between the relatively large number of vehicles served and the generally acceptable level of service provided. It is the intent of the City's standards and policies for new and most upgraded intersections and road segments to be designed and built so as not to drop below LOS D ("tolerable delay") during peak traffic periods."

Therefore, in this traffic impact study, LOS A through D are considered acceptable for signalized intersections, while LOS E and F are unacceptable.

At two-way stop-sign-controlled intersections (or one-way stop T intersections), Level of Service can be calculated for each movement where motorists yield the right of way, as well as for the intersection as a whole. Significance is based on the length of the average delay experienced by motorists on the worst case movement, which is typically a left turn made from the stop-sign-controlled approach to the intersection. It should be noted that overall intersection average LOS at un-signalized intersections is better, often much better, than LOS on the worst single movement.

Under City of Merced guidelines, however, a poor "worst case" LOS is not necessarily significant unless the intersection also carries traffic volumes which satisfy **peak hour traffic signal warrant** requirements. Traffic signal warrants are a series of several standards which provide guidelines for determining if a traffic signal is appropriate. Signal warrant analyses are



typically conducted at intersections of uncontrolled major streets and stop sign-controlled minor streets. If one or more signal warrants are met, signalization of the intersection may be appropriate. However, a signal should not be installed if none of the warrants are met, since the installation of signals would increase delays on the previously-uncontrolled major street, and may increase the occurrence of particular types of accidents.

Consistent with the California Environmental Quality Act (CEQA), the City will use the traffic study to determine the project's impact to two broad CEQA checklist topics: (1) substantial increases in traffic; and (2) changes to level-of-service. Each of these broad categories have distinct thresholds of significance (described below) and are to be utilized in the traffic study.

1. Topic: Substantial Increase in Traffic Levels

- A. <u>Arterial Level Road</u>: The threshold of significance is a project ADT contribution equal or greater than 5% of the current ADT for an "arterial roadway" that is, or will be, operating at an unacceptable LOS "E" or "F".
- B. <u>Collector Level Road</u>: The threshold of significance is an amount where the Project contributes more than 20% of the current ADT on roads carrying at least 3,000 ADT. Thus, a significant impact would occur if a Project adds 601 ADT to a collector road that currently has 3,000 ADT. [3,000(.20)]

2. Topic: Change in Level of Service (LOS) Rating

Merced Vision 2015 General Plan Policy T-1.8 states: Use A Minimum Peak Hour Level of Service (LOS) "D" As a Design Objective for All New Streets in New Growth Areas and for Most Existing City Streets Except Under Special Circumstances. To implement this Policy, the City focuses on four different street system categories, each described in greater detail below: (A) roadways; (B) signalized intersections; (C) un-signalized intersections; and (D) roads within established neighborhoods.

A. <u>Roadways and Signalized Intersections</u>: *Merced Vision 2015 General Plan*, Implementing Action T-1.8.b, establishes an acceptable LOS of "D" for <u>intersection</u> and <u>roadway</u> operations.

1.8.b Use peak-hour Level of Service "D" ("Tolerable Delays") as the design standard for new streets and intersections in new growth areas.

The preferred LOS levels are typically "C" and "D," particularly for larger roads and major intersections. With LOS C the road provides stable operation but is still underutilized to some degree. LOS D represents a fine balance between the relatively large number of vehicles served and the generally acceptable level of service provided. It is the intent of the City's standards and policies for new and most upgraded intersections and road segments to be designed and built so as not to drop below LOS D ("tolerable delay") during peak traffic periods.



Existing Traffic Conditions and Levels of Service

Traffic count data for the weekday a.m. and p.m. peak hours, as well as 24 hour weekday counts were collected for this traffic impact study at the existing study intersections on March 26, 2017 and on roadway segments on March 28, 2017. Weekday counts were conducted when local schools were in session. Count data were collected in 15-minute intervals for the period from 7:00 a.m. to 9:00 a.m. and from 4:00 p.m. to 6:00 p.m. on weekdays and from noon to 2:00 p.m. on Saturdays. The contiguous one-hour period within each period with the highest volumes was used in this traffic impact study as the peak hour. Figure 3 presents the existing lane configurations and existing a.m. and p.m. peak hour traffic volumes at the existing study intersections.

The extent to which traffic within the hour was concentrated into any particular 15 minute period was determined based on the *Peak Hour Factor (PHF)* at each intersection. The observed PHF was incorporated into the LOS analysis to address the specific peaking characteristics of traffic near area schools, but in each case a maximum PHF of 0.92 was used.

Intersection Levels of Service. Table 3 presents existing a.m. peak hour and p.m. peak hour LOS at the existing study intersections. The worksheets presenting the calculation of LOS and signal warrants under all development conditions including Existing Conditions are included in the Appendix. As indicated, all intersections operate at acceptable LOS (i.e., LOS D or better) during all three time periods.

	EXISTING PE	TABLE CAK HOUR L	3 EVELS OF SER	VICE						
			AM Peak H	our	PM Peak Ho	ur				
#	Intersection	Control	Average Delay (sec/veh)	LOS	Average Delay (sec/veh)	LOS				
1	SR 59 / Yosemite Ave	Signal	20.7	C	21.8	С				
2	2 SR 59 / Buena Vista Dr Signal 8.8 A 12.0 B									
3	3 SR 59 / Santa Fe Dr / W. Olive Ave Signal 24.8 C 37.6 D									
4										
5	<u> </u>									
6										
7	W. Olive Ave / Austin Ave	Signal	7.4	A	16.2	В				
ВО	LD values are Levels of Service in excess	of LOS D.								

EXISTING TRAFFIC VOLUMES AND LANE CONFIGURATIONS

KD Anderson & Associates, Inc. Transportation Engineers 0780-06 RA 1/3/2018 **Roadway Segments.** Table 4 identifies 2017 daily traffic volumes on study area roadways as well as the applicable Level of Service based on Merced General Plan thresholds. As indicated, the two lane segments of SR from the W. 16th Street intersection to W. Olive Avenue carry volumes that are indicative of LOS F conditions. This exceeds the City's minimum LOS D standard. All other roadways carry traffic volumes that indicate LOS D or better conditions.

EXI	STING ROADWAY S	TABLE 4 SEGMENTS VOLUMES	S AND LEVELS OF	SERVICE	
Street	from	То	Classification	Daily Volume	LOS
SR 59	Buena Vista Dr	W. Olive Ave	2 lane Arterial	13,739	D
	W. Olive Ave	NB & SF RR	2 lane Arterial	21,954	F
	BN&SF RR	W 16 th Street	2 lane Arterial	20,462	F
Santa Fe Drive	Beachwood Dr	SR 59	4 lane Arterial	19,733	C
W. Olive Ave	SR 59	Loughborough Dr	6 lane Arterial	25,131	C

Alternative Transportation Modes

The section which follows describes existing and planned facilities for pedestrians, bicyclists and transit riders in the area of the proposed project.

Pedestrians. Sidewalks are generally absent along rural Merced County roads but are constructed as properties are annexed into the City of Merced and developed. The text which follows notes the availability of pedestrian facilities in the study area.

To the south along SR 59 no pedestrian facilities exist on the west side of SR 59 in the area from the Santa Fe Drive across the BN&SF railroad to Cooper Avenue, and no shoulder is available in some areas. A separated bike path exists on the east side of SR 59 and that facility extends to the BN&SF crossing. Sidewalk begins south of the railroad crossing.

No sidewalk exists immediately east of SR 59 along W. Olive Avenue. Pedestrians typically walk off the roadway on and unimproved paths have been worn in this area. Sidewalks exist on W. Olive Avenue starting roughly 300 feet east of SR 59.

To the north the bike path extends on the east side of SR 59 from W. Olive Avenue to Rascal Creek, and the path continues to the east along the creek. No facilities exist on the creek crossing or in the area north of the creek for roughly 1,000 feet to the point where sidewalk was installed with commercial property at the Buena Vista Drive intersection.

There are no dedicated facilities on Santa Fe Drive and pedestrians use the paved shoulders.



Bicycles. The City of Merced General Plan includes the Bicycle Master Plan which identifies existing and planned facilities. Bicycle facilities are divided into three classes:

- Class I (Bike Paths or Trails) which are a completely separate right-of way designated for the exclusive use of bicycles and pedestrians.
- Class II (Bike Lanes) which provide restricted right-of-way on the street for the exclusive or semi-exclusive use of bicycles.
- Class III (Bike Routes) where bicycles are encouraged but bike lanes are not provided and motor vehicles and bicyclists share the right of way.

Today Class I facilities exist along the east side of SR 59 from the BNSF crossing to Black Rascal Creek.

The Merced 2013 Bicycle Transportation Plan and General Plan indicates that Class II lanes are to be created on SR 59 from W. 16th Street to W. Olive Avenue, but none exist today in this area.

Transit. The City of Merced is served by a local public bus system, inter-regional private bus companies, and private taxi-cabs, as well as rail and air passenger services that are both dealt with under separate headings. The public bus system, created in 1974, served the community as the Merced Transit System (MTS)/City Shuttle for more than two decades. Its primary goal over time remained to serve senior citizens, low-income people and the disabled, even as the system expanded. Originally created solely as a demand responsive Dial-A-Ride operation, the service extended as time passed to include a number of fixed routes within the City.

Today Route M1 – Merced West serves the area of the proposed project. This route originates at the downtown Transportation Center on 16th Street and extends north on SR 59 beyond the project site to a stop on Buena Vista Drive (refer to map in Appendix). M1 runs from 6:30 a.m. to 8:00 p.m. Monday thru Friday on roughly ½ hour headways. The route runs from 8:30 a.m. to 6:00 p.m. Saturday and Sunday.

Route M6 – Olive Loops follows Olive Drive as far west as the Loughborough Drive intersection roughly ¼ mile east of the project. M6 runs from 7:15 a.m. to 8:00 p.m. Monday thru Friday on roughly ½ hour headways. The route runs from 8:45 a.m. to 5:00 p.m. Saturday and Sunday.

Intersection Queuing. The feasibility of project access is linked to the length of southbound queues on SR 59 approaching the Santa Fe Drive – W. Olive Avenue intersection. Caltrans staff has noted that if the queue of southbound through traffic regularly extends beyond the project driveway, then it would be difficult to leave the site and use the southbound left turn lane to reach W. Olive Avenue.



The length of peak period queues has been estimated as a byproduct of the Level of Service analysis, and the results are presented in Table 5. These calculations assume that the pending Caltrans safety improvements project has been installed and that a southbound right turn lane is available.

	ESTIMATED EXISTIN	TABLE 5 G SOUTHBOU	IND PEAK HOU	R QUEUES	
		AM P	eak Hour	PM F	Peak Hour
Approach	Lane	Volume	95 th % Queue (feet)	Volume	95 th % Queue (feet)
Southbound	Left turn	31	53	86	117
	Through	291	263	299	276
	Right turn	60	<25	83	<25

PROJECT CHARACTERISTICS

Project Use / Access Characteristics

The SR 59 / Olive Avenue Retail Center plan includes a variety of convenience oriented retail land uses. The development plan includes three points of access that are also evaluated in this analysis.

Trip Generation Rates. The number of vehicle trips that are expected to be generated by development of the proposed project has been estimated using trip generation rates based on the nature and size of project land uses. Data compiled by the Institute of Transportation Engineers (ITE) and presented in the publication *Trip Generation*, *9th Edition* (Institute of Transportation Engineers 2012) is the source of trip generation rates for the uses within the proposed project. The trip generation rates used in this analysis are presented in Table 6.

A conservative approach has been taken to estimate project trip generation which yields a "worst case" assessment. As indicated, available rates have been employed for those areas with a specific land use designation, including those areas designated for food services, gasoline sales, and pharmacy. Those areas broadly designated as "retail" have been assigned trip generation rates based on the average rates from the ITE "Shopping Center" land use category 820.

Trip Generation Forecasts. Table 7 identifies the results of applying the identified trip generation rates to the land use inventory. A portion of these trips would likely be made between uses on the site, but to provide a "worst case" evaluation no internal capture has been assumed. Similarly, many of the trips associated with retail uses are typically drawn from the stream of background traffic passing the site as part of another trip. Table 7 identifies the typical share of the trips associated with various retail uses. After discount for "pass-by" trips the project could be expected to result in 4,040 net new trips on a daily basis, with 300 new trips in the a.m. peak hour and 320 new trips in the p.m. peak hour.



	TRIP GENERA	TABLE 6 ENERATION RATES FOR SR 59 / OLIVE RETAIL CENTER	TABLE 6 S FOR SR 59) / OLIVE R	ETAIL CE	NTER			
					L	Trips per Unit	it		
Codo	Description	Quantity	Deille.	\mathbf{A}	AM Peak Hour	ır	[H	PM Peak Hour	H
apo >			Damy	In	Out	Total	uI	Out	Total
820	General Retail	ksf	42.70	62%	38%	96.0	48%	52%	3.71
880	Pharmacy without Drive thru window	ksf	90.06	%59	35%	2.94	49%	51%	8.40
934	Fast Food Restaurant with Drive thru	ksf	496.12	51%	49%	45.42	52%	48%	32.65
938	Coffee / Donut Shop with Drive thru and No Indoor Seating	ksf	2000:00	20%	20%	337.04	%05	20%	83.33
946	Gasoline / Service Station with C store and Car Wash	fueling position	152.84	51%	49%	11.84	51%	49%	13.86



	TRIP GENERATIO	TABLE 7 RATION FORECASTS FOR SR 59 / OLIVE RETAIL CENTER	TABLE 7 STS FOR SE	VI 10 / 65 !	E RETAIL	CENTER			
					L	Trips per Unit	it		
ITE Code	Description	Quantity	Doily	A	AM Peak Hour	ır		PM Peak Hour	ır
			Dany	In	Out	Total	In	Out	Total
	Phase 1: Gasoline with C Store and Car Wash plus Fast Food and Coffee / Kiosk	vith C Store and	d Car Wash	plus Fast Fo	ood and Coff	ee / Kiosk			
946	Gasoline with C Store and Car Wash	16 positions	2,445	26	92	189	113	109	222
	Pass-by (56% daily, 62% a.m., 56% p	p.m.)	1,369	09	27	117	63	61	124
	Net New Trips		1,076	37	35	7.5	20	48	86
826	Fast Food with Drive Thru	3.46 ksf	1,717	80	LL	157	59	54	113
	Pass-by (50% daily and p.m., 49% a.m.	1.)	858	39	38	LL	56	27	99
	Net New Trips		829	41	39	08	30	27	51
	Coffee / Donut Shop with Drive thru and No Indoor Seating	0.824 ksf	1,648	139	139	822	35	34	69
938	Pass-by (89%)		1,467	124	123	247	31	30	61
	Net New Trips		181	15	16	31	4	4	8
			1,116	93	06	183	84	62	163
	rnase i 10tai Net New 1 rips		1,935	2/8	74	152	80	75	155
	T .	Phase 2: Pharmacy, Fast Food and Retail	nacy, Fast F	ood and Re	tail				
826	General Retail	18.2 ksf	<i>LLL</i>	11	9	11	32	36	89
	Pass-by (15% daily and p.m.)		116	2	0	2	5	5	6
	Net New Trips		661	8	2	13	27	31	28
934	Fast Food Restaurant with Drive Thru	2.7 ksf	1,340	63	09	123	46	42	88
	Pass-by (50% daily and p.m., 49% a.m.	1.)	670	31	29	90	23	21	44
	Net New Trips		670	32	31	63	23	21	44
880	Pharmacy without Drive Thru	14.0 ksf	1,261	27	14	41	58	09	118
	Pass-by (53% daily and p.m.)		668	0	0	0	31	32	63
	Net New Trips		593	27	14	41	27	28	55
	Phase 2 Total Net New Trips		1,924	<i>L</i> 9	20	117	77	80	157
PROTECT	PROTECT TOTAL NET NEW TRIPS		4,040	160	140	00ε	161	159	320
			3,859	1	124	569	157	155	317

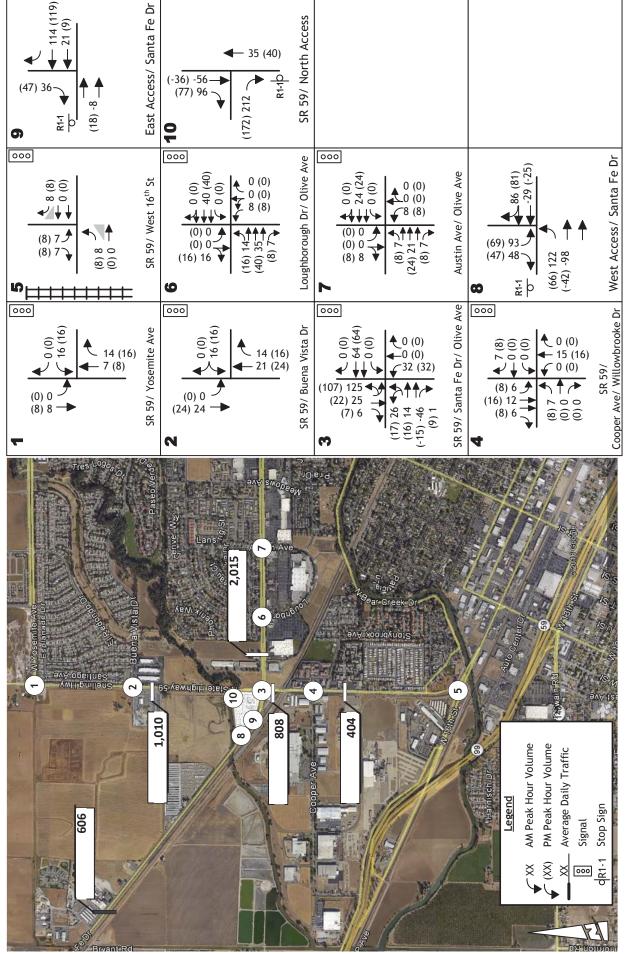
Trip Distribution. The geographic distribution of vehicle trips associated with the proposed project has been determined from review of select zone analysis results from the MCAG regional travel demand forecasting model, consideration of the nature of land uses in each area and consideration of current travel patterns. Table 8 indicates the directional allocation of new trips.

	TABLE 8 SR 59 / OLIVE AVENUE RETAIL CENTER CON TRIP DISTRIBUTION ASSUMPTI		
Direction	Route	Percentage of	of Total Trips
	New Trips		
North	SR 59 beyond Yosemite Avenue	5	%
	Yosemite Avenue east of SR 59	10)%
	Buena Vista Drive east of SR 59	10)%
East	W. Olive Avenue beyond Austin Avenue	15	5%
	Loughborough Drive off of W. Olive Avenue	15	5%
	Austin Avenue off of W. Olive Avenue	10)%
West	Santa Fe Drive west of SR 59	15	5%
South	W. 16 th Street beyond SR 59	10)%
	Cooper Avenue west of SR 59	5	%
	Willowbrook Drive east of SR 59	5	%
	Total	10	0%
	Pass By Trips		
Direction		AM Peak Hour	PM Peak Hour
Southbound on	SR 59	23%	22%
Westbound on S	Santa Fe Drive	26%	41%
Eastbound on Sa	anta Fe Drive	52%	37%

Pass-by trips were assigned in proportion to the volume of traffic passing along the site, and the shares may vary based on time of day. The share drawn from each stream is also presented in Table 8.

Trip Assignment. Figure 4 illustrates "project only" trips through study area intersections and at project driveways under the distribution percentages noted above with access as proposed.





Project Improvements. The project will install frontage improvements along SR 59 and Santa Fe Drive as required by the City and Caltrans in a manner that is consistent with Caltrans' pending safety improvement project. All work conducted in the state right of way will require an encroachment permit form Caltrans. The SR 59 access will be limited to right turns only, and a raised island will be constructed in the driveway to preclude left turns. To accommodate access the southbound right turn lane being constructed by Caltrans will be extended by the project proponents as far north towards Black Rascal Creek as is possible.

On Santa Fe Avenue the eastern access will be limited to right turns only. A painted center median is being installed by Caltrans, and precluding left turns will require either a raised median or a specific feature in the driveway. This driveway will be preceded by a right turn deceleration lane or taper as required by the City. Full access is planned at the western access, and the driveway is planned to be west of the end of the striped median being installed by Caltrans. The existing striped median will be reconfigured to provide an eastbound left turn lane at the project access. A right turn deceleration lane or taper will be installed at this driveway.

The project will also install frontage improvements typically required by the City of Merced, including sidewalks.

Truck Access – Proposed Project. Retail businesses attract truck traffic to stock stores and supply restaurants, and in the case of gasoline sales fuel trucks will visit the site regularly. Trucks typically stage in aisles in front of fast food restaurants and small trucks will unload at the rear of retail stores. The project driveways will be designed to accommodate the turning requirements of full size trucks. It is likely that fuel trucks traveling to and from the site via SR 99 will enter from by turning right from Santa Fe Drive and exit onto southbound SR 59. However, trucks can be accommodated at all driveways.



EXISTING PLUS SR 59 / OLIVE AVENUE RETAIL CENTER CONDITIONS

This analysis scenario assumes that the SR 59 / Olive Avenue Retail Center project is fully developed.

Traffic Volumes

Existing Plus Project Traffic Volumes. Figure 5 presents resulting a.m. and p.m. peak hour volumes assuming the project is built out with access as proposed.

Intersection Level of Service

Table 9 present the a.m. and p.m. peak hour Level of Service at each study intersection under Existing Plus Project conditions with access as proposed. As indicated projected Levels of Service at off-site intersections will fall within the LOS D minimum established by the City of Merced. Thus, the project's impact is not significant and no mitigation based on Level of Service is required at off-site locations.

Motorists waiting to turn onto Santa Fe Drive from the projects **Western Access** will experience delays that are indicative of LOS E in the a.m. peak hour and LOS F conditions in the p.m. peak hour, which exceed the LOS D minimum. Options to improve the Level of Service included:

- 1. Reconfigure Santa Fe Drive to provide a Two-Way Left Turn Lane (TWLT) lane in the area between the access and the eastbound left turn lane approaching the SR 59 intersection. This might be accomplished by moving the driveway to the west to create space for the TWLT lane or by leaving the driveway at the proposed location and modifying the SR 59 / Santa Fe Drive intersection to provide shorter dual left turn lanes and space for the TWLT lane. The later concept would however, require two northbound lanes on SR 59 north of the Santa Fe Drive intersection to received dual left turns, or.
- 2. *Install a traffic signal at the western access*. While a traffic signal could deliver an adequate Level of Service, the feasibility of another signal in relatively close proximity to the signalized SR 59 intersection is questionable, or.
- 3. *Prohibit outbound left turns*. The approach Level of Service would be improved if outbound left turns onto eastbound Santa Fe Drive were prohibited. However, this action would divert southbound traffic to the project's SR 59 driveway which would be undesirable, as noted in the discussion of queueing which follows.

Southbound SR 59 Queues

Table 10 compares current southbound queues with those that would be expected if the proposed project is completed. As shown the peak period queues on southbound SR 59 will extend beyond the proposed driveway. As a result, there will be occasions when outbound motorists waiting to turn onto SR 59 will find their path blocked. As in most locations near major intersections these motorists would have to wait through a portion of the traffic signal cycle until



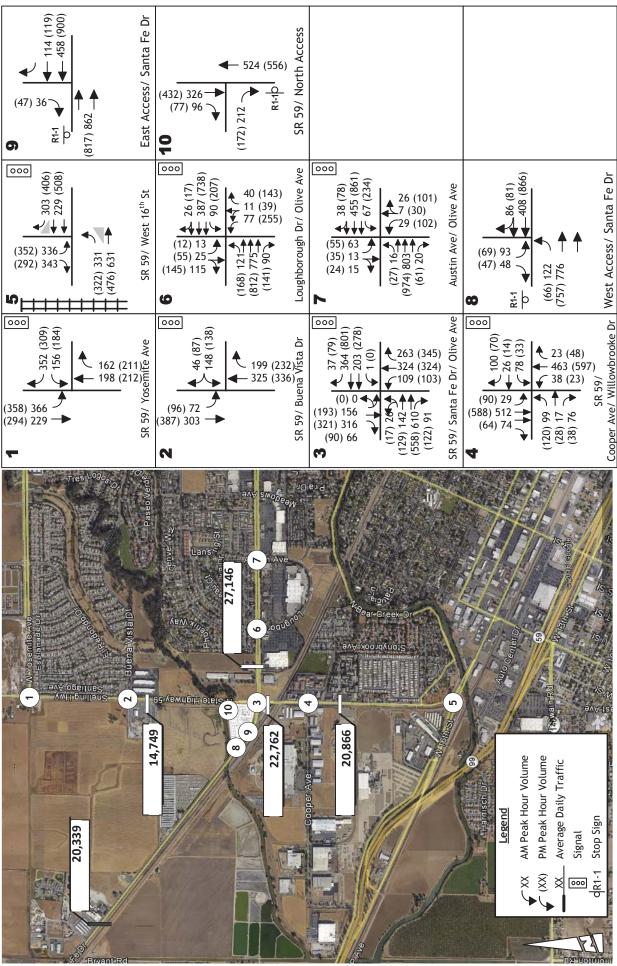
the queue clears and space is available. Reaching the southbound left turn lane could be problematic. In initial discussions Caltrans District 10 staff noted that the presence of long queues could be a reason to eliminate project access to SR 59. Options to address the effects of southbound queueing include:

- 1. Lengthen the southbound left turn lane on SR 59. This actions does not itself reduce the length of southbound queues, however, this mitigation would make it easier to drive around those queues to reach the turn lane and travel east on Olive Avenue. This alternative is the recommended mitigation, or.
- 2. Move the Project Access to the north. The project access could theoretically be moved to the north to reduce the amount of time that it is blocked by southbound queues. However, the length of project frontage beyond the current driveway location is limited. Moving the driveway an appreciable distance would require encroaching into the area of Black Rascal Creek through property that is not a part of the project. This alternative is not feasible, or.
- 3. Close the SR 59 Access. Closing the access to SR 59 would eliminate the conflicts created by southbound queues, but would have unintended consequences at the western access on Santa Fe Drive. The traffic diverted to the western access would exacerbate the LOS F conditions already discussed, and the resulting traffic volumes would reach the level that would justify a traffic signal. However signalizing the western access at the location proposed is problematic. In addition, according to the project proponent closing the access on SR 59 would leave the site unusable for retail commercial uses. This alternative is therefore not feasible

Roadway Segment Level of Service

Table 11 compares current Levels of Service based on daily traffic volumes with those conditions occurring after the project is completed. As indicated, the project will add traffic to all neighboring streets but will not result in any additional streets operating with Level of Service in excess of the LOS D standard. The project will increase the daily traffic volume on the segments of SR 59 south of the W. Olive Avenue intersection that already experience LOS F conditions. Because the minimum standard is exceeded with and without the project, the significance of the project's impact is determined based on the percentage change in traffic volume. Project trips represent 2.0% to 3.7% of the current daily volume on SR 59 in this area. Because these increases do not exceed the 5.0% increase permitted under City traffic study guidelines, the project's impact is not significant, and mitigation is not required.





EXISTING PLUS PROJECT TRAFFIC VOLUMES AND LANE CONFIGURATIONS

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	EXI	STING PLUS	T S PROJECT I	TABLE 9 PEAK HO	TABLE 9 EXISTING PLUS PROJECT PEAK HOUR LEVELS OF SERVICE	OF SER	VICE			
				AM Pe	AM Peak Hour			PM Pe	PM Peak Hour	
:		i	Existing	gu	Existing Plus Project	Project	Existing	50	Existing Plus Project	Project
#	Intersection	Control	Average		Average		Average		Average	
			Delay (sec/veh)	ros	Delay (sec/veh)	ros	Delay (sec/veh)	ros	Delay (sec/veh)	ros
1	SR 59 / Yosemite Ave	Signal	20.7	С	21.0	С	21.8	С	22.5	С
2	SR 59 / Buena Vista Dr	Signal	8.8	A	9.1	В	12.0	В	12.3	В
3	SR 59 / Santa Fe Dr / W. Olive Ave	Signal	24.8	С	32.0	С	37.6	D	52.5	D
4	SR 59 / Cooper Ave / Willowbrook Dr	Signal	15.0	В	15.6	В	18.3	В	19.4	В
5	SR 59 / W. 16 th Street	Signal*	15.2	В	15.6	В	21.1	В	22.1	В
9	W. Olive Ave / Loughborough Dr	Signal	14.6	В	15.3	В	27.5	С	29.1	С
7	W. Olive Ave / Austin Ave	Signal	7.4	А	7.6	В	16.2	В	16.6	В
∞	SR 59 / Access EB right turn	EB Stop			13.8	В			14.8	В
6	Santa Fe Dr / West Access SB approach EB left turn	SB Stop			40.1 9.1	E A			73.9 11.3	F
10	Santa Fe Dr / East Access SB right turn	SB stop			10.1	В			12.8	В
(Ī						

BOLD values are Levels of Service in excess of LOS D.

		EXISTIN	FING PLUS	PROJECT	TABLE 10 SOUTHBO	0 OUND PEA	TABLE 10 G PLUS PROJECT SOUTHBOUND PEAK HOUR QUEUES				
		Exis	AM Existing	AM Peak Hour	Hour Existing Plus Project	roject	Exi	P.N. Existing	PM Peak Hour	Hour Existing Plus Project	ject
Approach	Lane		95 th %	Volume	me	62^{th} %		$62_{ m th}$ %	Volume	me	95 th %
		Volume	Queue (feet)	Project Only	Total	Queue (feet)	Volume	Queue (feet)	Project Only	Total	Queue (feet)
Southbound	Left turn	31	53	125	156	240	98	117	107	193	318
	Through	291	263	25	316	286	299	276	22	321	299
	Right turn	09	<25	6	99	<25	83	<25	7	90	<25

	EXI	TABLE 11 EXISTING ROADWAY SEGMENTS VOLUMES AND LEVELS OF SERVICE	TABLE 11 SEGMENTS VOLUI	1 JMES AND L	EVELS O	F SERVICE			
				Existing	gı		Existing Plus Project	s Project	
70	£	E	10:70:31:20	D.:II			Daily Volume	0	
Street	Шол	0	Classincation	Damy Volume	SOT	Project Only	Total	Percentage Increase	ros
SR 59	Buena Vista Dr	W. Olive Ave	2 lane Arterial	13,739	D	1,010	14,749	7.0%	D
	W. Olive Ave	NB & SF RR	2 lane Arterial	21,954	F	808	22,762	3.7%	F
	BN&SF RR	W 16 th St	2 lane Arterial	20,462	F	404	20,866	2.0%	F
Santa Fe Dr	Beachwood Dr	SR 59	4 lane Arterial	19,733	С	909	20,339	3.1%	С
W. Olive Ave	SR 59	Loughborough Dr	6 lane Arterial	25,131	С	2,015	27,146	8.0%	C

BOLD values exceed minimum Level of Service standard. **HIGHLIGHTED** values are a significant impact

Traffic Signal Warrants

The volume of traffic occurring at the project's access to Santa Fe Avenue was compared to MUTCD peak hour traffic signal warrants to determine whether a traffic signal may be justified. The posted speed limit on Santa Fe Drive is 55 mph, which suggests that "rural" warrant criteria are applicable. As shown in Table 12, with access as proposed the traffic volumes at the western access reach satisfaction in the a.m. peak hour but do not reach the level that satisfies peak hour warrants in the p.m. peak hour. However, if the SR 59 access were to be closed, the resulting traffic volumes would exceed the minimum requirements under peak hour warrants.

P	EAK HOUI	TABL R TRAFFIC SIGNAL WARF		ANTA FE DRIVI	E ACCESS	
			Hourl	y Volume	Signal War	rrants met
Location	Time	Access	Major Street	Minor Street (left turn)	Rural	Urban
	434	As proposed	1,392	93	Yes	No
XX	AM	Close SR 59 driveway	1,392	305	Yes	Yes
West Access	DM	As proposed	1,770	69	No	No
	PM	Close SR 59 driveway	1,770	241	Yes	Yes

Impacts to Alternative Transportation Modes

Pedestrians. The project could attract pedestrians from the neighborhoods to the east, north and south of the site, although the exact number of pedestrians is unknown. These pedestrians would be unlikely if the site was not re-designated for a retail commercial use. The project would be accompanied by standard City of Merced street frontage improvements that include sideways. With the project frontage improvements and completion of the Caltrans safety project, adequate facilities will exit to deliver pedestrians to the east side of SR 59 and the south side of Santa Fe Drive.

From that point existing facilities for pedestrians are intermittent, as was noted in the existing setting. Thus, project generated pedestrians would need to use the same shoulders and other unimproved surfaces that are used today. As is the case today, the gap in the pedestrian circulation system on the west side of SR 59 south of Olive Avenue to Cooper Drive will remain. Eliminating that gap would require acquiring right of way to install a sidewalk. While perhaps desirable, this action does not appear feasible at this time.

Bicycles. The project can be expected to attract bicyclists from various Merced neighborhoods. As noted in the Setting, bicycle facilities already exist as Class I trails on the east side of SR 59, but are nonexistent elsewhere. Bicycle lanes are not designated on SR 59 north of Olive Avenue



on Santa Fe Drive nor on Olive Avenue in the Merced County General Plan Circulation Element. Under the Circulation Element bicycles are expected to mix with motor vehicles on other streets.

Transit. The project will likely attract some persons from throughout the Merced area who may wish to use public transit. Route M1 passes the site on SR 59 every thirty minutes and M6 reaches the Olive Avenue / Loughborough Drive intersection. These services are adequate for a project of this nature, and the impacts of the project on transit are not significant.

LONG TERM YEAR 2035 CUMULATIVE CONDITIONS

Overview

The cumulative Year 2035 analysis presented herein is intended to evaluate the relative cumulative impact of the project assuming implementation of long term circulation system improvements and continuing development in the Merced area. The Merced County Association of Governments (MCAG) regional travel demand forecasting model is the tool employed for this analysis.

Land Use. The MCAG Year 2035 model's land use data set was employed. However, based on instruction from City of Modesto staff the model's land use was modified to include a portion of the City of Atwater's pending Ferrari Ranch Annexation. That project covers approximately 330-acres located adjacent to the eastern city limits of the City of Atwater abutting the Atwater Merced Expressway (AME). This 330-acre area was the subject of recent Annexation, General Plan Amendment, and Prezoning approvals from the City of Atwater, but no specific development proposal has come forward.

The anticipated buildout schedule for the Ferrari Ranch Annexation could exceed 40 years, and only a portion of the area might reasonably be expected to be occupied by the Year 2035. For this analysis City staff suggested that this analysis assume that one half of the Ferrari Ranch Sub-Area within the overall annexation be assumed to develop by 2035.

Circulation System Improvements. The City of Merced General Plan Circulation element and GPUE EIR suggest that appreciable improvements will be needed to accommodate the future traffic volumes accompanying build out of the General Plan. SR 59 is projected to be a 6-lane facility from W. 16th Street to Yosemite Avenue (refer to GP Table 4.4) and a four-lane facility north of Yosemite Avenue. Santa Fe Drive and Olive Avenue are to be 6-lane arterials. Regionally, the General Plan envisions the completion of the Atwater Merced Expressway and Campus Parkway.

Anticipated funding constrains the level of future improvements assumed in this analysis. The MCAG model reflects implementation of Tier I improvements noted in the 2014 Regional Transportation Plan. In addition, at the direction of City of Merced staff the model was refined to reflect the extension of Campus Parkway beyond SR 140 to Yosemite Avenue. However, as directed by City staff this analysis assumes that the AME is not extended beyond its current terminus at Green Sands Avenue. Similarly, this analysis assumes that SR 59 is widened to provide two through travel lanes in each direction in the area from W. 16th Street to Olive Avenue. The section of SR 59 north of Olive Avenue is assumed to remain a two lane roadway.

Approach to Developing Traffic Volume Forecasts. To provide the level of detail needed to address project driveways and study area intersections under long term cumulative conditions a three step process was developed to generate cumulative traffic volumes. An incremental approach was taken to producing future traffic volumes that is intended to address the relative



difference between baseline model forecasts and actual traffic counts. This approach follows these steps:

- Run the refined models for baseline and future conditions.
- Compare baseline model forecasts with future forecasts to identify the incremental change in daily approach volume at each intersection and on each roadway segment.
- Add that increment to the existing approach or segment volumes counted in 2017 to create "adjusted future" volumes.
- Compare existing and adjusted future volumes to identify the growth rate on each approach or segment.
- Multiply each intersection approach by the growth rate and adjust the results to balance using the "Furness" techniques from the Transportation Research Board's (TRB) NCHRP Report 255, *Highway Traffic Data for Urbanized Area Project Planning and Design*.

For this analysis the traffic model was used to forecast Year 2035 Plus Project traffic volumes. A separate TAZ was created and the project was loaded accordingly. The Year 2035 No Project condition was created by manually subtracting the project's net new trips.

Daily Traffic Volumes / Levels of Service

Traffic Volumes. Table 13 identifies projected Year 2035 traffic volumes and resulting Level so Service. As indicated the volume of traffic on study area roads is projected to increase appreciably in the future. The daily traffic volume on SR 59 is projected to approach the capacity of the highway with and without the proposed project.

Levels of Service. As indicated, while Santa Fe Drive and Olive Avenue are projected to operate with Level of Service that satisfy the City's LOS D minimum, SR 59 is projected to operate at LOS F with and without the project. To meet the City's minimum standard SR 59 would need to be widened in a manner that is consistent with the facility anticipated for General Plan buildout (i.e., 6-lanes) in the area south of Olive Avenue, and a four lane section is needed to the north. Alternatively, completion of other elements of the regional street system may alter the volume of traffic on these roads under Year 2035 conditions.

Because conditions exceed the adopted minimum LOS standard with and without the proposed project, the significance of the project's impact on roadways segments is determined based the incremental change in traffic volume attributed to the project. As shown, the project adds, roughly 4.0% and 1.7 % to the projected daily volume on SR 59 north and south of the W. Olive Avenue intersection. As these changes do not exceed the 5.0% increment permitted under City of Merced policy, the project's impact to mainline SR 59 is not significant, and mitigation to address this impact is not required.





Traffic Impact Analysis for SR 59 / Olive Avenue Retail Center Merced, CA (January 3, 2018)

	YEAR 2035 PL	TABLE 13 YEAR 2035 PLUS PROJECT ROADWAY SEGMENTS VOLUMES AND LEVELS OF SERVICE	TABLE 13 WAY SEGMENTS	VOLUMES AN	O LEVE	LS OF SE	RVICE		
				No Project	t		Year 2035	Year 2035 Plus Project	
24-25	f	É	10:15 of 10:	i d			Daily Volume	ıme	
Street		10	Classification	Dany Volume	SOT	Project Only	Total	Percentage Increase	ros
SR 59	Buena Vista Dr	W. Olive Ave	2 lane Arterial	24,060	F	965	25,025	4.0%	F
	W. Olive Ave	BN&SF RR	4 lane Arterial	46,375	F	775	47,150	1.7%	F
	BN&SFRR	W 16 th Street	4 lane Arterial	47,310	F	390	47,700	0.8%	F
Santa Fe Drive	Beachwood Dr	SR 59	4 lane Arterial	27,750	С	580	28,330	2.1%	С
W. Olive Ave	SR 59	Loughborough Dr	6 lane Arterial	36,770	C	1,930	38,700	5.3%	C
BOLD values excee	BOLD values exceed minimum Level of Service standard. HIGHLIGHTED values are a significant impact	rvice standard. HIGHL	JGHTED values are	a significant imp	act				

Peak Hour Intersection Volumes and Levels of Service

Traffic Volumes. Resulting Year 2035 traffic volumes with and without the project are presented in Figures 6 and 7. These figures also identify assumed improvements to intersections that would accompany the assumed widening of SR 59 to 4 lanes from W. Olive Avenue to W. 16th Street. This analysis assumes that two through lanes would be provided in each direction on SR 59 through the Olive Avenue intersection but would not continue to Buena Vista Drive.

Intersection Level of Service. Table 14 displays the a.m. and p.m. peak hour Levels of Service at each study intersection under future Cumulative Year 2035 conditions with and without the project.

Year 2035 No Project. If the project does not proceed and the site remains vacant, then two intersections are projected to operate with Level of Service that exceed the LOS D minimum standard. The SR 59 / Olive Avenue / Santa Fe Drive intersection is projected to operate at LOS F. This conclusion is consistent with Level of Service projected for SR 59 on a daily basis. Regional and local improvements might be considered to alleviate this deficiency. Regionally the extension of AME to Bellevue Road could alter travel patterns, although simply completing that improvements may not result in conditions that satisfy the minimum standard, and funding for that improvement is not secured. Locally, widening the intersection to provide additional capacity would be needed to achieve LOS D. These improvements are consistent with the planned 6 lane facilities and include:

- 1. Reconstruct westbound Olive Avenue to provide dual left turn lanes onto Southbound SR 59.
- 2. Reconfigure the westbound right turn lane to create a combination through & right turn lane, and extend that through lane across SR 59 along the project's frontage.
- 3. Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound and right turning traffic.
- 4. Reconstruct the Eastbound Santa Fe Drive approach to provide dual left turn lane.

This level of improvement would yield Level of Service D in the a.m. peak hour and LOS D in the p.m. peak hour.

The SR 59 / W. 16th Street intersection is also projected to operate at LOS F if the proposed project does not proceed. At this location the introduction of a second southbound left turn lane would reduce delays, and LOS D would result. This improvement would be consistent with widen the highway to 4 lanes.

Year 2035 Plus Project Conditions. The addition of project trips will increase the length of delays at all intersections, but under City of Merced guidelines the impact of the project is only significant at one off-site intersection. The SR 59 / Olive Avenue / Santa Fe Drive intersection is projected to operate at LOS F. Because the intersection is projected to operate at LOS F with and without the project, the significance of the project's impact is determined based on the



incremental difference in average delay. In this case, the project adds 22.1 and 14.6 seconds during the a.m. and p.m. peak hour, respectively. As these increases exceed the City's 5.0 second permissible increment, *the project's impact is cumulatively significant*.

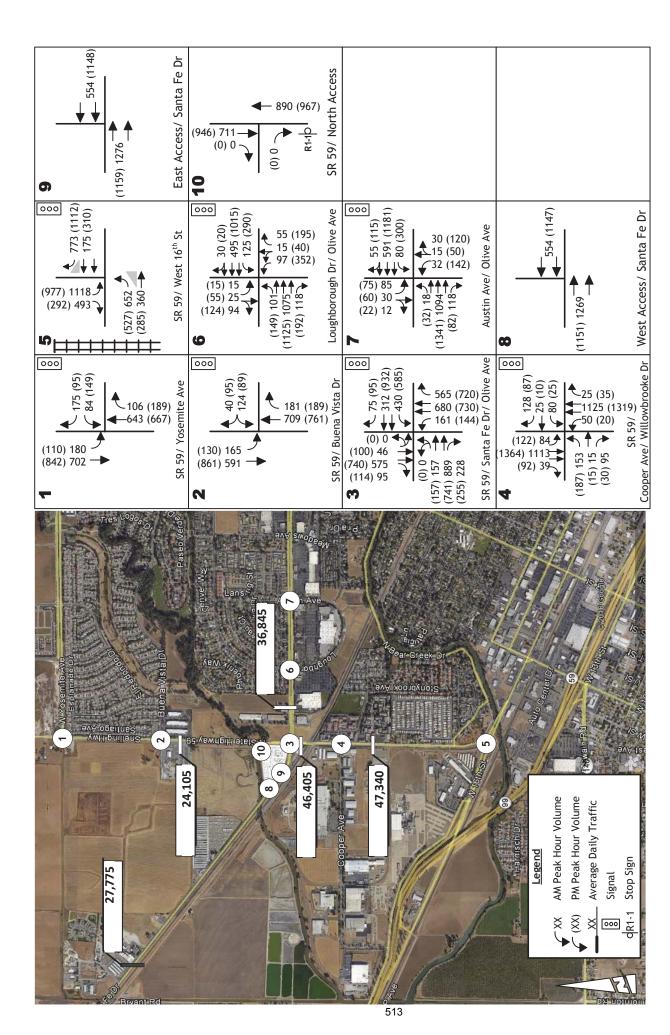
The measures identified for background conditions would also reduce the project's impact and deliver Level of Service meeting the City's LOS D minimum stand were considered. The project should contribute its fair share to the cost of these improvements, and with this mitigation the project's impact is less than significant.

The SR 59 / W. 16th Street intersection is projected to operate at LOS F with and without the project. Because the increment change in delay is less than the 5.0 second threshold employed by the City of Merced, the project's impact to this location is not significant, and mitigation is not required.

The project's western access is projected to operate at LOS F in the a.m. and p.m. peak hour. The issues associated with this access under cumulative conditions and potential mitigations are the same as those discussed under Existing Plus Project conditions.

Southbound SR 59 Queues

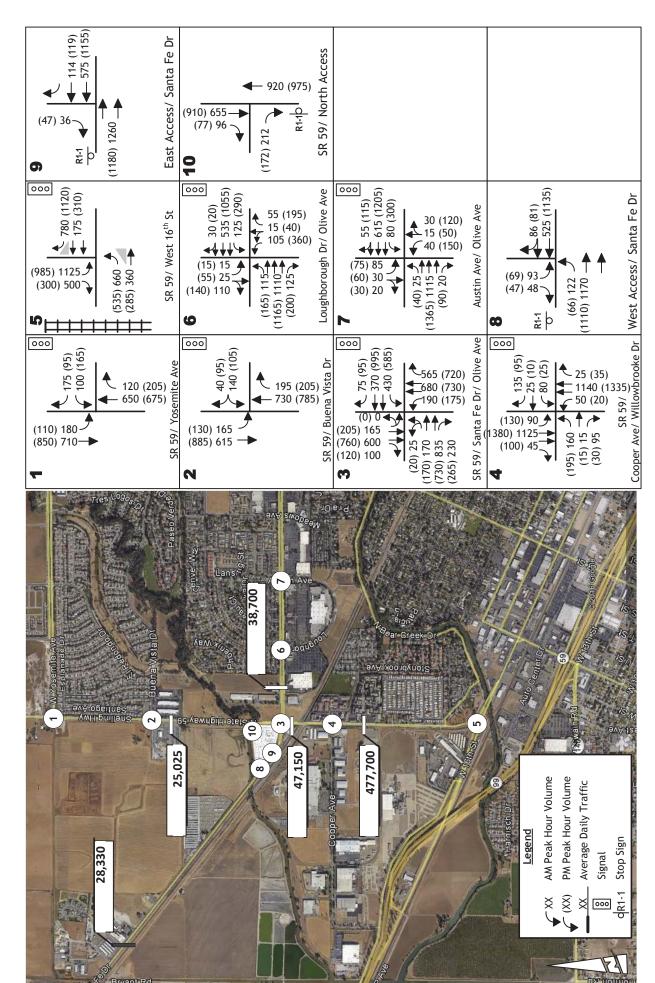
Table 15 compares southbound queues on SR 59 approaching the W. Olive Avenue intersection with and without the proposed project. The left turn and through lane queues will extend beyond the driveway if no improvements are made. The improvements required to mitigate cumulative intersection LOS impacts will reduce the length of queues slightly but the measures noted under Existing plus Project conditions will remain necessary.





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	YEA	AR 2035 PLU	TABLE 14 YEAR 2035 PLUS PROJECT PEAK HOUR LEVELS OF SERVICE	TABLE 14	4 OUR LEVEL	S OF SER	VICE			
				AM Peak Hour	k Hour			PM Pea	PM Peak Hour	
			Year 2035	35	2035 Plus Project	Project	Year 2035	35	2035 Plus Project	roject
#	Intersection	Control	Average Delay	SOI	Average Delay	501	Average Delay	801	Average Delay	501
			(sec/veh)		(sec/veh)		(sec/veh)		(sec/veh)	5
1	SR 59 / Yosemite Avenue	Signal	18.9	В	19.4	В	12.9	В	13.7	В
2	SR 59 / Buena Vista Drive	Signal	13.7	В	14.9	В	12.4	С	13.2	В
r	SR 59 / Santa Fe Dr / W. Olive Ave	Signal	86.8	F	108.9	F	128.9	F	143.5	F
c		w/mit	_	ı			1	1	53.3	D
4	SR 59/ Cooper Ave / Willowbrook Dr	Signal	19.2	В	20.9	С	23.4	С	25.8	C
5	SR 59 / W. 16 th Street	Signal	136.7	F	140.1	F	102.4	F	105.7	F
9	W. Olive Avenue / Loughborough Dr	Signal	17.9	В	18.8	В	42.6	С	47.2	D
7	W. Olive Avenue / Austin Avenue	Signal	10.0	В	10.4	В	19.5	С	20.7	В
o	SR 59 / Access	יייאט מבו								
×	EB right turn	EB Stop			25.2	О			39.7	田
	Santa Fe Drive / West Access									
6	SB approach	SB Stop			114.1	F			305.4	Ŧ
	EB left turn				9.6	A			13.0	В
10	Santa Fe Drive / East Access SB right turn	SB stop			10.6	В			14.6	В

BOLD values are Levels of Service in excess of LOS D. **HIGHLIGHTED** values are a significant impact



			YEAR 20	35 SOUTH	TABLE 15 BOUND PE	15 PEAK HOU	TABLE 15 YEAR 2035 SOUTHBOUND PEAK HOUR QUEUES				
			AM	AM Peak Hour				PM	PM Peak Hour		
		Year 2035 No	No Project	Year 2	Year 2035 Plus Project	Project	Year 2035	Year 2035 No Project	Year 2	Year 2035 Plus Project	roject
Approach	Lane		62^{th} %	Volume	me	62^{th} %		95 th %	Volume	me	95 th %
		Volume	Queue (feet)	Project Only	Total	Queue (feet)	Volume	Queue (feet)	Project Only	Total	Queue (feet)
Southbound Left turn	Left turn	46	66	119	165	329	100	232	105	205	421
	Through	575	372	25	009	394	740	484	20	760	469
	Right turn	95	<25	5	100	236	114	40	6	120	46

Traffic Impact Analysis for SR 59 / Olive Avenue Retail Center Merced, CA (January 3, 2018)

Traffic Signal Warrants

The volume of traffic occurring at the project's access to Santa Fe Avenue under Year 2035 conditions was compared to MUTCD peak hour traffic signal warrants to determine whether a traffic signal may be justified. As shown in Table 16, traffic signal warrants are satisfied if SR 59 access is closed but are not satisfied if that access remains open.

P	EAK HOUR	TAE CUMULATIVE FRAFFIC SIGNAL WAF		_	IVE ACCESS	
			Hourly	Volume	Signal War	rants Met?
Location	Time	Access	Major Street	Minor Street (left turn)	Rural	Urban
	434	As proposed	1,903	93	Yes	No
Wast Assess	AM	SR 59 access closed	1,903	305	Yes	Yes
West Access	DM	As proposed	2,392	69	No	No
	PM	SR 50 access closed	2,392	241	Yes	Yes

IMPROVEMENTS / MITIGATION

The preceding analysis has identified impacts on traffic operations that would occur without roadway improvements or mitigation. The text that follows identifies measures for improving traffic operations with the goal of achieving the City's LOS D minimum standard.

Existing Conditions

All study intersections and roadways currently operate at LOS D or better, which satisfies the City's minimum LOS D threshold. No specific improvements are required.

The existing pedestrian circulation system lacks a connection on the west side of SR 59 from Olive Avenue to Cooper Drive. While eliminating this bottleneck is desirable, right of way would have to be acquired to construct a sidewalk.

Existing Plus SR 59 / Olive Avenue Retail Center Build Out with Access as Proposed

Level of Service Impacts. The traffic impact analysis concludes that without improvements one intersection will operate with Levels of Service that exceed the minimum LOS D standard during some time period.

Motorists waiting to turn onto Santa Fe Drive from the projects **Western Access** will experience delays that are indicative of LOS F conditions, which exceed the LOS D minimum. Options to improve the Level of Service included:

- Reconfigure Santa Fe Drive to provide a Two-Way Left Turn Lane (TWLT) lane in the area between the access and the eastbound left turn lane approaching the SR 59 intersection. This might be accomplished by moving the driveway to the east to create space for the TWLT lane or by leaving the driveway at the proposed location and modifying the SR 59 / Santa Fe Drive intersection to provide shorter dual left turn lanes and space or the TWLT lane. The later concept would however, require two northbound lanes on SR 59 north of the Santa Fe Drive intersection, or.
- *Install a traffic signal at the western access*. While a traffic signal could deliver an adequate Level of Service, the feasibility of another signal in relatively close proximity to the signalized SR 59 intersection is questionable, or
- *Prohibit outbound left turns*. The approach Level of Service would be improved if outbound left turns onto eastbound Santa Fe Drive were prohibited. However, this action would divert southbound traffic to the project's SR 59 driveway which would be undesirable.

Southbound SR 59 Queue Impacts. The project access will occasionally be blocked by the queue of southbound traffic. To address this issue the southbound left turn lane on SR 59 shall be lengthened to extend beyond the driveway.



Pedestrian Impacts. The project will include sidewalks as part of its frontage improvements required by the City of Merced.

Cumulative Plus SR 59 / Olive Avenue Retail Center with Access as Proposed Conditions

Level of Service Impacts. The traffic impact analysis concludes that without improvements the **SR 59 / Olive Avenue intersection** will operate with Levels of Service that exceed the minimum LOS D standard during some time period and will be significantly impacted by the project. The project shall contribute its fair share to the cost of intersection improvements that include:

- Reconstruct westbound Olive Avenue to provide dual left turn lanes onto Southbound SR 59,
- Reconfigure the westbound right turn lane to create a combination through & right turn lane, and extend that through lane across SR 59 along the project's frontage, and
- Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound and right turning traffic. Reconstruct the Eastbound Santa Fe Drive approach to provide dual left turn lane.

This level of improvement would yield Level of Service D in the a.m. peak hour and LOS D in the p.m. peak hour.



REFERENCES

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NOTICE OF PUBLIC HEARING

FOR ANNEXATION / PREZONE #15-01; GENERAL PLAN AMENDMENT #15-04; PRE-ANNEXATION DEVELOPMENT AGREEMENT; AND NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION

A public hearing will be held by the Merced City Planning Commission on Wednesday, June 6, 2018, at 7:00 p.m., or as soon thereafter as may be heard, in the City Council Chambers located in the Civic Center at 678 W. 18th Street, Merced, CA, concerning Annexation and Pre-zoning #15-01, General Plan Amendment #15-04, and associated Pre-Annexation Development Agreement, initiated by Louann Bianchi, property owner. This application involves annexing 8.83 acres of land at the northwest and southwest corners of North Highway 59 and Santa Fe Drive into the City of Merced; changing the General Plan designation for the northwest corner from Open Space (OS) to Thoroughfare Commercial (CT) and pre-zoning the northwest corner as Thoroughfare Commercial (C-T). The General Plan designation for the southwest corner would remain Industrial (IL) and this corner would be pre-zoned Light Industrial (I-L). Said property is more particularly described as Parcels 1 and 2 as described in the Grant Deed recorded in Volume 3428 at Page 811 of Merced County Records; also known as Assessor's Parcel Numbers (APN) 057-200-067 and -029; and all of that property described in the Grant Deed recorded as Document Number 2017-000058 of Merced County Records, also known as Assessor's Parcel Number (APN) 057-200-042.

An environmental review checklist has been filed for this project, and a draft mitigated negative declaration (i.e., no significant effect in this case because of mitigation measures and/or modifications described in the draft) has been prepared. A copy of this staff evaluation ("Initial Study") is available for public inspection at the City of Merced Planning Department during regular business hours, at 678 West 18th Street. A copy of this document can also be purchased at the Planning Department for the price of reproduction.

All persons in favor of, opposed to, or in any manner interested in this Annexation, Pre-zoning, General Plan Amendment, and associated Pre-Annexation Development Agreement are invited to attend this hearing or forward written comments to the Director of Development Services, City of Merced, 678 W. 18th Street, Merced, CA 95340. The public review period for the environmental determination begins on May 17, 2018, and ends on June 6, 2018. Please feel free to call the Planning Department at (209) 385-6858 for additional information. If you challenge this action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City at, or prior to, the public hearing.

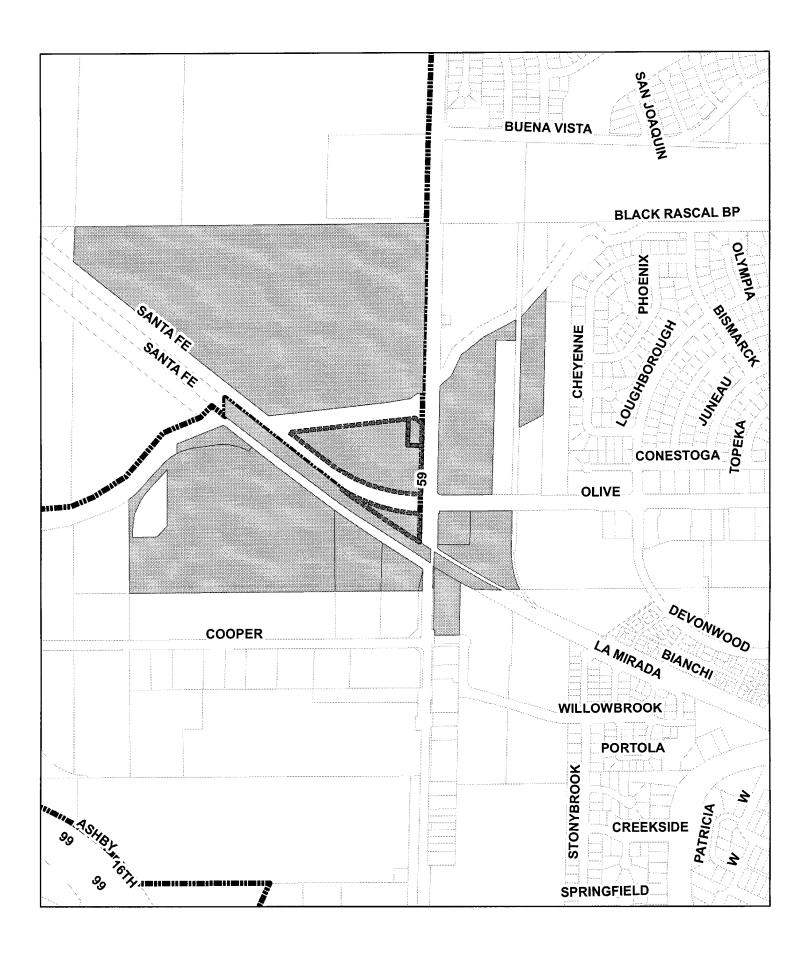
After the Planning Commission makes its decision on this matter, the matter will also be considered at a public hearing before the City Council. A separate notice of that public hearing will also be given.

May 14, 2018

/s/ Kim Espinosa

KIM ESPINOSA,

Planning Manager



ENVIRONMENTAL REVIEW #15-36 Mitigation Monitoring Program Revised August 22, 2018

MITIGATION MONITORING CONTENTS

This mitigation monitoring program includes a brief discussion of the legal basis and purpose of the mitigation monitoring program, a key to understanding the monitoring matrix, a discussion of noncompliance complaints, and the mitigation monitoring matrix itself.

LEGAL BASIS AND PURPOSE OF THE MITIGATION MONITORING PROGRAM

Public Resource Code (PRC) 21081.6 requires public agencies to adopt mitigation monitoring or reporting programs whenever certifying an environmental impact report or mitigated negative declaration. This requirement facilitates implementation of all mitigation measures adopted through the California Environmental Quality Act (CEQA) process.

The City of Merced has adopted its own "Mitigation Monitoring and Reporting Program" (MMC 19.28). The City's program was developed in accordance with the advisory publication, *Tracking CEQA Mitigation Measures*, from the Governor's Office of Planning and Research.

As required by MMC 19.28.050, the following findings are made:

- 1) The requirements of the adopted mitigation monitoring program for Annexation and Pre-Zone Application #15-01 and General Plan Amendment #15-04 shall run with the real property. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
- 2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

MITIGATION MONITORING PROCEDURES

In most cases, mitigation measures can be monitored through the City's construction plan approval/plan check process. When the approved project plans and specifications, with mitigation measures, are submitted to the City Development Services Department, a copy of the monitoring checklist will be attached to the submittal. The Mitigation Monitoring Checklist will be filled out upon project approval with mitigation measures required. As project plans and specifications are checked, compliance with each mitigation measure can be reviewed.

In instances where mitigation requires on-going monitoring, the Mitigation Monitoring Checklist will be used until monitoring is no longer necessary. The Development Services Department will be required to file periodic reports on how the implementation of various mitigation measures is progressing or is being maintained. Department staff may be required to conduct periodic inspections to assure compliance. In some instances, outside agencies and/or consultants may be required to conduct necessary periodic inspections as part of the mitigation monitoring program. Fees may be imposed per MMC 19.28.070 for the cost of implementing the monitoring program.

GENERAL PLAN MITIGATION MEASURES

As a second tier environmental document, Initial Study #15-36 incorporates some mitigation measures adopted as part of the *Merced Vision 2030 General Plan Program Environmental Impact Report* (SCH# 2008071069), as mitigation for potential impacts of the Project.

NONCOMPLIANCE COMPLAINTS

Any person or agency may file a complaint asserting noncompliance with the mitigation measures associated with the project. The complaint shall be directed to the Director of Development Services in written form providing specific information on the asserted violation. The Director of Development Services shall cause an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall cause appropriate actions to remedy any violation. The complainant shall receive written confirmation indicating the results of the investigation or the final action corresponding to the particular noncompliance issue. Merced Municipal Code (MMC) Sections 19.28.080 and 19.28.090 outline the criminal penalties and civil and administrative remedies which may be incurred in the event of noncompliance. MMC 19.28.100 spells out the appeals procedures.

MONITORING MATRIX

The following pages provide a series of tables identifying the mitigation measures proposed specifically for Annexation and Pre-zone Application #15-01 and General Plan Amendment #15-04 The columns within the tables are defined as follows:

Mitigation Measure: Describes the Mitigation Measure (referenced by number).

Timing: Identifies at what point in time or phase of the project that the mitigation

measure will be completed.

Agency/Department This column references any public agency or City department with

Consultation: which coordination is required to satisfy the identified mitigation

measure.

Verification: These columns will be initialed and dated by the individual designated

to verify adherence to the project specific mitigation.

Annexation and Pre-Zone Application #15-01 and General Plan Amendment #15-04 Mitigation Monitoring Checklist

Project Name:	File Number:
Approval Date:	Project Location
Brief Project Description_	

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City of Merced's Mitigation Monitoring Requirements (MMC 19.28) with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6).

A) Aesthetics	STICS			
Impact			Agency or	City Verification
No.	Mitigation Measures	Timing	Department	(date and initials)
	AES-4) Lighting should be designed to provide ambiance, safety, and security without unnecessary spillover or glare onto	Building Permits	Planning Department	
	adjacent properties. The quality of light, level of light (measured in foot-		•	
	candles) and the type of bulb or source should be carefully addressed. Lighting levels should not be so intense as to			
	draw attention to the flow or glare of the project site. The			
	lighting plan should incorporate current energy-efficient			
	fixtures and technology.			
	Glare from any site lighting should be shielded from			
	adjacent properties and directed at a specific object or			
AFS-A	target area. Exposed bulbs shall not be used.			
	Wall-mounted light fixtures shall not extend above the			
	height of the wall to which the fixtures are mounted.			
	Blinking and flashing lights used to illuminate building			
	facades or to outline buildings shall not be used.			
	When security lighting is necessary, it should be recessed,			
	hooded and located to illuminate only the intended area.			
	Off-site glare and light trespass is prohibited.			
	Pedestrian areas, sidewalks, parking lots, and building			
	entrances shall be adequately lit to provide safety and			
	security.			
	All exterior lighting fixtures shall be efficient in terms of			
	design and energy use.			

Impact		Mitiantion Measures	Timina	Agency or Dengations	City Verification
AES-4	AES4a	AES4a - The project shall comply with Mitigation Measure 3.1-4 required by the Mitigation and Reporting Program for the Merced Vision 2030 General Plan EIR.	Building Permits	Planning Department	
D) Biological Resources	ical Resou	ırces			
ВІО-І	BIO-1)	BIO-1) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for nesting Swainson's hawks within 0.25 miles of the project site shall be done if construction commences between March I and September 15. If active nests are found, a qualified biologist shall determine the need (if any) for temporal restrictions on construction. The determination shall utilize criteria set forth by CDFW (CDFG 1994).	Building Permit	Planning Department	
	BIO-1a)	BIO-1a) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for western pond turtles and their nests shall be conducted if construction commences between April 1 through October 31. This survey shall include a search for nests in uplands adjacent to the creek. If nest sites are located, a 50-foot buffer rea around the nest, a 50-foot buffer area around the nest shall be established and work shall be delayed until hatching is complete and the young have left the nest site.	Building Permit	Planning Department	
	BIO-1b)	BIO-1b) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for birds protected by the Migratory Bird Treaty Act of 1918. If nesting birds are found, work in the vicinity of the nest shall be delayed until the young fledge.	Building Permit	Engineering Department	

r City Verification nt (date and initials)	ng nt	n nt
Agency or Department	Planning/ Engineering Department	Inspection Services/ Panning Department
Timing	Building Permit	Grading
Mitigation Measures	BIO-3) Avoidance of jurisdictional Waters of the U.S. is recommended, if possible. If complete avoidance of Black Rascal Creek is infeasible, impact shall be minimized to the maximum extent practicable, and permits from ACOE, CDFW, RWQCB, and possibly CVFPS shall be secured prior to the placement of any fill material (e.g., culverts, fill dirt, rock) within jurisdictional Waters of the U.S.	CUL-1) In the event that buried historic or archaeological resources are discovered during construction, operations shall stop within 50 feet of the find and a qualified archaeologist shall be consulted to evaluate the resource in accordance with CEQA Guidelines 15064.5. The applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. If the resource does not qualify as a significant resource, then no further protection or study is necessary. If the resource does qualify as a significant resource then the impacts shall be avoided by project activities. If the resource shall be addressed. The archaeologist shall make recommendations concerning appropriate mitigation measures that shall be implemented to excavation and evaluation of the finds in accordance with Section 15064.5 of the CEQA Guidelines. Any previously undiscovered resources found during construction within the project area should be recorded on appropriate Department of Parks and Recreation (DPR) 523 forms and evaluated for significance in terms of CEOA criteria
Impact No.	BIO-3	CUL-I

Impact			Agency or	City Verification
No.	Mitigation Measures	Timing	Department	(date and initials)
CUL-3	CUL-3) In the event that fossils or fossil-bearing deposits are discovered during construction activities, excavations within a 50-foot radius of the find shall be temporarily halted or diverted. The project contractor shall notify a qualified paleontologist to examine the discovery. The applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. The paleontologist shall document the discovery as needed in accordance with Society of Vertebrate Paleontology standards and assess the significance of the find under the criteria set forth in CEQA Guidelines Section 15064.5. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction activities are allowed to resume at the location of the find. If the Applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of construction activities on the discovery. The plan shall be submitted to the City of Merced for review and approval prior to implementation, and the Applicant shall adhere to the recommendations in the plan.	Grading	Inspection Services/ Panning Department	

Impact No.		Mitioation Measures	Timino	Agency or Denartment	City Verification (date and initials)
CUL-4	CUL-4)	CUL-4) Guidelines Section 15064.5, Health and Safety Code Section 7050.5, and Public Resources Code (PRC) Sections 5097.94 and 5097.98 must be followed. If during the course of project development there is accidental discovery or recognition of any human remains, the following steps shall be taken:	Grading	Inspection Services/ Panning Department	
	I.	There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the County Coroner is contacted and determines if the remains are Native American and if an investigation of the cause of death is			
		Native American, the coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours, and the NAHC shall identify the person or persons it believes to be the most likely descendant (MLD) of the deceased Native American. The MLD may make			
		recommendations to the landowner or the person responsible for the excavation work within 48 hours, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC Section 5097.98.			
	7	Where the following conditions occur, the landowner or his or her authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity either in accordance with the recommendations of the most likely descendant or on the project site in a location not subject to further subsurface disturbance:			

igation Measures ble to identify a most likely descendent or ble to identify a most likely descendent or ble to identify a most likely descendent or ble to identify a most likely descendent failed to make a Services/ Paming Department Inspection Finity 48 hours after being notified by the paming between a recommendation. This authorized representative rejects the of the descendant, and mediation by the provide measures acceptable to the provide measures acceptable to the following with regards to Native the following with regards to Native American standy identified by the Native American sold of, Native American as provided in Public Resources of, or the applicant may develop a plan syoning of, with appropriate dignity, the and any items associated with Native with the appropriate Native Americans e NAHC. Tentative Map Engineering Building Permit Department is to ensure that these systems and their revenuely control systems and their revenuely.	Impact			Agency or	City Verification
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No.	Mitigation Measures	Timing	Department	(date and initials)
GEO-2	GEO-2a) Upon completion of phased construction, subsequent phases shall re-vegetate all exposed soil surfaces within 30 days, or as otherwise approved by the City, to minimize potential topsoil erosion. Reasonable alternatives to revegetation may be employed, especially during peak high temperature periods or to avoid negative impacts to nearby agricultural activities, subject to the approval of the City.	Building Permit	Inspection Services	
GEO-4	GEO-4 A geotechnical study shall be provided prior to the issuance of a building or grading permit for this site. All recommendations for addressing expansive soils and site grading shall be implemented as well as any other recommendations determined relevant by the Chief Building Official or City Engineer.	Building Permit	Inspection Services/ Engineering	
HAZ-5	HAZ-5 Prior to the issuance of any subsequent land use entitlement for construction of a building or the issuance of a building permit, the developer shall demonstrate compliance with the requirements of the Merced County Airport Land Use Compatibility Plan (ALUCP). If compliance is not feasible, the development plan shall be modified to make compliance possible.	Site Plan Review/Building Permit	Planning Department	
HYD-1	HYD Ia Prior to the issuance of grading permits, the applicant shall file a "Notice of Intent" with and obtain a facility identification number from the State Water Resources Control Board. The project shall also submit a Stormwater Pollution Prevention Plan (SWPPP) to the City of Merced that identifies specific actions and Best Management Practices (BMP's) to prevent stormwater pollution during construction activities. (continued on next page)	Grading Permit	Inspection Services/ Engineering	

Impact			Agency or	City Verification
No.	Mitigation Measures	Timing	Department	(date and initials)
HYD-1	The SWPPP shall identify a practical sequence for BMP implementation, site restoration, contingency measures,	Grading Permit	Inspection Services/	
	responsible parties, and agency contacts. The SWFFF shall include, but not be limited to, the following elements:		Engmeering	
	• Comply with the requirements of the State of California's most current Construction Stormwater Permit.			
	• Temporary erosion control measures shall be implemented on all disturbed areas.			
	• Disturbed surfaces shall be treated with erosion control measures during the October 15 to April 15 rainy season.			
	• Sediment shall be retained on-site by a system of sediment basins, traps, or other BMPs.			
	• The construction contractor shall prepare Standard Operating Procedures for the handling of hazardous materials on the construction site to eliminate discharge of materials to storm drains.			
	BMP performance and effectiveness shall be determined either by visual means where applicable on observation of above mormal sediment release)			
	or by actual water sampling in cases where verification of contaminant reduction or elimination			
	(such as madvertent petroteum release) is required by the Central Valley Regional Water Quality			
	Control Board to determine adequacy of the measure. (continues on next page)			

Impact			Agency or	City Verification
No.	Mitigation Measures	Timing	Department	(date and initials)
HYD-1	In the event of significant construction delays or delays in final landscape installation, native grasses or other appropriate vegetative cover shall be established on the construction site as soon as possible after disturbance, as an interim erosion control measure throughout the wet season.			
HYD-1	HYD-1b Prior to the issuance of building permits, the project applicant shall submit a final Storm Water Mitigation Plan (SWMP) to the City of Merced for review and approval. The plan shall be developed using the California Stormwater Quality Association's "New Development and Redevelopment Handbook." The SWMP shall identify pollution prevention measures and BMPs necessary to control stormwater pollution from operational activities and facilities, and provide for appropriate maintenance over time. The SWMP shall include design concepts that are intended to accomplish a "first flush" objective that would remove contaminants from the first 2 inches of stormwater before it enters area waterways. The project applicant shall also prepare and submit an Operations and Maintenance Agreement to the City identifying procedures to ensure that stormwater quality control measures work properly during operations.	Grading Permit	Inspection Services/ Engineering	

Impact No.		Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
HYD-5	HYD-5	Prior to the issuance of a building permit for this project, the applicant shall demonstrate to the City that proposed storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City's Storm Drainage Master Plan and the Post Construction Standards for the City's Phase II MS4 permit.	Grading Permit	Inspection Services/ Engineering	
HYD-8	HYD-8	HYD-8 Development of the site is required to provide fill dirt to raise the elevation of the site and achieve protection from flooding. The fill must be elevated above the computed 200-year flood elevation and freeboard is highly recommended by DWR (note: freeboard is the difference between the fill elevation and the computed flood elevation). A freeboard of 1-foot or greater will help to account for the inherent uncertainty in estimating peak flood discharges and the computed flood elevations. A Summary of the proposed fill elevations is provided in the Table below. The required fill elevation ranges from 168.4 to 167.7 ft. (NAVD88 vertical datum)	Grading Permit	Inspection Services/ Engineering	

Imnact			A GORGE OF	City Vorification
infuct N			Agency or	
No.		Immg	Department	(date and initials)
I-ION	NOI-1 The construction contractor shall limit all noise-producing	Grading Permit	Inspection	
	construction activities, including deliveries and warming		Services/ Fraincerina	
	Monday through Saturday. No such work shall be		8,11,22,11,8	
	de			
NOI-1	NOI-2 Any outdoor dining areas or other outdoor uses shall have	Building Permit	Inspection	
1-1011			Services/	
	level of 70 dB for outdoor uses:		Planning	
	Road/Railroad Required Setback			
	Santa Fe Drive 54 Ft.			
	59			
	BNSF Railroad			
TRA-1	TRA-1 The following improvements shall be incorporated into the	Building Permit	Engineering/	
	development of the northwest corner of North Highway 59		Planning	
	and Santa Fe Drive. These improvements are the sole			
	responsibility of the property owner/developer.			
	1. Restripe Santa Fe Drive to create a two-way left-turn			
	(TWLT) lane east of the western access. This will			
	improve the Level of Service by accommodating two-step			
	 Moally the tayout of the access to Santa Fe Drive to either prohibit outbound right turns from the eastern driveway 			
	or provide a continuous auxiliary acceleration-			
	deceleration lane between the driveways. These			
	measures will address the horizontal curve on the			
	alignment of Santa Fe Drive as it relates to the western			
	атгуешау.			

Impact			A opney or	City Verification
No.	Mitigation Measures	Timing	Department	(date and initials)
TRA-1	A traffic signal may be required at the western-most driveway. Traffic conditions at the western access shall be monitored and a traffic signal shall be installed if determined to be needed by the City Engineer based on warrants associated with preventable accidents. The cost of the traffic signal shall be the responsibility of the owner/developer.	Building Permit	Engineering/ Planning	
	TRA-1a The southbound left-turn lane on SR 59 shall be lengthened as determined by the City Engineer and approved by Caltrans.	Building Permit	Engineering/ Planning	
	 TRA-1b The development shall contribute its fair share to the cost of improvements for the intersection of SR 59 and Olive Avenue: Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and, Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and, Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound and right turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes. 	Building Permit	Planning	

TRA-6	TRA-6	TRA-6 TRA-6 Prior to the issuance of a building permit, the developer	Building Permit	Planning	
		shall work with the Merced County Transit Authority (aka:			
		The Bus) to determine if a bus stop is needed at this			
		location. If a bus stop is required, the stop shall be in an			
		area to allow the bus to move completely out of the travel			
		lanes. The location of all bus stops shall be subject to			
		approval by the City Engineer and Caltrans if along SR			
		59.			

Certificate of Completion:

By signing below, the environmental coordinator confirms that the required mitigation measures have been implemented as evidenced by the Schedule of Tasks and Sign-Off Checklist, and that all direct and indirect costs have been paid. This act constitutes the issuance of a Certificate of Completion.

Date Environmental Coordinator A list of public agencies that provided comments on Initial Study #15-36 are listed below. Each comment has been assigned a code. Individual comments within each communication have been numbered so comments can be crossed-referenced with responses. Following this list, the text of the communication is provided followed by the corresponding responses.

AGENCY	CODE
Merced County Community and Economic Development Department	MCCEDD
San Joaquin Valley Air Pollution Control District	SJVAPCD
LAFCo of Merced County.	MCLAFCO

RESPONSE TO COMMENTS

In accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15088, the City of Merced, as the lead agency, evaluated the comments received on Draft Initial Study #15-36 for Annexation and Pre-Zone Application #15-01 and General Plan Amendment #15-04, and has prepared the following responses to the comments received. The Response to Comments document becomes part of the Initial Study for the project in accordance with CEQA Guidelines Section 15132.

Merced County Community and Economic Development Department

Response to MCCEDD-1

The comments indicate a concern with the determination of a Less Than Significant Impact regarding Section O, Transportation/Traffic, No. 4, which states "Substantially increase hazards due to a design feature (e.g. sharp curves or dangerous intersection) or incompatible uses (e.g. farm equipment)?"

The Initial Study has been revised to provide additional analysis and detail regarding the setting of the project site relating to the roadways and intersections. Additionally, the traffic analysis was updated to include a revised mitigation measure requiring a traffic signal at the western-most driveway if determined to be needed by the City Engineer based on warrants associated with preventable accidents.

Response to MCCEDD-2

The comments express concern about future plans Caltrans may have for this intersection and the fact that there was no discussion of this in the Initial Study. The comments suggested the City verify any proposed improvements with Caltrans.

The Initial Study has been revised to include the possibility of Caltrans improvements to the intersection. Caltrans has been notified of this project through the Inter-Governmental Review (IGR) process. They had no comments on the proposed project.

Response to MCCEDD-3

The comment stated that the analysis overlooked a multifamily residential area approximately 500 feet to the south of the project site, and a recreation area approximately 1,000 feet to the southwest. The County stated that the presence of these additional sensitive receptors may impact the validity of the assumptions in the AQ/GHG analysis, particularly regarding CO impacts on roadways adjacent to these sensitive receptors.

As discussed in the AQ/GHG analysis, the project at buildout would contribute approximately 11.03 tons per year of CO from its operations, which is well below the significance threshold established by the SJVAPCD of 100 tons per year. Also, according to the GAMAQI issued by the SJVAPCD, project CO operational emissions would have an impact that is less than significant if neither of the following criteria are met:

- A traffic study for the project indicates that the Level of Service (LOS) on one or more streets or at one or more intersections in the project vicinity will be reduced to LOS E or F; and,
- A traffic study indicates that the project will substantially worsen an already existing LOS F on one or more streets or at one or more intersections in the project vicinity.

According to the traffic study for the project, the SR 59/Willowbrook Avenue intersection would operate at LOS B with the project, so neither of the criteria concerning CO operational emissions are met. Thus, the project would have no significant CO impact on the multifamily residential area near that intersection.

At the distances cited in the comment letter, CO concentrations tend to decrease substantially. An EPA technical report indicated that CO concentrations declined from 1.0 ppm at 20 meters from the roadway source to less than 0.2 ppm at 150 meters and approximately 0.1 ppm at 300 meters (EPA, Final Technical Report: Studies of Emission Sources and Related Adverse Health Effects, August 31, 2006). Given this pattern, it is unlikely that CO concentrations at the land uses mentioned in the comment letter would be at levels that would pose a health risk – 20 ppm 1-hour concentration, 9 ppm 8-hour concentration (UC Davis, Transportation Project-Level Carbon Monoxide Protocol, Revised December 1997). The additional land uses do not change the analysis and conclusions of the AQ/GHG analysis related to CO emissions.

Response to MCCEDD-4

The comment stated that the project features that would reduce GHG emissions generated by the project were not identified in the AQ/GHG analysis.

Page 2-5 of the analysis lists the features of the project that reduce GHG emissions from business-as-usual levels.

San Joaquin Valley Air Pollution Control District

Response to SJVAPCD-1

The comment suggests that analysis be done to assess the Project's daily construction and operational emissions compared against the District's 100 pounds per day screening level to determine the impact to the ambient air quality standards.

Additional analysis was done comparing against the District's 100 pound per day screening level. Based on CalEEMod results, neither construction nor operational emissions of any pollutants would exceed the 100 pounds per day screening level.

Response to SJVAPCD-2

The comment suggests the fleet-mix be adjusted to reflect the percentage of VMT and not the percentage of traffic volume.

For mobile emissions, the CalEEMod run for the project utilized trip generation figures from the project traffic study prepared by KD Anderson and Associates.

Response to SJVAPCD-3A

The comment asks for clarification on the fleet mix for HHD and LDA as used in the CalEEMod Modeling runs for Phases 1 and 2.

For mobile emissions, the CalEEMod run for the project utilized trip generation figures from the project traffic study prepared by KD Anderson and Associates.

Response to SJVAPCD-3B

The comment asks for clarification on the weekday trip rate for the convenience market with gas pumps as used in the CalEEMod Modeling runs for Phases 1.

For mobile emissions, the CalEEMod run for the project utilized trip generation figures from the project traffic study prepared by KD Anderson and Associates.

Response to SJVAPCD-4

The comment advised that District Rule 9510 would apply and that an Air Impact Assessment (AIA) application is required prior to applying for final discretionary approval.

The comment is acknowledged.

Response to SJVAPCD-5

The comment advised that the proposed gas station is subject to District Rule 2010 (Permits Required) and Rule 2201 (New and Modified Stationary Source Review) and will require District permit.

The comment is acknowledged.

Response to SJVAPCD-6

The comment advised that the Project may also be subject to other District rules and regulation.

The comment is acknowledged.

LAFCo of Merced County

Response to MCLAFCO-1

The comments expressed concern about the circulation and possible access problems at the northwest corner of North Highway 59 and Santa Fe Drive.

The Initial Study has been revised to provide additional analysis and detail regarding the setting of the project site relating to the roadways and intersections. Additionally, the traffic analysis was updated to include a revised mitigation measure requiring a traffic signal at the western-most driveway when determined to be needed by the City Engineer based on warrants associated with preventable accidents.

Response to MCLAFCO-2

The comment addressed the proposed land use on the site and suggested considering allowing a land use that had less impacts to the area.

This comment is acknowledged and the traffic analysis was revised to provide mitigation measures to address traffic concerns. Mitigation Measure TRA-1 was modified to require a traffic signal at the western-most driveway when determined to be needed by the City Engineer based on warrants associated with preventable accidents.

Response to MCLAFCO-3

This comment addressed the City's responsibility to submit a "plan for services' in compliance with Government Code section 56653(b).

This comment is acknowledged.

The following are revisions to Initial Study #15-36 for Annexation and Pre-Zoning Application #15-01 and General Plan Amendment #15-04. These revisions are minor modifications and clarifications to the document. The revisions are listed by page number. All additions to the text are underlined (<u>underlined</u>) and all deletions from the text are indicated with strikethrough text (<u>strikethrough</u>).

O. <u>Transportation/Traffic</u>

Page 49

A Traffic Impact Analysis was prepared by KD Anderson & Associates, Inc. (Attachment L). A revised Executive Summary for this analysis was provided based on comments received from the Merced County Community and Economic Development Department and LAFCo of Merced County. This revised Executive Summary is provided at Attachment L with the full Traffic Impact Analysis. This analysis was reviewed by Caltrans due to the proximity of the project to a state highway. Caltrans concurs with the analysis and has no additional comments.

Page 52

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
4) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g. bus turnouts, bicycle racks)?		√	4	

Page 53

Intersections

Although SR 59 between Olive Avenue and W. 16th Street would continue to operate at an LOS F, the existing off-site intersections studied would all operate at an LOS D. However, the proposed western driveway is forecasted to operate at an LOS F in the p.m. peak hour (4-6 p.m.) In order to improve this condition, mitigation measures are proposed (see Mitigation Measure TRA-1 below). the traffic analysis offers three possible alternatives. Each scenario would have ramifications on the project.

Western Driveway Alternatives

Alternative	Ramification
Install a Two-Way Left-Turn Lane on Santa	Requires moving driveway or reconstructing
Fe Drive	SR 59 intersection
Prohibit outbound left turns.	Exacerbates problem at SR 59 driveway.
Install traffic signal.	Location is problematic and would likely
	require moving the driveway.

Page 54

Mitigation Measure TRA-1

The following improvements shall be incorporated into the development of the northwest corner of North Highway 59 and Santa Fe Drive. These improvements are the sole responsibility of the property owner/developer.

- 1. <u>Restripe Santa Fe Drive to create a two-way left-turn (TWLT) lane east of the western access.</u> This will improve the Level of Service by accommodating two-step left turns,
- 2. <u>Modify the layout of the access to Santa Fe Drive to either prohibit outbound right turns from the eastern driveway or provide a continuous auxiliary acceleration-deceleration lane between the driveways. These measures will address the horizontal curve on the alignment of Santa Fe Drive as it relates to the western driveway.</u>

A traffic signal may be required at the western-most driveway. Traffic conditions at the western access shall be monitored and a traffic signal shall be installed if determined to be needed by the City Engineer based on warrants associated with preventable accidents. The cost of the traffic signal shall be the responsibility of the owner/developer.

Prior to construction, the Site Plan Review Committee shall review the site design and determine which alternative at the western driveway is best to reduce the expected impacts. The alternatives may include those alternatives included in the traffic analysis or another alternative such as moving the driving further to the west. The developer shall provide any additional documentation or studies needed for the Site Plan Review Committee to make this determination.

Page 55

4) Less than Significant with Mitigation

The proposed project on the northwest corner North Highway 59 and Santa Fe Drive proposes right-turn only access to North Highway 59 north of Olive Avenue, as well as two driveways on Santa Fe Drive. The operation of the driveways as it relates to sight distance, intersection spacing, and weaving between driveways was considered, and measures to ensure the long term feasibility of these access points has been identified. Mitigation Measure TRA-1 would reduce this impact to a **less than significant level.**

4) Less than Significant

The annexation and proposed project would not substantially increase hazards due to a design feature or incompatible uses. There are no design features that would increase a hazard at the site. The proposed western driveway on Santa Fe Drive would operate at an LOS F without mitigation which could present a hazard due to impatient drivers not wanting to wait for long queuing times. However, Mitigation Measure TRA-1 requires mitigation to alleviate that impact. Therefore, this impact is **less than significant.**

Revised Attachments

Attachment G – Air Quality/Greenhouse Gas Analysis

Page 2-5

For mobile emissions, the CalEEMod run for the project utilized trip generation figures from the project traffic study (KD Anderson and Associates 2018)."

Page 2-7

The GAMAQI states that, when assessing the significance of project-related impacts on air quality, impacts may be significant when on-site emission increases from construction activities or operational activities exceed the 100 pounds per day screening level of any criteria pollutant after implementation of all enforceable mitigation measures (SJVAPCD 2015b). Based on the CalEEMod results, neither construction nor operational emissions of any pollutants would exceed the 100 pounds per day screening level.

Page 3-2

KD Anderson and Associates. 2018. Traffic Impact Analysis for SR 59/Olive Avenue Retail Center, Merced, CA. October 9, 2017, revised January 3, 2018.

Attachment L – Traffic Analysis

Executive Summary

Page i

Access. The project proposes right-turn only access to SR 59 north of Olive Avenue, as well as two driveways on Santa Fe Drive. The location and operation of this access has been evaluated by Caltrans District 10 as part of their review of the project. Full access is proposed at the western driveway, and the eastern driveway near SR 59 is limited to right turns only. The operation of the driveways as it relates to sight distance, intersection spacing, and weaving between driveways was considered, and measures to ensure the long term feasibility of these access points has been identified within the context of original mitigation options.

Improvements. The project is assumed to complete frontage improvements on SR 59 and Santa Fe Drive that are consistent with the City's Arterial Street standard. Separate right turn deceleration acceleration treatments are assumed at the project driveways. Work required along SR 59 would be conducted under an encroachment permit acquired through Caltrans.

Pages ii and iii

Impacts. If no improvements to the area circulation system are made all off-site study intersections would continue to operate with LOS D or better conditions, but access is problematic from two standpoints. The western access on Santa Fe Drive is forecast to operate at LOS F in the p.m. peak hour. As noted in Table A1 conditions at this location could be improved either by creating a Two-Way Left-Turn lane on Santa Fe Drive, by restricting access

or by installing a traffic signal. However, each alternative has ramifications on the project layout as noted. The preferred improvement option identified in consultation with City staff will:

- 1. Restripe Santa Fe Drive to create a two-way left-turn (TWLT) lane east of the western access. This will improve the Level of Service by accommodating two-step left turns;
- 2. Monitor traffic conditions at the western access and install a traffic signal if/when required by the City of Merced in response to any potential safety problems as evidenced by an appreciable increase in the number of collisions. While implementation will result in two closely spaced signals, their operation can be adequate because the western driveway is only a "tee" intersection. Coordination with the SR 59 signal will be required; and,
- 3. Modify the layout of the access to Santa Fe Drive to either prohibit outbound right turns from the eastern driveway or provide a continuous auxiliary acceleration-deceleration lane between the driveways. These measures will address the horizontal curve on the alignment of Santa Fe Drive as it relates to the western driveway.

		TABLE A1 REVISED MITIGATION SUMMARY	
Location	Impact	Mitigation	Ramification
	EX	EXISTING PLUS PROJECT CONDTIONS	
Western Santa Fe Drive Access	LOS F during p.m. peak hour	Create TWLT lane on Santa Fe Drive PROPOSED	Required moving driveway or reconstructing SR 59 intersection—Restripe Santa Fe Drive to provide TWI T lane east of the access
		Or Prohibit outbound left turns NOT PROPOSED	Exacerbates problem at SR 59 driveway
		Or Install traffic signal When deemed warranted by the City of Merced based on	Location is problematic and likely require moving
		warrants associated with preventable accidents. PROPOSED	
	Operational issues	Prohibit outbound right turns from the	
		Keep right turns and Construct a continuous	
		auxiliary acceleration –deceleration lane between the two driveways	
SR 59 Access	Access blocked by Southbound Queues	Lengthen southbound left turn lane PROPOSED	Facilitates access but does not shorten queues. Recommended Mitigation
	,	Move access to the north	Affects Black Rascal Creek as well as property not included in project. Not feasible
		Close SR 59 access	Exacerbates issues at western access, and make site
		NOT PROPOSED	untenable as a retail center
	CUMI	CUMULATIVE PLUS PROJECT CONDITIONS	
SR 59 / Olive Avenue /	Significantly exacerbate LOS F	Significantly exacerbate LOS F Fair share contribution to intersection improvements including:	/ements including:
	peak hours	 Reconstruct westbound Onve Ave to present the Reconfigure the westbound right turn Is 	Reconstruct westbound Onlye Ave to provide dual left turn lanes onto Southbound SK 39. Reconfigure the westbound right turn lane to create a combination through & right turn lane,
		and extend that through lane across SR 59 along the project's frontage.	59 along the project's frontage.
		 Reconstruct the existing northbound rig 	Reconstruct the existing northbound right turn lane as a "free" right turn with median island
		separating eastbound and right turning traffic. • Reconstruct the Eastbound Santa Fe Drive app	separating eastbound and right turning traffic. Reconstruct the Eastbound Santa Fe Drive approach to provide dual left turn lane.

CITY OF MERCED Planning Commission

Resolution #3095

WHEREAS, the Merced City Planning Commission at its regular meeting of June 6, 2018, held a public hearing and considered Pending Annexation and Pre-zoning Applications #15-01 and General Plan Amendment #15-04, initiated by Louann Bianchi, and Quad LLC, property owners. This application involves annexing 8.83 acres of land at the northwest and southwest corners of North Highway 59 and Santa Fe Drive into the City of Merced; changing the General Plan designation for the northwest corner from Open Space (OS) to Thoroughfare Commercial (CT) and pre-zoning the northwest corner as Thoroughfare Commercial (C-T) for the Thoroughfare Commercial development. The General Plan designation for the southwest corner would remain Industrial (IL) and this corner would be pre-zoned Light Industrial (I-L); also known as Assessor's Parcel Numbers 057-200-029, 057-200-067, and 057-200-042; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through M of Staff Report # 18-14; and,

WHEREAS, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Mitigated Negative Declaration and Mitigation Monitoring Program (Exhibit B) regarding Initial Study #15-36, and approval of Pending Annexation and Pre-zoning Applications #15-01 and General Plan Amendment #15-04, subject to the Conditions set forth in Exhibit A attached hereto.

Upon motion by Commissioner ALSHAMI, seconded by Commissioner MARTINEZ, and carried by the following vote:

AYES: Commissioners Alshami, Camper, Colby, Martinez, and

Chairperson Dylina

NOES: Commissioner Padilla ABSENT: None, (One Vacancy)

ABSTAIN: None

PLANNING COMMISSION RESOLUTION #___3095 Page 2 June 6, 2018

Adopted this 6th day of June, 2018

Chairperson, Planning Commission of

the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

Exhibit B – Mitigation Monitoring Program

n:shared:planning:PC Resolutions:ANX-PREZ#15-01 & GPA#15-04 NorCal Foods

Conditions of Approval Planning Commission Resolution #3095 Pending Annexation and Pre-zoning Applications #15-01 and General Plan Amendment #15-04

- 1. All new construction within the annexation area (including modifications to the developed site at the southwest corner of North Highway 59 and Santa Fe Drive) shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
- 2. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
- Approval of Pre-Annexation #15-01, Pre-zoning Application #15-01, 3. and General Plan Amendment #15-04 is subject to the applicant's entering into a written (legislative action) 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 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 (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 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 such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

5. The developer/applicant shall construct and operate all future projects within the annexation area 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.

The following conditions apply to new construction within the annexation area:

6. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, public landscaping within State rights-of-way, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map or first building permit 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.

The following conditions apply to the future development at the northwest corner of North Highway 59 and Santa Fe Drive:

7. All development shall be subject to the Mitigation Measures outlined in the Mitigation Monitoring Program for Initial Study #15-36.

- 8. Site Plan Review is required prior to construction on the northwest corner, the Site Plan Review Committee shall review the site design and determine which alternative at the western driveway is best to reduce the expected impacts. The alternatives may include those alternatives included in the traffic analysis or another alternative such as moving the driveway further to the west. The developer shall provide any additional documentation or studies needed for the Site Plan Review Committee to make this determination (Mitigation Measure TRA-1).
- 9. The southbound left-turn lane on SR 59 shall be lengthened as determined by the City Engineer and approved by Caltrans (Mitigation Measure TRA-1a).
- 10. The development shall contribute its fair share to the cost of improvements for the intersection of SR 59 and Olive Avenue (Mitigation Measure TRA-1b):
 - Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and,
 - Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and,
 - Reconstruct the existing northbound right turn lane as a "free" right turn with a median island separating eastbound and right-turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes.
- 11. Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR 59 (Mitigation Measure TRA-6).
- 12. Any outdoor dining areas or other outdoor uses shall have the following setbacks to maintain an acceptable noise level of 70 dB for outdoor uses (Mitigation Measure NOI-2):
 - Road/Railroad Required Setback
 - Santa Fe Drive 54 Ft.

- North Highway 59 89 Ft.
- BNSF Railroad 137 F
- 13. At the time of construction, all required public improvements shall be installed along the property frontage. This includes, but is not limited to, sidewalk, curb, gutter, street lights, and street trees.
- 14. The developer shall work with Caltrans and obtain all necessary permits for all work done within the state right of way.
- 15. All construction shall comply with Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
- 16. All new utilities serving the site shall be installed underground.
- 17. All City sewer, water, and storm drain lines serving the site shall be extended across the full frontage of the property unless it is determined by the Public Works Director that these lines are not likely to be extended to serve any other property (consistent with Merced Municipal Code Section 15.40.030).
- 18. All storm water shall be contained onsite and metered out to the City's storm water system in accordance with City Standards.
- 19. A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access must be provided throughout the project site or as required by the Fire Department.
- 20. The future commercial development shall provide pedestrian and bicycle access throughout the site. Connectivity throughout the site shall be provided by pedestrian pathways. Bicycle parking shall be provided as required by the City's Zoning Ordinance.
- 21. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
- 22. All landscaping shall be in compliance with the City's Water Efficient Landscaping and Irrigation Ordinance (Merced Municipal Code Section 17.60) and all state-mandated conservation and drought restrictions as well as the City's Zoning Ordinance Section 20.36 Landscaping. This shall include the use of xeriscape landscaping as appropriate.

- 23. Irrigation for all onsite landscaping shall be provided by a low-volume system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other state or city-mandated water regulations dealing with the current drought conditions.
- 24. All landscaping in the public right-of-way shall comply with the most recently adopted water regulations by the State and City addressing water conservation measures. If turf is proposed to be installed in medians or parkstrips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
- 25. Parking lot trees shall be installed per the City's Parking Lot Landscape Standards. Trees shall be a minimum of 15 gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list). Trees shall be installed at a ratio of 1 tree for every 6 parking spaces. A reduced number of trees may be required where there are carports with solar panels over the parking spaces. However, if all the parking spaces are covered by a carport with solar panels, then additional trees may be required at the discretion of the Development Services Director. Trees within the PG&E easement shall comply with the regulations of this easement which limits the height of trees to a maximum of 15 feet at full maturity.
- 26. All mechanical equipment shall be screened from public view.

n:shared:planning:PC Resolutions:ANX-PREZ#15-01 & GPA#15-04 Exhibit A

ENVIRONMENTAL REVIEW #15-36 Mitigation Monitoring Program

MITIGATION MONITORING CONTENTS

This mitigation monitoring program includes a brief discussion of the legal basis and purpose of the mitigation monitoring program, a key to understanding the monitoring matrix, a discussion of noncompliance complaints, and the mitigation monitoring matrix itself.

LEGAL BASIS AND PURPOSE OF THE MITIGATION MONITORING PROGRAM

Public Resource Code (PRC) 21081.6 requires public agencies to adopt mitigation monitoring or reporting programs whenever certifying an environmental impact report or mitigated negative declaration. This requirement facilitates implementation of all mitigation measures adopted through the California Environmental Quality Act (CEQA) process.

The City of Merced has adopted its own "Mitigation Monitoring and Reporting Program" (MMC 19.28). The City's program was developed in accordance with the advisory publication, *Tracking CEQA Mitigation Measures*, from the Governor's Office of Planning and Research.

As required by MMC 19.28.050, the following findings are made:

- The requirements of the adopted mitigation monitoring program for Annexation and Pre-Zone Application #15-01 and General Plan Amendment #15-04 shall run with the real property. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
- 2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

MITIGATION MONITORING PROCEDURES

In most cases, mitigation measures can be monitored through the City's construction plan approval/plan check process. When the approved project plans and specifications, with mitigation measures, are submitted to the City Development Services Department, a copy of the monitoring checklist will be attached to the submittal. The Mitigation Monitoring Checklist will be filled out upon project approval with mitigation measures required. As project plans and specifications are checked, compliance with each mitigation measure can be reviewed.

In instances where mitigation requires on-going monitoring, the Mitigation Monitoring Checklist will be used until monitoring is no longer necessary. The Development Services Department will be required to file periodic reports on how the implementation of various mitigation measures is progressing or is being maintained. Department staff may be required to conduct periodic inspections to assure compliance. In some instances, outside agencies and/or consultants may be required to conduct necessary periodic inspections as part of the mitigation monitoring program. Fees may be imposed per MMC 19.28.070 for the cost of implementing the monitoring program.

GENERAL PLAN MITIGATION MEASURES

As a second tier environmental document, Initial Study #15-36 incorporates some mitigation measures adopted as part of the *Merced Vision 2030 General Plan Program Environmental Impact Report* (SCH# 2008071069), as mitigation for potential impacts of the Project.

NONCOMPLIANCE COMPLAINTS

Any person or agency may file a complaint asserting noncompliance with the mitigation measures associated with the project. The complaint shall be directed to the Director of Development Services in written form providing specific information on the asserted violation. The Director of Development Services shall cause an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall cause appropriate actions to remedy any violation. The complainant shall receive written confirmation indicating the results of the investigation or the final action corresponding to the particular noncompliance issue. Merced Municipal Code (MMC) Sections 19.28.080 and 19.28.090 outline the criminal penalties and civil and administrative remedies which may be incurred in the event of noncompliance. MMC 19.28.100 spells out the appeals procedures.

MONITORING MATRIX

The following pages provide a series of tables identifying the mitigation measures proposed specifically for Annexation and Pre-zone Application #15-01 and General Plan Amendment #15-04 The columns within the tables are defined as follows:

Mitigation Measure: Describes the Mitigation Measure (referenced by number).

Timing: Identifies at what point in time or phase of the project that the mitigation

measure will be completed.

Agency/Department

Consultation:

This column references any public agency or City department with which coordination is required to satisfy the identified mitigation

measure.

Verification: These columns will be initialed and dated by the individual designated

to verify adherence to the project specific mitigation.

Annexation and Pre-Zone Application #15-01 and General Plan Amendment #15-04 Mitigation Monitoring Checklist

File Number:	oject Location_	
Project Name:	Approval Date: P	Brief Project Description

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City of Merced's Mitigation Monitoring Requirements (MMC 19.28) with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6).

A) Aesthetics	STICS			
Impact			Agency or	City Verification
No.	Mitigation Measures	Timing	Department	(date and initials)
	AES-4) Lighting should be designed to provide ambiance, safety, and security without unnecessary spillover or glare onto	Building Permits	Planning Department	
	adjacent properties. The quality of light, level of light (measured in foot-		•	
	candles) and the type of bulb or source should be carefully addressed. Lighting levels should not be so intense as to			
	draw attention to the flow or glare of the project site. The			
	lighting plan should incorporate current energy-efficient			
	fixtures and technology.			
	Glare from any site lighting should be shielded from			
	adjacent properties and directed at a specific object or			
AFS-A	target area. Exposed bulbs shall not be used.			
	Wall-mounted light fixtures shall not extend above the			
	height of the wall to which the fixtures are mounted.			
	Blinking and flashing lights used to illuminate building			
	facades or to outline buildings shall not be used.			
	When security lighting is necessary, it should be recessed,			
	hooded and located to illuminate only the intended area.			
	Off-site glare and light trespass is prohibited.			
	Pedestrian areas, sidewalks, parking lots, and building			
	entrances shall be adequately lit to provide safety and			
	security.			
	All exterior lighting fixtures shall be efficient in terms of			
	design and energy use.			

Impact		Mitigation Modernes	Timing	Agency or	City Verification
AES-4	AES4a -	AES4a - The project shall comply with Mitigation Measure 3.1-4 required by the Mitigation and Reporting Program for the Merced Vision 2030 General Plan EIR.	Building Permits	Planning Department	
D) Biological Resources	ical Resou	rces			
ВІО-І	BIO-1)	BIO-1) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for nesting Swainson's hawks within 0.25 miles of the project site shall be done if construction commences between March I and September 15. If active nests are found, a qualified biologist shall determine the need (if any) for temporal restrictions on construction. The determination shall utilize criteria set forth by CDFW (CDFG 1994).	Building Permit	Planning Department	
	BIO-1a)	BIO-1a) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for western pond turtles and their nests shall be conducted if construction commences between April 1 through October 31. This survey shall include a search for nests in uplands adjacent to the creek. If nest sites are located, a 50-foot buffer rea around the nest, a 50-foot buffer area around the nest shall be established and work shall be delayed until hatching is complete and the young have left the nest site.	Building Permit	Planning Department	
	BIO-1b)	BIO-1b) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for birds protected by the Migratory Bird Treaty Act of 1918. If nesting birds are found, work in the vicinity of the nest shall be delayed until the young fledge.	Building Permit	Engineering Department	

Impact $No.$	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
BIO-3	BIO-3) Avoidance of jurisdictional Waters of the U.S. is recommended, if possible. If complete avoidance of Black Rascal Creek is infeasible, impact shall be minimized to the maximum extent practicable, and permits from ACOE, CDFW, RWQCB, and possibly CVFPS shall be secured prior to the placement of any fill material (e.g., culverts, fill dirt, rock) within jurisdictional Waters of the U.S.	Building Permit	Planning/ Engineering Department	
CUL-1	CUL-1) In the event that buried historic or archaeological resources are discovered during construction, operations shall stop within 50 feet of the find and a qualified archaeologist shall be consulted to evaluate the resource in accordance with CEQA Guidelines 15064.5. The applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. If the resource does not qualify as a significant resource, then no further protection or study is necessary. If the resource does qualify as a significant resource then the impacts shall be avoided by project activities. If the resource shall be addressed. The archaeologist shall make recommendations concerning appropriate mitigation measures that shall be implemented to protect the resources, including but not limited to excavation and evaluation of the finds in accordance with Section 15064.5 of the CEQA Guidelines. Any previously undiscovered resources found during construction within the project area should be recorded on appropriate Department of Parks and Recreation (DPR) 523 forms and evaluated for significance in terms of CEQA criteria.	Grading	Inspection Services/ Panning Department	

Impact				Agency or	City Verification
No.		Mitigation Measures	Timing	Department	(date and initials)
CUL-3	CUL-3)	CUL-3) In the event that fossils or fossil-bearing deposits are discovered during construction activities, excavations within a 50-foot radius of the find shall be temporarily halted or diverted. The project contractor shall notify a qualified paleontologist to examine the discovery. The applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. The paleontologist shall document the discovery as needed in accordance with Society of Vertebrate Paleontology standards and assess the significance of the find under the criteria set forth in CEQA Guidelines Section 15064.5. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction activities are allowed to resume at the location of the find. If the Applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of construction activities on the discovery. The plan shall be submitted to the City of Merced for review and approval prior to implementation, and the Applicant shall adhere to the recommendations in the plan.	Grading	Inspection Services/ Panning Department	

Impact				Agency or	City Verification
No.		Mitigation Measures	Timing	Department	(date and initials)
CUL-4	CUL-4) 1. 2.		Grading	Inspection Services/ Panning Department	
		alsturbance:			

Impact			Agency or	City Verification
No.	Mitigation Measures	Timing	Department	(date and initials)
	• The NAHC is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 48 hours after being notified by the commission.	Grading	Inspection Services/ Panning Department	
	 The descendant identified fails to make a recommendation. The landowner or his authorized representative rejects the recommendation of the descendant, and mediation by the NAHC fails to provide measures acceptable to the landowner. 			
	Additionally, California Public Resources Code Section 15064.5 requires the following with regards to Native American Remains:			
	When an initial study identifies the existence of, or the probable likelihood of, Native American Remains within a project, a lead agency shall work with the appropriate			
	Native Americans as identified by the Native American Heritage Commission as provided in Public Resources Code Section 5097.98. The applicant may develop a plan			
	for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American Burials with the appropriate Native Americans			
GEO-2	GEO-2) Prior to the approval of a tentative subdivision map or building permit, the City shall review plans for drainage	Tentative Map Building Permit	Engineering Department	
	component facilities to ensure that these systems are non- erosive in design.			

Imnact			Agency or	City Verification
No.	Mitigation Measures	Timing	Department	(date and initials)
GEO-2	GEO-2a) Upon completion of phased construction, subsequent phases shall re-vegetate all exposed soil surfaces within 30 days, or as otherwise approved by the City, to minimize potential topsoil erosion. Reasonable alternatives to revegetation may be employed, especially during peak high temperature periods or to avoid negative impacts to nearby agricultural activities, subject to the approval of the City.	Building Permit	Inspection Services	
GE0-4	GEO-4 A geotechnical study shall be provided prior to the issuance of a building or grading permit for this site. All recommendations for addressing expansive soils and site grading shall be implemented as well as any other recommendations determined relevant by the Chief Building Official or City Engineer.	Building Permit	Inspection Services/ Engineering	
HAZ-5	HAZ-5 Prior to the issuance of any subsequent land use entitlement for construction of a building or the issuance of a building permit, the developer shall demonstrate compliance with the requirements of the Merced County Airport Land Use Compatibility Plan (ALUCP). If compliance is not feasible, the development plan shall be modified to make compliance possible.	Site Plan Review/Building Permit	Planning Department	
HYD-1	HYD Ia Prior to the issuance of grading permits, the applicant shall file a "Notice of Intent" with and obtain a facility identification number from the State Water Resources Control Board. The project shall also submit a Stormwater Pollution Prevention Plan (SWPPP) to the City of Merced that identifies specific actions and Best Management Practices (BMP's) to prevent stormwater pollution during construction activities. (continued on next page)	Grading Permit	Inspection Services/ Engineering	

Imnact			A gonery or	City Vorification
No.	Mitigation Measures	Timing	Department	(date and initials)
HYD-1	The SWPPP shall identify a practical sequence for BMP implementation, site restoration, contingency measures,	Grading Permit	Inspection Services/	
	responsible parties, and agency contacts. The SWPPP shall include, but not be limited to, the following elements:		Engineering	
	• Comply with the requirements of the State of California's most current Construction Stormwater Permit.			
	• Temporary erosion control measures shall be implemented on all disturbed areas.			
	• Disturbed surfaces shall be treated with erosion control measures during the October 15 to April 15 rainy season.			
	• Sediment shall be retained on-site by a system of sediment basins, traps, or other BMPs.			
	• The construction contractor shall prepare Standard Operating Procedures for the handling of hazardous materials on the construction site to eliminate discharge of materials to storm drains.			
	≥ .≊ ∘			
	or by actual water sampling in cases where verification of contaminant reduction or elimination (such as inadvertent petroleum release) is required			
	by the Central Valley Regional Water Quality Control Board to determine adequacy of the measure.			
	(continues on next page)			

Impact No.		Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
HYD-5	HYD-5	HYD-5 Prior to the issuance of a building permit for this project, the applicant shall demonstrate to the City that proposed storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City's Storm Drainage Master Plan and the Post Construction Standards for the City's Phase II MS4 permit.	Grading Permit	Inspection Services/ Engineering	
HYD-8	HYD-8	HYD-8 Development of the site is required to provide fill dirt to raise the elevation of the site and achieve protection from flooding. The fill must be elevated above the computed 200-year flood elevation and freeboard is highly recommended by DWR (note: freeboard is the difference between the fill elevation and the computed flood elevation). A freeboard of 1-foot or greater will help to account for the inherent uncertainty in estimating peak flood discharges and the computed flood elevations. A Summary of the proposed fill elevations is provided in the Table below. The required fill elevation ranges from 168.4 to 167.7 ft. (NAVD88 vertical datum)	Grading Permit	Inspection Services/ Engineering	

Impact No		Mitigation Modern	CORRE	Timing	Agency or	City Verification
NOI-1	NOI-1	The construction contractor shall limit all noise-producing construction activities, including deliveries and warming up of equipment, to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No such work shall be permitted on Sundays or federal holidays without prior approval from the City.	The construction contractor shall limit all noise-producing construction activities, including deliveries and warming up of equipment, to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No such work shall be permitted on Sundays or federal holidays without prior approval from the City.	Grading Permit	Inspection Services/ Engineering	(ame and ames)
I-ION	NOI-2	Any outdoor dining areas or other outdoor uses shall have the following setbacks to maintain an acceptable noise level of 70 dB for outdoor uses:	Any outdoor dining areas or other outdoor uses shall have the following setbacks to maintain an acceptable noise level of 70 dB for outdoor uses:	Building Permit	Inspection Services/ Planning	
	Road/Railroad Santa Fe Drive North Highway BNSF Railroad	Road/Railroad Santa Fe Drive North Highway 59 BNSF Railroad	Required Setback 54 Ft. 89 Ft. 137 Ft.			
TRA-1	TRA-1	TRA-1 Prior to construction, the Site Plan Review Committee shall review the site design and determine which alternative at the western driveway is best to reduce the expected impacts. The alternatives may include those alternatives included in the traffic analysis or another alternative such as moving the driving further to the west. The developer shall provide any additional documentation or studies needed for the Site Plan Review Committee to make this determination.	rior to construction, the Site Plan Review Committee shall review the site design and determine which alternative at the western driveway is best to reduce the expected impacts. The alternatives may include those alternatives included in the traffic analysis or another alternative such as moving the driving further to the west. The developer shall provide any additional documentation or studies needed for the Site Plan Review Committee to make this determination.	Site Plan Review	Planning	
	TRA-1a	TRA-1a The southbound left-turn lane on SR 59 shall be lengthened as determined by the City Engineer and approved by Caltrans.	on SR 59 shall be lengthened Engineer and approved by			

Impact				Agency or	City Verification
No.		Mitigation Measures	Timing	Department	(date and initials)
TRA-1	TRA-1b	The development shall contribute its fair share to the cost of improvements for the intersection of SR 59 and Olive Avenue: • Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and, • Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and, • Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound and right turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes.	Building Permit	Planning	
TRA-6	TRA-6	Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR 59.	Building Permit	Planning	

Certificate of Completion:

By signing below, the environmental coordinator confirms that the required mitigation measures have been implemented as evidenced by the Schedule of Tasks and Sign-Off Checklist, and that all direct and indirect costs have been paid. This act constitutes the issuance of a *Certificate of Completion*.

Date Environmental Coordinator

570

CITY OF MERCED Planning & Permitting Division

STAFF REPORT: #18-14 AGENDA ITEM: 4.3

FROM: Kim Espinosa, PLANNING COMMISSION

Planning Manager MEETING DATE: June 6, 2018

PREPARED BY: Julie Nelson, CITY COUNCIL

Associate Planner MEETING DATE: July 16, 2018

(Tentatively)

SUBJECT:

Annexation and Pre-zoning #15-01, General Plan Amendment #15-04, and Pre-Annexation Development Agreement, initiated by Louann Bianchi, and Quad LLC, property owners. This application involves annexing 8.83 acres of land at the northwest and southwest corners of North Highway 59 and Santa Fe Drive into the City of Merced; changing the General Plan designation for the northwest corner from Open Space (OS) to Thoroughfare Commercial (CT) and pre-zoning the northwest corner as Thoroughfare Commercial (C-T) for the Thoroughfare Commercial development. The General Plan designation for the southwest corner would remain Industrial (IL) and this corner would be pre-zoned Light Industrial (I-L). *PUBLIC HEARING*

ACTION: PLANNING COMMISSION:

Recommendation to City Council

- 1) Environmental Review #15-36 (Mitigated Negative Declaration)
- 2) Pending Annexation Application #15-01
- 3) Pre-zoning Application #15-01
- 4) General Plan Amendment #15-04
- 5) Pre-Annexation Development Agreement

CITY COUNCIL:

Approve/Disapprove/Modify

- 1) Environmental Review #15-36 (Mitigated Negative Declaration)
- 2) Pending Annexation Application #15-01
- 3) Pre-zoning Application #15-01
- 4) General Plan Amendment #15-04
- 5) Pre-Annexation Development Agreement

SUMMARY

The is a request to annex and pre-zone approximately 8.83 acres of land generally located at the northwest and southwest corners of North Highway 59 and Santa Fe Drive (Attachment A). The

proposal also includes a General Plan Amendment for the northwest corner of North Highway 59 and Santa Fe Drive to change the General Plan land use designation from Open Space (OS) to Thoroughfare Commercial (CT). The proposed pre-zoning designations would be Light Industrial (I-L) for the southwest corner which is consistent with the current General Plan designation, and Thoroughfare Commercial (C-T) for the northwest corner which would be consistent with the General Plan designation if the proposed General Plan Amendment is approved.

The southwest corner of North Highway 59 and Santa Fe Drive is developed with a wholesale/retail landscape and irrigation distribution business (Horizon). No changes are proposed to the business or the site with this application. This use is consistent with the proposed Light Industrial General Plan and Zoning designations.

The northwest corner is currently vacant. Once annexed, a portion of the property would be developed with a commercial development (Attachment B). The first phase of development would consist of a gas station, mini-market, and car wash business, a fast-food restaurant, and a drive-thru coffee kiosk. The second phase could include another fast-food restaurant as well as additional retail uses (these uses are unknown at this time). For a list of uses that are appropriate for the Thoroughfare Commercial (C-T) zone, please refer to the table at Attachment C.

Staff has reviewed the proposed applications and is recommending the Planning Commission recommend approval of these applications to the City Council.

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend approval of Environmental Review #15-36 (Mitigated Negative Declaration), Pending Annexation #15-01, Pre-zoning Application #15-01, and General Plan Amendment #15-01 (including the adoption of the Resolution at Attachment I) subject to the following conditions:

- *1) All new construction within the annexation area (including modifications to the developed site at the southwest corner of North Highway 59 and Santa Fe Drive) shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
- *2) All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
- *3) Approval of Pre-Annexation #15-01, Pre-zoning Application #15-01, and General Plan Amendment #15-04 is subject to the applicant's entering into a written (legislative action) 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 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 (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 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 such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
- *5) The developer/applicant shall construct and operate all future projects within the annexation area 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.

The following conditions apply to new construction within the annexation area:

*6) Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, public landscaping within State rights-of-way, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map or first building permit 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.

The following conditions apply to the future development at the northwest corner of North Highway 59 and Santa Fe Drive:

*7) All development shall be subject to the Mitigation Measures outlined in the Mitigation Monitoring Program for Initial Study #15-36.

- *8) Site Plan Review is required prior to construction on the northwest corner, the Site Plan Review Committee shall review the site design and determine which alternative at the western driveway is best to reduce the expected impacts. The alternatives may include those alternatives included in the traffic analysis or another alternative such as moving the driveway further to the west. The developer shall provide any additional documentation or studies needed for the Site Plan Review Committee to make this determination (Mitigation Measure TRA-1).
- *9) The southbound left-turn lane on SR 59 shall be lengthened as determined by the City Engineer and approved by Caltrans (Mitigation Measure TRA-1a).
- *10) The development shall contribute its fair share to the cost of improvements for the intersection of SR 59 and Olive Avenue (Mitigation Measure TRA-1b):
 - Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and,
 - Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and.
 - Reconstruct the existing northbound right turn lane as a "free" right turn with a median island separating eastbound and right-turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes.
- *11) Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR 59 (Mitigation Measure TRA-6).
- *12) Any outdoor dining areas or other outdoor uses shall have the following setbacks to maintain an acceptable noise level of 70 dB for outdoor uses (Mitigation Measure NOI-2):
 - Road/Railroad Required Setback
 - Santa Fe Drive 54 Ft.
 - North Highway 59 89 Ft.
 - BNSF Railroad 137 F
- *13) At the time of construction, all required public improvements shall be installed along the property frontage. This includes, but is not limited to, sidewalk, curb, gutter, street lights, and street trees.
- *14) The developer shall work with Caltrans and obtain all necessary permits for all work done within the state right of way.
- *15) All construction shall comply with Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
- *16) All new utilities serving the site shall be installed underground.

- *17) All City sewer, water, and storm drain lines serving the site shall be extended across the full frontage of the property unless it is determined by the Public Works Director that these lines are not likely to be extended to serve any other property (consistent with Merced Municipal Code Section 15.40.030).
- *18) All storm water shall be contained onsite and metered out to the City's storm water system in accordance with City Standards.
- *19) A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access must be provided throughout the project site or as required by the Fire Department.
- 20) The future commercial development shall provide pedestrian and bicycle access throughout the site. Connectivity throughout the site shall be provided by pedestrian pathways. Bicycle parking shall be provided as required by the City's Zoning Ordinance.
- 21) The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
- All landscaping shall be in compliance with the City's Water Efficient Landscaping and Irrigation Ordinance (Merced Municipal Code Section 17.60) and all state-mandated conservation and drought restrictions as well as the City's Zoning Ordinance Section 20.36 Landscaping. This shall include the use of xeriscape landscaping as appropriate.
- Irrigation for all onsite landscaping shall be provided by a low-volume system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other state or city-mandated water regulations dealing with the current drought conditions.
- All landscaping in the public right-of-way shall comply with the most recently adopted water regulations by the State and City addressing water conservation measures. If turf is proposed to be installed in medians or parkstrips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
- Parking lot trees shall be installed per the City's Parking Lot Landscape Standards. Trees shall be a minimum of 15 gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list). Trees shall be installed at a ratio of 1 tree for every 6 parking spaces. A reduced number of trees may be required where there are carports with solar panels over the parking spaces. However, if all the parking spaces are covered by a carport with solar panels, then additional trees may be required at the discretion of the Development Services Director. Trees within the PG&E easement shall comply with the regulations of this easement which limits the height of trees to a maximum of 15 feet at full maturity.
- 26) All mechanical equipment shall be screened from public view.
- (*) Denotes non-discretionary conditions.

PROJECT DESCRIPTION

The proposed annexation area consists of three parcels containing approximately 8.83 acres of land. Approximately 7.83 acres is located at the northwest corner of North Highway 59 and Santa Fe Drive and the remaining 1.0 acre is located at the southwest corner of the intersection (Attachment A). The original annexation application was only for the northwest corner. However, in consultation with LAFCo (Local Agency Formation Commission), it was determined that a "logical boundary" should include the southwest corner as well.

The annexation area is bounded by Black Rascal Creek to the north, the Burlington Northern Santa Fe (BNSF) Railroad to the south, and North Highway 59 to the east. Vacant county land is located to the west of the annexation area. The annexation area is divided by Santa Fe Drive splitting the northern portion of the annexation area (7.83 acres) from the southern portion (1.0 acre). The property located at the southwest corner of North Highway 59 and Santa Fe Drive (3065 N. Hwy 59) is developed with a wholesale/retail business (Horizon). The 7.83 acres of land at the northwest corner of North Highway 59 and Santa Fe is currently vacant. The vacant land is comprised of two separate parcels – Assessor's Parcel Number (APN): 057-200-067 contains 7.4 acres and APN: 057-200-029 contains 0.43 acres.

The owner of the property at the northwest corner is in contract with a developer to purchase and develop approximately 2.5 acres of the existing 7.4-acre parcel. The 7.4 acres would be subdivided into three separate parcels (refer to the Tentative Map at Attachment D) with the developer purchasing Parcel 1 and Parcel 4 for development (Phase One). The remainder of the property would be developed in the future as Phase Two. Phase One of the development would consist of a 3,764-square-foot convenience market (AM/PM), a gas station with 8 pumps (16 fueling positions), a car wash, and a 3,462-square-foot fast food restaurant with 110 seats and a drive-thu (refer to the Site Plan at Attachment B). Parcel 4 would be developed with a drive-thru coffee shop/kiosk.

Phase Two could include a 2,695-square-foot fast-food restaurant at the western edge of the site on Parcel 2. The remainder of the site would be for the future development of commercial space totaling approximately 32,000 square feet. Development of Phase Two remains speculative at this time. The owner does not have a developer interested in constructing Phase Two. However, for CEQA Environmental Review purposes, uses were identified and analyzed as part of the annexation.

Uses allowed within the remainder of the development would be consistent with the Thoroughfare Commercial (C-T) zone and could include:

- Retail, General (i.e., drug stores, general merchandise stores, pet stores, department stores, etc.)
- Business Support Services
- Indoor Commercial Recreation, except multi-screen (6 or more) movie theaters
- Vehicle Sales
- Warehousing, Wholesaling, and Distribution

For a full list of permitted uses as well as conditional uses and uses allowed with Site Plan Review, refer to the Table at Attachment C.

No development is planned for the 0.43-acre parcel at the northeast corner of the site. This area would be used for storm drain retention for the site once it's developed.

Two driveways are proposed for Santa Fe Drive. The driveway serving Parcel One would be a right-in/right-out driveway only. This driveway would be approximately 170 feet west of the intersection of North Highway 59 and Santa Fe Drive. A second full access driveway is proposed approximately 500 feet west of the intersection. An additional right-in/right-out driveway would be provided approximately 250 feet north of the intersection on Highway 59.

The existing use at the southwest corner of North Highway 59 and Santa Fe Drive will remain unchanged. The pre-zoning designation for the site is Light Industrial (I-L) which is consistent with the current General Plan designation of Industrial (IL). For a full listing of uses allowed within the I-L zone, please refer to the table at Attachment E.

Surrounding Uses (Attachment A)

	(,	
Surrounding	Existing Use	Zoning	City General Plan
Land	of Land	Designation	Land Use Designation
		Merced	Regional/Community
North	Black Rascal Creek/Vacant Land	County	Commercial (RC)
South	BNSF Railroad/Industrial Uses	I-L	Industrial (IL)
		P-D #12 and	Commercial Office (CO)
East	Vacant Land (across SR 59)	R-1-6	and Industrial (IL)
			Regional/Community
		Merced	Commercial (RC) and
West	Vacant Land	County	Industrial (IL)

BACKGROUND

The annexation area is comprised of the northwest corner and southwest corner of North Highway 59 and Santa Fe Drive. The northwest corner of Santa Fe Drive has been vacant for many years. This property was previously identified by FEMA as an area within a floodway. Therefore, development on this property was not feasible and the property was given a General Plan designation of Open Space (OS). However, in 2014, FEMA revised the floodway and removed the majority of this property out of the floodway making it possible to be developed (Attachment F).

The southwest corner has been developed for many years with similar retail/wholesale businesses operating from the site.

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

A) The proposed annexation complies with the General Plan designation of Industrial (IND) for the southwest corner. The northwest corner of the annexation area would comply with the General Plan designation of Thoroughfare Commercial (CT) upon approval of General Plan Amendment #15-04. The southwest corner would also comply with the zoning designation of Light Industrial (I-L) and the northwest corner would comply with the designation of Thoroughfare Commercial (C-T) if the recommended pre-zoning is approved.

Policy UE-1.3

Control the annexation, Timing, Density, and Location of new Land Uses Within the City's Urban Expansion Boundaries.

Implementing Actions:

- 1.3.a The City should continue to require that all new urban development and annexations be contiguous to existing urban areas and have reasonable access to public services and facilities.
- 1.3.c The City shall encourage phasing of new development.

Policy UE-1.5

Promote Annexation of Developed Areas Within the City's Specific Urban Development Plan (SUDP)/Sphere of Influence (SOI) During the Planning Period.

Implementing Actions:

1.5.a The City should continue to promote the annexation of unincorporated urban areas within the urban expansion boundaries, which cause a duplication of public services and hinder extension of City services to new development, if they are financially feasible.

General Plan Policy UE-1.3 and Implementing Action 1.3.g requires that annexation requests be evaluated against certain criteria. Below is an evaluation of the proposed annexation against those criteria:

Criteria 1

Is the area contiguous to the Current City Limits and within the City's Specific Urban Development Plan (SUDP)/Sphere of Influence (SOI)? Do the annexed lands form a logical and efficient City limit and include older areas where appropriate to minimize the formation of unincorporated peninsulas?

Evaluation

The proposed annexation area is contiguous to the existing City Limits to east and south (see map at Attachment A). The annexation area is on the western edge of the City Limits. The annexation would form a logical and efficient boundary and does not create any new islands or peninsulas.

Criteria 2

Is the proposed development consistent with the land use classification on the General Plan Land Use Diagram (Figure 3.1)?

Evaluation

The property at the southwest corner of the annexation area is consistent with the land use classification (IND) of the General Plan diagram. The northwest corner is currently designated as Open Space. However, the proposed General Plan Amendment would change the designation to Thoroughfare Commercial (CT) which would be consistent with the proposed development on that site.

Criteria 3

Can the proposed development be served by the City water, sewer, storm drainage, fire and police protection, parks, and street systems to meet acceptable standards and service levels without requiring improvements and additional costs to the City beyond which the developer will consent to provide or mitigate?

Evaluation

The City would be able to provide all services to the annexation area. All new development within the annexation area would be required to annex into the City's Community Facilities District (CFD) for services which would cover the costs of Police and Fire protection. Public Facilities Impact Fees would also be paid that would help fund future police and fire stations, parks and street improvements.

Criteria 4

Will this annexation result in the premature conversion of prime agricultural land as defined in the Important Farmland Map of the State Mapping and Monitoring Program? If so, are there alternative locations where this development could take place without converting prime soils?

Evaluation

The annexation area is not listed as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency.

Criteria 5

Will a non-agricultural use create conflict with adjacent or nearby agricultural uses? If so, how can these conflicts be mitigated?

Evaluation

The proposed development would not conflict with any nearby agricultural uses. The land directly to the north of the site is currently vacant. Beyond the vacant land is property planted with almond trees. Other than this use, there are no other agricultural uses nearby. Therefore, there would be no conflict with ag uses.

Criteria 6

Does the annexation area help the City reach one of the following goals?

a) Does annexation of the area bring the City closer to annexation of the UC Merced campus and University Community?

- b) Does the area contain significant amounts of job-generating land uses, such as industrial, commercial, office, and business/research and development parks?
- c) Does the project provide key infrastructure facilities or other desirable amenities such as the extension of major roads, utility trunk lines, parks and recreational facilities, etc.?

Evaluation

- a) The proposed annexation does not bring the City closer to annexation the UC or UC Community area. This annexation is on the western edge of the City approximately 7 miles from UC Merced.
- b) The proposed commercial development at the northwest corner of North Highway 59 and Santa Fe would generate a small number of jobs within the City. The first phase of the development would include a fast-food restaurant, gas station/mini-market/car wash, and drive-thru coffee kiosk. The jobs generated by these uses would typically be part-time jobs, but would include some full-time jobs. The future development of Phase Two would most likely include more retail-type uses. The exact number of jobs created is not currently available, but it is certain that new jobs would be available due to development of this site.
- c) The development proposed for the northwest corner of North Highway 59 and Santa Fe Drive would be required to extend utility services across the full length of the project frontage as development occurs.

Traffic/Circulation

B) The following is a summary. For more details regarding the traffic analysis, please refer to Section O of Initial Study #15-36 at Attachment G.

<u>Substantial Increase in Traffic Levels:</u> Thresholds are established for arterial and collector type roadways. Customarily, traffic studies prepared for the City established a threshold of significance at 5% or more of existing traffic amounts contributed by the Project to an "arterial roadway" that is, or will be, operating at an unacceptable level of service (LOS) "E" or "F." KD Anderson and Associates prepared a traffic analysis for the proposed development (Attachment L) of Initial Study #15-36 (Attachment G). This analysis concluded the following:

All the roadway segments studied (SR 59, Santa Fe Drive, and Olive Avenue) are arterial roadways. Thus, the threshold of significance would be the addition of 5% of the current ADT for roadways operating at LOS "E" or "F." As shown in the table below, SR 59 from Olive Avenue to W. 16th Street is currently operating at LOS F.

Exis	ting Roadway Segm	ents Volumes and Lo	evels of Service	
Street	From	To	Daily Volume	LOS
	Buena Vista Dr.	W. Olive Ave	13,379	D
SR 59	W. Olive Ave.	BNSF RR	21,954	F
	BNSF RR	W. 16 th St.	20,462	F
Santa Fe Dr.	Beachwood Dr.	SR 59	19,733	C
W. Olive Ave	SR 59	Loughborough Dr.	25,131	C

Phase One of the proposed development at the northwest corner of North Highway 59 and Santa Fe Drive would add approximately 1,116 daily trips to the area. Phase Two would add an additional 1,924 trips for a total of 4,040 daily trips at full build-out of the project. The table on the following page shows the comparison of the existing traffic volumes to the expected traffic volumes with build-out of the project. As shown, the additional traffic generated from the project would not decrease the level of service for these roadway segments below the existing LOS. As shown below, no segment of the SR 59 that currently operates at LOS F exceeds a 5% increase in traffic volume. Therefore the project would not result in a significant impact.

E	xisting Roady	vay Segments Pl	us Project	Volumes	and Level	s of Servic	e
Street	From	То	Existing	Project	Total	Percent	LOS
			Daily	Daily	Daily	Increase	
			Volume	Volume	Volume		
	Buena Vista	W. Olive Ave	13,379	1,010	14,749	7.0%	D
	Dr.						
SR 59	W. Olive	BNSF RR	21,954	808	22,762	3.7%	F
	Ave.						
	BNSF RR	W. 16 th St.	20,462	404	20,866	2.0%	F
Santa	Beachwood	SR 59	19,733	606	20,339	3.1%	С
Fe Dr.	Dr.						
W.	SR 59	Loughborough	25,131	2,015	27,146	8.0%	С
Olive		Dr.					
Ave							

Intersections

Although SR 59 between Olive Avenue and W. 16th Street would continue to operate at an LOS F, the existing off-site intersections studied would all operate at an LOS D. However, the proposed western driveway is forecasted to operate at an LOS F in the p.m. peak hour (4-6 p.m.) In order to improve this condition, the traffic analysis offers three possible alternatives. Each scenario would have ramifications on the project.

Similarly, the SR 59 access is expected to occasionally be blocked by the queue of southbound traffic extending from the Santa Fe Drive traffic signal. Alternative measures to alleviate this issue are also noted, along with their ramifications on the site. The traffic analysis recommends Alternative #1 as the preferred mitigation measure for this impact.

Western Driveway Alternatives

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Alternative	Ramification
Install a Two-Way Left-Turn lane on Santa Fe Drive.	Requires moving driveway or reconstructing SR 59 intersection.
Prohibit outbound left turns.	Exacerbates problem at SR 59 driveway.
Install traffic signal.	Location is problematic and would likely require moving the driveway.

SR 59 Access Alternatives

Alternative	Ramification
Lengthen southbound left turn lane.	Facilitates access, but does not shorten queues (mitigation recommended by traffic analysis).
Move access to the north.	Affects Black Rascal Creek as well as property not included in project.
Close SR 59 access.	Exacerbates issues at western access and makes site untenable as a retail center.

The additional traffic on the roadways does not reach the level of significance since the amount of traffic added to the sections of road currently operating at LOS F are less than 5%. However the on-site impacts described above would require mitigation to reduce them to a less than significant level.

Cumulative Conditions

The analysis of the Cumulative Plus Project analysis determined that in order to improve the level of service at SR 59 and Olive Avenue, improvements would be needed. As mitigation for the project's proportional impact on this roadway segment, the analysis determined the development should contribute its fair share to the cost of intersection improvements.

The following Mitigation Measures have been recommended in order to reduce traffic impacts to a less than significant level. These mitigation measures are also included as Conditions #8, 9, and 10.

Mitigation Measure TRA-1

Prior to construction, the Site Plan Review Committee shall review the site design and determine which alternative at the western driveway is best to reduce the expected impacts. The alternatives may include those alternatives included in the traffic analysis or another alternative such as moving the driving further to the west. The developer shall provide any additional documentation or studies needed for the Site Plan Review Committee to make this determination.

Mitigation Measure TRA-1a

The southbound left-turn lane on SR 59 shall be lengthened as determined by the City Engineer and approved by Caltrans.

Mitigation Measure TRA-1b

The development shall contribute its fair share to the cost of improvements for the intersection of SR 59 and Olive Avenue:

- Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and,
- Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and.
- Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound and right-turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes.

Caltrans is currently working on improvements to the intersection of Olive Ave./Santa Fe Dr. and Highway 59. Caltrans would be consulted prior to any mitigation measures being constructed at this intersection.

Parking

C) The annexation does not directly produce a need for parking. However, the subsequent development would require parking to serve the future uses on the site. Parking requirements would be evaluated at the Site Plan Review and/or Building Permit phase of development.

Public Improvements/City Services

D) Streets/Sidewalks/Curb/Gutter

Santa Fe Drive and North Highway 59 shall be widened to the full width along the north side of Santa Fe Drive and the west side of Highway 59 as part of the development of the retail center. All public improvements shall be installed in this area including, but not limited to, sidewalk, curb, gutter, street lights, and street trees (Condition #13). The developer shall work with Caltrans and obtain all necessary permits for all work done within the state right of way (Condition #14).

E) Sewer/Water

The City's current water and wastewater system is capable of handling the annexation area and future development of the proposed project at the northwest corner of North Highway 59 and Santa Fe Drive. There is an existing sewer line in Olive Avenue. The project would be required to extend the main line to their site and across the entire frontage of their property (approximately 1,000 feet) as development occurs. A sewer line also exists in Highway 59, south of Olive Avenue that would serve the existing development in that area.

There is a water line in North Highway 59 which extends along the property frontage within the entire annexation area. This water line would serve both the existing development and future development.

F) Storm Drainage

Any future development within the annexation area would be required to provide on-site storm drainage facilities that would connect to the City's storm drain system (Condition #18). Details regarding this system would be addressed prior to issuance of any building permits for development. Prior to the issuance of a building permit for this project, the

applicant shall demonstrate to the City that proposed storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City's Storm Drainage Master Plan and the Post Construction Standards for the City's Phase II MS4 permit (Mitigation Measure HYD-5 and Condition #15).

Additionally, the developer would be required to submit a Storm Water Pollution Prevention Plan (SWPP) and a Storm Water Mitigation Plan (SWMP) for review and approval prior to construction (Mitigation Measures HYD-1a and 1b).

G) Police and Fire Protection

The annexation area is located within the City's Police and Fire emergency response times. All new construction within the annexation area would be required to annex into the City's Community Facilities District (CFD) for services which helps cover the cost of Police and Fire response. In addition, all new development would be required to pay the City's Public Facilities Impact Fees to help fund future Police and Fire stations.

H) Parks and Recreation

The existing use and proposed uses within the annexation area are all commercial or industrial in nature. These uses would not produce a need for additional parks and recreation facilities. However, a portion of the PFFP fees paid go towards the development of new parks within the City.

Building Design/Site Design/Landscaping/Signs

I) The annexation process does not get into the detail of building and site design, landscaping, or signs for projects. These issues would be addressed during subsequent reviews for new development.

Neighborhood Impact/Interface

J) The annexation area is not adjacent to any developed residential areas. The nearest residential uses to the annexation area are approximately 1,000 to 1,500 feet away. Public hearing notices were mailed to all property owners within 300 feet of the annexation area. To date, no one has expressed any concerns with the proposed annexation or subsequent development.

Timeliness of Annexation

K) This annexation would be the first since the Mather Road Annexation in 2009. In 2016, the City and County reached an agreement for a new Revenue Sharing Agreement which paved the way for new annexations.

Pre-Annexation Development Agreement

L) Section 20.86.150 of the Zoning Ordinance requires a property owner to enter into a Pre-Annexation Development Agreement prior to annexation. This agreement shall not become operative unless annexation proceedings are completed by the Local Agency Formation commission (LAFCO). A Draft Pre-Annexation Development Agreement (Attachment H) has been provided for the Commission to make a recommendation on to the City Council as required by Section 20.86.060 of the Zoning Ordinance. The Preannexation Development Agreement is only with the owner of the vacant land and binds the owner and her successors to certain conditions and requirements related to the development of the land. The property owner has reviewed the draft agreement and has verbally agreed to sign it prior to City Council taking final action on the agreement.

Environmental Clearance

M) The Planning staff has conducted an environmental review (Initial Study #15-36) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Draft Mitigated Negative Declaration (i.e., no significant effects in this case because of the mitigation measures and/or modifications described in Initial Study #15-36 is being recommended (Attachment G).

Attachments:

- A) Location Map
- B) Site Plan
- C) Zoning Table Commercial Uses
- D) Tentative Map
- E) Zoning Table Industrial Uses
- F) Flood Zone
- G) Initial Study
- H) Draft Pre-Annexation Development Agreement
- I) Draft Planning Commission Resolution

Ref: N:\SHARED\PLANNING\STAFFREP\SR2018\SR 18-14 Annex & Pre-Zone .docx

REFER TO ATTACHMENTS 1 THROUGH 8 OF THE ADMINISTRATIVE REPORT FOR ATTACHMENTS A THROUGH I OF STAFF REPORT #18-14.

Planning Commission Minutes Excerpt JUNE 6, 2018

4.3 Annexation and Pre-zoning #15-01, General Plan Amendment #15-04, and associated Pre-Annexation Development Agreement, initiated by Louann Bianchi, and Quad LLC, property owners. This application involves annexing 8.83 acres of land at the northwest and southwest corners of North Highway 59 and Santa Fe Drive into the City of Merced; changing the General Plan designation for the northwest corner from Open Space (OS) to Thoroughfare Commercial (CT) and pre-zoning the northwest corner as Thoroughfare Commercial (C-T) for the Thoroughfare Commercial development. The General Plan designation for the southwest corner would remain Industrial (IL) and this corner would be pre-zoned Light Industrial (I-L).

Associate Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #18-14.

Public testimony was opened at 7:56 p.m.

Speakers from the Audience in Favor:

SURINA MANN, 59 Petroleum Development, Representative for Applicant, Danville

ADAM REED, VVH Engineering Consulting, Project Representative, Atwater

There were no speakers from the audience in opposition to the project.

Public testimony was completed at 7:59 p.m.

Commissioner PADILLA inquired what the applicants' plans were in reference to Black Rascal Creek.

Planning Manager ESPINOSA assured the Commission that the applicant would still need to meet the requirements of the City's Flood Ordinance even though the LOMAR removed it out of the floodway.

Ms. ESPINOSA explained that Black Rascal Creek lays outside the annexation area.

M/S ALSHAMI-MARTINEZ, to recommend to City Council adoption of a Mitigated Negative Declaration and Mitigation Monitoring Program regarding Initial Study #15-36, and approval of Pending Annexation and Prezoning Applications #15-01 and General Plan Amendment #15-04, subject to the Findings and twenty-six (26) Conditions set forth in Staff Report #18-14 (RESOLUTION #3095):

AYES: Commissioners Alshami, Camper, Colby, Martinez, and

Chairperson Dylina

NOES: Commissioner Padilla ABSENT: None, (one vacancy)

ABSTAIN: None

Refer to Attachment 1 of the Draft Ordinance at Attachment 8 of Administrative Report #18-490 for the Pre-Annexation Development Agreement (Attachment 11 of Administrative Report #18-324).

Refer to Attachments 5 through 8 of Administrative Report #18-490 for Attachments 12 through 15 of Administrative Report #18-324.

RESOLUTION NO. 2018-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, APPROVING A MITIGATED NEGATIVE **DECLARATION FOR ANNEXATION #15-01, PRE-ZONING APPLICATION #15-01, AND GENERAL** PLAN AMENDMENT #15-04 FOR 7.83 ACRES OF LAND GENERALLY LOCATED AT THE NORTHWEST CORNER OF NORTH HIGHWAY 59 AND SANTA FE DRIVE AND 1.0 ACRE OF LAND GENERALLY LOCATED AT THE SOUTHWEST CORNER OF NORTH HIGHWAY 59 AND SANTA FE DRIVE AND APPROVING GENERAL PLAN AMENDMENT #15-05 FOR THE 7.83 ACRES OF LAND GENERALLY LOCATED AT THE NORTHWEST CORNER OF HIGHWAY 59 AND SANTA FE DRIVE CHANGING THE GENERAL PLAN LAND USE DESIGNATION FROM OPEN SPACE (OS) TO THOROUGHFARE **COMMERCIAL (C-T)**

WHEREAS, the City is processing an application for a General Plan Amendment for approximately 7.83 acres of land generally located at the northwest corner of North Highway 59 and Santa Fe Drive, and being more particularly described in Exhibit A and shown on the map at Exhibit B, both attached hereto and incorporated herein by this reference, where an environmental review was required; and

WHEREAS, the Planning Commission of the City of Merced held a noticed public hearing on June 6, 2018, at which time all those interested in the matter were provided the opportunity to speak or provide written or oral testimony regarding the application; and

WHEREAS, after hearing all of the evidence and testimony, the Planning Commission adopted Resolution #3095, attached hereto as Exhibit "C," and incorporated herein by reference, recommending that the City Council approve the General Plan Amendment and Environmental Review (Mitigated Negative Declaration); and

WHEREAS, the City Council held a noticed public hearing on September 17, 2018, at which time all those interested in the matter were provided the opportunity to speak or to provide written or oral testimony regarding the application; and

WHEREAS, the City Council continued the public hearing from the September 17, 2018 to the meeting of October 1, 2018, at which time all those interested in the matter were provided the opportunity to speak to provide written or oral testimony regarding the application.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MERCED AS FOLLOWS:

SECTION 1. <u>CALIFORNIA ENVIRONMENTAL QUALITY ACT</u>. Based upon the evidence and testimony in the record at the City Council public hearing, the City Council exercising its independent judgment and review, hereby adopts and approves the Mitigated Negative Declaration following Environmental Review #15-36 pursuant to the provisions of the California Environmental Quality Act.

SECTION 2. <u>GENERAL PLAN AMENDMENT ADOPTION</u>. The General Plan of the City of Merced is hereby amended by approving General Plan Amendment #15-04, which changes the General Plan Land Use designation for approximately 7.83 acres of land as described in Exhibit A, from Open Space (OS) to Thoroughfare Commercial (CT) as shown on the map at Exhibit D.

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regulares	PASSED AND As ar meeting held on	DOPTED by the City Conthe day of	uncil of the City of Merced at a 2018, by the following
	AYES:	Council Members:	
	NOES:	Council Members:	
	ABSENT:	Council Members:	
	ABSTAIN:	Council Members:	
			APPROVED:
			Mayor
ATTE STEV	EST: /E CARRIGAN, CI	ITY CLERK	
BY:_A	ssistant/Deputy Cit	y Clerk	
(SEA	L)		
APPR	OVED AS TO FO	RM:	
	ity Attorney	- 9-24-25,8 Date	

EXHIBIT A LEGAL DESCRIPTION

PARCEL 1: A portion of lot 96 and a portion of the West 40 feet of the 100 foot wide Southern Pacific Railroad-Oakdale Branch right-of-way (now abandoned) as shown an the map entitled, MAP OF THE CROCKER COLONY, recorded in Volume 5 of Official Plats, Page 6, Merced County Records, said portions being described as a whole as follows:

Commencing at the Northwest corner of said Lot 96 and running thence North 85° 48' 00" East 83.54 feet along the North line of said Lot 96 to a point on the Northeasterly line of Santa Fe Drive (a County Road) said point being the true point of beginning of this description; thence South 53° 11' 13" East, 308.33 feet along said Northeasterly line of Santa Fe Drive; thence Southeasterly along said northeasterly line of Santa Fe Drive along a 1,464.11 foot radius curve to the left, the long chord of which bears south 69° 35' 30" East 825.20 feet, through a central angle of 32° 44' 12", an arc distance of 836.54 feet, thence North 18° 36' 31" East 17.45 feet along said Northeasterly line of Santa Fe Drive to a point on the West line of State Highway 59; thence North 01° 24' 30" East 375.88 feet along the West line of State Highway 59 to the southeast corner of that certain real property described as Parcel II in deed from Crocker Land Company to Merced Water Company recorded in Volume 1483, Official Records, page 111, Merced County Records; thence North 8° 35' 30" West 100.00 feet to the Southwest corner of said Parcel II; thence North 01°24' 30" East 180.34 feet along the West line of said Parcel II to a point on the North line of the aforesaid Lot 96; thence south 83° 48' 00" West 945.081 feet along the North line of said Lot 96 to the true point of beginning, all as delineated on map entitled, "RECORD OF SURVEY FOR J.F. COLLINS CO.", recorded in Book 13 of surveys, page 35, Merced County Records.

EXCEPTING therefrom all that portion conveyed to the County of Merced for road widening by deed recorded January 13, 1984, in volume 2407, page 718, Merced County Records.

ALSO EXCEPTING therefrom the property and property rights and reserved in deeds recorded August 4, 1961, in Volume 1539, page 504, as Instrument No. 14501, Official Records, March 3, 1971, in Volume 1881, page 555, as Instrument No. 3989, Official Records and March 3, 1972, in volume 1881, page 572, as Instrument No. 3991, Official Records, being all oil, gas and other hydrocarbons and all other mines and minerals found in solid, gaseous or viscid state lying below a depth of 500 feet.

APN: 057-200-067

PARCEL 2: A portion of Lot 96 and a portion of the West 40 feet of the 100 foot wide Southern Pacific Railroad-Oakdale Branch right-of-way (now abandoned), according to the map entitled, MAP OF CROCKER COLONY, filed June 7, 1911, in book 5 of Maps, page 6 Merced County Records, and more particularly described as follows:

Commencing at a point that is the Southeast corner of said Lot 96, said point also being on the Northerly line of the Santa Fe Railroad right-of-way; thence South 88° 35' 30" East, 40.00 feet; thence North 01° 24' 30" West, a distance of 697 feet, to the true point of beginning; thence north 88° 25' 30" West, a distance of 100.00 feet; thence North 01° 24' 30" East, a distance of 189.93

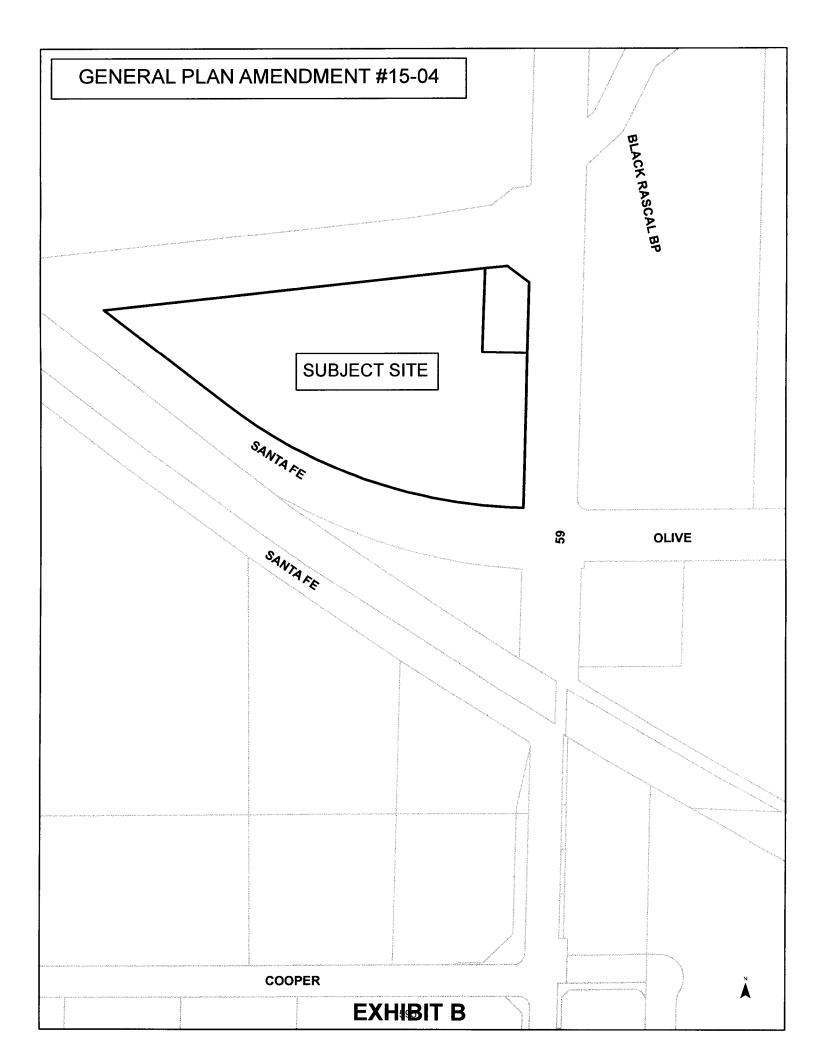
LEGAL DESCRIPTION

Page 2

feet; thence South 51° 47' 00" East, a distance of 74.78 feet; thence South 40° 05' 55" East, a distance of 60.36 feet; thence South 01° 24' 30" West, a distance of 100.00 feet to the true point of beginning.

EXCEPTING therefrom the property and property rights excepted and reserved in deeds recorded August 4, 1961, in Volume 1539, page 504, as Instrument No. 14501, Official Records, March 3, 1971, in Volume 1881, page 555, as Instrument No. 3989, Official Records and March 3, 1972, in Volume 1881, page 572, as Instrument No. 3991, Official Records, being all oil, gas and other hydrocarbons and all other mines and minerals found in solid, gaseous or viscid state lying below a depth of 500 feet.

APN: 057-200-029



CITY OF MERCED Planning Commission

Resolution #3095

WHEREAS, the Merced City Planning Commission at its regular meeting of June 6, 2018, held a public hearing and considered Pending Annexation and Pre-zoning Applications #15-01 and General Plan Amendment #15-04, initiated by Louann Bianchi, and Quad LLC, property owners. This application involves annexing 8.83 acres of land at the northwest and southwest corners of North Highway 59 and Santa Fe Drive into the City of Merced; changing the General Plan designation for the northwest corner from Open Space (OS) to Thoroughfare Commercial (CT) and pre-zoning the northwest corner as Thoroughfare Commercial (C-T) for the Thoroughfare Commercial development. The General Plan designation for the southwest corner would remain Industrial (IL) and this corner would be pre-zoned Light Industrial (I-L); also known as Assessor's Parcel Numbers 057-200-029, 057-200-067, and 057-200-042; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through M of Staff Report # 18-14; and,

WHEREAS, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Mitigated Negative Declaration and Mitigation Monitoring Program (Exhibit B) regarding Initial Study #15-36, and approval of Pending Annexation and Pre-zoning Applications #15-01 and General Plan Amendment #15-04, subject to the Conditions set forth in Exhibit A attached hereto.

Upon motion by Commissioner ALSHAMI, seconded by Commissioner MARTINEZ, and carried by the following vote:

AYES: Commissioners Alshami, Camper, Colby, Martinez, and

Chairperson Dylina

NOES: Commissioner Padilla ABSENT: None, (One Vacancy)

ABSTAIN: None

PLANNING COMMISSION RESOLUTION #__3095___ Page 2 June 6, 2018

Adopted this 6th day of June, 2018

Chairperson, Planning Commission of the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

Exhibit B – Mitigation Monitoring Program

n:shared:planning:PC Resolutions:ANX-PREZ#15-01 & GPA#15-04 NorCal Foods

Conditions of Approval Planning Commission Resolution #3095 Pending Annexation and Pre-zoning Applications #15-01 and General Plan Amendment #15-04

- 1. All new construction within the annexation area (including modifications to the developed site at the southwest corner of North Highway 59 and Santa Fe Drive) shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
- 2. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
- 3. Approval of Pre-Annexation #15-01, Pre-zoning Application #15-01, and General Plan Amendment #15-04 is subject to the applicant's entering into a written (legislative action) 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 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

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION #3095

herein. Furthermore, developer/applicant 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 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 such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

5. The developer/applicant shall construct and operate all future projects within the annexation area 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.

The following conditions apply to new construction within the annexation area:

6. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, public landscaping within State rights-of-way, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map or first building permit 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.

The following conditions apply to the future development at the northwest corner of North Highway 59 and Santa Fe Drive:

7. All development shall be subject to the Mitigation Measures outlined in the Mitigation Monitoring Program for Initial Study #15-36.

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION #3095

- 8. Site Plan Review is required prior to construction on the northwest corner, the Site Plan Review Committee shall review the site design and determine which alternative at the western driveway is best to reduce the expected impacts. The alternatives may include those alternatives included in the traffic analysis or another alternative such as moving the driveway further to the west. The developer shall provide any additional documentation or studies needed for the Site Plan Review Committee to make this determination (Mitigation Measure TRA-1).
- 9. The southbound left-turn lane on SR 59 shall be lengthened as determined by the City Engineer and approved by Caltrans (Mitigation Measure TRA-1a).
- 10. The development shall contribute its fair share to the cost of improvements for the intersection of SR 59 and Olive Avenue (Mitigation Measure TRA-1b):
 - Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and,
 - Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and,
 - Reconstruct the existing northbound right turn lane as a "free" right turn with a median island separating eastbound and right-turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes.
- 11. Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR 59 (Mitigation Measure TRA-6).
- 12. Any outdoor dining areas or other outdoor uses shall have the following setbacks to maintain an acceptable noise level of 70 dB for outdoor uses (Mitigation Measure NOI-2):
 - Road/Railroad Required Setback
 - Santa Fe Drive 54 Ft.

EXHIBIT A OF PLANNING COMMISSION RESOLUTION #3095

- North Highway 59 89 Ft.
- BNSF Railroad 137 F
- 13. At the time of construction, all required public improvements shall be installed along the property frontage. This includes, but is not limited to, sidewalk, curb, gutter, street lights, and street trees.
- 14. The developer shall work with Caltrans and obtain all necessary permits for all work done within the state right of way.
- 15. All construction shall comply with Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
- 16. All new utilities serving the site shall be installed underground.
- 17. All City sewer, water, and storm drain lines serving the site shall be extended across the full frontage of the property unless it is determined by the Public Works Director that these lines are not likely to be extended to serve any other property (consistent with Merced Municipal Code Section 15.40.030).
- 18. All storm water shall be contained onsite and metered out to the City's storm water system in accordance with City Standards.
- 19. A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access must be provided throughout the project site or as required by the Fire Department.
- 20. The future commercial development shall provide pedestrian and bicycle access throughout the site. Connectivity throughout the site shall be provided by pedestrian pathways. Bicycle parking shall be provided as required by the City's Zoning Ordinance.
- 21. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
- 22. All landscaping shall be in compliance with the City's Water Efficient Landscaping and Irrigation Ordinance (Merced Municipal Code Section 17.60) and all state-mandated conservation and drought restrictions as well as the City's Zoning Ordinance Section 20.36 Landscaping. This shall include the use of xeriscape landscaping as appropriate.

- 23. Irrigation for all onsite landscaping shall be provided by a low-volume system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other state or city-mandated water regulations dealing with the current drought conditions.
- 24. All landscaping in the public right-of-way shall comply with the most recently adopted water regulations by the State and City addressing water conservation measures. If turf is proposed to be installed in medians or parkstrips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
- 25. Parking lot trees shall be installed per the City's Parking Lot Landscape Standards. Trees shall be a minimum of 15 gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list). Trees shall be installed at a ratio of 1 tree for every 6 parking spaces. A reduced number of trees may be required where there are carports with solar panels over the parking spaces. However, if all the parking spaces are covered by a carport with solar panels, then additional trees may be required at the discretion of the Development Services Director. Trees within the PG&E easement shall comply with the regulations of this easement which limits the height of trees to a maximum of 15 feet at full maturity.
- 26. All mechanical equipment shall be screened from public view.

n:shared:planning:PC Resolutions:ANX-PREZ#15-01 & GPA#15-04 Exhibit A

ENVIRONMENTAL REVIEW #15-36 Mitigation Monitoring Program

MITIGATION MONITORING CONTENTS

This mitigation monitoring program includes a brief discussion of the legal basis and purpose of the mitigation monitoring program, a key to understanding the monitoring matrix, a discussion of noncompliance complaints, and the mitigation monitoring matrix itself.

LEGAL BASIS AND PURPOSE OF THE MITIGATION MONITORING PROGRAM

Public Resource Code (PRC) 21081.6 requires public agencies to adopt mitigation monitoring or reporting programs whenever certifying an environmental impact report or mitigated negative declaration. This requirement facilitates implementation of all mitigation measures adopted through the California Environmental Quality Act (CEQA) process.

The City of Merced has adopted its own "Mitigation Monitoring and Reporting Program" (MMC 19.28). The City's program was developed in accordance with the advisory publication, *Tracking CEQA Mitigation Measures*, from the Governor's Office of Planning and Research.

As required by MMC 19.28.050, the following findings are made:

- The requirements of the adopted mitigation monitoring program for Annexation and Pre-Zone Application #15-01 and General Plan Amendment #15-04 shall run with the real property. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
- 2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

MITIGATION MONITORING PROCEDURES

In most cases, mitigation measures can be monitored through the City's construction plan approval/plan check process. When the approved project plans and specifications, with mitigation measures, are submitted to the City Development Services Department, a copy of the monitoring checklist will be attached to the submittal. The Mitigation Monitoring Checklist will be filled out upon project approval with mitigation measures required. As project plans and specifications are checked, compliance with each mitigation measure can be reviewed.

In instances where mitigation requires on-going monitoring, the Mitigation Monitoring Checklist will be used until monitoring is no longer necessary. The Development Services Department will be required to file periodic reports on how the implementation of various mitigation measures is progressing or is being maintained. Department staff may be required to conduct periodic inspections to assure compliance. In some instances, outside agencies and/or consultants may be required to conduct necessary periodic inspections as part of the mitigation monitoring program. Fees may be imposed per MMC 19.28.070 for the cost of implementing the monitoring program.

GENERAL PLAN MITIGATION MEASURES

As a second tier environmental document, Initial Study #15-36 incorporates some mitigation measures adopted as part of the *Merced Vision 2030 General Plan Program Environmental Impact Report* (SCH# 2008071069), as mitigation for potential impacts of the Project.

NONCOMPLIANCE COMPLAINTS

Any person or agency may file a complaint asserting noncompliance with the mitigation measures associated with the project. The complaint shall be directed to the Director of Development Services in written form providing specific information on the asserted violation. The Director of Development Services shall cause an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall cause appropriate actions to remedy any violation. The complainant shall receive written confirmation indicating the results of the investigation or the final action corresponding to the particular noncompliance issue. Merced Municipal Code (MMC) Sections 19.28.080 and 19.28.090 outline the criminal penalties and civil and administrative remedies which may be incurred in the event of noncompliance. MMC 19.28.100 spells out the appeals procedures.

MONITORING MATRIX

Consultation:

The following pages provide a series of tables identifying the mitigation measures proposed specifically for Annexation and Pre-zone Application #15-01 and General Plan Amendment #15-04 The columns within the tables are defined as follows:

Mitigation Measure: Describes the Mitigation Measure (referenced by number).

Timing: Identifies at what point in time or phase of the project that the mitigation

measure will be completed.

Agency/Department This column references any public agency or City department with

which coordination is required to satisfy the identified mitigation

measure.

Verification: These columns will be initialed and dated by the individual designated

to verify adherence to the project specific mitigation.

Annexation and Pre-Zone Application #15-01, General Plan Amendment #15-04 Initial Study #15-36 Mitigation Monitoring Program--Page 3

Annexation and Pre-Zone Application #15-01 and General Plan Amendment #15-04 Mitigation Monitoring Checklist

Project Name:	File Number:
Approval Date:	Project Location
Brief Project Description	

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City of Merced's Mitigation Monitoring Requirements (MMC 19.28) with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6).

EXHIBIT B

EXHIBIT B

Annexation and Pre-Zone Application #15-01, General Plan Amendment #15-04 Initial Study #15-04 Mitigation Monitoring Program--Page A-4

A) Aesthetics				
Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
AES-4	AES-4) Lighting should be designed to provide ambiance, safety, and security without unnecessary spillover or glare onto adjacent properties. The quality of light, level of light (measured in footcandles) and the type of bulb or source should be carefully addressed. Lighting levels should not be so intense as to draw attention to the flow or glare of the project site. The lighting plan should incorporate current energy-efficient fixtures and technology. Glare from any site lighting should be shielded from adjacent properties and directed at a specific object or target area. Exposed bulbs shall not be used. Wall-mounted light fixtures shall not be used. Wall-mounted light fixtures shall not be used. When security lighting is necessary, it should be recessed, hooded and located to illuminate only the intended area. Off-site glare and light trespass is prohibited. Pedestrian areas, sidewalks, parking lots, and building entrances shall be adequately lit to provide safety and security. All exterior lighting fixtures shall be efficient in terms of design and energy use	Building Permits	Planning Department	

EXHIBIT B

Annexation and Pre-Zone Application #15-01, General Plan Amendment #15-04 Initial Study #15-04 Mitigation Monitoring Program--Page A-5

Impact No.	Ç	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)	
AES-4	AES4a -	AES4a - The project shall comply with Mitigation Measure 3.1-4 required by the Mitigation and Reporting Program for the Merced Vision 2030 General Plan EIR.	Building Permits	Planning Department		-
Biologi	D) Biological Resources	ırces				
BIO-1	BIO-1)	Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for nesting Swainson's hawks within 0.25 miles of the project site shall be done if construction commences between March I and September 15. If active nests are found, a qualified biologist shall determine the need (if any) for temporal restrictions on construction. The determination shall utilize criteria set forth by CDFW (CDFG 1994).	Building Permit	Planning Department		
	BIO-1a)	BIO-1a) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for western pond turtles and their nests shall be conducted if construction commences between April 1 through October 31. This survey shall include a search for nests in uplands adjacent to the creek. If nest sites are located, a 50-foot buffer rea around the nest, a 50-foot buffer area around the nest shall be established and work shall be delayed until hatching is complete and the young have left the nest site.	Building Permit	Planning Department		1
	BIO-1b)	BIO-1b) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for birds protected by the Migratory Bird Treaty Act of 1918. If nesting birds are found, work in the vicinity of the nest shall be delayed until the young fledge.	Building Permit	Engineering Department		

Annexation and Pre-Zone Application #15-01, General Plan Amendment #15-04 Initial Study #15-04 Mitigation Monitoring Program--Page A-6

Impact No.		Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
BIO-3	BIO-3)	BIO-3) Avoidance of jurisdictional Waters of the U.S. is recommended, if possible. If complete avoidance of Black Rascal Creek is infeasible, impact shall be minimized to the maximum extent practicable, and permits from ACOE, CDFW, RWQCB, and possibly CVFPS shall be secured prior to the placement of any fill material (e.g., culverts, fill dirt, rock) within jurisdictional Waters of the U.S.	Building Permit	Planning/ Engineering Department	
COL-1	CUL-1)	CUL-1) In the event that buried historic or archaeological resources are discovered during construction, operations shall stop within 50 feet of the find and a qualified archaeologist shall be consulted to evaluate the resource in accordance with CEQA Guidelines 15064.5. The applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. If the resource does not qualify as a significant resource, then no further protection or study is necessary. If the resource shall be avoided by project activities. If the resource shall be addressed. The archaeologist shall make recommendations concerning appropriate mitigation measures that shall be implemented to excavation and evaluation of the finds in accordance with Section 15064.5 of the CEQA Guidelines. Any previously undiscovered resources found during construction within the project area should be recorded on appropriate Department of Parks and Recreation (DPR) 523 forms and evaluated for significance in terms of CEOA criteria	Grading	Inspection Services/ Panning Department	

Annexation and Pre-Zone Application #15-01, General Plan Amendment #15-04 Initial Study #15-04 Mitigation Monitoring Program--Page A-7

Impact			Agency or	City Verification
No.	Mitigation Measures	Timing	Department	(date and initials)
CUL-3	CUL-3) In the event that fossils or fossil-bearing deposits are	Grading	Inspection	
	discovered during construction activities, excavations		Services/	
	within a 50-foot radius of the find shall be temporarily		Panning	
	halted or diverted. The project contractor shall notify a		Department	
	qualified paleontologist to examine the discovery. The			
	applicant shall include a standard inadvertent discovery			
	clause in every construction contract to inform contractors			
	of this requirement. The paleontologist shall document the			
	discovery as needed in accordance with Society of			
	Vertebrate Paleontology standards and assess the			
	significance of the find under the criteria set forth in CEQA			
	Guidelines Section 15064.5. The paleontologist shall			
	notify the appropriate agencies to determine procedures			
	that would be followed before construction activities are			
	allowed to resume at the location of the find. If the			
	Applicant determines that avoidance is not feasible, the			
	paleontologist shall prepare an excavation plan for			
	mitigating the effect of construction activities on the			
	discovery. The plan shall be submitted to the City of			
	Merced for review and approval prior to implementation,			
	and the Applicant shall adhere to the recommendations in			
	the plan.			

Annexation and Pre-Zone Application #15-01, General Plan Amendment #15-04 Initial Study #15-04 Mitigation Monitoring Program--Page A-8

Impact No.		Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
CUL-4	$\left \begin{array}{c} \text{CUL-4} \end{array}\right \left.\begin{array}{c} \text{S} \\ \text{S} \end{array}\right $	CUL-4) Guidelines Section 15064.5, Health and Safety Code Section 7050.5, and Public Resources Code (PRC)	Grading	Inspection Services/	
		the course of project development there is accidental		ranning Department	
	 B &	aiscovery or recognition of any numan remains, the following steps shall be taken:			
	I. I	There shall be no further excavation or disturbance of the			
	<u> </u>	site or any nearby area reasonably suspected to overlie adjacent human remains until the County Coroner is			
	ວົ 	contacted and determines if the remains are Native			
	W W	American and if an investigation of the cause of death is			
	~ ~	required. If the coroner determines the remains to be Notive American the coroner shall contact the Notive			
		American Heritage Commission (NAHC) within 24 hours,			
	a	and the NAHC shall identify the person or persons it			
	$\stackrel{\cdot}{q}$	believes to be the most likely descendant (MLD) of the			
	× ×	recommendations to the landowner or the person		_	
	. "	means of treating or disposing of, with appropriate dignity,			
	#	the human remains and any associated grave goods as			
	d	provided in PRC Section 5097.98.			
	2. M	Where the following conditions occur, the landowner or his			
	0 7	or her authorized representative shall rebury the Native			
		announieto dionito oithon in accordance with the			
		appropriate arguing entirer in accordance with the recommendations of the most likely descendant or on the			
	ď	project site in a location not subject to further subsurface			
	a	disturbance:			

Annexation and Pre-Zone Application #15-01, General Plan Amendment #15-04 Initial Study #15-04

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Impact	Militarities Manuelle	Timin	Agency or	City Verification
740.	Mugation Measures	Ilming	Department	(date and initials)
	 The NAHC is unable to identify a most likely descendent or 	Grading	Inspection	
	the most likely descendent failed to make a		Services/	
	recommendation within 48 hours after being notified by the		Panning	
	commission.		Department	
	 The descendant identified fails to make a recommendation. 			
	 The landowner or his authorized representative rejects the 			
	SS			
	NAHC fails to provide measures acceptable to the			
	Additionally. California Public Resources Code Section			
	American Remains:			
	When an initial study identifies the existence of, or the			
	probable likelihood of, Native American Remains within a			
	project, a lead agency shall work with the appropriate			
	Native Americans as identified by the Native American			
	Heritage Commission as provided in Public Resources			
	Code Section 5097.98. The applicant may develop a plan			
	for treating or disposing of, with appropriate dignity, the			
	human remains and any items associated with Native			
	American Burials with the appropriate Native Americans			
	as identified by the NAHC.			
GE0-2	GEO-2) Prior to the approval of a tentative subdivision map or	Tentative Map	Engineering	
	and storm water run-off control systems and their	Dunumg i Ginin	Department	
	component facilities to ensure that these systems are non-			
	erosive in design.			

Annexation and Pre-Zone Application #15-01, General Plan Amendment #15-04 Initial Study #15-04 Mitigation Monitoring Program--Page A-10

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
GE0-2	GEO-2a) Upon completion of phased construction, subsequent phases shall re-vegetate all exposed soil surfaces within 30 days, or as otherwise approved by the City, to minimize potential topsoil erosion. Reasonable alternatives to revegetation may be employed, especially during peak high temperature periods or to avoid negative impacts to nearby agricultural activities, subject to the approval of the City.	Building Permit	Inspection Services	
GE0-4	GEO-4 A geotechnical study shall be provided prior to the issuance of a building or grading permit for this site. All recommendations for addressing expansive soils and site grading shall be implemented as well as any other recommendations determined relevant by the Chief Building Official or City Engineer.	Building Permit	Inspection Services/ Engineering	
HAZ-5	HAZ-5 Prior to the issuance of any subsequent land use entitlement for construction of a building or the issuance of a building permit, the developer shall demonstrate compliance with the requirements of the Merced County Airport Land Use Compatibility Plan (ALUCP). If compliance is not feasible, the development plan shall be modified to make compliance possible.	Site Plan Review/Building Permit	Planning Department	
HYD-I	HYD Ia Prior to the issuance of grading permits, the applicant shall file a "Notice of Intent" with and obtain a facility identification number from the State Water Resources Control Board. The project shall also submit a Stormwater Pollution Prevention Plan (SWPPP) to the City of Merced that identifies specific actions and Best Management Practices (BMP's) to prevent stormwater pollution during construction activities. (continued on next page)	Grading Permit	Inspection Services/ Engineering	

EXHIBIT B

Annexation and Pre-Zone Application #15-01, General Plan Amendment #15-04 Initial Study #15-04

<i>A</i> -11
ProgramPage
Monitoring I
Mitigation

	Mitigation Measures	Timing	Department	(date and initials)
The Sh	The SWPPP shall identify a practical sequence for BMP	Grading Permit	Inspection	
implem	implementation, site restoration, contingency measures,		Services/	
respon	responsible parties, and agency contacts. The SWPPP		Engineering	
shall in	shall include, but not be limited to, the following elements:			
•	Comply with the requirements of the State of			
) r	6.7			
T	Fermit.			
· T	Temporary erosion control measures shall be			
: ·	interior on an aisial oca aleas.			
T	Disturbed surfaces shall be treated with erosion			
ં દે	control measures auring the October 15 to April 15			
Ξ ,	rumy seuson.			
ろ •	Sediment shall be retained on-site by a system of			
SK	sediment basins, traps, or other BMPs.			
. T	The construction contractor shall prepare Standard			
S.	Operating Procedures for the handling of hazardous			
W.	materials on the construction site to eliminate			
ď	discharge of materials to storm drains.			
• B	BMP performance and effectiveness shall be			
d	_			
<u>)</u>	(e.g., observation of above normal sediment release),			
Ö	or by actual water sampling in cases where			
ž	verification of contaminant reduction or elimination			
S	(such as inadvertent petroleum release) is required			
p.	by the Central Valley Regional Water Quality			
C	Control Board to determine adequacy of the measure.			
"	(continues on next nage)			

Annexation and Pre-Zone Application #15-01, General Plan Amendment #15-04 Initial Study #15-04 Mitigation Monitoring Program--Page A-12

Immant			4 2 222 222	
	Mitigation Measures	Timing	Agency or Department	Cuy verification (date and initials)
	In the event of significant construction delays or delays in final landscape installation, native grasses or other appropriate vegetative cover shall be established on the construction site as soon as possible after disturbance, as an interim erosion control measure throughout the wet season			
HYD-1b	Perm Wate Vate revie (the (Deve SWA BMA BMA oper inclu inclu inclu inclu inclu inclu from wate subm City quall	Grading Permit	Inspection Services/ Engineering	

Annexation and Pre-Zone Application #15-01, General Plan Amendment #15-04 Initial Study #15-04 Mitigation Monitoring Program--Page A-13

	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
ارني	HYD-5 Prior to the issuance of a building permit for this project, the applicant shall demonstrate to the City that proposed storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City's Storm Drainage Master Plan and the Post Construction Standards for the City's Phase II MS4 permit.	Grading Permit	Inspection Services/ Engineering	
3	HYD-8 Development of the site is required to provide fill dirt to raise the elevation of the site and achieve protection from flooding. The fill must be elevated above the computed 200-year flood elevation and freeboard is highly recommended by DWR (note: freeboard is the difference between the fill elevation and the computed flood elevation). A freeboard of 1-foot or greater will help to account for the inherent uncertainty in estimating peak flood discharges and the computed flood elevations. A Summary of the proposed fill elevations is provided in the Table below. The required fill elevation ranges from 168.4 to 167.7ft. (NAVD88 vertical datum)	Grading Permit	Inspection Services/ Engineering	

Annexation and Pre-Zone Application #15-01, General Plan Amendment #15-04 Initial Study #15-04

4-14
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g Progra
Monitorin
Mitigation.

Impact			Agency or	City Verification
Ño.	Mitigation Measures	Timing	Department	(date and initials)
I-ION	NOI-1 The construction contractor shall limit all noise-producing construction activities, including deliveries and warming up of equipment, to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No such work shall be permitted on Sundays or federal holidays without prior approval from the City.	Gra	Inspection Services/ Engineering	
NOI-I	NOI-2 Any outdoor dining areas or other outdoor uses shall have the following setbacks to maintain an acceptable noise level of 70 dB for outdoor uses:	e Building Permit	Inspection Services/ Planning	
	Nour Kuiroda Santa Fe Drive 54 Ft. North Highway 59 89 Ft. BNSF Railroad 137 Ft.			
TR4-1	TRA-1 Prior to construction, the Site Plan Review Committee shall review the site design and determine which alternative at the western driveway is best to reduce the expected impacts. The alternatives may include those alternatives included in the traffic analysis or another alternative such as moving the driving further to the west. The developer shall provide any additional documentation or studies needed for the Site Plan Review Committee to make this determination.	tt Site Plan Review d d h r r s s s s	Planning	
	TRA-1a The southbound left-turn lane on SR 59 shall be lengthened as determined by the City Engineer and approved by Caltrans.	d y		

Annexation and Pre-Zone Application #15-01, General Plan Amendment #15-04 Initial Study #15-04 Mitigation Monitoring Program--Page A-15

TRA-1b The development shall contribute its fair share to the cost of improvements for the intersection of SR 59 and Olive Avenue: • Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and, • Reconstruct westbound Tight turn lane, and extend that through lane across SR 59 along the project's frontage; and, • Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound Santa Fe Drive approach to provide dual left turn lanes. TRA-6 Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is reeded at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR	Impact				Agency or	City Verification
TRA-1b The development shall contribute its fair share to the cost of improvements for the intersection of SR 59 and Olive Avenue: • Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 55; and, • Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and, • Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound and right turning traffic. Reconstruct the eastbound and right turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes. TRA-6 Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR	Ňo.		Mitigation Measures	Timing	Department	(date and initials)
 Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and, Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and, Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound and right turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes. TRA-6 Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR 	TR4-1	TRA-1b	· ·	Building Permit	Planning	
• Reconfigure the westbound right turn lane, and extend that through lane across SR 59 along the project's frontage; and, • Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound and right turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes. TRA-6 Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR			• Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and,			
• Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound and right turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes. TRA-6 Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR			• Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and,			
TRA-6 Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to			• Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound and right turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes.			
- 6C	TRA-6	TRA-6	Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR	Building Permit	Planning	

EXHIBIT B

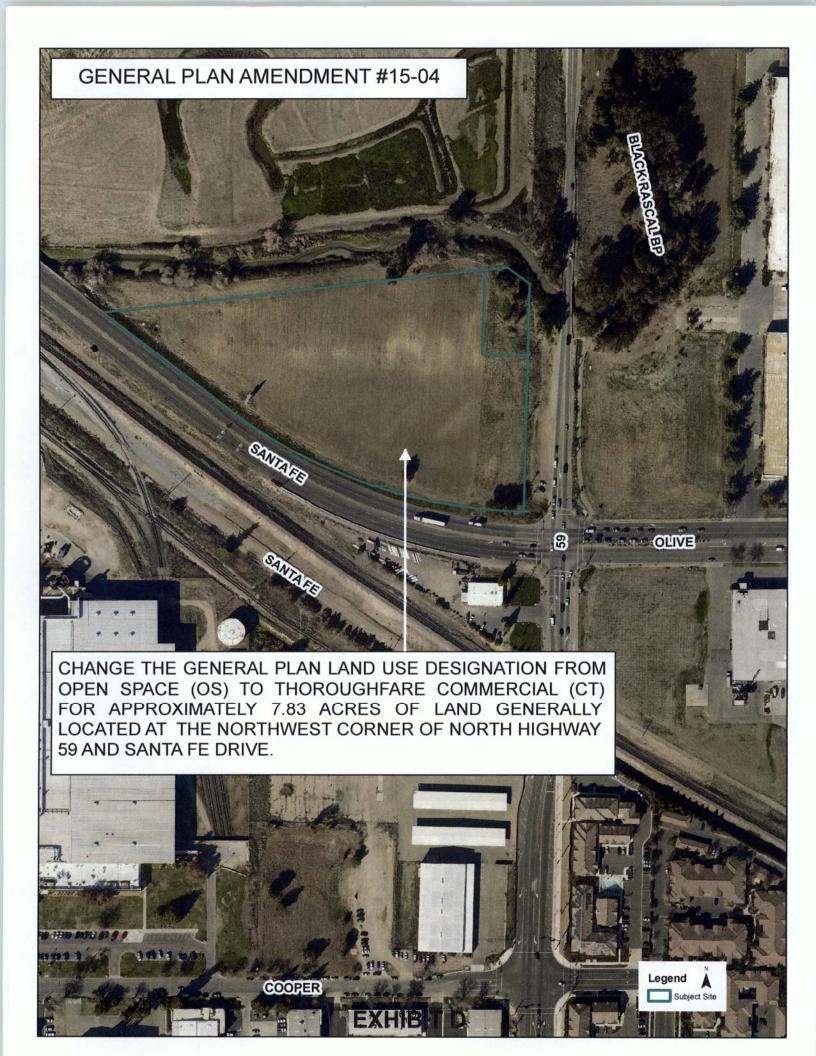
Annexation and Pre-Zone Application #15-01, General Plan Amendment #15-04 Mitigation Monitoring Program--Page A-16 Initial Study #15-04

Certificate of Completion:

By signing below, the environmental coordinator confirms that the required mitigation measures have been implemented as evidenced by the Schedule of Tasks and Sign-Off Checklist, and that all direct and indirect costs have been paid. This act constitutes the issuance of a Certificate of Completion.

Environmental Coordinator

Date



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, TO THE LOCAL AGENCY FORMATION COMMISSION FOR THE ANNEXATION OF UNINHABITED PROPERTY LOCATED AT THE NORTHWEST AND SOUTHWEST CORNERS OF NORTH HIGHWAY 59 AND SANTA FE DRIVE AS DESCRIBED HEREIN

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City Council hereby proposes and requests that proceedings be taken for the annexation proposed therein, pursuant to Part 3, Division 3, Title 5 (Section 56000 *et seq.*) of the Government Code.

SECTION 2. The proposal is for annexation to the City of Merced of certain uninhabited contiguous territory more specifically described in Exhibit "A" attached hereto, and shown upon the map attached hereto, marked Exhibit "B".

SECTION 3. The reason for the proposed annexation is to provide municipal services to said territory.

SECTION 4. The City Manager is directed to prepare and the City Clerk is directed to submit to the Executive Officer of the Merced County Local Agency Formation Commission a plan for providing services to the affected territory, pursuant to Government Code Section 56653, together with a certified copy of this Resolution.

SECTION 5.	Environmental	review fo	or this pro	ject has	been comp	leted	and
the proposal is consi	stent with the s	phere of in	nfluence	of the C	ity of Merce	ed.	

///

			ncil of the City of Merced at a 2018, by the following vote
A	YES:	Council Members:	
N	IOES:	Council Members:	
A	BSENT:	Council Members:	
A	BSTAIN:	Council Members:	
			APPROVED:
			Mayor
ATTES: STEVE	Г: CARRIGAN, CI	ΓY CLERK	
BY:	ssistant/Deputy C	lity Clerk	
(SEAL)			
APPRO	VED AS TO FOR	RM:	
Ci	T S S CAT	75-2018 Date	

The land referred to herein is situated in the unincorporated area of the County of Merced, State of California, and is described as follows:

PARCEL 1:

A portion of Lot 96 and a portion of the West 40 feet of the 100 foot wide Southern Pacific Railroad-Oakdale Branch right-of-way (now abandoned) as shown on the Map entitled, Map of the Crocker Colony, recorded in Volume 5 of Official Plats, Page 6, Merced County Records, said portions being described as a whole as follows:

COMMENCING at the Northwest corner of said Lot 96 and running thence North 83° 48' 00" East 83.54 feet along the North line of said Lot 96 to a point on the Northeasterly line of Santa Fe Drive (a County Road) said point being THE TRUE POINT OF BEGINNING of this description; thence South 53° 11' 43" East, 308.33 feet along said Northeasterly line of Santa Fe Drive; thence Southeasterly along said Northeasterly line of Santa Fe Drive along a 1,464.11 foot radius curve to the left, the long chord of which bears South 69° 35' 30" East 825.20 feet, through a central angle of 32° 44' 12", an arc distance of 836.54 feet, thence North 18° 36' 31" East 17.45 feet along said Northeasterly line of Santa Fe Drive to a point on the West line of State Highway 59; thence North 01° 24' 30" East 375.88 feet along the West line of State Highway 59 to the Southeast corner of that certain real property described as Parcel II in deed from Crocker Land Company to Merced Water Company recorded in Volume 1483, Official Records, Page 111, Merced County Records; thence North 88° 35' 30" West 100.00 feet to the Southwest corner of said Parcel II; thence North 01° 24' 30" East 180.34 feet along the West line of said Parcel Il to a point on the North line of the aforesaid Lot 96; thence South 83° 48' 00" West 945.08 feet along the North line of said Lot 96 to THE TRUE POINT OF BEGINNING, all as delineated on Map entitled, "Record of Survey for J.F. Collins Co.", recorded in Book 13 of Surveys, Page 35, Merced County Records.

EXCEPTING therefrom all that portion conveyed to the County of Merced for road widening by deed recorded January 13, 1984, in Volume 2407, Page 718, Merced County Records.

ALSO EXCEPTING therefrom the property and property rights excepted and reserved in deeds recorded August 4, 1961, in Volume 1539, Page 504, as Instrument No. 14501, Official Records, March 3, 1972, in Volume 1881, Page 555, as Instrument No. 3989, Official Records and March 3, 1972, in Volume 1881, Page 572, as Instrument No. 3991, Official Records, being all oil, gas and other hydrocarbons and all other mines and minerals found in solid, gaseous or viscid state lying below a depth of 500 feet.

Exhibit A Parcel 1 continues:

Containing a total of 7.39 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

See Exhibit B attached hereto and made a part hereof.

APN: 057-200-067

END OF DISCRIPTION.

Kaiser I. Shahbaz, L. S. 8599

9/17/2018

Page 2 of 6

PARCEL 2:

A portion of Lot 96 and a portion of the West 40 feet of the 100 foot wide Southern Pacific Railroad-Oakdale Branch right-of-way (now abandoned) as shown on the Map entitled, Map of the Crocker Colony, recorded in Volume 5 of Official Plats, Page 6, Merced County Records, said portions being described as a whole as follows:

COMMENCING at the Northwest corner of said Lot 96 and running thence North 83° 48′ 00″ East 1028.62 feet along the North line of said Lot 96 to **THE POINT OF BEGINNING**; thence North 01°24′30″ East 9.49 feet; thence South 51°57′00″ East 74.78 feet to the Westerly line of a 100.00 feet wide abandoned railroad right of way; thence leaving last said line South 40°05′55″ East 60.36 feet to the Westerly line of State Highway 59 and the City/County limit line; thence along last said line South 01°24′30″ West 100.00 feet; thence leaving last said line North 88°35′30″ West 100.00 feet; thence North 01°24′30″ East 189.83 feet to **THE POINT OF BEGINNING**, all as delineated on Map entitled, "Record of Survey for J.F. Collins Co.", recorded in Book 13 of Surveys, Page 35, Merced County Records.

Containing a total of 0.34 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

See Exhibit B attached hereto and made a part hereof.

APN: 057-200-029

END OF DISCRIPTION.

Kaiser I. Shahbaz, L. S. 8599

9/17/20/8

PARCEL 3:

A portion of Lot 96, MAP OF CROCKER COLONY, in the County of Merced, State of California, as per plat recorded in Book 5 of Maps, Page 6, records of said County and a portion of the Yosemite Valley Railroad right of way (now abandoned), described as follows:

BEGINNING at the southeast comer of the aforesaid Lot 96 and running thence northwesterly along the northerly line of the A.T. & S.F. Railroad right of way along an 11,409.16 foot radius curve to the right, through a central angle of 03° 07' 59" an arc distance of 623.88 feet to a point on the southerly line of Santa Fe Drive (a County Road); thence easterly along the southerly line of Santa Fe Drive along a 1,260.00 foot radius curve to the left through a central angle of 26° 32' 37" an arc distance of 583.72 feet; thence South 22° 47' 55" East 22.73 feet along the southerly line of said Santa Fe Drive to a point on the west line of State Highway 59; thence South 01° 24' 30" West 153.60 feet; thence North 88° 35' 30" West 40.00 feet to **THE POINT OF BEGINNING** all as delineated on map entitled, "RECORD OF SURVEY FOR J. F. COLLINS CO.", recorded in Book 13 of Surveys at Page 35, Merced County Records.

EXCEPTING therefrom the property and property rights excepted and reserved in deeds recorded August 4, 1961 in Vol. 1539 of Official Records, Page 594, as Instrument NO. 14501, March 3, 1972 in Vol. 1881 of Official Records, Page. 555, as Instrument No. 3989, and March 3, 1972 in Vol. 1881 of Official Records, page 572, as Instrument No. 3991, being all oil, gas and other hydrocarbons and all other mines and minerals found in solid, gaseous or viscid state lying below a depth of 500 feet.

Containing a total of 1.01 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

See Exhibit B attached hereto and made a part hereof.

APN: 57-200-42

Caiser I Shahbaz I S 8599

<u>9/17/20/8</u> Date

PORTION OF RASCAL CREEK:

A portion of Canal Reserve property as shown on the Map entitled, Map of the Crocker Colony, recorded in Volume 5 of Official Plats, Page 6, Merced County Records, said portion being described as a whole as follows:

COMMENCING at the Northwest corner of said Lot 96 and running thence North 83° 48' 00" East 83.54 feet along the North line of said Lot 96 to a point on the Northeasterly line of Santa Fe Drive (a County Road) said point being THE POINT OF BEGINNING of this description; thence North 53°11'12" West 260.35 feet along said Northeasterly line of Santa Fe Drive; thence leaving last said line and along the Northerly line of said Canal Reserve property the following five (5) courses: (1) South 70°04'35" East 176.18 feet; (2) North 83°48'00" East 825.98 feet; (3) North 80°52'54" East 178.90 feet; (4) North 51°57'00" East 61.30 feet to the Westerly line of a 100.00 feet wide abandoned railroad right of way; thence leaving last said line; (5) North 83°48'00" East 40.36 feet to the Westerly line of State Highway 59 and the City/County limit line; thence along last said line South 01°24'30" West 236.41 feet to the Southerly line of said Canal Reservation property; thence along said last line the following four (4) courses: (1) North 40°05'55" West 60.36 feet; (2) North 51°57'00" West 74.78 feet; (3) South 01°24'30" West 9.49 feet; (4) South 83°48'00" West 945.08 feet to THE POINT OF BEGINNING.

n Volume 1881, Page 572, as Instrument No. 3991, Official Records, being all oil, gas and other hydrocarbons and all other mines and minerals found in solid, gaseous or viscid state lying below a depth of 500 feet.

Containing a total of 2.78 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

See Exhibit B attached hereto and made a part hereof.

Kaiser I. Shahbaz, L. S. 8599

Date

OF CALIFORN

PORTION OF SANTA FE DRIVE:

A portion of Canal Reserve property as shown on the Map entitled, Map of the Crocker Colony, recorded in Volume 5 of Official Plats, Page 6, Merced County Records, said portion being described as a whole as follows:

COMMENCING at the Northwest corner of said Lot 96 and running thence North 51°48'45" West along the Southwesterly line of Santa Fe Drive and the Northeasterly line of Santa Fe Railroad, a distance of 200.57 feet; thence leaving last said line North 38°11'15" East 52.15 feet to the Northeasterly line of said Santa Fe Drive; thence along the Northeasterly line of said Santa Fe Drive the following five (5) courses: (1) South 53°11'45" East 260.35 to the Northerly line of Lot 96 as shown on said Official Map; (2) along the Northerly line of said Lot 96, North 83°48'00" East 81.00 feet; (3) leaving the Northerly line of said Lot 96, South 52°42'37" East 416.32 feet to beginning of a curve concave to the Northeast having a radius of 1139.23 feet; (4) along said curve through a central angle of 33°09'44" an arc distance of 659.37 feet; (5) North 18°36'31" East 17.45 feet to the Westerly line of State Highway No. 59; thence leaving the Northeasterly line of said Santa Fe Drive South 01°24'30" West along the Westerly line of said State Highway No. 59, a distance of 168.02 feet to the Southwesterly line of said Santa Fe Drive; thence along the Southwesterly line of said Santa Fe Drive the following four (4) courses: (1) North 22°47'55" West 22.73 feet to beginning of a curve having a radius of 1260.00 feet and a radial bearing of South 04°35'37" West; (2) along said curve through a central anale of 26°32'36" an arc distance of 583.72 feet to a non-tangent curve concave to the Northeast having a radius of 11409.16 feet and a radial bearing of South 35°48'32" West; (3) along said curve through a central angle of 02°22'43" an arc distance of 473.66 feet; (4) North 51°48'45" West 212.60 feet to THE POINT OF BEGINNING.

Containing a total of 3.60 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

See Exhibit B attached hereto and made a part hereof.

END OF DISCRIPTIONS.

Area Note: Proposed total area to be annexed to the City of Merced is 15.12 acres, more

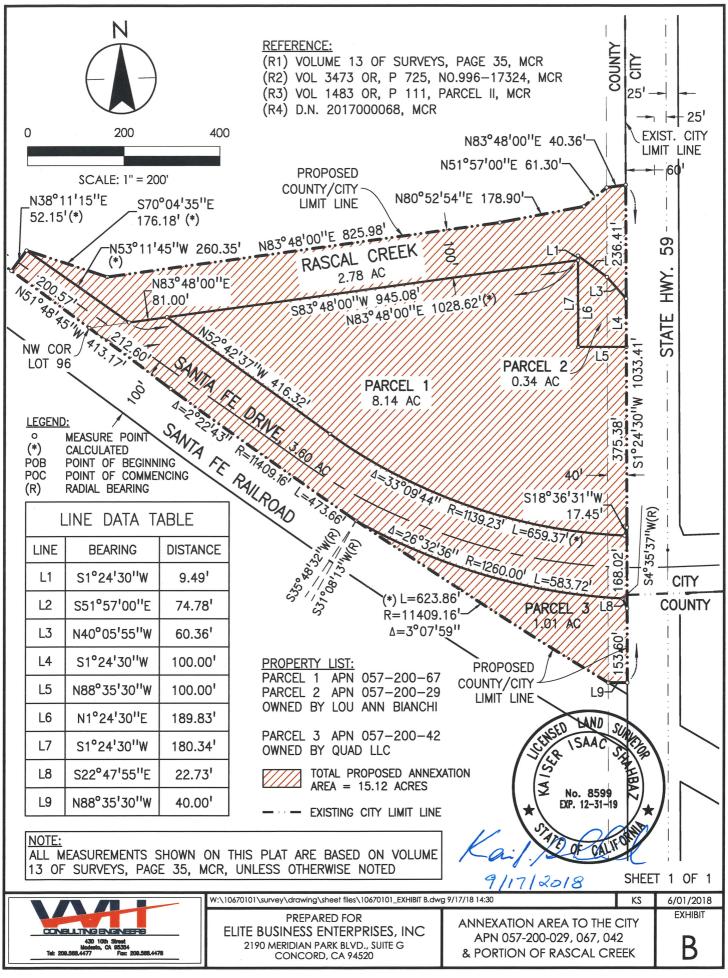
9/17/2018

or less.

Kaiser I. Shahbaz, L. S. 8599

Date

Page 6 of 6



ORDINANCE NO.	ORDINA	NCE NO.	
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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING THE OFFICIAL ZONING MAP BY PREZONING LAND GENERALLY LOCATED AT THE NORTHWEST CORNER OF NORTH HIGHWAY 59 AND SANTA FE DRIVE AS THOROUGHFARE COMMERCIAL (C-T) AND THE LAND GENERALLY LOCATED AT THE SOUTHWEST CORNER OF NORTH HIGHWAY 59 AND SANTA FE DRIVE AS LIGHT INDUSTRIAL (I-L)

THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN AS FOLLOWS:

- **SECTION 1. AMENDMENT TO CODE.** The property described in Exhibit "A" attached hereto, and by this reference made a part hereof, is hereby prezoned as shown on said map as Thoroughfare Commercial (C-T) and Light Industrial (I-L).
- **SECTION 2. CHANGE OF MAP.** The Director of Development Services is hereby directed to make the appropriate markings on the Official Zoning Map in conformance with this Ordinance and the provisions of Title 20 of the Merced Municipal Code.
- **SECTION 3. EFFECTIVE DATE.** This Ordinance shall be in full force and effect thirty (30) days after its adoption.
- **SECTION 4. SEVERABILITY.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. PUBLICATION. The City Clerk is directed to cause a copy of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption. The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ___ day of _____ 2018, and was passed and adopted at a regular meeting of said City Council held on the day 2018, by the following called vote: AYES: **Council Members: NOES: Council Members: ABSTAIN: Council Members: ABSENT: Council Members: APPROVED:** Mayor ATTEST: STEVE CARRIGAN, CITY CLERK BY: **Assistant/Deputy City Clerk** (SEAL) APPROVED AS TO FORM:

NOTICE OF POTENTIAL INTRODUCTION OF ORDINANCE

CITY OF MERCED
NOTICE IS HEREBY GIVEN that on, 2018, the City Council of the City of Merced is scheduled to consider the introduction of an Ordinance entitled:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING THE OFFICIAL ZONING MAP BY PREZONING LAND GENERALLY LOCATED AT THE NORTHWEST CORNER OF NORTH HIGHWAY 59 AND SANTA FE DRIVE AS THOROUGHFARE COMMERCIAL (C-T) AND THE LAND GENERALLY LOCATED AT THE SOUTHWEST CORNER OF NORTH HIGHWAY 59 AND SANTA FE DRIVE AS LIGHT INDUSTRIAL (I-L)
at its regular meeting to be held at 6:00 pm in the City Council Chambers at 678 West 18 th Street, Merced, California. The public is invited to provide any oral or written comments regarding this proposed Ordinance.
If adopted, this Ordinance would prezone the land described therein as Thoroughfare Commercial (C-T) and Light Industrial (I-L).
A copy of the full text of the proposed Ordinance is available for review in the Office of the City Clerk, City of Merced, 678 West 18 th Street, Merced, California and on the City's website at www.cityofmerced.org .
ASSISTANT CITY CLERK
PUBLISH:

PUBLIC NOTICE OF ADOPTION OF ORDINANCE

CITY OF MERCED

	ORDINANCE NO.			
NOTICE IS HEREB the City of Merced ac	GIVEN that on, 2018, the City Council opted Ordinance No, entitled:	of		
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING THE OFFICIAL ZONING MAP BY PREZONING LAND GENERALLY LOCATED AT THE NORTHWEST CORNER OF NORTH HIGHWAY 59 AND SANTA FE DRIVE AS THOROUGHFARE COMMERCIAL (C-T) AND THE LAND GENERALLY LOCATED AT THE SOUTHWEST CORNER OF NORTH HIGHWAY 59 AND SANTA FE DRIVE AS LIGHT INDUSTRIAL (I-L)				
Ordinance No prezones the land described therein as Thoroughfare Commercial (C-T) and Light Industrial (I-L).				
Ordinance No City Council:	was adopted by the following roll call vote of the	he		
AYES:	Council Members:			
NOES:	Council Members:			
ABSTAIN:	Council Members:			
ABSENT:	Council Members:			

A copy of the full text of Ordinance N	o is available for review in the Office
of the City Clerk, City of Merced, 678	West 18th Street, Merced, California, and on
the City's website at www.cityofmerco	ed.org.
	ASSISTANT CITY CLERK
PUBLISH:	

The land referred to herein is situated in the unincorporated area of the County of Merced, State of California, and is described as follows:

PARCEL 1:

A portion of Lot 96 and a portion of the West 40 feet of the 100 foot wide Southern Pacific Railroad-Oakdale Branch right-of-way (now abandoned) as shown on the Map entitled, Map of the Crocker Colony, recorded in Volume 5 of Official Plats, Page 6, Merced County Records, said portions being described as a whole as follows:

COMMENCING at the Northwest corner of said Lot 96 and running thence North 83° 48' 00" East 83.54 feet along the North line of said Lot 96 to a point on the Northeasterly line of Santa Fe Drive (a County Road) said point being THE TRUE POINT OF BEGINNING of this description; thence South 53° 11' 43" East, 308.33 feet along said Northeasterly line of Santa Fe Drive; thence Southeasterly along said Northeasterly line of Santa Fe Drive along a 1,464.11 foot radius curve to the left, the long chord of which bears South 69° 35' 30" East 825.20 feet, through a central angle of 32° 44' 12", an arc distance of 836.54 feet, thence North 18° 36' 31" East 17.45 feet along said Northeasterly line of Santa Fe Drive to a point on the West line of State Highway 59; thence North 01° 24' 30" East 375.88 feet along the West line of State Highway 59 to the Southeast corner of that certain real property described as Parcel II in deed from Crocker Land Company to Merced Water Company recorded in Volume 1483, Official Records, Page 111, Merced County Records; thence North 88° 35' 30" West 100.00 feet to the Southwest corner of said Parcel II; thence North 01° 24' 30" East 180.34 feet along the West line of said Parcel Il to a point on the North line of the aforesaid Lot 96; thence South 83° 48' 00" West 945.08 feet along the North line of said Lot 96 to THE TRUE POINT OF BEGINNING, all as delineated on Map entitled, "Record of Survey for J.F. Collins Co.", recorded in Book 13 of Surveys, Page 35, Merced County Records.

EXCEPTING therefrom all that portion conveyed to the County of Merced for road widening by deed recorded January 13, 1984, in Volume 2407, Page 718, Merced County Records.

ALSO EXCEPTING therefrom the property and property rights excepted and reserved in deeds recorded August 4, 1961, in Volume 1539, Page 504, as Instrument No. 14501, Official Records, March 3, 1972, in Volume 1881, Page 555, as Instrument No. 3989, Official Records and March 3, 1972, in Volume 1881, Page 572, as Instrument No. 3991, Official Records, being all oil, gas and other hydrocarbons and all other mines and minerals found in solid, gaseous or viscid state lying below a depth of 500 feet.

Exhibit A Parcel 1 continues:

Containing a total of 7.39 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

See Exhibit B attached hereto and made a part hereof.

APN: 057-200-067

END OF DISCRIPTION.

Kaiser I. Shahbaz, L. S. 8599

9/17/2018

Page 2 of 6

PARCEL 2:

A portion of Lot 96 and a portion of the West 40 feet of the 100 foot wide Southern Pacific Railroad-Oakdale Branch right-of-way (now abandoned) as shown on the Map entitled, Map of the Crocker Colony, recorded in Volume 5 of Official Plats, Page 6, Merced County Records, said portions being described as a whole as follows:

COMMENCING at the Northwest corner of said Lot 96 and running thence North 83° 48' 00" East 1028.62 feet along the North line of said Lot 96 to **THE POINT OF BEGINNING**; thence North 01°24'30" East 9.49 feet; thence South 51°57'00" East 74.78 feet to the Westerly line of a 100.00 feet wide abandoned railroad right of way; thence leaving last said line South 40°05'55" East 60.36 feet to the Westerly line of State Highway 59 and the City/County limit line; thence along last said line South 01°24'30" West 100.00 feet; thence leaving last said line North 88°35'30" West 100.00 feet; thence North 01°24'30" East 189.83 feet to **THE POINT OF BEGINNING**, all as delineated on Map entitled, "Record of Survey for J.F. Collins Co.", recorded in Book 13 of Surveys, Page 35, Merced County Records.

Containing a total of 0.34 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

See Exhibit B attached hereto and made a part hereof.

APN: 057-200-029

END OF DISCRIPTION.

Kaiser I. Shahbaz, L. S. 8599

9/17/20/8

Page 3 of 6

PARCEL 3:

A portion of Lot 96, MAP OF CROCKER COLONY, in the County of Merced, State of California, as per plat recorded in Book 5 of Maps, Page 6, records of said County and a portion of the Yosemite Valley Railroad right of way (now abandoned), described as follows:

BEGINNING at the southeast comer of the aforesaid Lot 96 and running thence northwesterly along the northerly line of the A.T. & S.F. Railroad right of way along an 11,409.16 foot radius curve to the right, through a central angle of 03° 07' 59" an arc distance of 623.88 feet to a point on the southerly line of Santa Fe Drive (a County Road); thence easterly along the southerly line of Santa Fe Drive along a 1,260.00 foot radius curve to the left through a central angle of 26° 32' 37" an arc distance of 583.72 feet; thence South 22° 47' 55" East 22.73 feet along the southerly line of said Santa Fe Drive to a point on the west line of State Highway 59; thence South 01° 24' 30" West 153.60 feet; thence North 88° 35' 30" West 40.00 feet to **THE POINT OF BEGINNING** all as delineated on map entitled, "RECORD OF SURVEY FOR J. F. COLLINS CO.", recorded in Book 13 of Surveys at Page 35, Merced County Records.

EXCEPTING therefrom the property and property rights excepted and reserved in deeds recorded August 4, 1961 in Vol. 1539 of Official Records, Page 594, as Instrument NO. 14501, March 3, 1972 in Vol. 1881 of Official Records, Page. 555, as Instrument No. 3989, and March 3, 1972 in Vol. 1881 of Official Records, page 572, as Instrument No. 3991, being all oil, gas and other hydrocarbons and all other mines and minerals found in solid, gaseous or viscid state lying below a depth of 500 feet.

Containing a total of 1.01 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

See Exhibit B attached hereto and made a part hereof.

APN: 57-200-42

Caiser I Shahbaz I S 8599

<u>9/17/2018</u> Date

PORTION OF RASCAL CREEK:

A portion of Canal Reserve property as shown on the Map entitled, Map of the Crocker Colony, recorded in Volume 5 of Official Plats, Page 6, Merced County Records, said portion being described as a whole as follows:

COMMENCING at the Northwest corner of said Lot 96 and running thence North 83° 48' 00" East 83.54 feet along the North line of said Lot 96 to a point on the Northeasterly line of Santa Fe Drive (a County Road) said point being THE POINT OF BEGINNING of this description; thence North 53°11'12" West 260.35 feet along said Northeasterly line of Santa Fe Drive; thence leaving last said line and along the Northerly line of said Canal Reserve property the following five (5) courses: (1) South 70°04'35" East 176.18 feet; (2) North 83°48'00" East 825.98 feet; (3) North 80°52'54" East 178.90 feet; (4) North 51°57'00" East 61.30 feet to the Westerly line of a 100.00 feet wide abandoned railroad right of way; thence leaving last said line; (5) North 83°48'00" East 40.36 feet to the Westerly line of State Highway 59 and the City/County limit line; thence along last said line South 01°24'30" West 236.41 feet to the Southerly line of said Canal Reservation property; thence along said last line the following four (4) courses: (1) North 40°05'55" West 60.36 feet; (2) North 51°57'00" West 74.78 feet; (3) South 01°24'30" West 9.49 feet; (4) South 83°48'00" West 945.08 feet to THE POINT OF BEGINNING.

n Volume 1881, Page 572, as Instrument No. 3991, Official Records, being all oil, gas and other hydrocarbons and all other mines and minerals found in solid, gaseous or viscid state lying below a depth of 500 feet.

Containing a total of 2.78 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

See Exhibit B attached hereto and made a part hereof.

Kaiser I. Shahbaz, L. S. 8599

Date

Page **5** of **6**

PORTION OF SANTA FE DRIVE:

A portion of Canal Reserve property as shown on the Map entitled, Map of the Crocker Colony, recorded in Volume 5 of Official Plats, Page 6, Merced County Records, said portion being described as a whole as follows:

COMMENCING at the Northwest corner of said Lot 96 and running thence North 51°48'45" West along the Southwesterly line of Santa Fe Drive and the Northeasterly line of Santa Fe Railroad, a distance of 200.57 feet; thence leaving last said line North 38°11'15" East 52.15 feet to the Northeasterly line of said Santa Fe Drive; thence along the Northeasterly line of said Santa Fe Drive the following five (5) courses: (1) South 53°11'45" East 260.35 to the Northerly line of Lot 96 as shown on said Official Map; (2) along the Northerly line of said Lot 96, North 83°48'00" East 81.00 feet; (3) leaving the Northerly line of said Lot 96, South 52°42'37" East 416.32 feet to beginning of a curve concave to the Northeast having a radius of 1139.23 feet; (4) along said curve through a central angle of 33°09'44" an arc distance of 659.37 feet; (5) North 18°36'31" East 17.45 feet to the Westerly line of State Highway No. 59; thence leaving the Northeasterly line of said Santa Fe Drive South 01°24'30" West along the Westerly line of said State Highway No. 59, a distance of 168.02 feet to the Southwesterly line of said Santa Fe Drive; thence along the Southwesterly line of said Santa Fe Drive the following four (4) courses: (1) North 22°47'55" West 22.73 feet to beginning of a curve having a radius of 1260.00 feet and a radial bearing of South 04°35'37" West; (2) along said curve through a central anale of 26°32'36" an arc distance of 583.72 feet to a non-tangent curve concave to the Northeast having a radius of 11409.16 feet and a radial bearing of South 35°48'32" West; (3) along said curve through a central angle of 02°22'43" an arc distance of 473.66 feet; (4) North 51°48'45" West 212.60 feet to THE POINT OF BEGINNING.

Containing a total of 3.60 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

See Exhibit B attached hereto and made a part hereof.

END OF DISCRIPTIONS.

Area Note: Proposed total area to be annexed to the City of Merced is 15.12 acres, more or less.

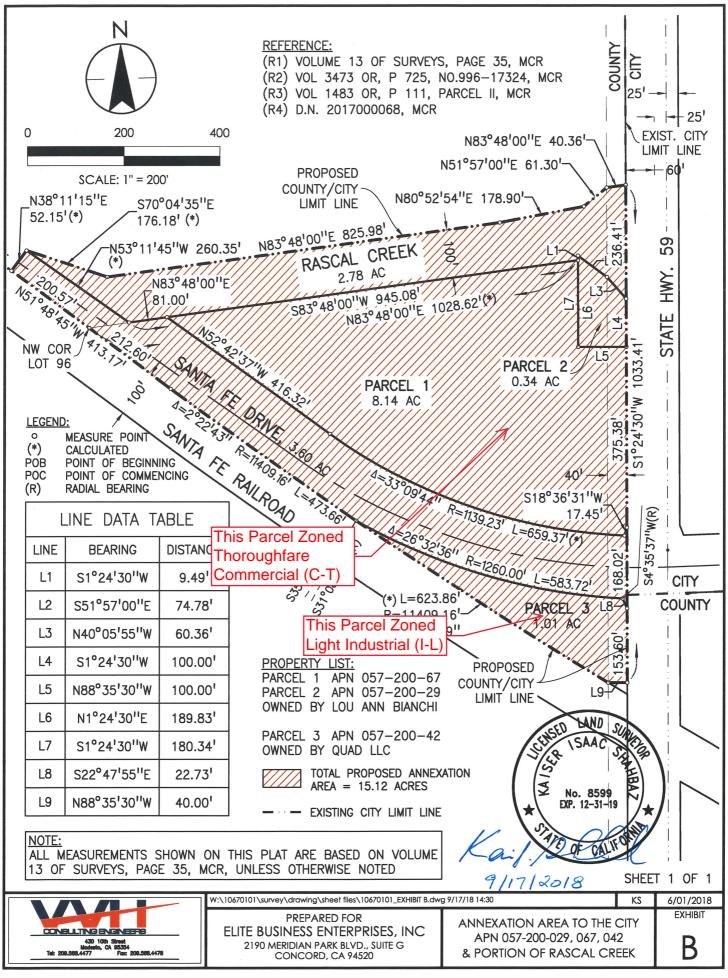
9/17/2018

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Kaiser I. Shahbaz, L. S. 8599

Date

Page 6 of 6



ORDINANCE NO.	
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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, APPROVING A PRE-ANNEXATION DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MERCED AND LOU ANN BIANCHI FOR THE HIGHWAY 59 AND SANTA FE ANNEXATION

WHEREAS, Section 65864 *et seq.* of the Government Code of the State of California and City of Merced Resolution 2005-101 authorize the execution of agreements establishing and maintaining requirements applicable to the development of real property; and,

WHEREAS, In accordance with the procedure specified in said Resolution, Lou Ann Bianchi, hereinafter "the Developer" has filed with the City of Merced an application for a Pre-Annexation Development Agreement (hereinafter "this Agreement"), for property generally located at the northwest corner of North Highway 59 and Santa Fe Drive, and said application has been reviewed and accepted for filing by the Director of Development Services; and,

WHEREAS, Notice of the City's intention to consider adoption of this Agreement with the Developer has been duly given in the form and manner required by law, and the Planning Commission and City Council of said City have each conducted public hearings on June 6, 2018 (Planning Commission), and July 16, 2018 (City Council) at which time each heard and considered all evidence relevant and material to said subject.

THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN AS FOLLOWS:

- **SECTION 1. FINDINGS.** The City Council hereby finds and determines, with respect to this Agreement by and between the City of Merced and the Developer, that it:
 - A. Is consistent with the objectives, policies, general land uses, and programs specified in the City of Merced's General Plan in that this Agreement makes reasonable provision for the use of certain real

- property for commercial development consistent with the General Plan's land use designation of Thoroughfare Commercial (CT);
- B. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the Subject Property referred to therein is located as this Agreement provides for commercial development;
- C. Is in conformity with the public convenience, general welfare, and good land use practice because it makes reasonable provision for a balance of land uses compatible with the remainder of the City;
- D. Will not be detrimental to the health, safety, or general welfare because it provides adequate assurances for the protection thereof;
- E. Notice of the public hearing before the Planning Commission was published in a newspaper of general circulation at least ten (10) days before the Planning Commission public hearing, and mailed or delivered at least ten (10) days prior to the hearing to the project applicant and to each agency expected to provide water, sewer, schools, police protection, and fire protection, and to all property owners within three hundred feet (300') of the property as shown on the latest equalized assessment roll;
- F. Notice of the public hearing before the Planning Commission included the date, time, and place of the public hearing, the identity of the hearing body, a general explanation of the matter to be considered, a general description and text or by diagram of the location of the real property that is the subject of the hearing, and of the need to exhaust administrative remedies;
- G. Notice of the public hearing before the City Council was published in a newspaper of general circulation at least ten (10) days prior to the City Council public hearing, mailed at least ten (10) days prior to the hearing to the project applicant, to each agency expected to provide water, sewer, schools, police protection, and fire protection, and to all property owners within three hundred feet (300') of the property as shown on the latest equalized assessment roll;

- H. Notice of the City Council hearing included the date, the time, and place of the public hearing, the identity of the hearing body, the general explanation of the matter to be considered, a general description in text or by diagram of the location of the Subject Property that is the subject of the hearing, and the notice of the need to exhaust administrative remedies;
- I. City Council approved this Agreement by Ordinance based upon evidence and findings of the Planning Commission and new evidence presented at its hearing on this Agreement, giving its reasons therefore and set forth their relationship between this Agreement and the General Plan;
- J. The benefits that will accrue to the people of the City of Merced from this legislation and this Agreement are as follows:
 - a. Participation in future Financing Districts to finance the expansion of the City's sewer facilities and system to upgrade the City's sewer treatment facility;
 - b. Upgrade, improvement, and replacement of existing public infrastructure adjacent to and within the Subject Property, including as follows:
 - i. Install all public improvements, including but not limited to, sidewalk, curb, gutter, street lights, and street trees along the property frontage along North Highway 59 and Santa Fe Drive;
 - ii. Extension of City water and sewer facilities across the full frontage of the property along Santa Fe Avenue;
 - iii. Provide fire hydrants as determined by the Fire Marshal; and,
 - iv. Provide storm drainage tie-in into existing storm water drainage system.

- c. Underground all utilities within the Subject Property site, but shall not be responsible for undergrounding existing utilities outside of the Subject Property;
- d. Connect all development to the City water system and pay all applicable connection fees;
- e. Developer agrees to form a Mello-Roos Community Facilities District (CFD) for infrastructure and maintenance within the Subject Property with waiver of protest rights;
- f. Improve/upgrade/replace all existing County infrastructure (road, utilities, etc.) adjacent to and within the Subject Property consistent with City of Merced standards.

The foregoing improvements are to be constructed and paid for by Developer.

SECTION 2. APPROVAL. This Agreement, attached hereto and incorporated herein by this reference as Attachment "1" is hereby approved. The City Manager is authorized and directed to evidence such approval by executing this Agreement for, and in the name of, the City of Merced; and the City Clerk is directed to attest thereto; provided, however, that this Agreement shall not be executed by the City until this Ordinance takes effect and the City has received from the applicant two executed originals of said Agreement.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 4. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. PUBLICATION. The City Clerk is directed to cause a copy of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the 2nd day of July 2018, and was passed and adopted at a regular meeting of said City Council held on the 16th day of July 2018, by the following called vote:

AYES:	Council Members:		
NOES:	Council Members:		
ABSTAIN:	Council Members:		
ABSENT:	Council Members:		
		APPROVED:	
		Mayor	
ATTEST: STEVE CARRIG	AN, CITY CLERK		
BY:Assistant/D	eputy City Clerk		
(SEAL)			

APPROVED AS TO FORM:

City Attorney

Date

NOTICE OF POTENTIAL INTRODUCTION OF ORDINANCE

CITY OF MERCED NOTICE IS HEREBY GIVEN that on ______, 2018, the City Council of the City of Merced is scheduled to consider the introduction of an Ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, APPROVING A PRE-ANNEXATION DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MERCED AND LOU ANN BIANCHI FOR THE HIGHWAY 59 AND SANTA FE **ANNEXATION** at its regular meeting to be held at 6:00 pm in the City Council Chambers at 678 West 18th Street, Merced, California. The public is invited to provide any oral or written comments regarding this proposed Ordinance. If adopted, this Ordinance would approve a pre-annexation development agreement between the City of Merced and Lou Ann Bianchi for the Highway 59 and Santa Fe Annexation. A copy of the full text of the proposed Ordinance is available for review in the Office of the City Clerk, City of Merced, 678 West 18th Street, Merced, California, and on the City's website at www.cityofmerced.org.

PUBLISH:

ASSISTANT CITY CLERK

PUBLIC NOTICE OF ADOPTION OF ORDINANCE

CITY OF MERCED

ORDINANCE NO. NOTICE IS HEREBY GIVEN that on ______, 2018, the City Council of the City of Merced adopted Ordinance No. _____, entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, APPROVING A PRE-ANNEXATION DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MERCED AND LOU ANN BIANCHI FOR THE HIGHWAY 59 AND SANTA FE ANNEXATION Ordinance No. _____ approves a Pre-Annexation Development Agreement between the City of Merced and Lou Ann Bianchi for the Highway 59 and Santa Fe Annexation. Ordinance No. _____ was adopted by the following roll call vote of the City Council: Council Members: AYES: Council Members: NOES: Council Members: ABSTAIN: Council Members: ABSENT:

A copy of the full text of Ordinance No of the City Clerk, City of Merced, 678 the City's website at www.cityofmerced	West 18 th Street, Merced, California, and on
_	ASSISTANT CITY CLERK
PUBLISH:	

RECORDED AT THE REQUEST OF City Clerk City of Merced A California Charter Municipal Corporation

WHEN RECORDED RETURN TO City Clerk City of Merced 678 West 18th Street Merced, California 95340

(Space Above Line For Recorder's Use)

PRE-ANNEXATION DEVELOPMENT AGREEMENT

PENDING ANNEXATION/PRE-ZONING NO. 15-01
"HIGHWAY 59 & SANTA FE ANNEXATION"

LOUANN BIANCHI

Date:			

PRE-ANNEXATION DEVELOPMENT AGREEMENT BETWEEN CITY OF MERCED AND LOUANN BIANCHI

This Pre-Annexation Development Agreement ("Agreement") is entered into to be effective on the date it is recorded with the Merced County Clerk/County Recorder (the "Effective Date") by and among the City of Merced, a California Charter Municipal Corporation ("City") and the persons listed below ("Owner"):

Louann Bianchi 151 N. Ulukoa Pl. Lahaina, HI 96761-1969

RECITALS

- A. To provide for orderly planning, City has the authority pursuant to California Government Code Sections 65300 and 65301 to include in its General Plan land outside its boundaries which is in the City's sphere of influence or in the City's judgment bears a relation to its planning and, pursuant to Section 65450, to adopt specific plans for any part of the area covered by the General Plan. City also has the authority pursuant to California Government Code Section 65859 to prezone property adjoining the City for the purpose of determining the zoning designation that will apply to the property in the event of a subsequent annexation of the property to the City.
- B. The Legislature of the State of California has adopted California Government Code Section 65864-65869.5 ("Development Agreement Legislation") which authorizes a city to enter into a binding development agreement with persons having legal or equitable interests in real property located within a city's municipal boundaries or in unincorporated territory within a city's sphere of influence for the development of such property in order to, among other things: encourage and provide for the development of public facilities; to support development projects; provide certainty in approval of development projects in order to avoid a waste of resources and escalation in project costs and encourage

an investment in and commitment to comprehensive planning, which will make maximum efficient utilization of resources at the least economic cost to the public land; provide assurance to the applicants for development projects that they may proceed with their projects in accordance with existing policies, rules and regulations and subject to the conditions of approval of such projects as provided in such annexation and/or development agreements.

- C. Pursuant and subject to the Development Agreement Legislation, the City's police powers, and City Council Resolution No. 95-6, City is authorized to enter into binding agreements with persons having legal or equitable interest in real property located within the City's municipal boundaries or sphere of influence thereby establishing the conditions under which such property may be developed in the City or may be annexed into the City and governing development of such property upon its annexation.
- D. By electing to enter into this Agreement, City shall bind future Members of the City Council of City by the obligations specified herein and further limit the future exercise of certain governmental and proprietary powers by any Member of the City Council to the extent such limitation is provided in the Development Agreement Legislation.
- E. The terms and conditions of this Agreement have undergone extensive review by the staff of the City, the City's Planning Commission, the City Council of City, and Owner, and have been found to be fair, just, and reasonable.
- F. City finds and determines that it will be in the best interests of its citizens and the public health, safety and welfare will be served by entering into this Agreement.
- G. All of the procedures of the California Environmental Quality Act have been met with respect to this Agreement.
- H. City was incorporated on April 1, 1889, and the City Charter was approved on April 12, 1949 and last amended on in January 2008.
- I. Owner is the fee or equitable owner of two parcels totaling approximately 7.83 acres of undeveloped land located within the City's sphere of influence, hereinafter referred to as the "Property" as legally described in Exhibit "A" and depicted on the map thereto, both attached hereto and made a part herein by this reference.

- J. Owner has requested City to apply to the Merced County Local Agency Formation Commission ("LAFCO") to annex the Property. City is not opposed to Owner's request and will consider said request upon Owner's execution of this Agreement.
- K. City and Owner desire that the Property be developed pursuant to the land uses and conditions of Pending Annexation and Prezoning #15-01and Expanded Initial Study #15-36.
 - L. The City Council of City hereby finds and determines that:
- (1) The environmental impacts of the Project have been reviewed and all measures deemed feasible to mitigate adverse impacts thereof have been incorporated into the City approvals for the Project.
- (2) No other mitigation measures for environmental impacts created by the Project, as presently approved, shall be required for development of the Project unless mandated by law.
- (3) City may, pursuant to and in accordance with its rules, regulations, and ordinances, conduct an environmental review of subsequent discretionary entitlements for the development of the Project or any changes, amendments, or modifications to the Project. The City, as a result of such review, may impose additional measures (or conditions) to mitigate as permitted by law the adverse environmental impacts of such development entitlement which were not considered or mitigated at the time of approval of the Project.
- M. As a Mitigated Negative Declaration was prepared for the Project vested by this Agreement, the following language is to be included:
- (1) Within forty-eight (48) hours of the effective date of this Agreement, Owner shall deliver to the City's Planning Department a check payable to the County Clerk in the amount of Two Thousand Three Hundred Thirty Dollars and Seventy-Five Cents (\$2,330.75.), which includes the Two Thousand Two Hundred Eighty Dollars and Seventy-Five Cents (\$2,280.75) fee required by Fish and Game Code Section 711.4(d)(3) plus the Fifty Dollar (\$50.00) County administrative fee to enable the City to file the Notice of Determination required under Public Resources Code Section 21152 and 14 Cal. Code of Regulations 15075. If within such forty-eight (48) hour period the Owner has not delivered to the City's Planning Department the check required above, this Agreement shall be

void by reason of failure of a material condition, Fish and Game Code Section 711.4.

	N. City Co	ouncil of City has approved this Agreement by	y Ordinance
No	adopted o	n, 2018, and effective on	, 2018.

NOW, THEREFORE, in consideration of the above Recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto do hereby agree as follows:

- 1. <u>Incorporation of Recitals</u>. The RECITALS above are true and correct and constitute an enforceable provision of this Agreement.
- 2. <u>Definitions</u>. In this Agreement, unless the context otherwise requires, the following words and phrases shall have the meaning set forth below:
 - 2.1 "City" is the City of Merced.
 - 2.2 "County" is the County of Merced.
 - 2.3 "Development Exaction" means any requirement of City in connection with or pursuant to any Land Use Regulation or Existing Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.
 - 2.4 "Development Plan" means the Existing Development Approvals defined in Section 2.6 below which are applicable to development of the Project.
 - 2.5 "Effective Date" means the date upon which the Ordinance approving this Agreement becomes effective, which date is thirty (30) days following the date the City Council adopted such Ordinance absent a referendum challenge.
 - 2.6 "Existing Development Approval(s)" means those certain development approvals in effect as of the effective date of this Agreement with respect to the Property, including, without limitation, the "Existing Development Approvals" listed in Exhibit "B" attached hereto and incorporated herein by this reference, which were approved by the City.

- 2.7 "Financing District" means a Community Facilities District formed pursuant to the Mello-Roos Community Facilities Act of 1982, (California Government Code Sections 53311 et seq., as amended, and referred to hererin as the "Mello-Roos" Law); an assessment district formed pursuant to the Landscaping and Lighting Act of 1972, (California Streets and Highways Code Sections 22500 et seq., as amended); a special assessment district formed pursuant to the Municipal Improvement Act of 1913, (California Streets and Highways Code Section 10100, et seq., as amended); or any other special assessment district pursuant to State law or by virtue of the City's status as a Charter City, formed for the purposes of financing the cost of public improvements, facilities, services and/or public facilities fees within a specific geographical area of the City.
- 2.8 "Future General Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City applicable to all properties in the City after the Effective Date and as stipulated in Section 14 of this Agreement.
- 2.9 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City, governing the development and use of land including without limitation, the permitted use of land; the density or intensity of use; subdivision requirements; the maximum height and size of proposed buildings; the provisions for reservation or dedication of land for public purposes; and the design, improvement, and construction standards and specifications applicable to the development of the Property listed on Exhibit "C" attached hereto and incorporated herein by this reference, which are a matter of public record on the Effective Date of this Agreement. "Land Use Regulations" does not include any County or City ordinance, resolution, code, rule, regulation, or official policy governing:
 - (a) The conduct of businesses, professions, and occupations;
 - (b) Taxes and assessments;
 - (c) The control and abatement of nuisances:
 - (d) The provision, maintenance, expansion, termination, conditions and limitations of municipal water and sewer services;

- (e) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property;
- (f) The exercise of the power of eminent domain.
- 2.10 "Owner" means the person or entity having a legal or equitable interest in the Property and Project and all successors, transferees, or assigns thereof;
- 2.11 "Project" or "Projects" is the development of the Property in accordance with the Development Plan.
- 2.12 "Property" is the real property legally described in Exhibit "A" and depicted on the map thereto, both attached hereto and incorporated herein by this reference.
- 2.13 "Subdivision" shall have the same meaning as that term is defined in Government Code Section 66424.
- 2.14 "Subsequent Development Approvals" means all development approvals required subsequent to the Effective Date in connection with development of the Property.
- 2.15 "Subsequent Land Use Regulation" means any Land Use Regulation adopted and effective after the Effective Date of this Agreement.
- 3. <u>Interest of Owner</u>. Owner represents that it has the fee title or equitable interest in the Property, and that all other persons holding legal or equitable interests in the Property are to be bound by this Agreement.
- 4. <u>Exhibits.</u> The following documents are referred to in this Agreement attached hereto, incorporated herein, and made a part hereof by this reference:

Exhibit Designation	Description
Exhibit A	Property Legal Description and Map
Exhibit B	Existing Development Approvals
Exhibit C	Land Use Regulations
Exhibit D	Public Benefits
Exhibit E	Notice of Default to Mortgagee
Exhibit F	Planning Commission Resolution #3095

5. <u>Term of Agreement.</u>

- 5.1 <u>Term</u>. The term of this Agreement shall commence on the Effective Date and shall extend for a period of ten (10) years thereafter, unless this Agreement is sooner terminated, modified, or extended by circumstances set forth in this Agreement or by mutual consent of the parties hereto.
- 5.2 <u>Time to Annex</u>. Except as otherwise expressly provided in this Agreement, this Agreement shall terminate and be of no further force and effect if the change of organization or reorganization ("Annexation") of the Property is not approved by the Merced County Local Agency Formation Commission ("LAFCO") and the City Council of City and any other appropriate public agencies having jurisdiction thereover within two (2) years after the effective date of this Agreement unless extended in writing by mutual agreement of the parties.
- 5.3 <u>Termination by Litigation</u>. This Agreement shall terminate and be of no force and effect upon the occurrence of the entry of a final judgment or issuance of a final order after exhaustion of any appeals directed against the City as a result of any lawsuit filed against the City to set aside, withdraw, or abrogate the approval by the City Council of City of this Agreement.
- 5.4 <u>Subdivision Map Act Compliance</u>. Any tentative map prepared for the Subdivision under this Agreement shall comply with the provisions of Government Code Section 66473.7.
- 6. <u>Permitted Use and Density</u>. The permitted use of the Property is a commercial center to include a gas station, mini-market, car wash, fast-food restaurant, and drive-through coffee shop along with other unknown commercial uses.
- 7. <u>Public Benefits</u>. In accordance with Section 1 of City Resolution No. 2005-101, specific public benefits are provided to City beyond those already forthcoming through Project approvals in return for the City's commitments to maintain present plans as regulations for the determinate period set forth in this Agreement. These specific public benefits are set forth on Exhibit "D" attached

hereto and incorporated herein by this reference as if set forth in full. Owner agrees to provide all public benefits identified in said Exhibit "D" in such manner and within such timeframe as provided therein.

8. Annexation.

- 8.1 <u>Annexation-Owner's Obligations</u>. Owner shall take all actions reasonably necessary to process and complete proceedings before LAFCO on the Annexation. Owner shall pay all LAFCO processing fees required in connection with the Annexation and shall pay any generally applicable City processing fees required for the Annexation. Owner shall reimburse City for its actual and reasonable costs incurred in the processing of this Agreement. Owner agrees to take all steps reasonably necessary to support annexation to the City, including voting in favor of annexation. Owner shall assist City in preparing the Plan of Services required by LAFCO.
- 8.2 <u>City's Duty to Cooperate</u>. City shall cooperate and assist in the processing of the Annexation before LAFCO by timely taking the following actions:
 - (a) Providing all information reasonably required or requested by LAFCO with respect to the Annexation including, without limitation, a Plan of Services providing information to LAFCO with respect to the provision of municipal services to the Annexation Property by the City; and,
 - (b) Providing a written statement of support for the Annexation to LAFCO prior to the LAFCO public hearing on the Annexation.

9. <u>Assignment</u>.

9.1 <u>Right to Assign</u>. The Owner shall have the right to sell, transfer, or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Sections 66410, *et seq.*, or Chapter 18.04 of the Merced Municipal Code to any person, partnership, joint venture, firm, limited liability company, or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the

rights, duties, and obligations arising under or from this Agreement and be made in strict compliance with the following conditions precedent:

- (a) No sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or a part of the Property. Owner agrees to provide specific notice of this Agreement, including the record or document number, where a true and correct copy of this Agreement may be obtained from the County Clerk/County Recorder of the County of Merced, in any grant deed or other document purporting to transfer the title or an interest in the Property during the term of this Agreement or any extension thereof.
- No less than thirty (30) business days prior to any such (b) sale, transfer, or assignment, the Owner shall notify City. in writing, of such sale, transfer, or assignment and shall provide City with an executed Assignment and Assumption Agreement, in a form acceptable to the City Attorney, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of the owner under this Agreement. Where multiple sales, transfers, or assignments are contemplated by Owner to more than one purchaser, transferee, or assignee, said Assignment and Assumption Agreement shall expressly specify and apportion shared obligations amongst various purchasers, transferees, or assignees.

Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall be null and void and shall constitute a material default by the Owner under this Agreement. Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required by Paragraph (b) of this Subsection, the burdens of this Agreement placed upon Owner shall run with the land and shall be binding upon any purchaser, transferee, or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee, or assignee until and unless such agreement is executed.

- 9.2 <u>Release of Transferring Owner</u>. Notwithstanding any sale, transfer, or assignment, a transferring Owner shall continue to be obligated under this Agreement unless such transferring Owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring Owner of <u>ALL</u> of the following conditions:
 - (a) The Owner no longer has a legal interest in all or any part of the Property except as a beneficiary under a deed of trust.
 - (b) The Owner is not then in default under this Agreement.
 - (c) The Owner or purchaser has provided City with the notice and executed Assignment and Assumption Agreement required under Paragraph (b) of Subsection 9.1 above.
 - (d) The purchaser, transferee, or assignee provides City with security equivalent to or better than any security previously provided by Owner to secure performance of its obligations hereunder.
 - (e) The Owner has reimbursed City for any and all City costs associated with Owner's transfer of all or a portion of the Property.
 - (f) The Owner has reimbursed City for any and all costs relating to this Agreement.
 - (g) The conditions in Section 20.4 (Sewer Facility Capital Expansion Improvement Bonds) have been completely satisfied, are no longer required or the obligations under Section 20.4 have been completely and unequivocally assumed by the subsequent Owner.
- 9.3 <u>Termination of Agreement with Respect to Individual Lots</u> upon Sale to Public and Completion of Construction. With the exception of Section 20.4, the provisions of Subsection 9.1 shall not apply to the sale or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be

released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of all of the following conditions:

- (a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and
- (b) A Certificate of Occupancy has been issued for a building on a lot, and the fees set forth in this Agreement have been paid; and
- (c) The conditions in Section 20.4 (Sewer Facility Capital Expansion Improvement Bonds) have been completely satisfied or are no longer required.
- 9.4 <u>Subsequent Assignment</u>. Any subsequent sale, transfer, or assignment after an initial sale, transfer, or assignment shall be made only in accordance with and subject to the terms and conditions of this Section.
- 10. Mortgagee Protection. Neither entering into this Agreement nor committing a Default under this Agreement shall defeat, render invalid, diminish, or impair the lien of Mortgagees having a Mortgage on any portion of the Property made in good faith and for value, unless otherwise required by law. No Mortgagee shall have an obligation or duty under this Agreement to perform Owner's obligations, or to guarantee such performance prior to any foreclosure or deed in lieu of foreclosure, but upon acquiring the right to possession pursuant to a Mortgage on the Property or any portion thereof, the Mortgagee shall be subject to the terms and conditions of this Agreement. The term of this Agreement shall not be extended based on the fact that a Mortgagee held title to the Property for all or any part of the term of this Agreement.

11. Notice of Default to Mortgagee; Right to Cure.

11.1 <u>Timely Notice to City Clerk</u>. If the City Clerk timely receives notice, on the form set forth on Exhibit "E," attached hereto and incorporated herein by this reference, from a Mortgagee requesting a copy of any Notice of Default given to Owner under the terms of the Agreement, the City shall endeavor to provide a copy of that notice to the Mortgagee within ten (10) days of sending the Notice of Default to Owner. City shall have no

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liability for damages or otherwise to Owner, Owner's successor, or to any Mortgagee or successor therefor for failure to provide such notice.

- Mortgagee Right to Cure. The Mortgagee shall have the right, but not the obligation, for a period up to ninety (90) days after the receipt of such notice from the City to cure or remedy, or to commence to cure or remedy, the Default unless a further extension of time to cure is granted in writing by the City. However, a Mortgagee to avail itself of the rights provided by this Section must notify the City in writing of its intent to attempt to remedy or cure within twenty (20) days of the date of the Notice of Default from City to Mortgagee. A failure by a Mortgagee to provide such timely notice to City shall extinguish the rights and protections provided by this Section. By providing the notice to City, Mortgagee is agreeing and consenting to the provisions of this Section and is further waiving the right to claim a prior lien on the Property. If the Default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continually through foreclosure, a receiver, or otherwise, and shall thereafter remedy or cure the Default within thirty (30) days after obtaining possession. If the Default cannot, with diligence, be remedied or cured within this thirty (30) day period, then the Mortgagee shall have such additional time as the City Council determines is reasonably necessary to remedy or cure the Default, if the Mortgagee commences cure during the thirty (30) day period and thereafter diligently pursues and completes the cure.
- diligence by the Mortgagee on effectuating such cure shall be reviewed by the City's City Council every thirty (30) days thereafter until any and all Defaults are cured. If at any such review, the City Council determines that the Mortgagee is not making good faith efforts to cure any and all Defaults, the City Council shall have the authority to terminate this Agreement at its sole and complete discretion.
- 11.4 Reservation of City's Rights During Cure Period. In return for City granting to Owner, Owner's successors and transferees, and the Mortgagees of each of them, an extended time to remedy or cure a Default, Owner, Owner's successors and transferees, and the Mortgagees of each of them agree that once a Default is declared by City's City Council, the City may take the actions set forth below and lien and burden the Property for the costs thereof

- -- irrespective of any lien priority, construction loan, deed of trust, or other encumbrance. Such actions include the following:
 - (a) Abate public nuisances following the City-adopted public nuisance ordinance;
 - (b) Remedy any health or safety threat posed by the Property, construction, or other activities going on on the Property;
 - (c) Control storm water run-off from the Property pursuant to Chapter 8.08 of the Merced Municipal Code and in compliance with all Post Construction Standards required by the City's Municipal Separate Storm Sewer System (MS-4) Permit;
 - (d) Screen any unsightly appearance on the Property for aesthetic purposes;
 - (e) Abate weeds; and,
 - (f) Control noise, dust, or other offensive conditions on the Property.
- the event any obligation of Owner is for the payment of money or fees, other than standard permit or processing fees, and a Default is declared by City based upon such failure to pay, a Mortgagee may be granted an extended time to remedy or cure until such time as Mortgagee obtains possession of the Property; provided, Mortgagee agrees that any money due City which remains unpaid shall bear the higher of the legal rate of interest or the United States Department of Labor San Francisco-Oakland-San Jose Consumer Price Index as the measure of inflation.
- 12. <u>Mortgagee Rights</u>. The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with the Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or

modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Owner shall reimburse City for any and all of City's reasonable costs associated with said negotiations, interpretations, and modifications and shall make reimbursement payments to City within thirty (30) days or receipt of an invoice from City.

Any Mortgagee of the Property shall be able to rely upon the provisions hereof and except as expressly provided in this Agreement, neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law or specified herein.

- 13. <u>California Codes</u>. This Agreement does not prevent the City from adopting and amending in compliance with State law certain Codes which are based on recommendations of a multi-state professional organization and which become applicable throughout the City -- including the Project and Property subject to this Agreement. Such Codes include, but are not limited to, the <u>California Building Code</u>, <u>California Mechanical Code</u>, <u>California Electrical Code</u>, and <u>California Fire Code</u>.
- 14. <u>Public Health and Safety Concerns, Application to Project of Future General Regulations.</u>
 - Agreement does not prevent the City from adopting Future General Regulations and applying such Future General Regulations to the Project and the Property, provided the City Council adopts findings that a failure to apply such Future General Regulations would result in a condition injurious or detrimental to the public health and safety. These findings shall be based upon substantial evidence in the record from a hearing conducted by the City Council at which the Owner was provided at least ten (10) days advance written notice.
 - 14.2 <u>Application of Future General Regulations to Project.</u>
 Notwithstanding Section 14.1 above, the City shall not apply to the Project or the Property any Future General Regulations which prevent, preclude, or unreasonably delay or alter or in any way affect the implementation of all or any portion of the Development Plan, unless the City Council, in accordance with Section 14.1 above also makes a finding that such Future General Regulations are reasonably necessary to correct or avoid such injurious or detrimental condition. Any Future General Regulations applied to the Project

or the Property pursuant to this Section 14.2 shall only apply for the duration necessary to correct or avoid such injurious or detrimental condition.

- 15. <u>Binding Effect of Agreement</u>. The burdens of this Agreement bind and the benefits of the Agreement inure to the successors-in-interest to the parties to it in accordance with the provisions of and subject to the limitations of this Agreement.
- 16. Project as a Private Undertaking/Relationship of Parties. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. No partnership, joint venture, or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.
- 17. <u>Changes in Project</u>. City may expand the permitted uses for the Property without amending this Agreement so long as Owner or Owner's successor retains his/her/their existing entitlements.
- 18. Timing of Development; Pardee Construction case. The parties acknowledge that Owner cannot at this time predict when, or at the rate at which the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties, it is the parties intent to cure that deficiency by acknowledging and providing that the Owner shall have the right to develop the Property in such order, at such rate, and at such times as the Owner deems appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing requirements set forth in the Development Plan and this Agreement.
 - 19. <u>Indemnity and Cost of Litigation</u>.
 - 19.1 <u>Hold Harmless</u>. The Owner shall indemnify, protect, defend, and hold harmless the City, and any agency or instrumentality thereof,

and officers, 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, employees, or agents thereof to attack, modify, 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 Property, the Project, and the approvals related thereto. Furthermore, Owner shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, and officers, employees, or agents thereof, against any and all claims, actions, suits, proceedings, or judgments against another governmental entity in which 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 in the defense of the action by providing staff witnesses, documents, and related information. It is understood that the duty of Owner to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Owner from liability under this indemnification and hold harmless clause. Owner agrees to and shall indemnify, protect, defend, and hold harmless the City and its officers, employees, agents, and representatives from actions for damages caused or alleged to have been suffered by reason of the operations referred to in this paragraph, regardless of whether or not City prepared, supplied, or approved plans or specifications for the Project. This indemnification requirement shall extend beyond the termination or expiration of this Agreement. By execution of this Agreement, Owner acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

19.2 <u>Hold Harmless—Damages & Injury</u>. Owner further agrees to and shall indemnify, protect, defend, and hold City, its officers, employees, agents, and representatives harmless from liability for any and all damage or claims for damage for personal injury, including death, and claims for property damage, resulting from intentional or negligent acts, errors, or omissions which may arise from the direct or indirect operations of the Owner or those of its employees, officers, agents, contractors, subcontractors, or other person acting on its behalf which relate to the Project, or from any violation of any federal, state, municipal law, ordinance, or regulation, to the extent caused, in whole or in part, by the intentional or negligent acts, errors, or omissions of Owner or its employees, officers, agents, contractors, subcontractors, or other person acting

on its behalf, or by the quality or character of Owner's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence of the City. It is understood that the duty of Owner to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Owner from liability under this indemnification and hold harmless clause. Owner agrees to and shall indemnify, protect, defend, and hold harmless the City and its officers, employees, agents, and representatives from actions for damages caused or alleged to have been suffered by reason of the operations referred to in this paragraph, regardless of whether or not City prepared, supplied, or approved plans or specifications for the Project. This indemnification requirement shall extend beyond the termination or expiration of this Agreement. By execution of this Agreement, Owner acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

- 19.3 Third Party Litigation Concerning Agreement. Owner shall indemnify, protect, defend, and hold harmless City, its officers, employees, or agents against any loss, cost, expense, claim, or counter-claim, complaint, or proceeding to attack, modify, set aside, void, or annul the approval of this Agreement or the approval of any permit or entitlement granted pursuant to this Agreement brought by a third party. City shall promptly notify Owner of any such claim, action, or proceeding, and City shall cooperate in the defense of the action by providing staff witnesses, documents, and related information. If City fails to promptly notify Owner of any such claim, action, or proceeding, or if City fails to cooperate in the defense, Owner shall not thereafter be responsible to indemnify, protect, defend, or hold harmless City. City may in its discretion participate in the defense of any such claim, action, or proceeding.
- 19.4 Environmental Assurances. Owner shall indemnify, protect, defend, and hold harmless City, its officers, employees, agents, assigns, and any successor or successors to City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred,

or suffered by, or asserted against, City or its officers, employees, or agents arising from or attributable to any repair, cleanup, or detoxification, or preparation and implementation of any removal, remedial, response, closure, or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance or hazardous wastes at any place within the Property which is the subject of this Agreement. The foregoing indemnity extends beyond the term of this Agreement and is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation, and Liability Act, "CERCLA," 42 U.S.C. Section 9667(e), and California Health and Safety Code Section 25364, and their successor statutes, to insure, protect, defend, hold harmless, and indemnify City from liability.

- 19.5 Release. Except for non-damage remedies, including the remedy of specific performance and judicial review as provided for in Sections 27.4 and 27.5 hereof, Owner, for itself, its successors and assignees, hereby releases the City, its officers, agents, and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms and/or operation of this Agreement.
- 19.6 Reservation of Rights. Owner's obligation to indemnify, protect, defend, and hold harmless under Sections 19.1 to 19.3 herein shall be provided at Owner's sole expense, including but not limited to attorneys' fees and court costs, with legal counsel which Owner selects, hires, or otherwise engages to defend City hereunder to be approved by City. City reserves the right to conduct its own defense, provided, however, that Owner shall reimburse City forthwith for any and all reasonable expenses incurred for such defense, including, but not limited to, attorneys' fees and court costs, upon billing and accounting therefor.
- 19.7 <u>Survival</u>. The provisions of this Section 19 shall survive the termination of this Agreement.
 - 20. <u>Public Benefits, Public Improvements and Facilities</u>.

- Agreement confers private benefits on the Owner which should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on the Owner by providing more fully for the satisfaction of the public needs resulting from development of the Project, as set forth on Exhibit "D" attached hereto and incorporated herein by this reference. Owner agrees to provide all public benefits identified in said Exhibit "D" in such manner and within such timeframe as provided therein.
- 20.2 <u>Development Fees</u>. Owner shall also pay all other customary and typical development exactions, for a Project of this size and nature, in existence as of the Effective Date and throughout the term of this Agreement, including but not limited to, Fire, Traffic Signal Mitigation, Public Facility Financing Plan Impact Fees, School Impact Fees (SB50), sewer and water connection fees, and permit fees pursuant to the provisions of City ordinances and resolutions in existence at the time of payment, including any periodic adjustments provided by said ordinances and resolutions.
- 20.3 <u>Public Improvements</u>. If Owner is required by this Agreement, or any other obligation, to construct any public improvements which will be dedicated to City or any other public agency upon completion, and if required by applicable laws to do so, Owner shall construct such improvements in the same manner and subject to the same requirements as would be applicable to City or such other public agency should it have undertaken such construction.

As required by Mitigation Measure TRA-1 of Environmental Review #15-36, adopted by City Council and found at Exhibit G, a traffic signal may be required at such time as the City Engineer deems it necessary for safety reasons based on warrants associated with preventable accidents. The cost of the traffic signal shall be the responsibility of Owner.

20.4 Sewer Facility Capital Expansion Improvement Bond. The City anticipates (i) forming one or more Financing Districts to finance the expansion of its sewer facilities and system to upgrade the City's sewer treatment facility to accommodate the additional sewer capacity required for growth attributable to the Project, and (ii) issuing sewer facility capital expansion improvement bonds or other indebtedness (the "Bonds") to be secured in whole or in part from assessments or special taxes levied within such Financing Districts, or similar fees and charges. Owner, on behalf of itself and

its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, agrees to form or annex to a Financing District or pay fees and charges in lieu thereof when established, agrees to include the Property within a Financing District, and agrees to pledge and encumber the Property for purposes of the issuance of the Bonds and authorize, by petition. vote, or otherwise, that inclusion of the Property in the Financing District, the issuance of the Bonds, and the imposition by the City of a special tax or assessment on the Property in order to secure the Bonds. The Owner acknowledges that an assessment lien or special tax lien will be recorded against the Property and that the lien will continue in force and effect until the assessment or special tax obligation is prepaid or permanently satisfied and the lien cancelled in accordance with the law. By executing this Agreement, Owner, on behalf of itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, agrees and consents to waive any protest, suit, claim, or challenge to the Bond or any proceedings related thereto. The terms and condition in this Section 20.4 shall run with the land and shall survive beyond the termination or expiration of this Agreement.

21. Reservation of Authority.

- 21.1 <u>Limitations, Reservations, and Exceptions</u>. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Property:
 - (a) Processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals.
 - (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure.
 - (c) Regulations imposing Development Exactions; provided, however, that no such subsequently adopted Development Exactions shall be applicable to development of the Property unless such Development Exactions are applied uniformly to development throughout the City.

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- (d) Regulations governing construction standards and specifications including without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, and Fire Code.
- (e) Regulations governing:
 - (1) The control and abatement of public nuisances;
 - (2) Storm water run-off from the Property;
 - (3) The remedy of any health or safety threat posted by the Property; and,
 - (4) The provision, maintenance, expansion, termination, conditions and limitations of municipal water and sewer services.
- (f) Regulations which are in conflict with the Development Plan. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Property shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Property.
- (g) Regulations which are in conflict with the Development Plan provided Owner has given written consent to the application of such regulations to development of the Property.
- 21.2 <u>Subsequent Development Approvals</u>. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying the Subsequent Land Use Regulations which do not conflict with the Development Plan, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing or Subsequent Land Use Regulations not in conflict with the Development Plan.
- 21.3 <u>Modification or Suspension by State or Federal Law</u>. In the event that State or Federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be

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modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

21.4 <u>Regulation by Other Public Agencies</u>. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies.

22. <u>Development of the Property, Vesting, and Changes/Amendments.</u>

- 22.1 Rights to Develop. Contingent upon approval of Owner's annexation request by LAFCO and subject to the terms of this Agreement, Owner shall have a vested right to develop the Property in accordance with, and to the extent of the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the City's Zoning Ordinance for Thoroughfare Commercial (C-T) Zone. In exchange for the vested right to develop pursuant to this Agreement, Owner expressly waives for itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, the right to challenge or contest the validity of the annexation and any condition of approval attached to any entitlement which is a part of the Development Plan.
- 22.2 Payment of Fees. Owner, for itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, agrees to pay all City and school district fees, taxes, and/or assessments in effect on the Effective Date of this Agreement, 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 special assessments or Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by a special assessment law or the Mello-Roos law, etc., (and to comply with the additional conditions set forth in Exhibit "F," attached hereto and incorporated herein by this reference).

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 mandates or permits payment of such fees, taxes, and/or assessments at an earlier or subsequent time.

- 22.3 <u>Compliance with Conditions</u>. Owner agrees to comply with the conditions of approval set forth in Planning Commission Resolution No. <u>3095</u>, attached hereto as Exhibit "F," and within this Agreement and acknowledges that the conditions are necessary to mitigate the environmental impacts, if any, caused by Owner's development or are necessary to offset the costs to the City generated by Owner's development including sewer connection costs pursuant to Chapter 15.16 of the Merced Municipal Code.
- 22.4 <u>Utility Connection Charge</u>. 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.
- 22.5 <u>Building Permits & Wastewater Treatment Plant Capacity</u>. No building permit or other permit for the Project shall be issued if Owner is not in full compliance with this Agreement. Notwithstanding any provision to the contrary, in the event the City's Wastewater Treatment Plant's capacity or operation is insufficient to serve all development projects in the City seeking connections, available building permits and sewer connections (hereinafter "Connection Permit"), shall be allocated as follows:
 - (a) The City reserves 5% of the available capacity, but not less than 100,000 gallons per day, to serve new commercial and industrial projects;
 - (b) Among residential projects, first priority shall be given for up to 5% of available capacity, but not less than 100,000 gallons per day, for projects legally covenanted and required to sell or lease to persons of low or moderate income;
 - (c) The balance of available capacity shall be allocated through the issuance of Connection Permits to Projects that have pledged their Property subject to this Agreement as security for the pubic financing essential to the expansion of the City's Wastewater Treatment Plant,

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and among those Projects that have done so meet the following additional criteria:

- (1) Have approved final maps for their Project and completed all other discretionary approvals (such as Conditional Use Permits);
- (2) Agree and are able to commence construction of buildings within 120 days of receiving a building permit;
- (3) Agree pursuant to a construction phasing plan submitted with the Connection Permit application to diligently pursue construction until completion in accordance with the phasing plan; and,
- (4) Allocation of Connection Permits shall be based on those applications approved meeting the requirements above with those approved first in time getting priority over those filing subsequent thereto.

Insufficient capacity shall be determined by the City Engineer considering existing agreements to serve and maximum flow to the Wastewater Treatment Plant at its highest average point.

This allocation method for Connection Permits shall continue until such time as capacity at the Wastewater Treatment Plant is able to meet all of the requests for service, as determined by the City Engineer, with a sufficient reserve capacity to meet unexpected needs or opportunities for the City.

If construction is not commenced within the time limit specified in Section 22.5(c)(2), any Connection Permit for which construction has not commenced under the building permit shall be deemed void and subject to reallocation.

Once a Connection Permit is issued for a Project, the Connection Permit is not transferable by the permit holder to another site or location. The Connection Permit may be transferred between parties, such as when one company buys out a site to complete the Project, so long as the location does not change. Any attempted transfer to another location shall be void and cause the Connection Permit to be immediately voided and subject to reallocation.

If construction of the Project is not commenced within five (5) years, any sewer capacity allocated to this Property by this annexation shall be terminated. If, after five (5) years the sewer capacity allocation is terminated, the City Engineer shall determine when sufficient capacity is available for development.

- Effect of Agreement on Land Use Regulations. Except as 22.6 otherwise provided under the terms of this Agreement, the rules, regulations. and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the existing Land Use Regulations in effect on the Effective Date of this Agreement. City shall exercise its lawful reasonable discretion in connection with Subsequent Development Approvals in accordance with the Development Plan, and as provided by this Agreement. City shall accept for processing, review, and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters. City may, at the request of Owner, contract for planning and engineering consultant services to expedite the review and processing of Subsequent Development Approvals, the cost of which shall be borne by Owner.
- Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event the Owner finds that a change in the Existing Development Approvals is necessary or appropriate, the Owner shall apply for a Subsequent Development Approval to effectuate such change. If approved by City under Section 25 below, any such change in the Existing Development Approvals shall be incorporated herein as addendum to this Agreement and may be further changed from time to time as provided in this Section. Owner, shall, within thirty (30) days of written demand by City, reimburse City for any and all reasonable costs, associated with any amendment or change to this Agreement that is initiated by Owner or Owner's successor -- without regard to the outcome of the request for amendment or change to this Agreement. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

- (a) Alter the permitted uses of the Property as a whole; or,
- (b) Increase the density or intensity of use of the Property as a whole; or,
- (c) Increase the maximum height and size of permitted buildings; or,
- (d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,
- (e) Constitute a project requiring a subsequent or a supplemental Environmental Impact Report pursuant to Section 21166 of the Public Resources Code.

Notwithstanding the forgoing, the City is neither obligated nor required to make any change or amendment to this Agreement.

23. <u>Periodic Review of Compliance with Agreement.</u>

- 23.1 <u>City Compliance Review</u>. Pursuant to City Council Resolution No. 95-6, as it may be subsequently amended, City may review this Agreement at least once during every twelve (12) month period from the Effective Date of this Agreement. The Owner or successor shall reimburse City for the reasonable and necessary costs of this review, within thirty (30) days of written demand from City.
- 23.2 <u>Owner Good Faith Compliance</u>. During each periodic review by City, the Owner is required to demonstrate good faith compliance with the terms of this Agreement. The Owner agrees to furnish such evidence of good faith compliance as City in the exercise of its discretion may require.
- 24. <u>Financing District</u>. In addition to any Financing District required by Section 20.4 hereof, upon the request of Owner, the parties shall cooperate in exploring the use of special assessment districts, special tax districts, and other similar financing districts for the financing of the construction, improvement, or acquisition of public infrastructure, facilities, lands, and improvements to serve the Project, whether located within or outside the Property. It is acknowledged that nothing contained in this Agreement shall be construed as requiring City or City Council to form such a district or to issue or sell bonds therefor.

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- 25. Amendment or Cancellation of Agreement. This Agreement shall not be amended, modified, or canceled, in whole or in part, unless in writing signed by both parties hereto, and only by mutual consent of the parties and in the manner provided for in Government Code Sections 65868, 65867, and 65867.5. The provisions of this Section do not impact the right of the City to terminate this Agreement because of Owner's breach or failure to comply in good faith with the requirements of this Agreement.
- 26. <u>Enforcement</u>. Unless amended or canceled as herein provided, this Agreement is enforceable by any party to it notwithstanding a change in the applicable general or specific plan, zoning, subdivision, or building regulations adopted by the City which alter or amend the rules, regulations, or policies governing permitted uses of the land, density, design, improvement, and construction standards and specifications.

27. Enforced Delay, Default, Remedies and Termination.

- 27.1 <u>Default by Owner</u>. If the City alleges an Owner Default, the City shall provide sixty (60) days prior written notice of the alleged Owner Default and then conduct a hearing utilizing the Annual Review procedures in Section 23(a) before the City may terminate this Agreement. Failure by Owner to reserve or dedicate any property pursuant to the Development Plan, or to pay fees and charges as required by the Land Use Regulations and this Agreement as they become due, shall constitute a separate material Owner Default. It shall also be deemed a material Owner Default of a material provision of this Agreement for more than forty-five (45) days to pass from City's written demand for reimbursement of any reimbursable costs under this Agreement and the receipt by City of such reimbursement. In the event of Owner Default, and in addition to any other remedy available to the City, the City shall have the right to rezone the Property back to its original designation.
- 27.2 <u>Default by City</u>. If Owner alleges a City Default the Owner shall provide written notice of the alleged City Default and the City shall have ninety (90) days to cure said Default. If the City has not cured the Default within ninety (90) days, Owner may pursue any legal or equitable remedy available to it under this Agreement. It is acknowledged by the parties that City would not have entered into this Agreement if City were to be subject to or liable for damages -- including monetary damages -- under or with respect to this Agreement or the application thereof, or with respect to the Project. Owner, for itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, expressly waives the right to

seek damages -- including monetary damages -- against the City or any officer, employee, or agent thereof, for any default or breach of this Agreement. Owner, on behalf of itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, covenants and agrees not to sue for or claim any damages -- including monetary damages -- for any purported breach of this Agreement by City. During the time when Owner alleges the existence of a City Default and without limiting any of its other available remedies, Owner shall not be obligated to proceed with or complete the Project or any phase of the Project, nor to reserve or dedicate any property pursuant to the Development Plan or this Agreement. Upon a City Default, any resulting delays in Owner's performance shall neither be an Owner Default nor constitute grounds for termination or cancellation of this Agreement by the City.

- 27.3 <u>Waiver</u>. Failure or delay in giving Notice of Default shall not waive a Party's right to give future Notice of the same or any other Default, provided, however, this Section 27.3 shall not preclude a Party from the protections provided under law or equity by the defenses of estoppel and/or latches.
- Specific Performance Remedy. Due to the elimination of damages as a remedy against City and to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its preexisting condition once implementation of this Agreement has begun. After such implementation, Owner may be foreclosed from other choices it may have had to utilize the Property and provide for other benefits. Owner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate Owner for such efforts. For the above reasons, the City and Owner agree that damages would not be an adequate remedy if the City fails to carry out its obligations under this Agreement. Therefore, no money damages are available against City, or any officer, employee, or agent thereof. Specific performance of this Agreement is necessary as the exclusive remedy to compensate Owner if the City fails to carry out its obligations under this Agreement and is also available to City, if Owner defaults hereunder.

- 27.5 <u>Judicial Review</u>. In the event City elects to terminate this Agreement pursuant to the provisions of Sections 11.7, 25, or 27.1, the Owner may challenge such termination by instituting legal proceedings in which event the court shall exercise its review, based on substantial evidence, as to the existence of cause for termination.
- 28. <u>Events of Default</u>. Owner is in default under this Agreement upon the happening of one or more of the following events or conditions:
 - (a) If a warranty, representation, or statement made or furnished by Owner to City is false or proves to have been false in any material respect when it was made;
 - (b) More than forty-five (45) days have passed since City's making of a written request to Owner for payment or reimbursement for a fee or service authorized or agreed to pursuant to this Agreement;
 - (c) Failure by Owner to reserve or dedicate any property pursuant to the Development Plan, or to pay fees and charges as required by the Land Use Regulations and this Agreement as they become due; or
 - (d) A finding and determination by City that upon the basis of substantial evidence the Owner has not complied in good faith with one or more of the terms or conditions of this Agreement.
- 29. <u>Attorney's Fees and Costs</u>. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs.
- 30. <u>Notices</u>. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid and presumed delivered upon actual receipt by personal delivery or within three (3) days following deposit thereof in United States Mail. Notice required to be given to City shall be addressed as follows:

To City:

City of Merced

678 West 18th Street

Merced, California 95340

Attn: City Clerk

Notices required to be given to Owner shall be addressed as follows:

To Owner: Louann Bianchi

151 N. Ulukoa Pl.

Lahaina, HI 96761-1969

A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

- 31. <u>Cooperation</u>. City agrees that it shall accept for processing and promptly take action on all applications, provided they are in a proper form and acceptable for required processing for discretionary permits, tract or parcel maps, or other land use entitlement for development of the Project in accordance with the provisions of this Agreement. City shall cooperate with Owner in providing expeditious review of any such applications, permits, or land use entitlement and, upon request and payment of any costs and/or extra fees associated therewith by Owner, City shall assign to the Project planner(s), building inspector(s), and/or other staff personnel as required to insure the timely processing and completion of the Project.
- 32. Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement. In the event, Owner or Owner's successor requires supplemental or additional agreements for purposes of securing financing or similar purposes, City will endeavor to assist in this respect, provided, however, Owner or Owner's successor shall reimburse the City for any and all costs associated with processing, reviewing, negotiating, or acting on such agreements. Owner or Owner's successor agrees to reimburse City within thirty (30) days of written demand therefor.
 - 33. Rules of Construction and Miscellaneous Terms.
 - (a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive.

- (b) If there is more than one signer of this Agreement their obligations are joint and several.
- (c) The time limits set forth in this Agreement may be extended by mutual written consent of the parties in accordance with the procedures for adoption of the Agreement.
- (d) This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person, including but not limited to third party beneficiaries, shall have any right of action based upon any provision of this Agreement.
- 34. Running with Land. 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."
- 35. <u>Waiver</u>. In the event that either City or 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.
- 36. <u>Venue</u>. 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.
- 37. Entire Agreement. This Agreement and the exhibits hereto contain the complete, final, entire, and exclusive expression of the agreement between the parties hereto, and is intended by the parties to completely state the agreement in full. Any agreement or representation respecting the matters dealt with herein or the duties of any party in relation thereto not expressly set forth in this Agreement shall be null and void.
- 38. <u>Counterparts</u>. This Agreement may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Agreement is in the physical possession of the party seeking enforcement thereof.

Authority to Execute. Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of his/her/their corporation, partnership, business entity, or governmental entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

IN WITNESS WHEREOF this Pre-Annexation Development Agreement has been executed by the authorized representatives of the parties hereto.

CITY: CITY OF MERCED A California Charter Municipal Corporation ATTEST: STEVE CARRIGAN, CITY CLERK BY:______Assistant/Deputy City Clerk APPROVED AS TO FORM:

ACCOUNT DATA:	
BY: Verified by Finance Officer	
	OWNER:
	BY: Louann Bianchi
	Taxpayer I.D. NoADDRESS: 151 N. Ulukoa Pl. Lahaina, HI 96761-1969
	TELEPHONE:FACSIMILE:E-MAIL:

EXHIBIT A PROPERTY LEGAL DESCRIPTION AND MAP

EXHIBIT A LEGAL DESCRIPTION

PARCEL 1: A portion of lot 96 and a portion of the West 40 feet of the 100 foot wide Southern Pacific Railroad-Oakdale Branch right-of-way (now abandoned) as shown an the map entitled, MAP OF THE CROCKER COLONY, recorded in Volume 5 of Official Plats, Page 6, Merced County Records, said portions being described as a whole as follows:

Commencing at the Northwest corner of said Lot 96 and running thence North 85° 48' 00" East 83.54 feet along the North line of said Lot 96 to a point on the Northeasterly line of Santa Fe Drive (a County Road) said point being the true point of beginning of this description; thence South 53° 11' 13" East, 308.33 feet along said Northeasterly line of Santa Fe Drive; thence Southeasterly along said northeasterly line of Santa Fe Drive along a 1,464.11 foot radius curve to the left, the long chord of which bears south 69° 35' 30" East 825.20 feet, through a central angle of 32° 44' 12", an arc distance of 836.54 feet, thence North 18° 36' 31" East 17.45 feet along said Northeasterly line of Santa Fe Drive to a point on the West line of State Highway 59; thence North 01° 24' 30" East 375.88 feet along the West line of State Highway 59 to the southeast corner of that certain real property described as Parcel II in deed from Crocker Land Company to Merced Water Company recorded in Volume 1483, Official Records, page 111, Merced County Records; thence North 8° 35' 30" West 100.00 feet to the Southwest corner of said Parcel II; thence North 01° 24′ 30" East 180.34 feet along the West line of said Parcel II to a point on the North line of the aforesaid Lot 96; thence south 83° 48' 00" West 945.081 feet along the North line of said Lot 96 to the true point of beginning, all as delineated on map entitled, "RECORD OF SURVEY FOR J.F. COLLINS CO.", recorded in Book 13 of surveys, page 35, Merced County Records.

EXCEPTING therefrom all that portion conveyed to the County of Merced for road widening by deed recorded January 13, 1984, in volume 2407, page 718, Merced County Records.

ALSO EXCEPTING therefrom the property and property rights and reserved in deeds recorded August 4, 1961, in Volume 1539, page 504, as Instrument No. 14501, Official Records, March 3, 1971, in Volume 1881, page 555, as Instrument No. 3989, Official Records and March 3, 1972, in volume 1881, page 572, as Instrument No. 3991, Official Records, being all oil, gas and other hydrocarbons and all other mines and minerals found in solid, gaseous or viscid state lying below a depth of 500 feet.

APN: 057-200-067

PARCEL 2: A portion of Lot 96 and a portion of the West 40 feet of the 100 foot wide Southern Pacific Railroad-Oakdale Branch right-of-way (now abandoned), according to the map entitled, MAP OF CROCKER COLONY, filed June 7, 1911, in book 5 of Maps, page 6 Merced County Records, and more particularly described as follows:

Commencing at a point that is the Southeast corner of said Lot 96, said point also being on the Northerly line of the Santa Fe Railroad right-of-way; thence South 88° 35' 30" East, 40.00 feet; thence North 01° 24' 30" West, a distance of 697 feet, to the true point of beginning; thence north 88° 25' 30" West, a distance of 100.00 feet; thence North 01° 24' 30" East, a distance of 189.93

feet; thence South 51° 47' 00" East, a distance of 74.78 feet; thence South 40° 05' 55" East, a distance of 60.36 feet; thence South 01° 24' 30" West, a distance of 100.00 feet to the true point of beginning.

EXCEPTING therefrom the property and property rights excepted and reserved in deeds recorded August 4, 1961, in Volume 1539, page 504, as Instrument No. 14501, Official Records, March 3, 1971, in Volume 1881, page 555, as Instrument No. 3989, Official Records and March 3, 1972, in Volume 1881, page 572, as Instrument No. 3991, Official Records, being all oil, gas and other hydrocarbons and all other mines and minerals found in solid, gaseous or viscid state lying below a depth of 500 feet.

APN: 057-200-029

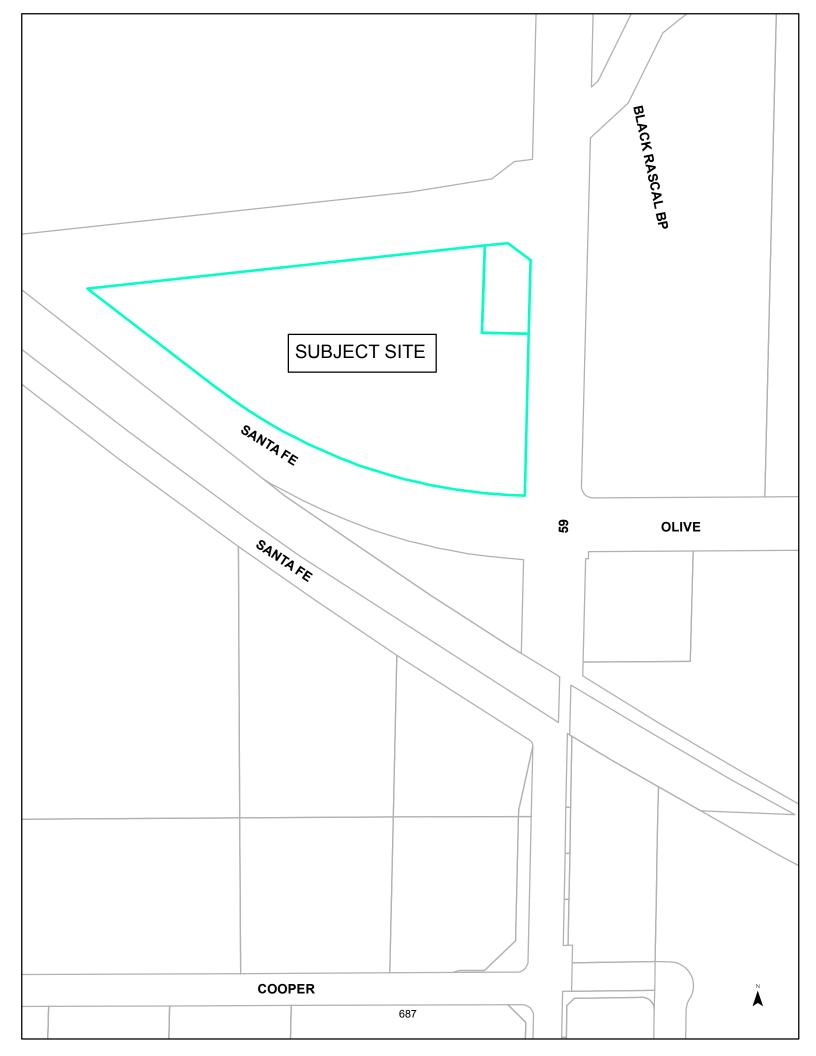


EXHIBIT B DEVELOPMENT APPROVALS

- > Annexation/Pre-Zoning No. 15-01
- ➤ General Plan Amendment No. 15-04
- > Expanded Initial Study No. 15-36 (Mitigated Negative Declaration and Mitigation Monitoring Program)

EXHIBIT C LAND USE REGULATIONS

- > Merced Vision 2030 General Plan.
- > Charter of the City of Merced.
- Merced Municipal Code.
- > City of Merced Design Standards.

EXHIBIT D

PUBLIC BENEFITS

- 1. Owner shall participate in the upgrade to the sewer treatment plant and sewer transmission lines in proportion to the growth attributable to the Project, as called for in Section 4.4.
- 2. Owner shall improve/upgrade/replace the following County infrastructure (roads, utilities, etc.) adjacent to and within the Project consistent with City of Merced standards, pursuant to this Agreement:
- a) Construct curb, gutter, sidewalk, install street lights and street trees along the full property frontage on Santa Fe Avenue and North State Highway 59.
- b) Provide fire hydrants as determined by the City of Merced Fire Department.
- c) Extend water and sewer lines across the entire property frontage on Santa Fe Avenue and North Highway 59.
- d) Provide storm drainage tie-in into the existing storm drainage system.
- 3. Owner shall underground all utilities serving the property along the property frontage, but is not responsible for undergrounding existing utilities beyond the property frontage.
- 4. Owner shall connect all development to the City sewer and water system and pay all applicable connection fees.
- 5. Owner must agree to annex into the City Community Facilities District for Services (CFD No. 2003-2) for the maintenance of street lights, storm drain facilities, landscaping in the public right-of-way, and the cost of police and fire services.

The forgoing improvements are to be jointly and severally constructed and paid for by Owner.

EXHIBIT E REQUEST FOR NOTICE OF DEFAULT UNDER PRE-ANNEXATION DEVELOPMENT AGREEMENT

Pre-Annexation Development Agreement: Specific Plan No. , {Name of Development Planning Application No.	Date:
To: City Clerk and Director of Development Services, City of M	1erced
Pursuant to Section 6(b) and (c) of the above-referenced Pro- Development Agreement, request is hereby made by as Mortgage (or portion thereof) to receive copies of any Notice of Default issu- against Owner in accordance with the terms and conditions of suc Development Agreement. Copies of any such Notices should be n following address:	e for the property led by City h Pre-Annexation
(Mortgagee)(Person/Department)(Address)(City/State/Zip)(Telephone No.)	
A copy of this Notice should be filed with the project file to and timely notice is given. Under the terms of said Pre-Annex Development Agreement,	ation
Mortgagee is entitled to receive copies of any Notice of Default days of sending any such Notice to Owner. <u>Failure to send any</u> may have serious legal consequences for the <u>City</u> .	within ten (10)
This request is to remain in effect until revoked byMortgagee or the Pre-Annexation Development Agreement is term	
The person executing this document on behalf of said Mortga and represents that the entity he/she represents is a bonafide Mortgoroperty and is entitled to receive copies of Notices of Default und Annexation Development Agreement.	agee of said

Dated:	, 20
	MORTGAGEE
	By:
	(signature)
	(printed name)
	Its:
	(title)

[Notary required]

This Notice is to be sent to both the City Clerk and Director of Development Services for the City of Merced at 678 West 18th Street, Merced, California 95340 or such other location as Merced City Hall may be located in the future.

EXHIBIT F

PLANNING COMMISSION RESOLUTION INCLUDING THE MITIGATION MONITORING PROGRAM FOR EXPANDED INITIAL STUDY #15-36

CITY OF MERCED Planning Commission

Resolution #3095

WHEREAS, the Merced City Planning Commission at its regular meeting of June 6, 2018, held a public hearing and considered Pending Annexation and Pre-zoning Applications #15-01 and General Plan Amendment #15-04, initiated by Louann Bianchi, and Quad LLC, property owners. This application involves annexing 8.83 acres of land at the northwest and southwest corners of North Highway 59 and Santa Fe Drive into the City of Merced; changing the General Plan designation for the northwest corner from Open Space (OS) to Thoroughfare Commercial (CT) and pre-zoning the northwest corner as Thoroughfare Commercial (C-T) for the Thoroughfare Commercial development. The General Plan designation for the southwest corner would remain Industrial (IL) and this corner would be pre-zoned Light Industrial (I-L); also known as Assessor's Parcel Numbers 057-200-029, 057-200-067, and 057-200-042; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through M of Staff Report # 18-14; and,

WHEREAS, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Mitigated Negative Declaration and Mitigation Monitoring Program (Exhibit B) regarding Initial Study #15-36, and approval of Pending Annexation and Pre-zoning Applications #15-01 and General Plan Amendment #15-04, subject to the Conditions set forth in Exhibit A attached hereto.

Upon motion by Commissioner ALSHAMI, seconded by Commissioner MARTINEZ, and carried by the following vote:

AYES: Commissioners Alshami, Camper, Colby, Martinez, and

Chairperson Dylina

NOES: Commissioner Padilla ABSENT: None, (One Vacancy)

ABSTAIN: None

PLANNING COMMISSION RESOLUTION #___3095 Page 2 June 6, 2018

Adopted this 6th day of June, 2018

Chairperson, Planning Commission of the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

Exhibit B – Mitigation Monitoring Program

n:shared:planning:PC Resolutions:ANX-PREZ#15-01 & GPA#15-04 NorCal Foods

Conditions of Approval Planning Commission Resolution #3095 Pending Annexation and Pre-zoning Applications #15-01 and General Plan Amendment #15-04

- 1. All new construction within the annexation area (including modifications to the developed site at the southwest corner of North Highway 59 and Santa Fe Drive) shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
- 2. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
- Approval of Pre-Annexation #15-01, Pre-zoning Application #15-01, 3. and General Plan Amendment #15-04 is subject to the applicant's entering into a written (legislative action) 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 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 (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 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 such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

5. The developer/applicant shall construct and operate all future projects within the annexation area 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.

The following conditions apply to new construction within the annexation area:

6. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, public landscaping within State rights-of-way, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map or first building permit 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.

The following conditions apply to the future development at the northwest corner of North Highway 59 and Santa Fe Drive:

7. All development shall be subject to the Mitigation Measures outlined in the Mitigation Monitoring Program for Initial Study #15-36.

- 8. Site Plan Review is required prior to construction on the northwest corner, the Site Plan Review Committee shall review the site design and determine which alternative at the western driveway is best to reduce the expected impacts. The alternatives may include those alternatives included in the traffic analysis or another alternative such as moving the driveway further to the west. The developer shall provide any additional documentation or studies needed for the Site Plan Review Committee to make this determination (Mitigation Measure TRA-1).
- 9. The southbound left-turn lane on SR 59 shall be lengthened as determined by the City Engineer and approved by Caltrans (Mitigation Measure TRA-1a).
- 10. The development shall contribute its fair share to the cost of improvements for the intersection of SR 59 and Olive Avenue (Mitigation Measure TRA-1b):
 - Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and,
 - Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and,
 - Reconstruct the existing northbound right turn lane as a "free" right turn with a median island separating eastbound and right-turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes.
- 11. Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR 59 (Mitigation Measure TRA-6).
- 12. Any outdoor dining areas or other outdoor uses shall have the following setbacks to maintain an acceptable noise level of 70 dB for outdoor uses (Mitigation Measure NOI-2):
 - Road/Railroad Required Setback
 - Santa Fe Drive 54 Ft.

- North Highway 59 89 Ft.
- BNSF Railroad 137 F
- 13. At the time of construction, all required public improvements shall be installed along the property frontage. This includes, but is not limited to, sidewalk, curb, gutter, street lights, and street trees.
- 14. The developer shall work with Caltrans and obtain all necessary permits for all work done within the state right of way.
- 15. All construction shall comply with Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
- 16. All new utilities serving the site shall be installed underground.
- 17. All City sewer, water, and storm drain lines serving the site shall be extended across the full frontage of the property unless it is determined by the Public Works Director that these lines are not likely to be extended to serve any other property (consistent with Merced Municipal Code Section 15.40.030).
- 18. All storm water shall be contained onsite and metered out to the City's storm water system in accordance with City Standards.
- 19. A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access must be provided throughout the project site or as required by the Fire Department.
- 20. The future commercial development shall provide pedestrian and bicycle access throughout the site. Connectivity throughout the site shall be provided by pedestrian pathways. Bicycle parking shall be provided as required by the City's Zoning Ordinance.
- 21. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
- 22. All landscaping shall be in compliance with the City's Water Efficient Landscaping and Irrigation Ordinance (Merced Municipal Code Section 17.60) and all state-mandated conservation and drought restrictions as well as the City's Zoning Ordinance Section 20.36 Landscaping. This shall include the use of xeriscape landscaping as appropriate.

- 23. Irrigation for all onsite landscaping shall be provided by a low-volume system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other state or city-mandated water regulations dealing with the current drought conditions.
- 24. All landscaping in the public right-of-way shall comply with the most recently adopted water regulations by the State and City addressing water conservation measures. If turf is proposed to be installed in medians or parkstrips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
- 25. Parking lot trees shall be installed per the City's Parking Lot Landscape Standards. Trees shall be a minimum of 15 gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list). Trees shall be installed at a ratio of 1 tree for every 6 parking spaces. A reduced number of trees may be required where there are carports with solar panels over the parking spaces. However, if all the parking spaces are covered by a carport with solar panels, then additional trees may be required at the discretion of the Development Services Director. Trees within the PG&E easement shall comply with the regulations of this easement which limits the height of trees to a maximum of 15 feet at full maturity.
- 26. All mechanical equipment shall be screened from public view.
- 27. The traffic signal at the western driveway and Satan Fe Drive, when warranted and required by the City Engineer, shall be synchronized with the traffic signal at the intersection of North State Highway 59 and Santa Fe Drive/Olive Avenue so as to ensure traffic stops and goes through both signals simultaneously.
- 28. The eastern driveway shall be an entrance-only drive way, allowing only right turns into the site.

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	n:shared:planning:PC Resolutions:ANX-PREZ#15-01 & GPA#15-04 Exhibit A

Conditions #27 & 28

added by

10/1/18

City Council

ENVIRONMENTAL REVIEW #15-36 Mitigation Monitoring Program Revised August 22, 2018

MITIGATION MONITORING CONTENTS

This mitigation monitoring program includes a brief discussion of the legal basis and purpose of the mitigation monitoring program, a key to understanding the monitoring matrix, a discussion of noncompliance complaints, and the mitigation monitoring matrix itself.

LEGAL BASIS AND PURPOSE OF THE MITIGATION MONITORING PROGRAM

Public Resource Code (PRC) 21081.6 requires public agencies to adopt mitigation monitoring or reporting programs whenever certifying an environmental impact report or mitigated negative declaration. This requirement facilitates implementation of all mitigation measures adopted through the California Environmental Quality Act (CEQA) process.

The City of Merced has adopted its own "Mitigation Monitoring and Reporting Program" (MMC 19.28). The City's program was developed in accordance with the advisory publication, *Tracking CEQA Mitigation Measures*, from the Governor's Office of Planning and Research.

As required by MMC 19.28.050, the following findings are made:

- 1) The requirements of the adopted mitigation monitoring program for Annexation and Pre-Zone Application #15-01 and General Plan Amendment #15-04 shall run with the real property. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
- 2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

MITIGATION MONITORING PROCEDURES

In most cases, mitigation measures can be monitored through the City's construction plan approval/plan check process. When the approved project plans and specifications, with mitigation measures, are submitted to the City Development Services Department, a copy of the monitoring checklist will be attached to the submittal. The Mitigation Monitoring Checklist will be filled out upon project approval with mitigation measures required. As project plans and specifications are checked, compliance with each mitigation measure can be reviewed.

In instances where mitigation requires on-going monitoring, the Mitigation Monitoring Checklist will be used until monitoring is no longer necessary. The Development Services Department will be required to file periodic reports on how the implementation of various mitigation measures is progressing or is being maintained. Department staff may be required to conduct periodic inspections to assure compliance. In some instances, outside agencies and/or consultants may be required to conduct necessary periodic inspections as part of the mitigation monitoring program. Fees may be imposed per MMC 19.28.070 for the cost of implementing the monitoring program.

GENERAL PLAN MITIGATION MEASURES

As a second tier environmental document, Initial Study #15-36 incorporates some mitigation measures adopted as part of the *Merced Vision 2030 General Plan Program Environmental Impact Report* (SCH# 2008071069), as mitigation for potential impacts of the Project.

NONCOMPLIANCE COMPLAINTS

Any person or agency may file a complaint asserting noncompliance with the mitigation measures associated with the project. The complaint shall be directed to the Director of Development Services in written form providing specific information on the asserted violation. The Director of Development Services shall cause an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall cause appropriate actions to remedy any violation. The complainant shall receive written confirmation indicating the results of the investigation or the final action corresponding to the particular noncompliance issue. Merced Municipal Code (MMC) Sections 19.28.080 and 19.28.090 outline the criminal penalties and civil and administrative remedies which may be incurred in the event of noncompliance. MMC 19.28.100 spells out the appeals procedures.

MONITORING MATRIX

The following pages provide a series of tables identifying the mitigation measures proposed specifically for Annexation and Pre-zone Application #15-01 and General Plan Amendment #15-04 The columns within the tables are defined as follows:

Mitigation Measure: Describes the Mitigation Measure (referenced by number).

Timing: Identifies at what point in time or phase of the project that the mitigation

measure will be completed.

Agency/Department This column references any public agency or City department with

Consultation: which coordination is required to satisfy the identified mitigation

measure.

Verification: These columns will be initialed and dated by the individual designated

to verify adherence to the project specific mitigation.

Annexation and Pre-Zone Application #15-01 and General Plan Amendment #15-04 Mitigation Monitoring Checklist

Project Name:	File Number:
Approval Date:	Project Location
Brief Project Description	

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City of Merced's Mitigation Monitoring Requirements (MMC 19.28) with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6).

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
AES-4	AES-4) Lighting should be designed to provide ambiance, safety, and security without unnecessary spillover or glare onto adjacent properties. The quality of light, level of light (measured in footcandles) and the type of bulb or source should be carefully addressed. Lighting levels should not be so intense as to draw attention to the flow or glare of the project site. The lighting plan should incorporate current energy-efficient fixtures and technology. Glare from any site lighting should be shielded from adjacent properties and directed at a specific object or target area. Exposed bulbs shall not be used. Wall-mounted light fixtures shall not extend above the height of the wall to which the fixtures are mounted. Blinking and flashing lights used to illuminate building facades or to outline buildings shall not be used. When security lighting is necessary, it should be recessed, hooded and located to illuminate only the intended area. Off-site glare and light trespass is prohibited. Pedestrian areas, sidewalks, parking lots, and building entrances shall be adequately lit to provide safety and security. All exterior lighting fixtures shall be efficient in terms of design and energy use.	Building Permits	Planning Department	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
AES-4	AES4a - The project shall comply with Mitigation Measure 3.1-required by the Mitigation and Reporting Program for the Merced Vision 2030 General Plan EIR.	T BIHRHIO PEHHIIC	Planning Department	
D) Biologi	cal Resources			
BIO-1	BIO-1) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for nesting Swainson's hawks within 0.25 miles of the project site shall be done if construction commences between March 1 and September 15. If active nests are found, a qualified biologist shall determine the need (if any) for temporare restrictions on construction. The determination shall utilize criteria set forth by CDFW (CDFG 1994).	3	Planning Department	
	BIO-1a) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for western point turtles and their nests shall be conducted if construction commences between April 1 through October 31. The survey shall include a search for nests in uplands adjacent to the creek. If nest sites are located, a 50-foot buffer rearound the nest, a 50-foot buffer area around the nest shall be established and work shall be delayed until hatching complete and the young have left the nest site.	d	Planning Department	
	BIO-1b) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for bird protected by the Migratory Bird Treaty Act of 1918. nesting birds are found, work in the vicinity of the nest shad be delayed until the young fledge.	s f	Engineering Department	

Impact		m	Agency or	City Verification
No.	Mitigation Measures	Timing	Department	(date and initials)
BIO-3	BIO-3) Avoidance of jurisdictional Waters of the U.S. is	Building Permit	Planning/	
	recommended, if possible. If complete avoidance of Black		Engineering	
	Rascal Creek is infeasible, impact shall be minimized to the		Department	
	maximum extent practicable, and permits from ACOE,			
	CDFW, RWQCB, and possibly CVFPS shall be secured			
	prior to the placement of any fill material (e.g., culverts, fill			
	dirt, rock) within jurisdictional Waters of the U.S.			
CUL-1	CUL-1) In the event that buried historic or archaeological resources	Grading	Inspection	
	are discovered during construction, operations shall stop		Services/	
	within 50 feet of the find and a qualified archaeologist shall		Panning	
	be consulted to evaluate the resource in accordance with		Department	
	CEQA Guidelines 15064.5. The applicant shall include a			
	standard inadvertent discovery clause in every			
	construction contract to inform contractors of this			
	requirement. If the resource does not qualify as a			
	significant resource, then no further protection or study is			
	necessary. If the resource does qualify as a significant			
	resource then the impacts shall be avoided by project			
	activities. If the resource cannot be avoided, adverse			
	impacts to the resource shall be addressed. The			
	archaeologist shall make recommendations concerning			
	appropriate mitigation measures that shall be implemented			
	to protect the resources, including but not limited to			
	excavation and evaluation of the finds in accordance with			
	Section 15064.5 of the CEQA Guidelines. Any previously			
	undiscovered resources found during construction within			
	the project area should be recorded on appropriate			
	Department of Parks and Recreation (DPR) 523 forms and			
	evaluated for significance in terms of CEQA criteria.			

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
CUL-3	CUL-3) In the event that fossils or fossil-bearing deposits are discovered during construction activities, excavations within a 50-foot radius of the find shall be temporarily halted or diverted. The project contractor shall notify a qualified paleontologist to examine the discovery. The applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. The paleontologist shall document the discovery as needed in accordance with Society of Vertebrate Paleontology standards and assess the significance of the find under the criteria set forth in CEQA Guidelines Section 15064.5. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction activities are allowed to resume at the location of the find. If the Applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of construction activities on the discovery. The plan shall be submitted to the City of Merced for review and approval prior to implementation, and the Applicant shall adhere to the recommendations in the plan.	Grading	Inspection Services/ Panning Department	(date ana initials)

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
CUL-4	CUL-4) Guidelines Section 15064.5, Health and Safety Code Section 7050.5, and Public Resources Code (PRC) Sections 5097.94 and 5097.98 must be followed. If during the course of project development there is accidental discovery or recognition of any human remains, the following steps shall be taken:	Grading	Inspection Services/ Panning Department	
	1. There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the County Coroner is contacted and determines if the remains are Native American and if an investigation of the cause of death is required. If the coroner determines the remains to be Native American, the coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours, and the NAHC shall identify the person or persons it believes to be the most likely descendant (MLD) of the deceased Native American. The MLD may make recommendations to the landowner or the person responsible for the excavation work within 48 hours, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC Section 5097.98.			
	2. Where the following conditions occur, the landowner or his or her authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity either in accordance with the recommendations of the most likely descendant or on the project site in a location not subject to further subsurface disturbance:			

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
	 The NAHC is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 48 hours after being notified by the commission. The descendant identified fails to make a recommendation. The landowner or his authorized representative rejects the recommendation of the descendant, and mediation by the NAHC fails to provide measures acceptable to the landowner. Additionally, California Public Resources Code Section 15064.5 requires the following with regards to Native American Remains: 	Grading	Inspection Services/ Panning Department	(unit unit initials)
	When an initial study identifies the existence of, or the probable likelihood of, Native American Remains within a project, a lead agency shall work with the appropriate Native Americans as identified by the Native American Heritage Commission as provided in Public Resources Code Section 5097.98. The applicant may develop a plan for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American Burials with the appropriate Native Americans as identified by the NAHC.			
GEO-2	GEO-2) Prior to the approval of a tentative subdivision map or building permit, the City shall review plans for drainage and storm water run-off control systems and their component facilities to ensure that these systems are non-erosive in design.	Tentative Map Building Permit	Engineering Department	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
GEO-2	GEO-2a) Upon completion of phased construction, subsequent	Building Permit	Inspection	(date and initials)
0202	phases shall re-vegetate all exposed soil surfaces within 30		Services	
	days, or as otherwise approved by the City, to minimize			
	potential topsoil erosion. Reasonable alternatives to re-			
	vegetation may be employed, especially during peak high			
	temperature periods or to avoid negative impacts to nearby			
GEO-4	agricultural activities, subject to the approval of the City. GEO-4 A geotechnical study shall be provided prior to the issuance	Building Permit	Inspection	
GEO-4	of a building or grading permit for this site. All	Building I cimii	Services/	
	recommendations for addressing expansive soils and site		Engineering	
	grading shall be implemented as well as any other			
	recommendations determined relevant by the Chief			
*****	Building Official or City Engineer.	GI DI	DI I	
HAZ-5	HAZ-5 Prior to the issuance of any subsequent land use entitlement	Site Plan	Planning Department	
	for construction of a building or the issuance of a building permit, the developer shall demonstrate compliance with	Review/Building Permit	Department	
	the requirements of the Merced County Airport Land Use	1 CIIIII		
	Compatibility Plan (ALUCP). If compliance is not			
	feasible, the development plan shall be modified to make			
	compliance possible.			
HYD-1	HYD 1a Prior to the issuance of grading permits, the applicant shall	Grading Permit	Inspection	
	file a "Notice of Intent" with and obtain a facility		Services/	
	identification number from the State Water Resources		Engineering	
	Control Board. The project shall also submit a Stormwater Pollution Prevention Plan (SWPPP) to the City of Merced			
	that identifies specific actions and Best Management			
	Practices (BMP's) to prevent stormwater pollution during			
	construction activities. (continued on next page)			

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
HYD-1	 The SWPPP shall identify a practical sequence for BMP implementation, site restoration, contingency measures, responsible parties, and agency contacts. The SWPPP shall include, but not be limited to, the following elements: Comply with the requirements of the State of California's most current Construction Stormwater Permit. Temporary erosion control measures shall be implemented on all disturbed areas. Disturbed surfaces shall be treated with erosion control measures during the October 15 to April 15 rainy season. Sediment shall be retained on-site by a system of sediment basins, traps, or other BMPs. The construction contractor shall prepare Standard Operating Procedures for the handling of hazardous materials on the construction site to eliminate discharge of materials to storm drains. BMP performance and effectiveness shall be determined either by visual means where applicable (e.g., observation of above-normal sediment release), or by actual water sampling in cases where verification of contaminant reduction or elimination (such as inadvertent petroleum release) is required by the Central Valley Regional Water Quality Control Board to determine adequacy of the measure. (continues on next page) 	Grading Permit	Inspection Services/ Engineering	

Impact	Mitigation Magazines	Timina	Agency or	City Verification
No. HYD-1	Mitigation Measures In the event of significant construction delays or	Timing	Department	(date and initials)
птр-т	delays in final landscape installation, native grasses			
	or other appropriate vegetative cover shall be			
	established on the construction site as soon as			
	possible after disturbance, as an interim erosion			
	control measure throughout the wet season.			
HYD-1	HYD-1b Prior to the issuance of building	Grading Permit	Inspection	
11110-1	permits, the project applicant shall submit a final Storm	Grading Termii	Services/	
	Water Mitigation Plan (SWMP) to the City of Merced for		Engineering	
	review and approval. The plan shall be developed using		Engineering	
	the California Stormwater Quality Association's "New			
	Development and Redevelopment Handbook." The			
	SWMP shall identify pollution prevention measures and			
	BMPs necessary to control stormwater pollution from			
	operational activities and facilities, and provide for			
	appropriate maintenance over time. The SWMP shall			
	include design concepts that are intended to accomplish a			
	"first flush" objective that would remove contaminants			
	from the first 2 inches of stormwater before it enters area			
	waterways. The project applicant shall also prepare and			
	submit an Operations and Maintenance Agreement to the			
	City identifying procedures to ensure that stormwater			
	quality control measures work properly during			
	operations.			

Impact				Agency or	City Verification
No.		Mitigation Measures	Timing	Department	(date and initials)
HYD-5	HYD-5	Prior to the issuance of a building permit for this project, the applicant shall demonstrate to the City that proposed storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City's Storm Drainage Master Plan and the Post Construction Standards for the City's Phase II MS4 permit.	Grading Permit	Inspection Services/ Engineering	
HYD-8	HYD-8	Development of the site is required to provide fill dirt to raise the elevation of the site and achieve protection from flooding. The fill must be elevated above the computed 200-year flood elevation and freeboard is highly recommended by DWR (note: freeboard is the difference between the fill elevation and the computed flood elevation). A freeboard of 1-foot or greater will help to account for the inherent uncertainty in estimating peak flood discharges and the computed flood elevations. A Summary of the proposed fill elevations is provided in the Table below. The required fill elevation ranges from 168.4 to 167.7 ft. (NAVD88 vertical datum)	Grading Permit	Inspection Services/ Engineering	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
NOI-1	NOI-1 The construction contractor shall limit all noise-producing construction activities, including deliveries and warming up of equipment, to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No such work shall be permitted on Sundays or federal holidays without prior approval from the City.	Grading Permit	Inspection Services/ Engineering	(date and initials)
NOI-1	NOI-2 Any outdoor dining areas or other outdoor uses shall have the following setbacks to maintain an acceptable noise level of 70 dB for outdoor uses: Road/Railroad Required Setback Santa Fe Drive 54 Ft. North Highway 59 89 Ft. BNSF Railroad 137 Ft.	Building Permit	Inspection Services/ Planning	
TRA-1	 TRA-1 The following improvements shall be incorporated into the development of the northwest corner of North Highway 59 and Santa Fe Drive. These improvements are the sole responsibility of the property owner/developer. 1. Restripe Santa Fe Drive to create a two-way left-turn (TWLT) lane east of the western access. This will improve the Level of Service by accommodating two-step left turns, 2. Modify the layout of the access to Santa Fe Drive to either prohibit outbound right turns from the eastern driveway or provide a continuous auxiliary acceleration-deceleration lane between the driveways. These measures will address the horizontal curve on the alignment of Santa Fe Drive as it relates to the western driveway. 	Building Permit	Engineering/ Planning	

Impact No.	Mitigation Measures	Timing	Agency or	City Verification (date and initials)
TRA-1	A traffic signal may be required at the western-most driveway. Traffic conditions at the western access shall be monitored and a traffic signal shall be installed if determined to be needed by the City Engineer based on warrants associated with preventable accidents. The cost of the traffic signal shall be the responsibility of the owner/developer. Prior to construction, the Site Plan Review Committee shall review the site design and determine which alternative at the western driveway is best to reduce the expected impacts. The alternatives may include those alternatives included in the traffic analysis or another alternative such as moving the driving further to the west. The developer shall provide any additional documentation or studies needed for the Site Plan Review Committee to make this determination.	Note: Underling new text, striket text is deleted to	hrough	(date and initials)
	TRA-1a The southbound left-turn lane on SR 59 shall be lengthened as determined by the City Engineer and approved by Caltrans.	Building Permit	Engineering/ Planning	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
	TRA-1b The development shall contribute its fair share to the cost of improvements for the intersection of SR 59 and Olive Avenue: • Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and,		Planning	
	 Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and, 			
	 Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound and right turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes. 			
TRA-6	TRA-6 Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR 59.		Planning	

• • •	that the required mitigation measures have been implemented as evidenced all direct and indirect costs have been paid. This act constitutes the issuance
Environmental Coordinator	Date

EXHIBIT G MITIGATION MEASURES ADOPTED BY CITY COUNCIL

ENVIRONMENTAL REVIEW #15-36 Mitigation Monitoring Program Revised August 22, 2018

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- The requirements of the adopted mitigation monitoring program for Annexation and Pre-Zone Application #15-01 and General Plan Amendment #15-04 shall run with the real property. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
- 2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

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In most cases, mitigation measures can be monitored through the City's construction plan approval/plan check process. When the approved project plans and specifications, with mitigation measures, are submitted to the City Development Services Department, a copy of the monitoring checklist will be attached to the submittal. The Mitigation Monitoring Checklist will be filled out upon project approval with mitigation measures required. As project plans and specifications are checked, compliance with each mitigation measure can be reviewed.

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Any person or agency may file a complaint asserting noncompliance with the mitigation measures associated with the project. The complaint shall be directed to the Director of Development Services in written form providing specific information on the asserted violation. The Director of Development Services shall cause an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall cause appropriate actions to remedy any violation. The complainant shall receive written confirmation indicating the results of the investigation or the final action corresponding to the particular noncompliance issue. Merced Municipal Code (MMC) Sections 19.28.080 and 19.28.090 outline the criminal penalties and civil and administrative remedies which may be incurred in the event of noncompliance. MMC 19.28.100 spells out the appeals procedures.

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Consultation: which coordination is required to satisfy the identified mitigation

measure.

Verification: These columns will be initialed and dated by the individual designated

to verify adherence to the project specific mitigation.

Annexation and Pre-Zone Application #15-01 and General Plan Amendment #15-04 Mitigation Monitoring Checklist

Project Name:	File Number:
Approval Date:	Project Location
Brief Project Description	

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City of Merced's Mitigation Monitoring Requirements (MMC 19.28) with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6).

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
AES-4	AES-4) Lighting should be designed to provide ambiance, safety, and security without unnecessary spillover or glare onto adjacent properties. The quality of light, level of light (measured in footcandles) and the type of bulb or source should be carefully addressed. Lighting levels should not be so intense as to draw attention to the flow or glare of the project site. The lighting plan should incorporate current energy-efficient fixtures and technology. Glare from any site lighting should be shielded from adjacent properties and directed at a specific object or target area. Exposed bulbs shall not be used. Wall-mounted light fixtures shall not extend above the height of the wall to which the fixtures are mounted. Blinking and flashing lights used to illuminate building facades or to outline buildings shall not be used. When security lighting is necessary, it should be recessed, hooded and located to illuminate only the intended area. Off-site glare and light trespass is prohibited. Pedestrian areas, sidewalks, parking lots, and building entrances shall be adequately lit to provide safety and security. All exterior lighting fixtures shall be efficient in terms of design and energy use.	Building Permits	Planning Department	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
AES-4	AES4a - The project shall comply with Mitigation Measure 3.1-required by the Mitigation and Reporting Program for the Merced Vision 2030 General Plan EIR.	T BIHRHIO PEHHIIC	Planning Department	
D) Biologi	cal Resources			
BIO-1	BIO-1) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for nesting Swainson's hawks within 0.25 miles of the project site shall be done if construction commences between March 1 and September 15. If active nests are found, a qualified biologist shall determine the need (if any) for temporare restrictions on construction. The determination shall utilize criteria set forth by CDFW (CDFG 1994).	3	Planning Department	
	BIO-1a) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for western point turtles and their nests shall be conducted if construction commences between April 1 through October 31. The survey shall include a search for nests in uplands adjacent to the creek. If nest sites are located, a 50-foot buffer rearound the nest, a 50-foot buffer area around the nest shall be established and work shall be delayed until hatching complete and the young have left the nest site.	d	Planning Department	
	BIO-1b) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for bird protected by the Migratory Bird Treaty Act of 1918. nesting birds are found, work in the vicinity of the nest shad be delayed until the young fledge.	s f	Engineering Department	

Impact	Mitigation Magazines	Timin o	Agency or	City Verification
No.	Mitigation Measures	Timing	Department	(date and initials)
BIO-3	BIO-3) Avoidance of jurisdictional Waters of the U.S. is	Building Permit	Planning/	
	recommended, if possible. If complete avoidance of Black		Engineering	
	Rascal Creek is infeasible, impact shall be minimized to the		Department	
	maximum extent practicable, and permits from ACOE,			
	CDFW, RWQCB, and possibly CVFPS shall be secured			
	prior to the placement of any fill material (e.g., culverts, fill			
	dirt, rock) within jurisdictional Waters of the U.S.			
CUL-1	CUL-1) In the event that buried historic or archaeological resources	Grading	Inspection	
	are discovered during construction, operations shall stop		Services/	
	within 50 feet of the find and a qualified archaeologist shall		Panning	
	be consulted to evaluate the resource in accordance with		Department	
	CEQA Guidelines 15064.5. The applicant shall include a			
	standard inadvertent discovery clause in every			
	construction contract to inform contractors of this			
	requirement. If the resource does not qualify as a			
	significant resource, then no further protection or study is			
	necessary. If the resource does qualify as a significant			
	resource then the impacts shall be avoided by project			
	activities. If the resource cannot be avoided, adverse			
	impacts to the resource shall be addressed. The			
	archaeologist shall make recommendations concerning			
	appropriate mitigation measures that shall be implemented			
	to protect the resources, including but not limited to			
	excavation and evaluation of the finds in accordance with			
	Section 15064.5 of the CEQA Guidelines. Any previously			
	undiscovered resources found during construction within			
	the project area should be recorded on appropriate			
	Department of Parks and Recreation (DPR) 523 forms and			
	evaluated for significance in terms of CEQA criteria.			
	evaluated for significance in terms of CDQA effects.			

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
CUL-3	CUL-3) In the event that fossils or fossil-bearing deposits are discovered during construction activities, excavations within a 50-foot radius of the find shall be temporarily halted or diverted. The project contractor shall notify a qualified paleontologist to examine the discovery. The applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. The paleontologist shall document the discovery as needed in accordance with Society of Vertebrate Paleontology standards and assess the significance of the find under the criteria set forth in CEQA Guidelines Section 15064.5. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction activities are allowed to resume at the location of the find. If the Applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of construction activities on the discovery. The plan shall be submitted to the City of Merced for review and approval prior to implementation, and the Applicant shall adhere to the recommendations in the plan.	Grading	Inspection Services/ Panning Department	(date ana initials)

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
CUL-4	CUL-4) Guidelines Section 15064.5, Health and Safety Code Section 7050.5, and Public Resources Code (PRC) Sections 5097.94 and 5097.98 must be followed. If during the course of project development there is accidental discovery or recognition of any human remains, the following steps shall be taken:	Grading	Inspection Services/ Panning Department	
	1. There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the County Coroner is contacted and determines if the remains are Native American and if an investigation of the cause of death is required. If the coroner determines the remains to be Native American, the coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours, and the NAHC shall identify the person or persons it believes to be the most likely descendant (MLD) of the deceased Native American. The MLD may make recommendations to the landowner or the person responsible for the excavation work within 48 hours, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC Section 5097.98.			
	2. Where the following conditions occur, the landowner or his or her authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity either in accordance with the recommendations of the most likely descendant or on the project site in a location not subject to further subsurface disturbance:			

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
	 The NAHC is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 48 hours after being notified by the commission. The descendant identified fails to make a recommendation. The landowner or his authorized representative rejects the recommendation of the descendant, and mediation by the NAHC fails to provide measures acceptable to the landowner. Additionally, California Public Resources Code Section 15064.5 requires the following with regards to Native American Remains: 	Grading	Inspection Services/ Panning Department	(unit unit initials)
	When an initial study identifies the existence of, or the probable likelihood of, Native American Remains within a project, a lead agency shall work with the appropriate Native Americans as identified by the Native American Heritage Commission as provided in Public Resources Code Section 5097.98. The applicant may develop a plan for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American Burials with the appropriate Native Americans as identified by the NAHC.			
GEO-2	GEO-2) Prior to the approval of a tentative subdivision map or building permit, the City shall review plans for drainage and storm water run-off control systems and their component facilities to ensure that these systems are non-erosive in design.	Tentative Map Building Permit	Engineering Department	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
GEO-2	GEO-2a) Upon completion of phased construction, subsequent phases shall re-vegetate all exposed soil surfaces within 30 days, or as otherwise approved by the City, to minimize potential topsoil erosion. Reasonable alternatives to revegetation may be employed, especially during peak high temperature periods or to avoid negative impacts to nearby agricultural activities, subject to the approval of the City.	Building Permit	Inspection Services	
GEO-4	GEO-4 A geotechnical study shall be provided prior to the issuance of a building or grading permit for this site. All recommendations for addressing expansive soils and site grading shall be implemented as well as any other recommendations determined relevant by the Chief Building Official or City Engineer.	Building Permit	Inspection Services/ Engineering	
HAZ-5	HAZ-5 Prior to the issuance of any subsequent land use entitlement for construction of a building or the issuance of a building permit, the developer shall demonstrate compliance with the requirements of the Merced County Airport Land Use Compatibility Plan (ALUCP). If compliance is not feasible, the development plan shall be modified to make compliance possible.	Site Plan Review/Building Permit	Planning Department	
HYD-1	HYD 1a Prior to the issuance of grading permits, the applicant shall file a "Notice of Intent" with and obtain a facility identification number from the State Water Resources Control Board. The project shall also submit a Stormwater Pollution Prevention Plan (SWPPP) to the City of Merced that identifies specific actions and Best Management Practices (BMP's) to prevent stormwater pollution during construction activities. (continued on next page)	Grading Permit	Inspection Services/ Engineering	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
HYD-1	 The SWPPP shall identify a practical sequence for BMP implementation, site restoration, contingency measures, responsible parties, and agency contacts. The SWPPP shall include, but not be limited to, the following elements: Comply with the requirements of the State of California's most current Construction Stormwater Permit. Temporary erosion control measures shall be implemented on all disturbed areas. Disturbed surfaces shall be treated with erosion control measures during the October 15 to April 15 rainy season. Sediment shall be retained on-site by a system of sediment basins, traps, or other BMPs. The construction contractor shall prepare Standard Operating Procedures for the handling of hazardous materials on the construction site to eliminate discharge of materials to storm drains. BMP performance and effectiveness shall be determined either by visual means where applicable (e.g., observation of above-normal sediment release), or by actual water sampling in cases where verification of contaminant reduction or elimination (such as inadvertent petroleum release) is required by the Central Valley Regional Water Quality Control Board to determine adequacy of the measure. (continues on next page) 	Grading Permit	Inspection Services/ Engineering	

Impact	Mitigation Magazines	Timina	Agency or	City Verification
No. HYD-1	Mitigation Measures In the event of significant construction delays or	Timing	Department	(date and initials)
птр-т	delays in final landscape installation, native grasses			
	or other appropriate vegetative cover shall be			
	established on the construction site as soon as			
	possible after disturbance, as an interim erosion			
	control measure throughout the wet season.			
HYD-1	HYD-1b Prior to the issuance of building	Grading Permit	Inspection	
11110-1	permits, the project applicant shall submit a final Storm	Grading Termii	Services/	
	Water Mitigation Plan (SWMP) to the City of Merced for		Engineering	
	review and approval. The plan shall be developed using		Engineering	
	the California Stormwater Quality Association's "New			
	Development and Redevelopment Handbook." The			
	SWMP shall identify pollution prevention measures and			
	BMPs necessary to control stormwater pollution from			
	operational activities and facilities, and provide for			
	appropriate maintenance over time. The SWMP shall			
	include design concepts that are intended to accomplish a			
	"first flush" objective that would remove contaminants			
	from the first 2 inches of stormwater before it enters area			
	waterways. The project applicant shall also prepare and			
	submit an Operations and Maintenance Agreement to the			
	City identifying procedures to ensure that stormwater			
	quality control measures work properly during			
	operations.			

Impact			<i>m</i> : •	Agency or	City Verification
No.		Mitigation Measures	Timing	Department	(date and initials)
HYD-5	HYD-5	Prior to the issuance of a building permit for this project, the applicant shall demonstrate to the City that proposed storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City's Storm Drainage Master Plan and the Post Construction Standards for the City's Phase II MS4 permit.	Grading Permit	Inspection Services/ Engineering	
HYD-8	HYD-8	Development of the site is required to provide fill dirt to raise the elevation of the site and achieve protection from flooding. The fill must be elevated above the computed 200-year flood elevation and freeboard is highly recommended by DWR (note: freeboard is the difference between the fill elevation and the computed flood elevation). A freeboard of 1-foot or greater will help to account for the inherent uncertainty in estimating peak flood discharges and the computed flood elevations. A Summary of the proposed fill elevations is provided in the Table below. The required fill elevation ranges from 168.4 to 167.7 ft. (NAVD88 vertical datum)	Grading Permit	Inspection Services/ Engineering	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
NOI-1	NOI-1 The construction contractor shall limit all noise-producing construction activities, including deliveries and warming up of equipment, to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No such work shall be permitted on Sundays or federal holidays without prior approval from the City.	Grading Permit	Inspection Services/ Engineering	
NOI-1	NOI-2 Any outdoor dining areas or other outdoor uses shall have the following setbacks to maintain an acceptable noise level of 70 dB for outdoor uses: Road/Railroad Required Setback Santa Fe Drive 54 Ft. North Highway 59 89 Ft. BNSF Railroad 137 Ft.	Building Permit	Inspection Services/ Planning	
TRA-1	 TRA-1 The following improvements shall be incorporated into the development of the northwest corner of North Highway 59 and Santa Fe Drive. These improvements are the sole responsibility of the property owner/developer. 1. Restripe Santa Fe Drive to create a two-way left-turn (TWLT) lane east of the western access. This will improve the Level of Service by accommodating two-step left turns, 2. Modify the layout of the access to Santa Fe Drive to either prohibit outbound right turns from the eastern driveway or provide a continuous auxiliary acceleration-deceleration lane between the driveways. These measures will address the horizontal curve on the alignment of Santa Fe Drive as it relates to the western driveway. 	Building Permit	Engineering/ Planning	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
TRA-1	A traffic signal may be required at the western-most driveway. Traffic conditions at the western access shall be monitored and a traffic signal shall be installed if determined to be needed by the City Engineer based on warrants associated with preventable accidents. The cost of the traffic signal shall be the responsibility of the owner/developer. Prior to construction, the Site Plan Review Committee shall review the site design and determine which alternative at the western driveway is best to reduce the expected impacts. The alternatives may include those alternatives included in the traffic analysis or another alternative such as moving the driving further to the west. The developer shall provide any additional documentation or studies needed for the Site Plan Review Committee to make this determination.	Note: Underling new text, striket text is deleted to	Engineering/ Planning ed text is	(date and initials)
	TRA-1a The southbound left-turn lane on SR 59 shall be lengthened as determined by the City Engineer and approved by Caltrans.	Building Permit	Engineering/ Planning	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
	TRA-1b The development shall contribute its fair share to the cos of improvements for the intersection of SR 59 and Olive Avenue: • Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and,		Planning	
	 Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project' frontage; and, 	!		
	 Reconstruct the existing northbound right turn lands as a "free" right turn with median island separating eastbound and right turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dualeft turn lanes. 			
TRA-6	TRA-6 Prior to the issuance of a building permit, the develope shall work with the Merced County Transit Authority (aka The Bus) to determine if a bus stop is needed at thi location. If a bus stop is required, the stop shall be in a area to allow the bus to move completely out of the trave lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along \$159.		Planning	

	confirms that the required mitigation measures have been implemented as evidenced and that all direct and indirect costs have been paid. This act constitutes the issuance
Environmental Coordinator	Date

Amendment #15-04 Annexation #15-01 Pre-Zoning #15-01 General Plan



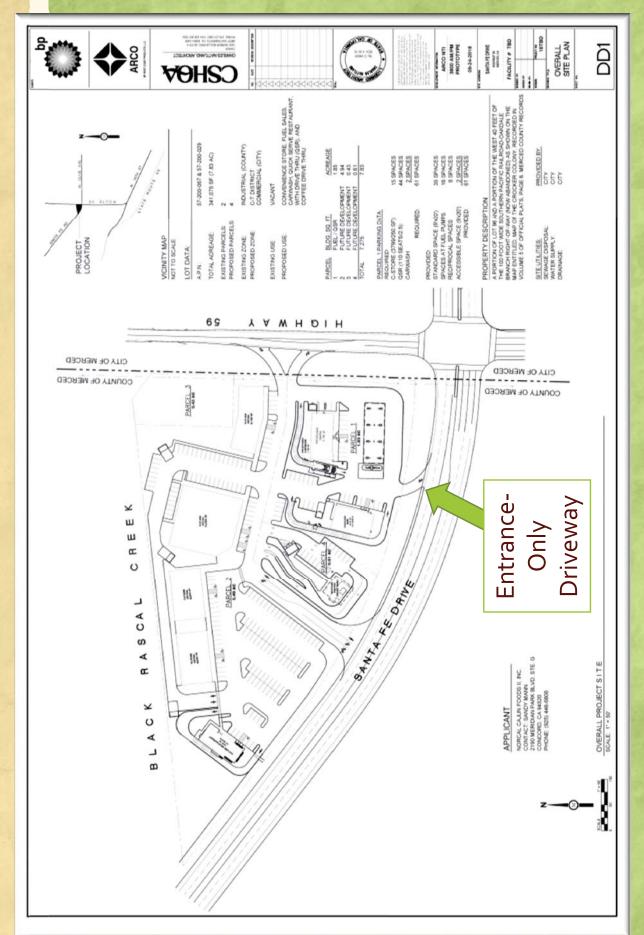
CITY COUNCIL MEETING—OCTOBER 1, 2018 NORTH HIGHWAY 59 & SANTA FE DRIVE

KIM ESPINOSA, PLANNING MANAGER

CONTINUED FROM SEPTEMBER 17, 2018



REVISED SITE PLAN



OFF-SITE IMPROVEMENTS

PLACE HOLDER FOR REVISED PLAN TO BE PROVIDED BY CITY

NEW CONDITIONS

- signal at the intersection of North State Highway 59 27) The traffic signal at the western driveway and Santa Fe Drive, when warranted and required by the City and Santa Fe Drive/Olive Avenue so as to ensure Engineer, shall be synchronized with the traffic traffic stops and goes through both signals simultaneously.
- 28) The eastern driveway shall be an entrance-only drive way, allowing only right turns into the site.

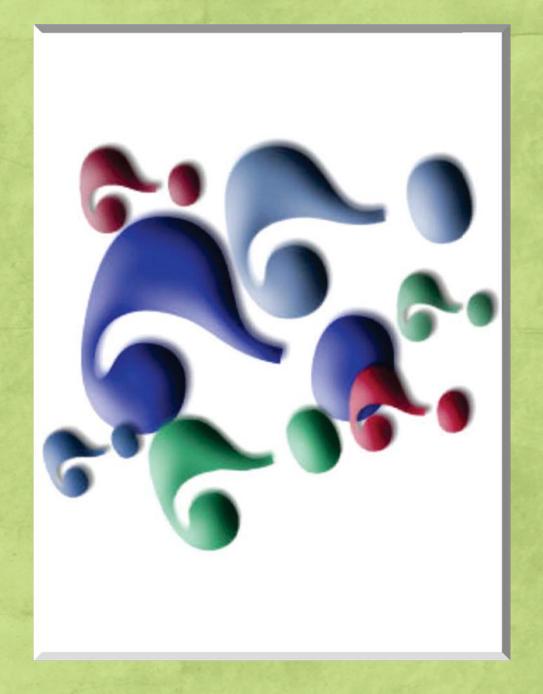


City Council Action



After the public hearing, take action on the following items:

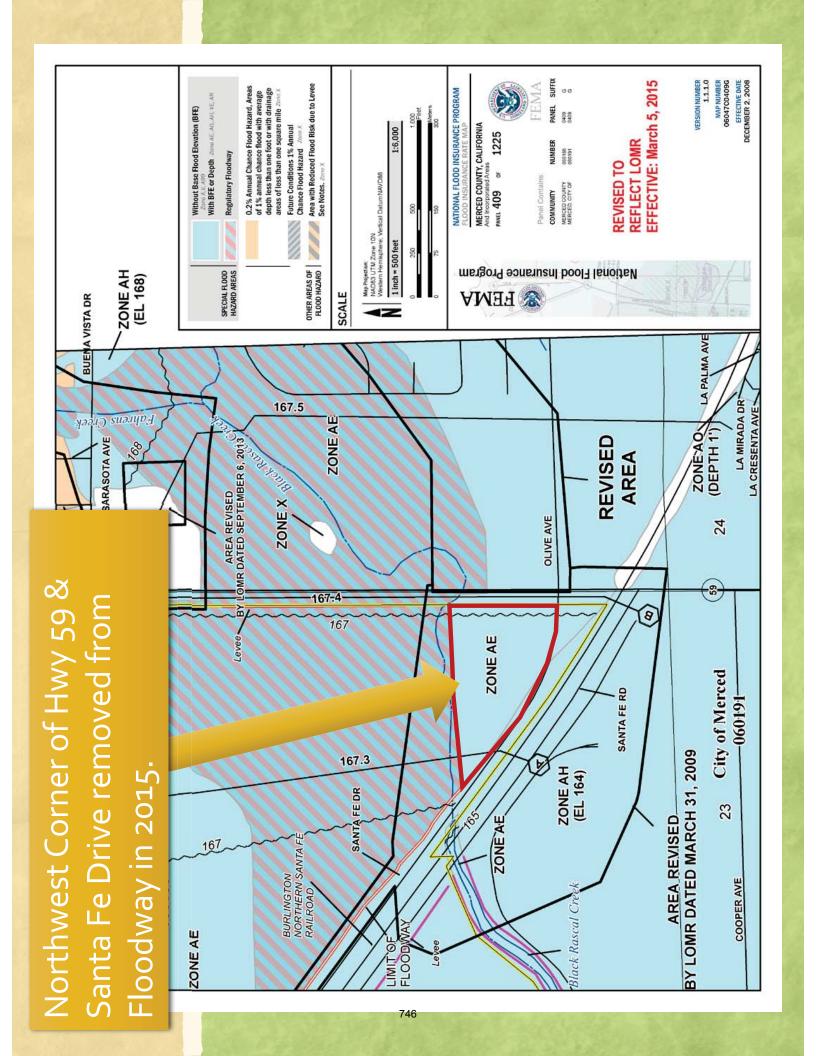
- Resolution #2018-60 Approving Mitigated Negative Declaration and General Plan Amendment.
- Resolution #2018-61 to LAFCO for annexation of property.
- Introduction of Ordinance #2494 approving the Pre-zoning.
- Annexation Development Agreement between the City of Introduction of Ordinance #2495 approving the Pre-Merced and Lou Ann Bianchi.

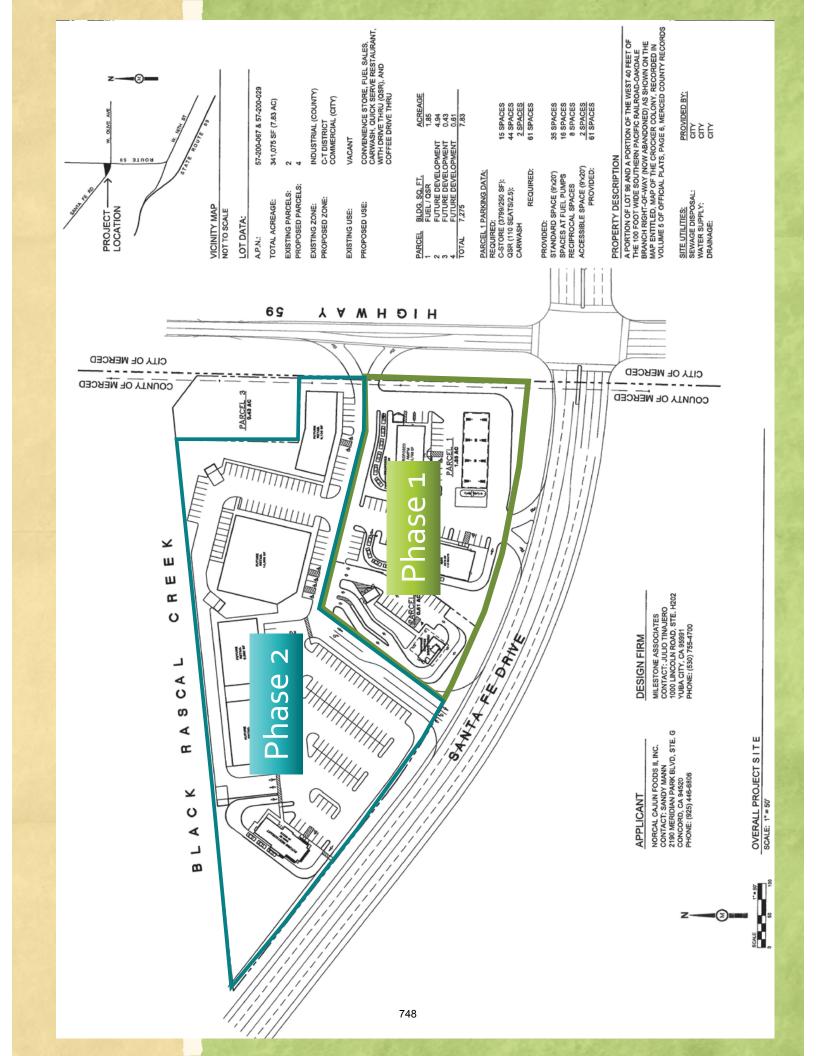


The following slides were presented to the Council on September 17, 2018.

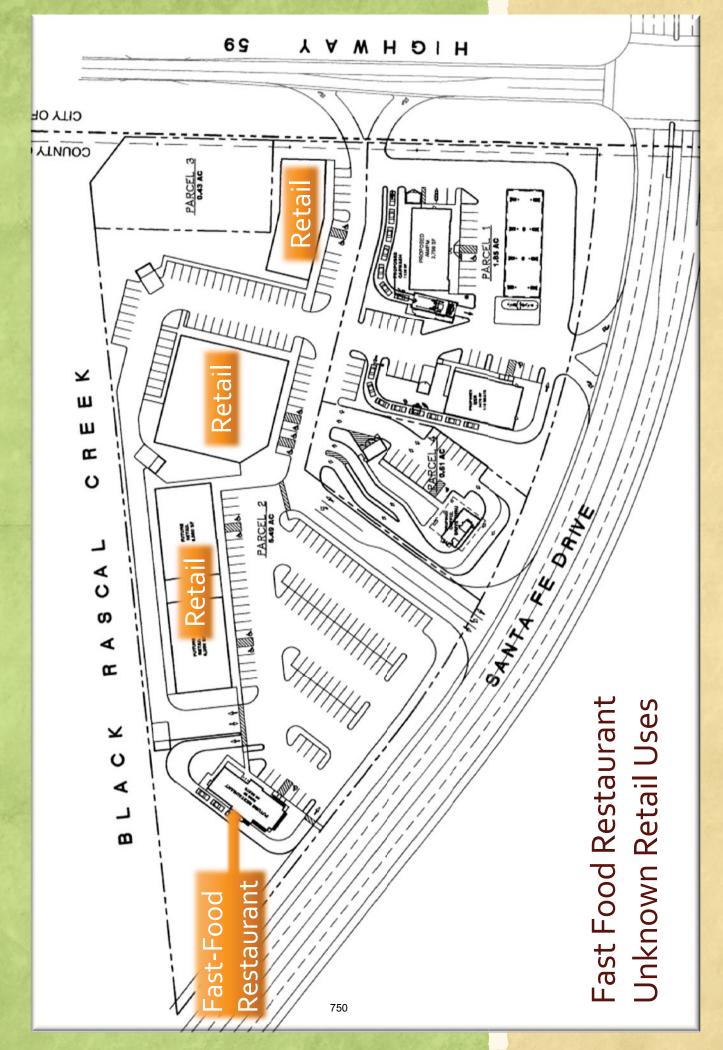


BLACK RASCAL BP OLIVE 69 DE CONTROL OF THE PROPERTY OF ANTERIA CONTRACTOR OF THE PROPERTY OF THE PROPERTY CONTRACTOR OF THE PROPERTY CONTRACTOR OF THE PROPERTY OF TH Open Space Change to THOROUGHFARE COMMERCIAL GENERAL PLAN DESIGNATIONS Proposed Annexation Boundary City Limit Legend





CarWash **Gas Station** RETAR 8,134 6F Canopy PROPOSED AMPN 3,799 SF PARCEL 1.85 AC MOTOR STATE Restauran' SAME OF THE PARTY. PHASE 1 Kiosk





C-T Zone – Allowed Uses

- Drive-Through and Drive-Up Sales
- Hotels and Motels
- Maintenance and Repair Services
- General Retail
- Restaurants
- Vehicle Rentals
- Vehicle Sales

For a complete list of allowable and conditional uses refer to Attachment 4 of the Administrative Report.

General Plan Criteria for Annexation

The Annexation would comply with the current General Plan Commercial designation if the General Plan Amendment is designation of Industrial and the proposed Thoroughfare approved. There are 6 Criteria set forth in the General Plan to evaluate annexations against. An evaluation of these criteria is provided in the Administrative

Report.

Traffic/Circulation



Traffic Analysis prepared by Ken Anderson and Associates.

Exis	ting Roadwa	Existing Roadway Segments Plus Project Volumes and Levels of Service	Project V	olumes a	and Level	s of Serv	ice
Street	From	To	Existing	Project	Total	Percent LOS	FOS
			Daily	Daily	Daily	Increas	
754			Volume	Volume	Volume	е	
	Buena	W. Olive Ave	13,379	1,010	14,749	7.0%	D
02 00	Vista Dr.						
SK 39	W. Olive	BNSF RR	21,954	808	22,762	3.7%	F
	BNSF RR	W. 16 th St.	20,462	404	20,866	2.0%	F
Santa	Beachwood SR 59	SR 59	19,733	909	20,339	3.1%	C
Fe Dr.	Dr.						
W.	SR 59	Loughborough	25,131	2,015	2,015 27,146	8.0%	C
Olive		Dr.					

Off-site Intersections would operate at LOS D.

Traffic/Circulation

Western Driveway would operate at LOS F in the afternoon peak hour at full build-out of project.

consultant, it was determined a traffic signal would be required After discussions with LAFCO, Merced County, and the traffic at western driveway if/when warrants are met.

Other Mitigation Measures/Conditions

Lengthen Southbound left-turn lane.

improvements for the intersection of SR 59 and Olive Avenue. The development shall contribute its fair share to the cost of

Caltrans--Safety Project @ Highway 59 and Santa Fe/Olive Avenue. Caltrans reviewed the traffic analysis and approved the mitigation measures proposed.

Public Improvements/City Services

Santa Fe Drive to be widened to ultimate width (128 ft. r-o-w).

All improvements (i.e., sidewalk, curb, gutter, etc.) required.

Sewer and Water lines are available to serve the site.

Storm drainage is required to be captured on site and would be metered out to the City's storm drain facilities.

City's Community Facilities District (CFD) to help pay for costs of Police and Fire Services and would be required to annex into the The annexation area is within the required response time for police and fire service.

Neighborhood Impact

south side of the railroad tracks on the east side of any residential areas (residential uses are on the The annexation area is not directly adjacent to Hwy 59)

Public Hearing Notices were sent to all property owners within 300 feet of the site.

Staff hasn't received any comments from the surrounding owners prior to the meeting.

Environmental Review

Initial Study #15-36 was prepared and a Mitigated Negative Declaration is being recommended.

The Initial Study was circulated for review prior to the meeting as required by law.

Staff received comments from the San Joaquin Valley Air Pollution Control District (SJVAPCD), LAFCO, and Merced County Planning. All comments were addressed and mitigation measures revised as appropriate.



Corrections

Draft Resolution. These mitigation measures have been The updated mitigation measures were not attached to provided at the dais.

the Draft Ordinance at Attachment 14 did not show the The legal description and map attached as Exhibit A to roadway included in the annexation area. A new legal description and map have been provided.

incorrect. The correct excerpt has been provided The Planning Commission minutes excerpt was

Planning Commission Action

The Planning Commission Held a Duly Noticed Public Hearing on June 6, 2018.

No one spoke in opposition of the project.

The developer spoke in favor of the project.

The Planning Commission voted to recommend approval of Amendment #15-04, and Environmental Review #15-36 by Annexation/Pre-Zoning Application #15-01, General Plan the following vote: 5 Ayes, 1 No, 1 Vacancy

CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item L.1. Meeting Date: 10/1/2018

Report Prepared by: Steven C. Son, City Engineer, Engineering Division

SUBJECT: Pavement Management System Survey Results, Current Capital Improvement Projects, and Discussion of Future Streets Funding

REPORT IN BRIEF

Discuss the results of the Pavement Management System (PMS) survey completed by Merced County Association of Governments (MCAG), the current Capital Improvement Program (CIP) and provide direction on the programming of future Streets funding.

RECOMMENDATION

Provide staff direction for the implementation of the Pavement Management System survey results and future programming of Streets funding through the City's Capital Improvement Program.

CITY COUNCIL PRIORITIES

Not applicable.

DISCUSSION

The City currently maintains 328 miles of streets within the City limits and the number of miles continue to increase as new subdivisions are constructed. Recently, the Merced County Association of Governments (MCAG) completed a survey of the City's current pavement conditions. The study provides the results in terms of pavement conditions, rated on a scale of 0 to 100, with 0 identified as an unpaved street and 100 identified as a newly paved street. The PMS survey results found the overall average rating of City streets to be 55, indicating that streets are in poor condition and are deteriorating at a rapid rate. The PMS survey recommends implementing a maintenance prevention plan that includes the following treatment methods: crack sealing, slurry sealing, and/or overlay. These treatments would help to prevent further deterioration while existing street reconstruction planned for in the City's Capital Improvement Program.

Currently, the Engineering Division has 15 projects in various phases of construction, with another 35 projects under design. Staff are seeking direction on how to prioritize Streets funding in a way that maximizes addresses current treatment needs while maximizing the need for full reconstruction. Staff are also seeking direction on the need for future projects to enhance circulation throughout the City.

IMPACT ON CITY RESOURCES

No impact to the existing FY 2018-2019 Budget. Staff will take input from Council on how to best plan for future projects to be included in the City's Capital Improvement Program.

Meeting Date: 10/1/2018 File #: 18-496

ATTACHMENTS

1. Presentation

PAVEMENT MANAGEMENT SYSTEM AND CAPITAL IMPROVEMENT PROJECTS



ASPHALT CONCRETE

ASPHALT CONCRETE IS COMPRISED OF THE FOLLOWING **MATERIALS**:

1. AGGREGATE (CRUSHED ROCKS AND SAND)

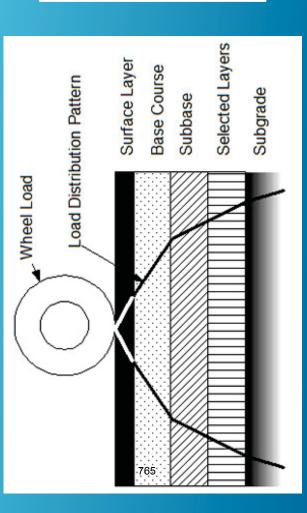
2. BITUMEN (DERIVED FROM CRUDE OIL)

WHY IS ASPHALT CONCRETE UTILIZED OVER CONCRETE?

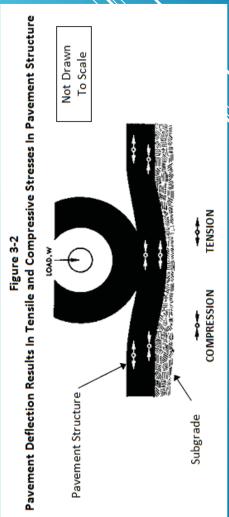
1. CONCRETE IS NOT FLEXIBLE AND IS PRONE TO CRACKING

2. ASPHALT CONCRETE IS FLEXIBLE WHILE PROVIDING STABILITY TO ENDURE WEIGHT OF A VEHICLE 3. ASPHALT CONCRETE MATERIALS ARE EASIER TO ACCESS AND OBTAIN

HOW DOES ASPHALT FAIL?



WEIGHT TRANSFER DISTRIBUTION OF WHEEL LOAD ONTO PAVEMENT



PAVEMENT REACTION TO WHEEL LOAD

PAVEMENT MANAGEMENT SYSTEM

- THE PURPOSE OF THE PAVEMENT MANAGEMENT SYSTEM IS TO DEVELOP A PLAN FOR MAINTAINING ROADWAY PAVEMENT CONDITION
- EACH ROAD IS GIVEN A PAVEMENT CONDITION INDEX FROM 0 TO 100 WHERE 0 IS IDENTIFIED AS DIRT ROAD AND 100 IS IDENTIFIED AS NEW ASPHALT PAVEMENT. \vec{c}
- 3. COMPONENTS OF PAVEMENT CONDITION INDEX
- STREETS ARE BROKEN DOWN INTO BLOCK-SECTIONS

766

- MEASURES THE TYPE, EXTENT, SEVERITY OF PAVEMENT SURFACE DISTRESS, AND SMOOTHNESS 🛠 RIDE COMFORT OF THE ROAD
- CONSISTS OF VISUAL ROAD SURFACE INSPECTION. DOES NOT TAKE INTO CONSIDERATION OF THE STRUCTURAL SECTION OF THE ROAD
- a visual inspection of subjective based on the individual perception of the Road DISTRESS. AUTO INSPECTION IS MORE UNIFORM AND MINIMIZES SUBJECTIVE EVALUATION
- INSPECTION SHOULD BE DONE ON AN ANNUAL BASIS $\dot{\omega}$

TYPES OF ASPHALT FAILURES

LONGITUDINAL CRACKING ALLIGATOR CRACKING

TRAVERSE CRACKING

PATCHING AND POTHOLES

RUTTING

ROUGHNESS

TYPES OF ASPHALT FAILURES

ALLIGATOR CRACKING



ALLIGATOR CRACKING IS EXCESSIVE AC CRACKING

TYPES OF ASPHALT FAILURES LONGITUDINAL CRACKING

769

TYPES OF ASPHALT FAILURES TRAVERSE CRACKING



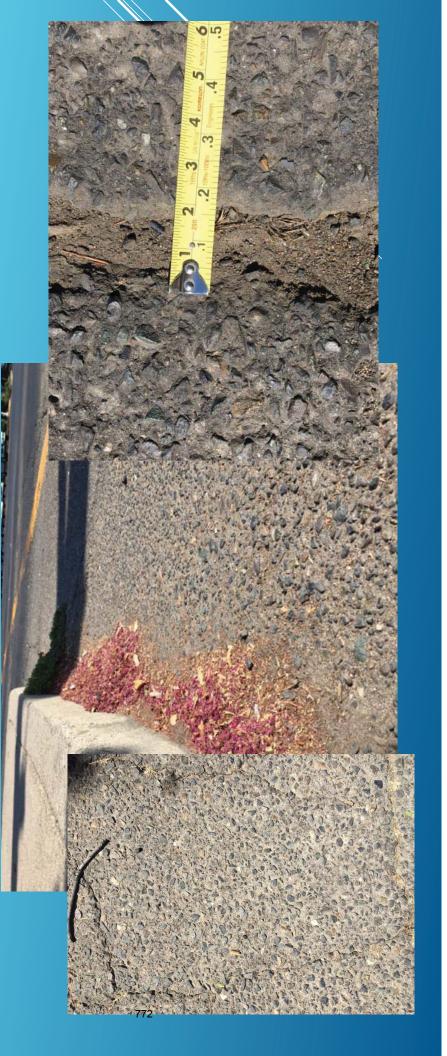
TYPES OF ASPHALT FAILURES

PATCHING AND POTHOLING FAILURE

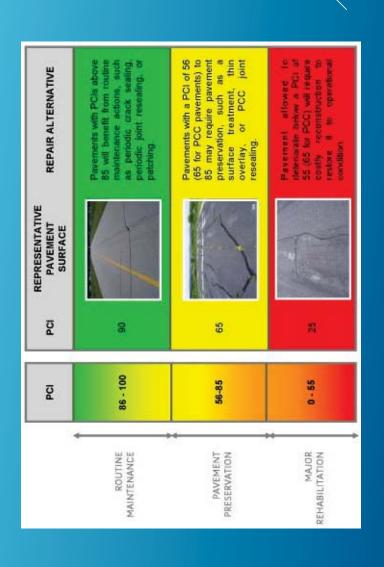


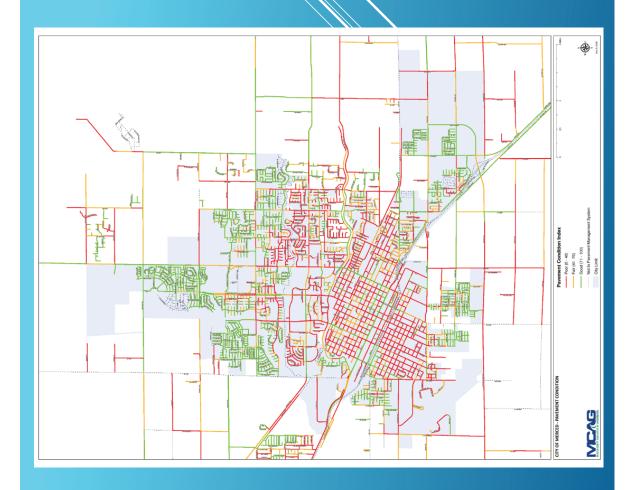
TYPES OF ASPHALT FAILURES

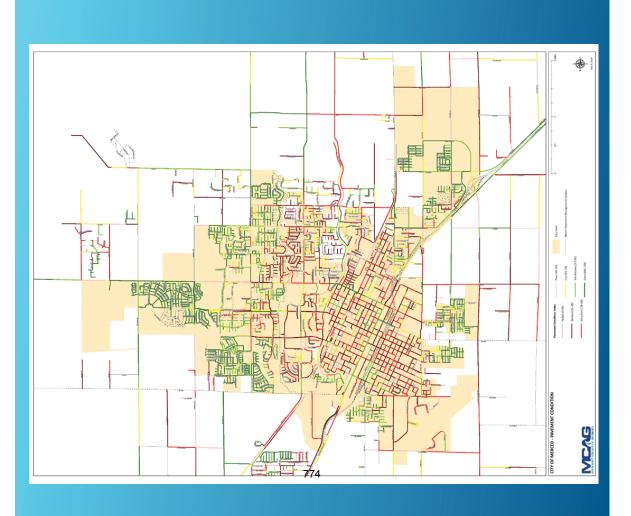
ROUGHNESS FAILURE



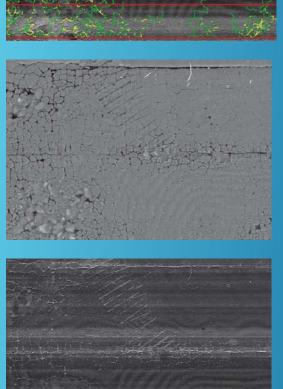
BASED ON THE AUTOMATIC PAVEMENT ASSESSEMENT, THE CITY OF MERCED HAS A PAVEMENT CONDITION INDEX (PCI) OF 55. WHY IS THAT IMPORTANT?











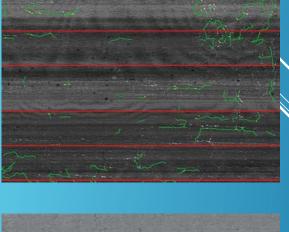






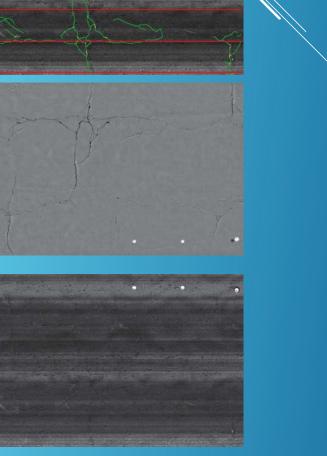






21ST STREET – FROM "S" ST. TO "T" ST. PCI 11-25

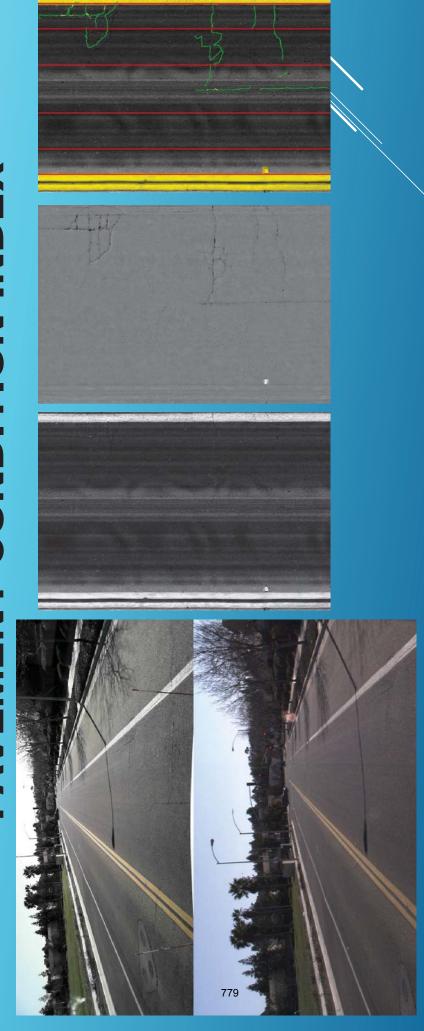




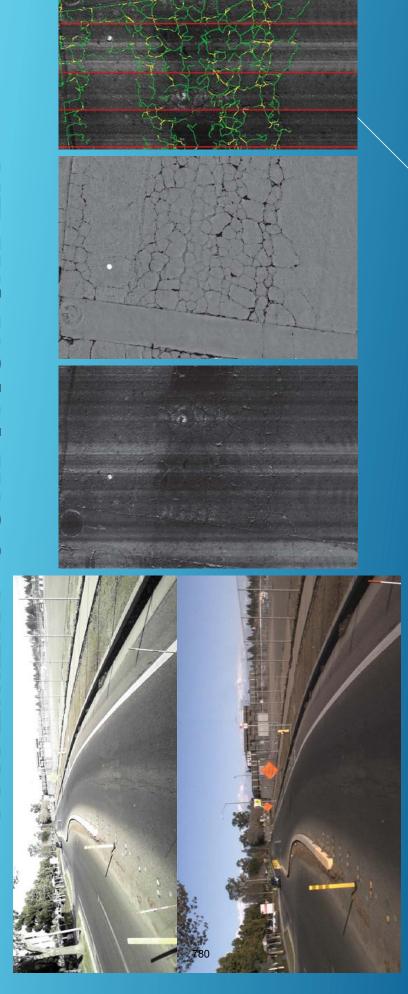
G STREET - FROM OLIVE AVE. TO ALEXANDER AVE. PCI 26-40



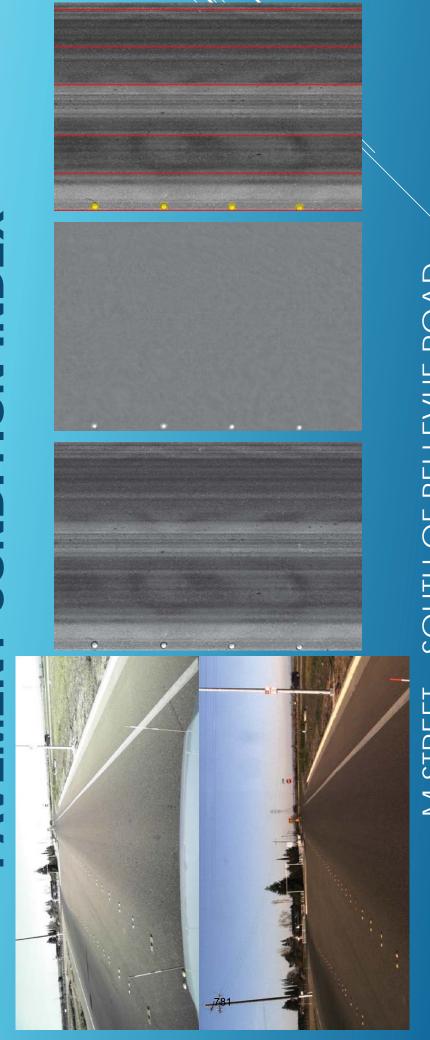
YOSEMITE AVENUE – FROM EL REDONDO TO COMPASS POINT PCI 41-55



EL REDONDO DRIVE – FROM YOSEMITE AVE TO HERMOSA DR PCI 56-70







M STREET – SOUTH OF BELLEVUE ROAD PCI 85-100

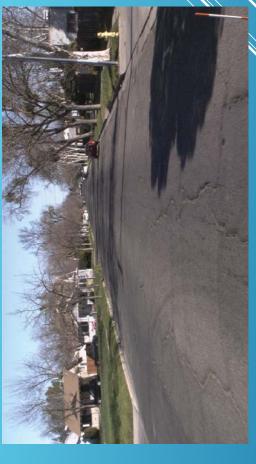
WHAT DOES ALL OF THIS MEAN?

THE CITY'S AVERAGE PCI IS 55 WHICH IS CONSIDERED POOR PAVEMENT CONDITION.

- WHY IS THIS SIGNIFICANT?
- HOW WILL THIS IMPACT THE CITY AND THE BUDGET?
- WHAT HAPPENS IF NO ACTION IS TAKEN TO MAINTAIN CITY STREETS?
- WHAT IS A DESIRED PCI LEVEL?
- WHAT ARE SOME OF THE FUNDING SOURCES TO MAINTAIN OFF **STREETS?**

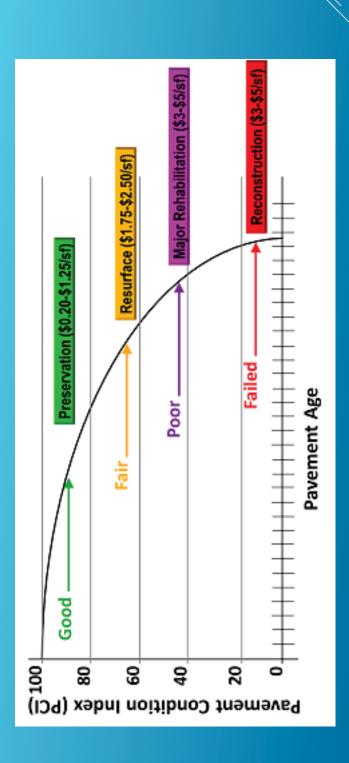
WHAT DOES ALL OF THIS MEAN?





VISUAL OF ROAD CONDITION AT A PCI OF 55

WHY IS THIS SIGNIFICANT?



THE CURRENT PCI OF 55 IS VERY IMPORTANT. THE GRAPH SHOWS WHAT RESOURCES WILL BE NECESSARY TO BRING THE CONDITION OF THE EXISTING PAVEMENT TO A HIGHER LEVEL. WHAT IS THE DESIRED PCI LEVEL THE CITY SHOULD UPHOLD? A PCI OF 60, 65, OR 70?

TYPES OF ROAD TREATMENT

CRACK SEAL – INTENDED TO SEAL CRACKS ON THE STREET MINOR ROAD TREATMENT











TYPES OF ROAD TREATMENT

MINOR ROAD TREATMENT

CHIP SEAL – EMULSION IS SPRAYED OVER THE ROAD AND "CHIPS" (SMALL ROCKS) ARE APPLIED ON TOP OF THE STREET







CAPE SEAL – COMBINATION OF A CHIP SEAL AND SLURRY SEAL

TYPES OF ROAD TREATMENT

MAJOR ROAD TREATMENT

CONCRETE ON TOP OF EXISTING CONCRETE



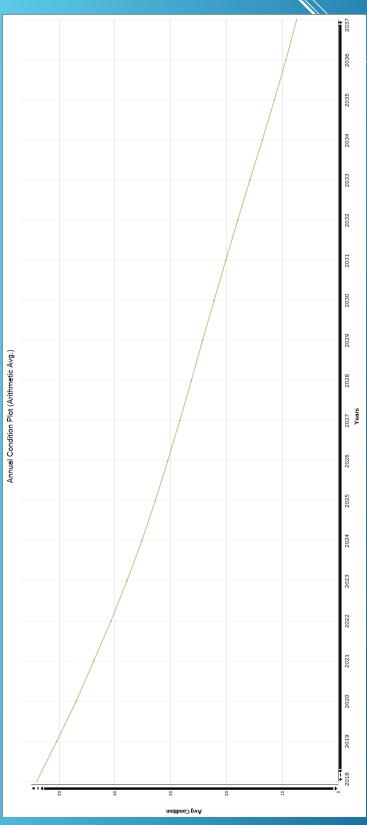






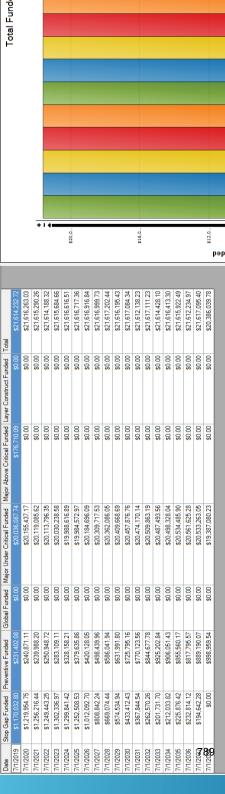
FULL DEPTH RECLAMATION (FDR) – PLACEMENT OF LIME (CEMENT) ONTO THE BASE OF THE ASPHAL)

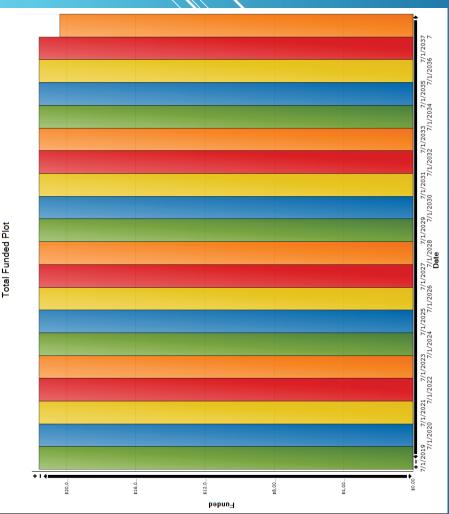
WHAT HAPPENS IF NO ACTION IS TAKEN **TO MAINTAIN CITY STREETS?**



Under Current Pavement Condition, this is a representative of the street details.

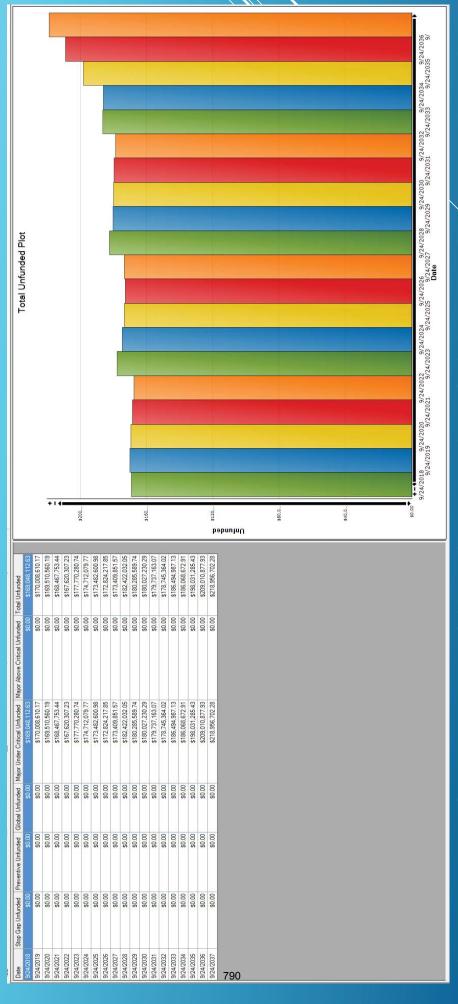
REPAIRS? WHAT WOULD IT TAKE TO FIX THE **ACCUMULATION OF STREET**





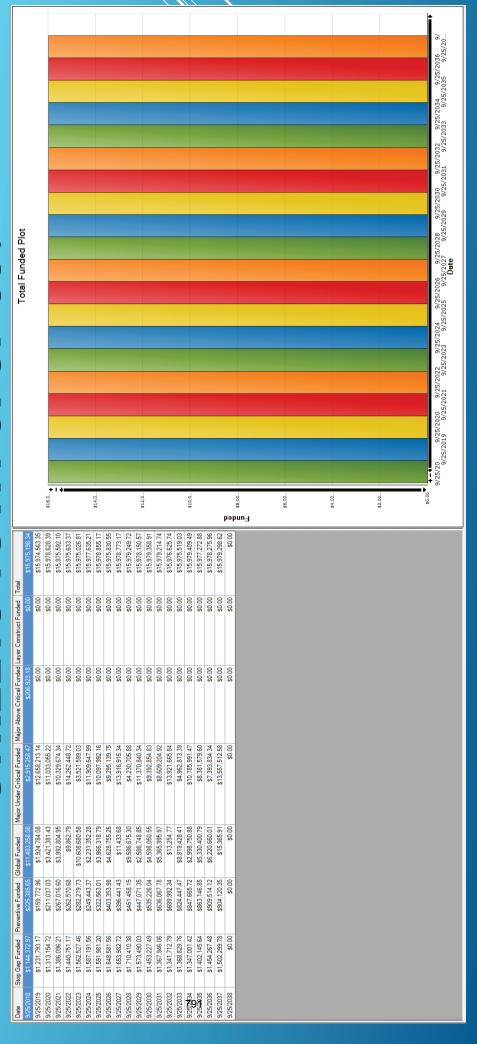
THE CITY WOULD NEED TO SPEND \$21,614,232 TO ADDRESS CURRENT BACKLOG OF WORK

WHAT WOULD IT TAKE TO STABILIZE OUR STREETS?

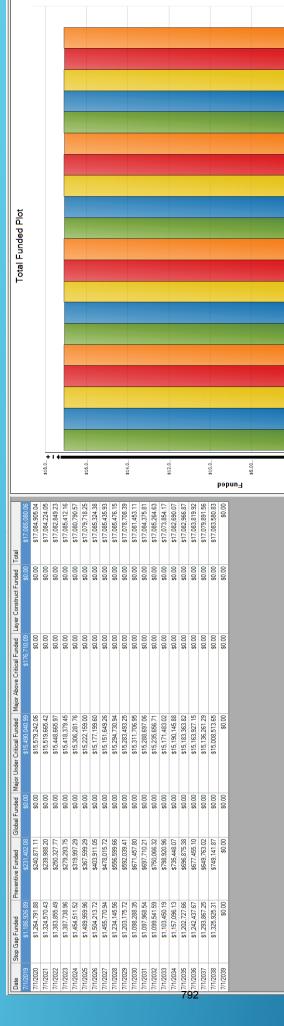


TO MAINTAIN THE CITY'S PAVEMENT CONDITION INDEX TO A PCI OF 55, WE WOULD NEED TO INVEST IN THE AMOUNT OF \$169 MILLION AND INCREASE IT TO \$219 MILLION WITHIN 20 YEARS

WHAT WOULD IT TAKE TO IMPROVE OUR **TO A PCI OF 60?** STREETS .



WHAT WOULD IT TAKE TO IMPROVE OUR STREETS TO A PCI OF 65?



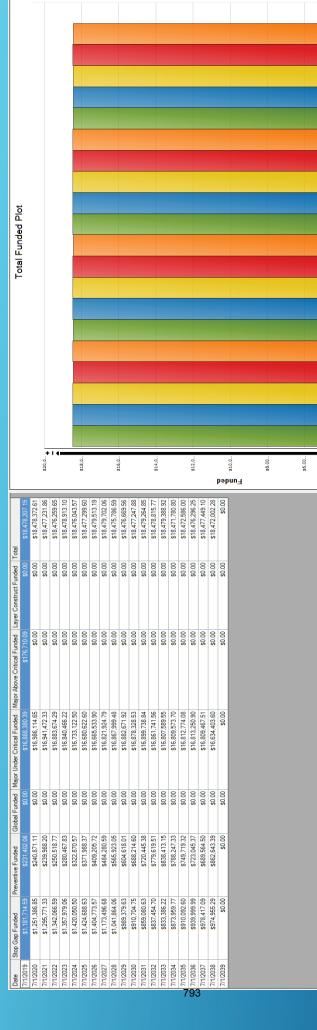
\$6,00

\$4,00

\$2,00

7/1/2019 7/1/2021 7/1/2023 7/1/2025 7/1/2028 7/1/2029 7/1/2031 7/1/2033 7/1/2035 7/1/2037 7 7/1/2020 7/1/2022 7/1/2024 7/1/2026 7/1/2038 7/1/2030 7/1/2032 7/1/2034 7/1/2036 7/1/2039 Date

WHAT WOULD IT TAKE TO IMPROVE OUR **TO A PCI OF 70?** STREETS '



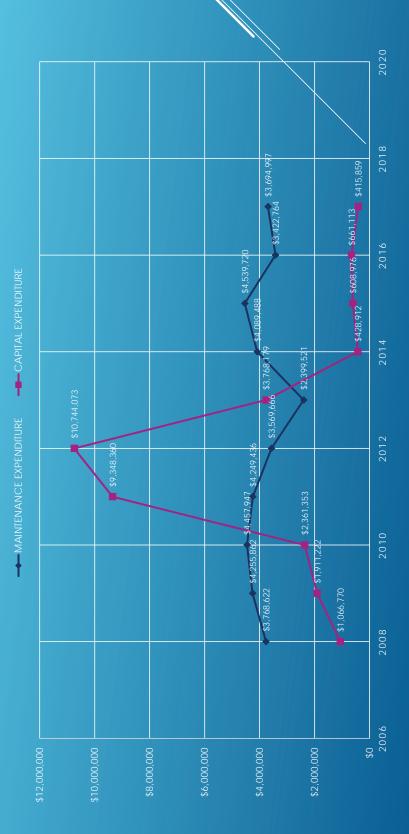
7/1/2019 7/1/2021 7/1/2025 7/1/2025 7/1/2028 7/1/2039 7/1/2030 7/1/2033 7/1/2035 7/1/2035 7/1/2035 7/1/2036 7/1

\$4,00

\$2,00

HISTORICALLY, HOW MUCH MONEY HAS THE CITY SPENT ON STREETS?

ANNUAL COST EXPENDITURE



WHAT FUNDING SOURCES ARE AVAILABLE **TO IMPROVE STREET CONDITIONS?**

- 1. SENATE BILL 1 (SB1)
- MEASURE V COUNTY WIDE SALES TAX
- 3. GAS TAX –LTF
- 4. FEDERAL FUNDS

FUNDING SOURCES & REQUIREMENTS

WHERE CAN SB1 BE USED?

- THE FUNDS WILL ASSIST WITH THE REPAIRS TO LOCAL STREETS.
 - CAN BE USED AS A MATCHING FUND FOR OTHER GRANTS

WHAT TYPE OF PROJECTS QUALIFY?

- MAINTENANCE AND REHABILITATION MINOR MAINTENANCE (POTHOLE, CRACK SEAL, ETC.) AND MAJOR MAINTENANCE (THIN OVERLAY)
- 2. CAPACITY EXPANSION OF A STREET

WHERE CAN MEASURE V BE USED?

- 1. THE FUNDS ARE INTENDED TO BE FLEXIBLE AS POSSIBLE TO DEVELOP A PRIORITY LIST OF LOCAL
- CAN BE USED FOR MINOR MAINTENANCE TO MAJOR MAINTENANCE OF STREETS. FUNDS CAN ALSO BE USED TO REPAIR SIDEWALKS, SAFE ROUTES TO SCHOOL, AND FREEWAY INTERCHANGE

WHAT TYPES OF PROJECTS QUALIFY?

. ANY STREET PROJECT FROM DAILY MAINTENANCE TO CAPITAL IMPROVEMENT PROJECTS WOULD QUALIFY FOR MEASURE V FUNDING

FUNDING SOURCES & REQUIREMENTS (continued)

WHERE CAN GAS TAX (LTF) BE USED?

- FUNDS ARE PRIMARILY DESIGNATED FOR TRANSIT NEEDS
- REMAINING FUNDS CAN BE EXPENDED FOR NON-TRANSIT USES, SUCH AS: STREETS & ROADS AND PEDESTRIAN & BICYCLE FACILITIES

WHERE CAN FEDERAL FUNDING BE USED?

- THE FUNDS CAN ONLY BE USED ON STREETS IDENTIFIED AS ARTERIAL AND COLLECTOR IN THE **CITY'S STREET CLASSIFICATION**
- THE PROPOSED PROJECT MUST BE IDENTIFIED IN THE FEDERAL TRANSPORTATION MPROVEMENT PLAN (FTIP)

WHAT TYPES OF PROJECTS QUALIFY?

1. IF AWARDED, THE REGIONAL TRANSPORTATION IMPROVEMENT PROGRAM (RTIP) ALLOWS THE FUNDING TO BE UTILIZED FOR STREET WIDENING AND RECONSTRUCTION. THIS IS THE MOST FLEXIBLE FUNDING SOURCE FROM THE FEDERAL HIGHWAY ADMINISTRATION

ACTION PLAN

1. WHAT IS AN ACCEPTABLE PCI WE SHOULD STRIVE FOR?

2. HOW DO WE MANAGE STREET DETERIORATION?

33. WHAT PROJECTS SHOULD BE PROGRAMED FOR THE NEAR **FUTURE?** 4. WHAT PROJECTS SHOULD BE CONSIDERED IN THE DISTANT FUTURE?

CAPITAL IMPROVEMENT PROJECTS (CIP)

CURRENT ACTIVITIES IN THE ENGINEERING DEPARTMENT

- 1. CURRENTLY THE ENGINEERING DEPARTMENT HAS 15 ACTIVE CONSTRUCTION PROJECTS AT VARIOUS STAGES OF CONSTRUCTION
- PROJECTS FOR CONSTRUCTION. THESE PROJECTS VARIES FROM STREETS, 2. OUT OF 117 PROPOSED PROJECTS, WE ARE ACTIVELY DESIGNING 29 WATER, SEWER, AND STORM DRAIN
- RECEIVED 69 PLANS FOR REVIEW AND APPROVAL FOR VARIOUS TYPES OF BETWEEN JULY 1, 2018 TO SEPTEMBER 7, 2018, ENGINEERING DEPARTMENT PROJECTS. PROJECTS RANGE FROM SUBDIVISION MAPS, SUBDIVISION IMPROVEMENTS, TO INSTALLATION OF POOLS
- 4. BETWEEN JULY 1, 2018 TO SEPTEMEBER 6, 2018, ENGINEERING DEPARTMENT SSUED 130 ENCROACHMENT PERMITS TO ALLOW UTILITY COMPANIES AND CONTRACTORS TO WORK WITHIN THE CITY'S RIGHT-OF-WAY

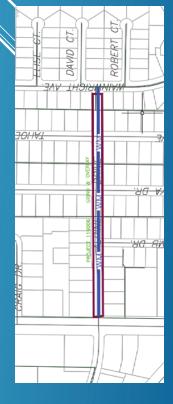
MEASURE V PROJECTS



MEASURE V PROJECTS



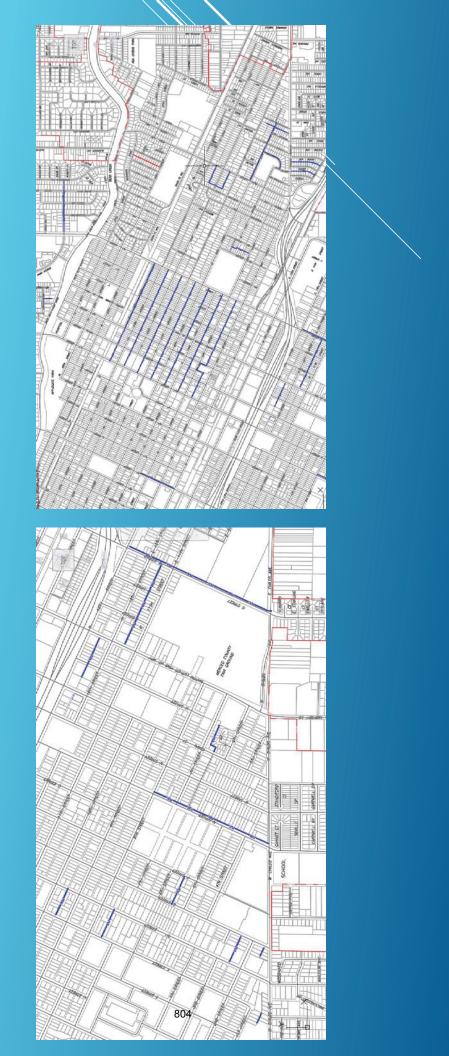
AFTER MEASURE V PROJECTS WERE INDENTIFIED, IT WAS BROUGHT TO ENGINEERING DEPARTMENT'S ATTENTION THAT THE CITY HAS AGING INFRASTRUCTURES WHICH REQUIRES REPLACEMENT BECAUSE OF REPEATED WATER MAIN BREAKS. FOR THIS REASON, THE WATER MAIN NEEDS TO BE REPLACED BEFORE THE ROAD CAN BE REPAIRED



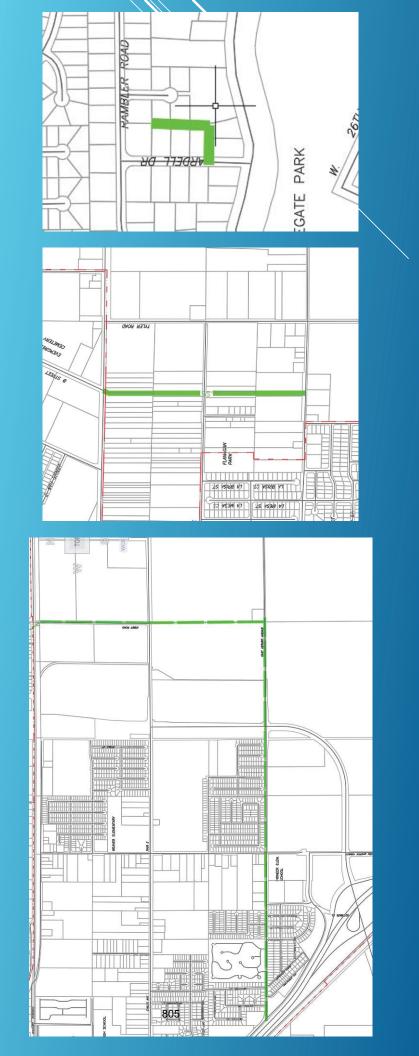
MEASURE V PROJECTS



WATER MAIN REPLACEMENT PROJECTS



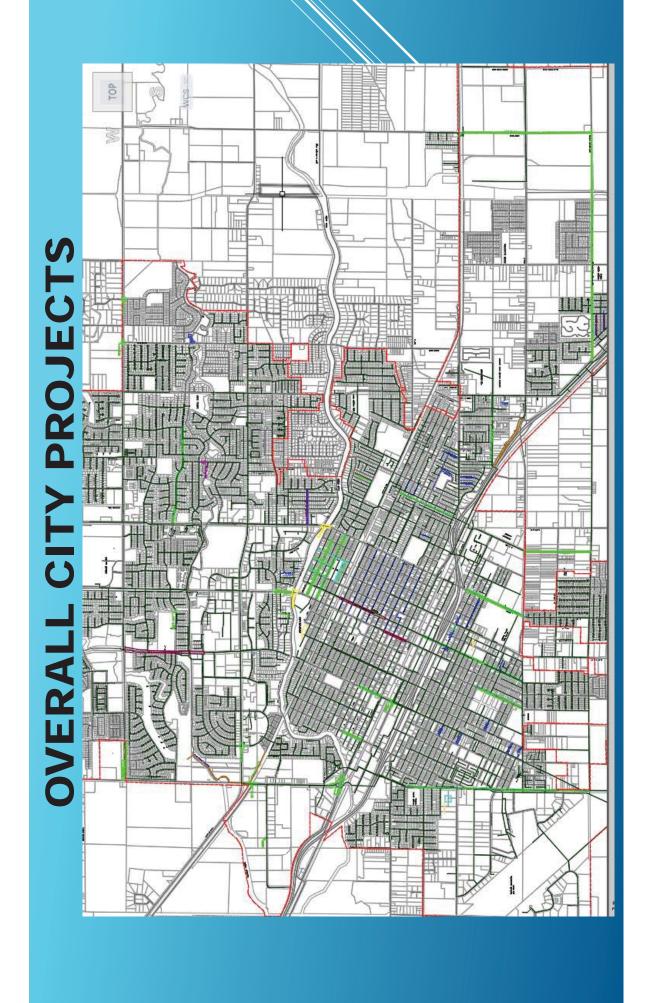
SEWER MAIN REPLACEMENT PROJECTS



08 JOE HEF COLDEN ROAD PROJECTS SCHOOL BEN 806

I 807

ROAD PROJECTS



CAUSES OF PROJECTS DELAYS

WHAT CAUSES DESIGN DELAYS?

- 1. DURING THE DESIGN PHASE, WE LOOK FOR ANY ISSUES THAT MAY CONFLICT WITH THE SCOPE OF THE PROJECT
- WE HAVE TO OBTAIN PERMITS OR APPROVAL FROM OUTSIDE AGENCIES
- . FEDERAL HIGHWAY ADMINISTRATION
- 3. CALTRANS
- C. RAILROAD COMPANIES
- D. MERCED COUNTY
- DESIGN WAS NOT PROPERLY SCOPED BECAUSE OF UNKNOWN CIRCUMSTANCES. . ლ

WHAT CAUSES DELAYS DURING CONSTRUCTION?

- 1. WAITING ON OTHER AGENCIES TO RELOCATE THEIR FACILITIES
 - MATERIALS NOT AVAILABLE IN A TIMELY MANNER
 - CONTRACTOR COMMITTED TO OTHER PROJECTS
- UNKNOWN UNDERGROUND UTILITIES CONFLICTS
- 5. WEATHER CONDITIONS

CONSTRUCTION SEASON

WHAT IS THE CONSTRUCTION SEASON FOR STREETS?

- 1. TYPICALLY BETWEEN MARCH/APRIL TO OCTOBER/NOVEMBER
- 2. PER CALTRANS' SPECIFICATIONS, ASPHALT CONCRETE CAN ONLY BE PLACED WHEN THE TEMPERATURE IS AT 50 DEGREES OR HIGHER
- 3. NO GRADING DURING RAINY SEASON BECAUSE IT WILL BE DIFFICULT TO **OBTAIN COMPACTION**

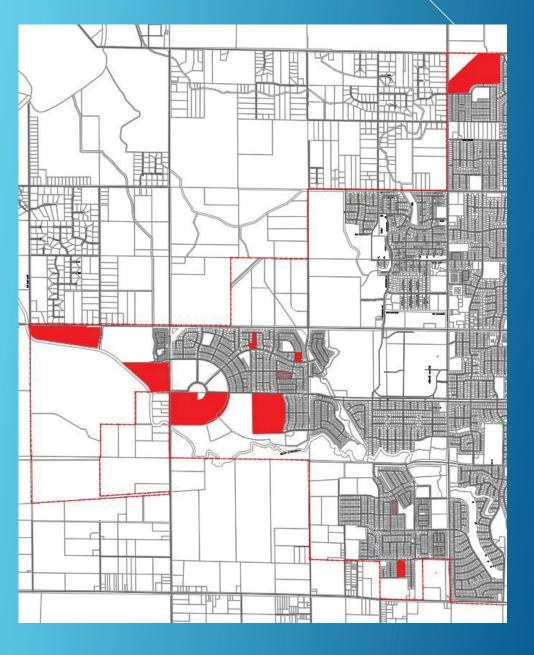
UNDERGROUND UTILITIES

- 1. CAN BE CONSTRUCTED ANYTIME
- 2. RAIN MAY CAUSE ISSUES WITH COMPACTION

CONCRETE INSTALLATION

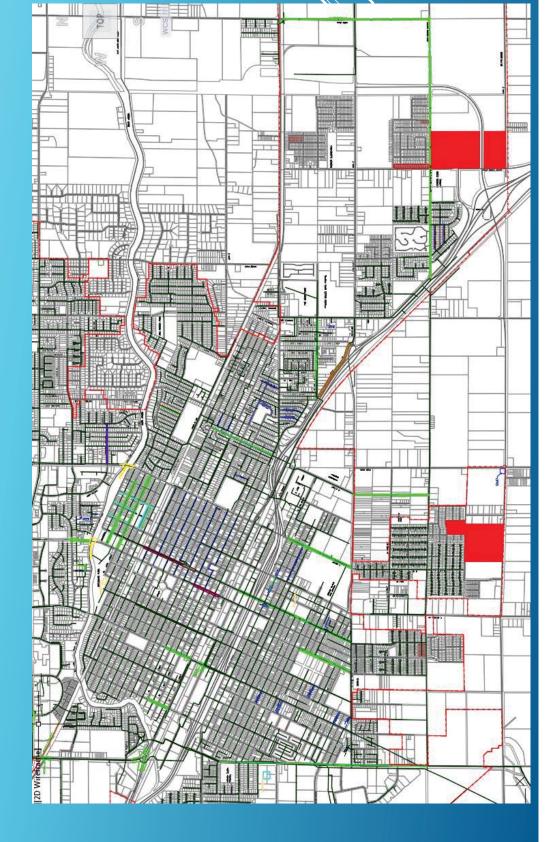
1. CAN BE CONSTRUCTED DURING MOST SEASONS

ACTIVE SUBDIVISIONS

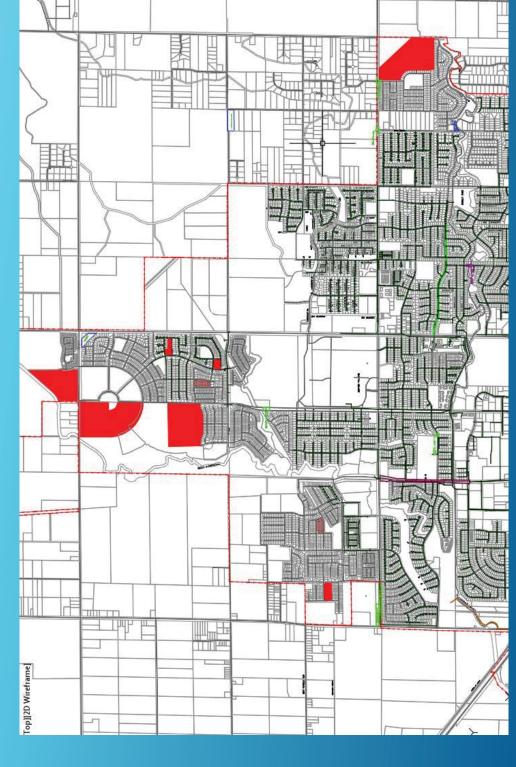


FANCES, BLDK. **ACTIVE SUBDIVISIONS** HON WILLY HON THILLIMIT ĤHIII H

DEVELOPMENT AND CIP ACTIVITY



DEVELOPMENT AND CIP ACTIVITY



OUESTIONS?





CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item L.2. Meeting Date: 10/1/2018

Report Prepared by: Stephanie Dietz, Assistant City Manager

SUBJECT: Update on Goals and Priorities (1st Quarter)

REPORT IN BRIEF

Update on the City Council's goals and priorities for FY 2018-2019 1st Quarter.

RECOMMENDATION

For information only.

DISCUSSION

The City Council engaged with the residents of the City of Merced through three Town Halls in north, central and south Merced during the Spring of 2018. After the conclusion of the Town Hall meetings, the City Council established Goals and Priorities to guide the development of the FY 2018-2019 Budget. These Goals and Priorities also guide staff through the year and allow for a focus on concentrated projects.

Council has requested that quarterly updates be provided to allow for direction or issues to be addressed more regularly throughout the year. Attached for Council's consideration is the approved FY 2018-2019 list. Staff will provide updates to the items on this list.

ATTACHMENTS

1. FY 2018-2019 Goals and Priorities

FY 2018/19 Council Goals & Priorities

* Prior Year

Staffing (General Fund)

- * Measure C Transition Sunsets in 2026
- * Code Enforcement/Dispatchers/Police Officers
- * Parks Maintenance Workers
- * Employee Compensation
 Parks & Recreation Director (fill vacancy)

Youth Programs (General Fund)

* Youth/Recreation Programs
Community Outreach - Mobilize Volunteers
Additional Programs with Partnerships
27th & K

City Beautification (One-time/General Fund)

- * Parks Maintenance & Equipment
- * Public Art
- * Blighted Property/Refuse Collection
- * Welcome Signs
 Public Spaces
 City Entry Points
 Honorary Signs Clovis example

Local Streets (Measure V/STP/Local Transportation)

* Overall Streets, Sidewalks, and Street Lights Safe Routes to School - Childs Ave. Parsons Ave. Flood prevention Regular Updates to community on projects

Future Planning

- * Police Station/Fire Stations/Public Works Yard/Park Restrooms Future Annexations/Growth of City/Sewer Master Plan
- * Economic Development/Industrial Park/Yosemite Travel
- * Quiet Zones/Rail Safety Growing General Fund Reserves Water Conservation Infill Development City Outskirts Services/County Islands

Downtown

Code Enforcement/Store Fronts Housing Sub-Committee

Regional Transportation

High Speed Rail ACE Train Amtrak

Community Wellness

 Homelessness/Pan Handling 16th Street/Motel Drive Issues Neighborhood Watch Expanded Citizen's Academy Think Tanks

Agency Partnerships

* Campus Parkway (County)

UC Merced Internships

Drug Prevention (County)

Public Health (County)

Youth Programs (County & Schools)

Job Training (Merced College & County)

CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item M.1. Meeting Date: 10/1/2018

Report Prepared by: Stephanie Dietz, Assistant City Manager

SUBJECT: Approval of Employment Agreement with City Attorney

REPORT IN BRIEF

It is requested that the City Council consider hiring a permanent City Attorney.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the Employment Agreement and announcing the new City Attorney; and,
- B. Authorizing the Mayor to sign on behalf of the City; and,
- C. Authorizing the Finance Officer to make the necessary budget adjustments.

ALTERNATIVES

- 1. Approve, as recommended by staff; or,
- 2. Provide direction on specific revisions to the Agreement; or,
- 3. Request additional information; or,
- 4. Continue the matter to a certain date; or,
- Decline to take action.

AUTHORITY

Charter of the City of Merced, Sections 603 and 1105

CITY COUNCIL PRIORITIES

N/A

DISCUSSION

The City Attorney's position is currently vacant and the City has retained Jolie Houston as Interim City Attorney, and the law firm of Berliner Cohen, LLP to provide Interim City Attorney services.

The City retained the services of Avery and Associates to conduct an extensive recruitment process over a four-month period seeking candidates for City Attorney.

File #: 18-499 Meeting Date: 10/1/2018

There is currently only one attorney in the City Attorney's Office who is supported by two very experienced support staff members; a paralegal and a legal secretary. A position of Senior Deputy City Attorney has been left vacant so that it could be filled by the new City Attorney when the position is filled. Attorneys from Berliner Cohen, LLP, have filled those duties on an interim basis.

IMPACT ON CITY RESOURCES

On July 2, 2018, the City Council appropriated additional resources to the City Attorney's Office to cover the estimated expenses of Interim City Attorney services through December 31, 2018. With the transition to a full-time appointment, the financial impact of the contract will be evaluated at Mid-Year Budget.

ATTACHMENTS

1. Employment Agreement

CITY OF MERCED

CITY ATTORNEY EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("Agreement") is entered into this day of, 2018 by and between the CITY OF MERCED, a California municipal corporation and Charter City ("Employer" or "City") and PHAEDRA A. NORTON ("Employee") an individual, (collectively "the Parties").
RECITALS
A. City is a California Charter Municipal Corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Merced City Charter.
B. The Merced City Council conducted an extensive recruitment process for the City Attorney position, and after carefully evaluating Employee's knowledge, skills, and experience, as well as her administrative skills and abilities, it now desires to appoint Employee to the position of City Attorney.
C. The Parties mutually agree that this form of Agreement reflects the terms and conditions under which the Parties intend and desire to employ Employee.
NOW, THEREFORE, it is mutually agreed by and between the undersigned Parties as follows:
SECTION 1: Term
This Agreement shall become effective, 2018 ("Effective Date"). Subject to City's right to terminate Employee's employment at any time, as provided for in this Agreement. The term of this Agreement is three (3) years from the Effective Date, and may be extended for an additional term as determined by mutual agreement in writing between the parties. Six (6) months prior to the

expiration of this Agreement, the parties agree that they shall meet to discuss the renewal of the Agreement and Employer shall at that time, or within a reasonable

time thereafter, notify Employee of their determination in that regard. City's election not to extend this Agreement shall not entitle Employee to severance pursuant to Section 7 of this Agreement.

SECTION 2: Duties and Authority

Employer agrees to employ Employee as City Attorney, to exercise the powers and authority and to perform the functions and duties specified in the Merced City Charter, the Municipal Code and all relevant resolutions, rules, regulations, procedures, applicable job description(s) and state codes, as they currently or may in the future exist. Employee shall exercise such power and authority and perform such other functions and duties, not inconsistent with this Agreement, as Employer, by its City Council, may legally assign.

SECTION 3: Compensation and Performance Evaluation.

Employer agrees to pay Employee at the rate of an annual base salary of Two Hundred, Four Thousand, Six Hundred Dollars (\$204,600.00), subject to deduction and withholding of any and all sums required for federal or state income tax, pension contributions, and all other taxes, deductions or withholdings required by then current state, federal or local law, prorated and paid on Employer's normal paydays for the City Manager, City Attorney, City Clerk, and any Department Directors not covered by collective bargaining agreements ("Executive Management Employees"). Employer shall also deduct sums Employee is obligated to pay because of participation in plans or programs described in Section 4 of this Agreement. The annual base salary of Employee shall be established by resolution of the City Council. Employee will receive an annual cost-of-living adjustment (COLA) to her salary on the first pay period of the calendar year commencing in 2020, of the actual COLA, but no greater than two and a half percent (2.5%). The COLA will be based on the California CPI for Urban Wage Earners and Clerical Workers for the 12 months between December and December as calculated by the Department of Industrial Relations as authorized by Government Code section 3511.1 and 3511.2.

This Agreement shall be deemed amended whenever the City Council adopts a resolution changing the base salary of Executive Management Employees

or the manner (but not the amount) by which Executive Management Employees are paid.

- B. Employee and Employer, by and through the City Council, shall meet on an annual basis, or at any time or times during the period in which this Agreement remains in effect, in order for the City Council to conduct an evaluation of Employee's performance. The City Council may provide Employee with a written performance evaluation in such format as the City Council may determine.
- C. Employee's compensation as discussed under this Section is not tied to the compensation of any other City employee or group of City employees, except as expressly provided in this Agreement.

SECTION 4: Employee Benefits

- A. Administrative Leave, Vacation Leave and Sick Leave.
- 1. Upon commencing employment with the City, Employee shall be credited with ninety-six (96) hours of administrative leave. Thereafter, commencing on January 1st of each year Employee shall be credited with an additional ninety-six (96) hours of administrative leave per calendar year. Administrative leave must be taken in the calendar year in which it is credited to Employee, except that unused administrative leave credited for the 2018 calendar year shall be carried over to the 2019 calendar year. In lieu of time-off, Employee may opt to be paid for the administrative leave in December of the year earned, except for the 2018 calendar year. Administrative leave not paid or taken by December of the year earned shall be lost and not reimbursed to Employee.
- 2. Upon commencement of employment, Employee shall be credited with an initial bank of 96 hours of vacation time ("initial bank"). Thereafter, Employee's vacation leave shall accrue at 6.160 hours per pay period with a maximum accrual of 320 hours. Annual vacation leave shall be accrued and administered in the same manner as vacation leave is administered for Executive Management Employees.
- 3. Upon commencement of employment, Employee shall be credited with an initial bank of 96 hours of sick leave. Thereafter, sick leave

shall accrue at 3.696 hours per pay period with a maximum accrual of 1056 hours. Annual sick leave shall be accrued and administered in the same manner as sick leave is administered for Executive Management Employees.

- B. Additional Benefits. Except as expressly provided herein, Employee shall receive the same health, dental and vision insurance, CALPERS retirement benefits, and be entitled to participate in plans and programs such as short term and long term disability plans, life insurance plans, and deferred compensation plans, as are available to the City's Executive Management Employees. This Agreement shall be deemed amended as to these benefits, and these benefits only, whenever the City Council adopts a resolution or takes action changing these benefits.
- C. Cell Phone. Employee shall be entitled to the same benefits regarding the provision of a cell phone or reimbursement for cell phone expenses relating to business usage as provided to Executive Management members.
- D. Car Allowance. Employee shall be entitled to the same benefits regarding the provision of a car as provided to Executive Management members as determined in accordance with City Council Resolution 86-7, as amended annually by the Finance Officer based upon the Internal Revenue Service's mileage rate.

SECTION 5: General Business Expenses

- A. Employer recognizes that Employee may incur expenses of a non-personal, job related nature that are reasonably necessary to Employee's service to Employer. Employer agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to Employer's normal expense reimbursement procedures or such other procedure as may be designated by the City Council. To be eligible for reimbursement, all expenses must be supported by documentation meeting Employer's normal requirements and must be submitted within time limits established by Employer.
- B. City shall reimburse Employee for expenses incurred in her attending a reasonable number of League of Cities conferences or other similar professional conferences relevant to the performance of her duties, as well as her annual dues to the California State Bar.

C. The expenses to be budgeted and paid in the Section 5, Paragraphs A and B above, are exclusive of reasonable expenses related to events, participation in organizations, or attendance at events or meetings on behalf of the City as required by the City Council. Employer will separately budget and pay for membership and participation in community, civic or other organizations or events in which Employer requires Employee to participate or attend.

SECTION 6: At-Will Employment Relationship

- A. Consistent with Article VI of the City Charter, Section 500, Employee is appointed by, and serves at the pleasure of, the City Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employer to terminate this Agreement and the employment of Employee at any time, with or without Cause, and with or without notice. Employer shall pay Employee for all services through the Effective Date of termination and Employee shall have no right to any additional compensation or payment, except as provided in Section 7, Severance and Benefit Payoff at Termination, and General Release Agreement, below.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from her employment with Employer, subject only to Employee's providing sixty (60) calendar days prior written notice to Employer of the effective date of her resignation.

SECTION 7: Severance and Benefit Payoff at Termination, and General Release Agreement

A. If Employer terminates this Agreement (thereby terminating Employee's Employment) without Cause, as determined by at least five (5) affirmative votes of the members of the City Council at a Regular Meeting of the City Council, and if Employee signs, delivers to the City Council, and does not revoke, the General Release Agreement in the form attached hereto as Exhibit A, Employer shall pay Employee a lump sum benefit equal to six (6) months of her then applicable base salary, and shall provide Employee six (6) months of continued medical and dental benefits, beginning on the Effective Date of termination (collectively "Severance").

- B. If Employer terminates this Agreement (thereby terminating Employee's Employment) with Cause, as determined by at least five (5) affirmative votes of the members of the City Council at a Regular Meeting of the City Council, Employee shall not be entitled to any additional compensation or payment, including Severance. If the City Council intends to terminate with Cause, based on a reason or reasons set forth in subpart 5 or 6, immediately below, the Council shall first deliver to Employee a written Notice of Intent to Terminate, stating the reason or reasons for the proposed termination, and providing a thirty (30) day period for Employee to cure. If, in the City Council's independent judgment, Employee cures the identified reason or reasons for Cause termination, Employee shall not be terminated therefor. As used in this Agreement, Cause shall mean any of the following:
 - 1. Conviction of a felony;
 - 2. Conviction of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law;
 - 3. Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4;
 - 4. Willful abandonment of duties;
 - 5. Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body;
 - 6. Any grossly negligent action or inaction by Employee that materially and adversely: (a) impedes or disrupts the operations of Employer or its organizational units; (b) is detrimental to employees or public safety; or (c) violates properly established rules or procedures of Employer.
 - 7. Disciplinary action by the State Bar of California which results in suspension and/or revocation of Employee's license to practice law in the State of California.
- C. In no event may Employee be terminated without cause within ninety (90) days after any municipal election for the selection or recall of one or more of the members of the City Council.

- D. If Employee terminates this Agreement (thereby terminating Employee's employment), Employee shall not be entitled to any additional compensation or payment, including Severance.
- E. Upon termination (regardless of reason), Employee shall be compensated for all accrued but unused Administrative and Vacation Leave.

SECTION 8: Employee's Obligations and Hours of Work

Employee shall devote her full energies, interest, abilities and productive time to the performance of this Agreement and utilize her best efforts to promote Employer's interests. Employee's duties may involve expenditures of time in excess of the regularly established workday or in excess of a forty (40) hour workweek and may also include time outside normal office hours (including attendance at evening City Council meetings). Employee's base salary includes compensation for all hours worked and Employee shall be classified as an exempt employee for purposes of overtime and shall not be entitled to any form of compensation for overtime. In recognition of the significant time Employee will need to devote outside normal office hours to business activities of Employer and the exempt, salaried nature of the employment, employee is permitted to exercise a flexible work schedule. However, consistent with this flexibility and Employee's participation in activities out of the office, Employee will generally be expected to keep office hours at City Hall, Monday through Friday, during normal business hours.

SECTION 9: Confidentiality and Non-Disparagement

A. Employee acknowledges that in the course of her employment contemplated herein, Employee will be given or will have access to confidential and proprietary documents and information, relating to the City, its residents, businesses, employees, and customers ("Confidential Information"). Such Confidential Information may include, but is not limited to, all information given to or otherwise accessible to Employee that is not public information or would be exempt from public disclosure as confidential, protected, exempt or privileged information. Employee shall hold the Confidential Information in trust for City's benefit, and shall not disclose the Confidential Information to others without the express written consent of City.

- B. Except as otherwise required by law, in the event the City terminates Employee with or without Cause, the City and Employee agree that no member of the City Council, the city management staff, nor the Employee shall make any written, oral, or electronic statement to any member of the public, the press, or any City employee concerning the Employee's termination except in the form of a joint press release or statement, which is mutually agreeable to City and Employee. The joint press release or statement shall not contain any text or information that is disparaging to either Party. Either Party may verbally repeat the substance of the joint press release or statement in response to any inquiry.
- C. The obligations of Employer and Employee under this Section 9 shall survive the termination of this Agreement.

SECTION 10: Outside Activities

Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which materially interferes with her duties and responsibilities to Employer.

SECTION 11: Indemnification

- A. Consistent with the California Government Code, Employer shall defend and indemnify Employee, using legal counsel of Employer's choosing, against expense or legal liability for acts or omissions by Employee occurring within the course and scope of Employee's employment under this Agreement. In the event there is a conflict of interest between Employer and Employee in such a case so that independent counsel is required for Employee, Employer may select the independent counsel after having considered the input of Employee and shall pay the reasonable fees of such independent counsel consistent with City litigation guidelines and standard rates received by City from its chosen special counsel.
- B. Notwithstanding the foregoing, and consistent with Sections 53243 through 53243.3 of the Government Code, Employee shall be required, if convicted of a crime involving an abuse of her office or position, to fully reimburse the City for: (1) any paid leave salary offered by the City to the Employee; (2) any funds provided for the legal criminal defense of the Employee; (3) any cash

settlement related to the termination that Employee may receive; and (4) any other payments received by Employee from City that in any way relate to the foregoing.

SECTION 12: Other Terms and Conditions of Employment

Employer may fix other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or applicable law.

SECTION 13: Notices

Notice pursuant to this Agreement shall be given by depositing written notification in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) EMPLOYER:

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

(2) EMPLOYEE:

Phaedra A. Norton Home address on file in Employee's personnel file

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable in civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service as provided by law.

SECTION 14: General Provisions

A. Integration: This Agreement sets forth the final, complete and exclusive agreement between Employer and Employee relating to the employment of Employee by Employer. Any prior discussions or representations by or between the parties are merged into this Agreement or are otherwise rendered null and void.

The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement. The foregoing notwithstanding, Employee acknowledges that, except as expressly provided in this Agreement, her employment is subject to Employer's generally applicable rules and policies pertaining to employment matters as they currently or may in the future exist, and her employment is, and will continue to be, at the will and pleasure of the City Council.

- B. Binding Effect: This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. Choice of Law: This Agreement shall be interpreted and construed pursuant to and in accordance with the laws of the State of California and all applicable City Charter provisions, Codes, Ordinances, Policies and Resolutions.
- D. Severability: If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.
- E. Conflict with City Charter or Municipal Code. The City personnel ordinances, resolutions, rules and policies shall apply to Employee in the same manner as applied to other management employees, provided, however, in the event of a conflict between the provisions of this Agreement and the City Charter, or this Agreement and the Municipal Code, the City Charter or the Municipal Code shall prevail over this Agreement.
- F. Employee's Independent Review: Employee acknowledges that she has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that she has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of Employer, its officers, agents or employees other than those expressly set forth in this Agreement. Employee

acknowledges that she has been advised to obtain, and has availed herself of legal advice with respect to the terms and provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates reflected below each signature.

EMPLOYER:	EMPLOYEE:
CITY OF MERCED, A Municipal Corporation	PHAEDRA A. NORTON
By	By Phaedra a Mr. M.
Date:	Date: 9-25-18
APPROVED AS TO FORM:	
By Kylokel 9/26/18 City Attorney Date	
ATTEST:	
By	
City Clerk Date	

CITY OF MERCED

Merced Civic Center 678 W. 18th Street Merced, CA 95340

ADMINISTRATIVE REPORT

Agenda Item M.2. Meeting Date: 10/1/2018

Report Prepared by: Stephanie Dietz, Assistant City Manager

SUBJECT: Considers Approving the Second Amendment to the City Manager Employment Agreement

REPORT IN BRIEF

The City Council is asked to consider approving the Second amendment to the employment agreement for the City Manager.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the Employment Agreement with the City Manager/City Clerk; and,
- B. Authorizing the Mayor to sign on behalf of the City; and,
- C. Authorizing the Finance Officer to make the necessary budget adjustments

ALTERNATIVES

- 1. Approve, as recommended by staff; or,
- 2. Provide direction on specific revisions to the Agreement; or,
- 3. Request additional information; or,
- 4. Continue the matter to a certain date; or,
- Decline to take action.

AUTHORITY

Charter of the City of Merced, Sections 603 and 1105

CITY COUNCIL PRIORITIES

N/A

DISCUSSION

The City Manager began his employment with the City of Merced January 25, 2016, with an employment contract that extended until January 24, 2019. Having completed the personnel evaluation for the City Manager, the attached Second Amendment to the Employment Agreement has been prepared for the City Council's consideration.

Meeting Date: 10/1/2018 **File #:** 18-500

IMPACT ON CITY RESOURCES

Although the contract amendment results in a salary increase, sufficient funding is available in the City Manager 2018-19 budget.

ATTACHMENTS

1. Second Amendment to Employment Agreement

SECOND AMENDMENT TO

CITY MANAGER EMPLOYMENT AGREEMENT

This SECOND AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT is made and entered into this ____ day of _____, 2018, by and between the CITY OF MERCED, a California Municipal Corporation and Charter City ("Employer" or "City") and STEVE CARRIGAN ("Employee") an individual (collectively referred to herein as the "Parties").

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. The Parties entered into the City Manager Employment Agreement on or about December 7, 2013 (the "Agreement"), and the Agreement was unanimously approved by the Merced City Council.
- C. The Agreement was/is effective as of January 25, 2016, for a period of three (3) years, and will expire, unless extended by written agreement of the Parties, on January 25, 2019.
- D. A First Amendment to the Agreement was entered into on June 20, 2016 (the "First Amendment").
- E. The Parties desire to amend certain provision of the Agreement and extend the term of the Agreement.

NOW, THEREFORE, it is mutually agreed by and between the Parties that the Agreement shall be amended and extended as follows:

1. This Second Amendment to the Agreement ("Second Amendment") shall become effective on January 25, 2019. Subject to the City's right to terminate Employee's employment at any time as provided in the Agreement, the term of this Second Amendment is four (4) years, and shall expire on January 24, 2023, unless extended for an additional term as determined by mutual agreement in writing between the Parties.

- 2. SECTION 3, Subsection A of the Agreement entitled "Compensation and Performance Evaluation," is hereby amended to read as follows:
 - Effective January 25, 2019, Employer agrees to increase Employee's annual base salary to Two Hundred Nine Thousand Seven Hundred Twenty-Three Dollars (\$209,723.00), effective January 25, 2019, subject to deduction and withholding of any and all sums required for federal or state income tax, pension contributions, and all other taxes, deductions or withholdings required by then current state, federal or local law, prorated and paid on Employer's normal paydays for the City Manager, City Attorney, City Clerk, and any Department Directors not covered by collective bargaining agreements ("Executive Management Employees"). Employer shall also deduct sums Employee is obligated to pay because of participation in plans or programs described in Section 4 of this Agreement. The annual base salary of Employee shall be established by resolution of the City Council. Based on Employee's performance, as determined by the City Council in the exercise of its sole discretion, Employee may receive an annual cost-of-living adjustment (COLA) to his salary on the first pay period of the calendar year, commencing on January 1, 2020, of the actual COLA, but no greater than two and a half percent (2.5%). The COLA will be based on the California CPI for Urban Wage Earners and Clerical Workers for the 12 months between December and December as calculated by the Department of Industrial Relations as authorized by Government Code section 3511.1 and 3511.2.

This Agreement shall be deemed amended whenever the City Council adopts a resolution changing the base salary of Executive Management in Employees or in the manner (but not the amount) by which Executive Management Employees are paid.

- 3. SECTION 4, Subsection A of the Agreement entitled "Employee Benefits," is hereby amended to read as follows:
 - A. Administrative Leave, Vacation Leave, and Sick Leave.

Commencing on January 25, 2019, Employee shall be credited with fifteen (15) days of administrative leave per calendar year. Administrative leave must be taken in the calendar year in which it is credited to Employee. In lieu of time-off, Employee may opt to be paid for the management leave in December of the year in which it

was earned. Administrative leave not paid or taken by December of the year in which it was earned shall be lost and not reimbursed to Employee.

In lieu of vacation and/or sick leave, Employee shall accrue Paid Time Off ("PTO") at 10.158 per pay period with a maximum accrual of 1392 hours. Annual PTO shall be accrued and administered in the same manner as leave is administered for Executive Management Employees. Employee's Sick Leave accrued prior to the effective date of this Agreement shall remain in a separate Sick Leave account and is to be used as such.

- 4. SECTION 4, Subsection E of the Agreement entitled "Moving and Relocation Expenses," shall be revoked and of no further force and effect.
- 5. Except as set forth herein, all remaining terms and conditions of the Agreement shall remain in full force and effect.

The effective date of this Second Amendment shall be January 25, 2019.

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to City Manager Employment Agreement to be executed on the date first above written.

EMPLOYER CITY OF MERCED	EMPLOYEE
By: Michael Murphy, Mayor	By: Steve Carrigan
Date:	Date: 9/28/18
APPROVED AS TO FORM:	
By: Kylones	
City Attorney Date: 9/28/2018	
ATTEST:	
By:	
City Clerk	
Date:	