

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2021, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and V & A Consulting Engineers, a California Corporation, whose address of record is 1000 Broadway, Suite 320, Oakland, California 94607, (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to conduct sanitary sewer flow monitoring; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide flow monitoring 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 flow monitoring 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 Director of Public Works 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 upon the day first above written and 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 fee schedule set forth in 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" within the compensation amount set forth in Exhibit "A". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of Sixty-Eight Thousand Eight Hundred Seventy-Five Dollars (\$68,875.00).

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.

9. INDEMNITY.

A. Indemnity for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

B. Indemnity for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant.

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. 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. PREVAILING WAGES.

A. Labor Code Compliance. If the work performed under this Agreement falls within Labor Code Section 1720(a)(1) definition of a “public works” the Vendor agrees to comply with all of the applicable provisions of the Labor Code including, those provisions requiring the payment of not less than the general prevailing rate of wages. The Vendor further agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.

B. These wage rate determinations are made a specific part of this Agreement by reference pursuant to Labor Code Section 1773.2. General Prevailing Wage Rate Determinations may be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov/>.

C. After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations, if applicable, are to be obtained by the Vendor from the Department of Industrial Relations. These wage rate determinations are to be posted by the Vendor at the job site in accordance with Section 1773.2 of the California Labor Code.

D. Vendor agrees to include prevailing wage requirements, if applicable, in all subcontracts when the work to be performed by the subcontractor under this Agreement is a “public works” as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

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

20. 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.

21. 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.

22. 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: _____
City Manager

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Kimberly Chry 7/30/21
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

{Signatures continued on next page}

CONSULTANT
V & A CONSULTING ENGINEERS,
A California Corporation

BY: 
(Signature)

Kim Costa
(Typed Name)

Its: Treasurer
(Title)

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

Taxpayer I.D. No. 94-2995304

ADDRESS: 1000 Broadway, Suite 320
Oakland, CA 94607p

TELEPHONE: (510) 903-6600

FAX: _____

E-MAIL: kcosta@vaengineering.com

V&A Project No. 20-0285

August 2, 2021

Ken Elwin, P.E.
Public Works Director
City of Merced
Public Works Department
1776 Grogan Ave
Merced, CA 95341

Subject: Proposal for Year 2021 Rate Study Flow Monitoring Services

Dear Mr. Elwin,

V&A Consulting Engineers (V&A) is prepared to conduct sanitary sewer flow monitoring for the City of Merced (City) to quantify sanitary sewer flow rates for different City zoning categories. Flow monitoring is initially expected to occur during the summer of 2021 during an extended period of dry weather and optimistically after Covid-19 "shelter-in-place" orders have been lifted. Flow monitoring will occur for a period of one month at a total of 21 flow monitoring sites. Eighteen (18) open channel flow meters will be distributed throughout the City system, capturing a variety of zoning areas. One additional open-channel flow meter will be installed on the 60-inch influent pipe to the City's wastewater treatment plant (WWTP). Two additional zoning areas within the city will be monitored at associated pump stations with pump station loggers on the pumps and a level logger in the pump station wet well.

Scope of Work

Task | Description

1. **Document Review, Equipment Preparation and Site Reconnaissance:** V&A will review existing sanitary sewer plans and documentation in preparation for flow monitoring. V&A will visit the proposed sites in order to verify suitability of manholes and/or alternative manholes for installation of flow meters. V&A will consult with the City in the event that alternative manholes are required for flow monitoring. V&A will document the following information: location map with address, pipe size, manhole identification number, flow channel condition, site schematics and photographs. V&A will recommend the appropriate metering technology for the flow characteristics and hydraulic conditions observed during the site reconnaissance visits.
2. **Flow Monitoring:** A V&A crew with a field truck and the necessary confined space, simple traffic control, and flow monitoring equipment will install, calibrate, and remove the flow meters. V&A shall be responsible for installation, calibration, and removal of the equipment for this project. Malfunction of meter operation will be documented and reported as soon as it is observed. V&A shall be prepared to extend or retract the duration of the flow monitoring period as required and directed by the City.
3. **Flow Monitoring Deliverable:** Following the flow monitoring activities, V&A will prepare a report documenting the flow monitoring results. V&A shall download and reduce flow monitoring data in 15-minute intervals into Excel format for data analysis and report preparation. The summary report will be in hardcopy and electronic format and will include the following information:
 - A summary of the flow monitoring equipment used
 - Location map with address, pipe size, manhole identifier number, flow channel condition, site schematics, and photographs
 - Flow monitoring data with tabular outputs of depth, velocity and flow rate and hydrographs of depth, velocity, and flow rates for the flow meter

EXHIBIT A

- An electronic copy of monitoring data provided in 15-minute time intervals
- Zoning Sewer Flow Rates Analysis: Average dry weather flow curves will be determined, zoning and population data will be obtained, and sewer flow rates for different City zoning categories will be determined on a per-capita basis.

V&A has conducted an initial review of City zoning and has determined a preliminary list of 21 flow monitoring sites that isolate different categories of zoning. V&A has reviewed this list with the City and determined the final number of sites to be used in this study. These sites are shown in Exhibit A.

V&A proposes to complete this work on a lump sum basis, with costs shown as follows:

Item	Cost
Flow Monitoring at 21 Locations for 1 Month:	\$ 68,875

If City permit fees are required (encroachment permit fees, traffic control plan permits, etc.), the cost of permits will be in addition to the stated costs for the flow monitoring. V&A assumes only simple traffic control set-ups (truck mounted light board and cones) will be required for this project. If complex traffic control set-ups requiring a traffic control contractor are deemed necessary, the costs of the traffic control contractor will be in addition to the stated costs for the flow monitoring.

Terms are Net 30 days. This fee is valid for 90 days from the date of this proposal. The scope of work was developed as a result of our discussion and represents our mutual understanding. If unforeseen circumstances should arise, which indicate that more work or more meters are required, we would provide a written estimate of the additional cost. We will not proceed with work beyond the not to exceed figure without written authorization from your office.

In the event of legislative actions by any level of government that impose any taxes, fees, or costs on V&A's services or other costs in connection with Work hereunder or compensation, such new taxes, fees, or costs shall be invoiced to and paid by the Client as a Reimbursable Expense. Should such taxes, fees, or costs be imposed, they shall be in addition to V&A's estimated total expenses.

We request that you carefully review this proposal to assure that we fully understand the scope of the work. We are prepared to begin work on your project upon receiving written approval, a Notice-to-Proceed, or purchase order.

On behalf of our staff and myself, I would like to thank you for the opportunity to be of service to you and the City of Merced. We look forward to working with you.

Sincerely,

V&A Consulting Engineers, Inc.


 Kevin Krajewski, P.E.
 Project Manager and Flow Monitoring Division Lead

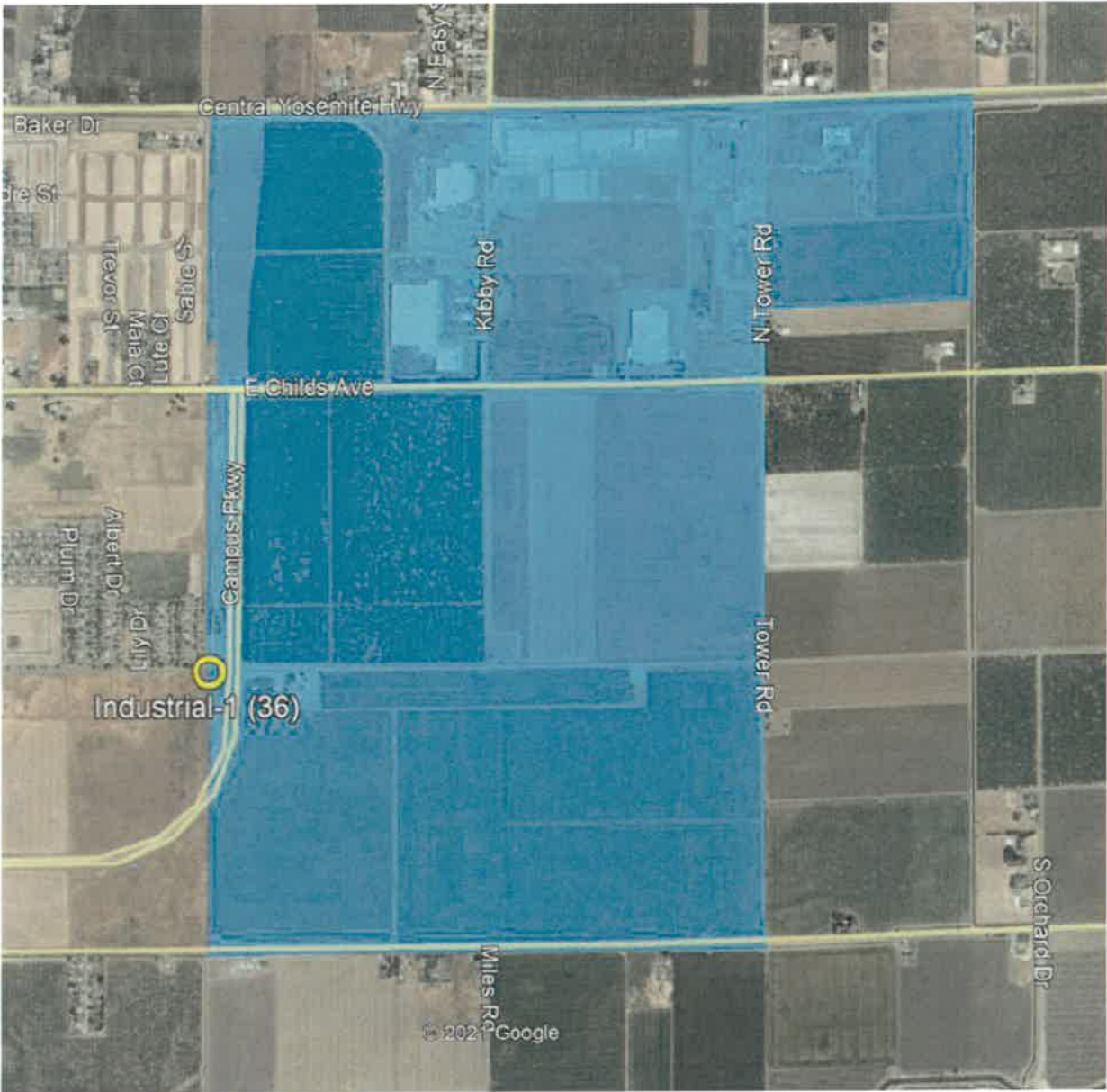
Accepted: _____

City of Merced

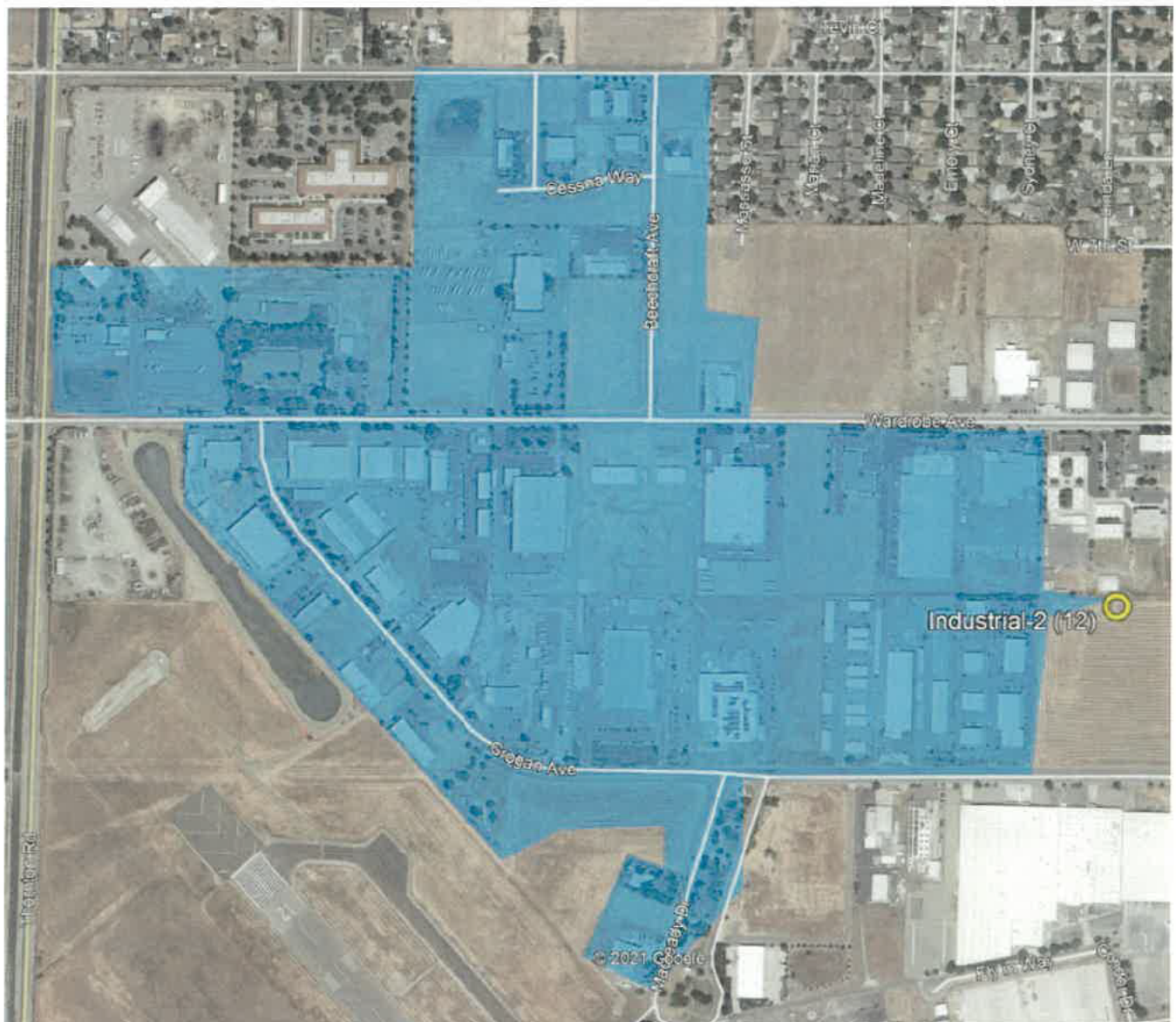
Date: _____

Exhibit A: Flow Monitoring Locations

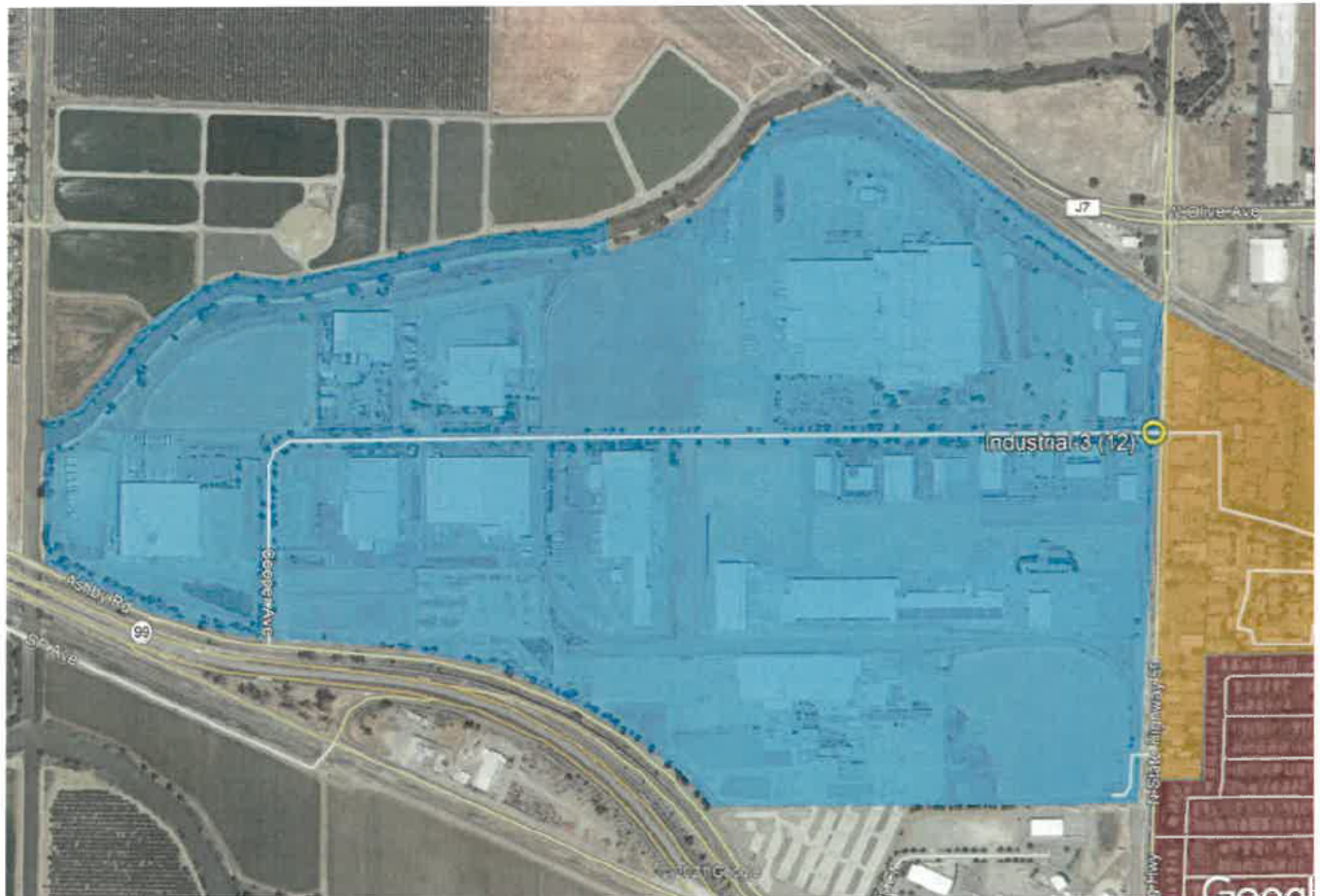
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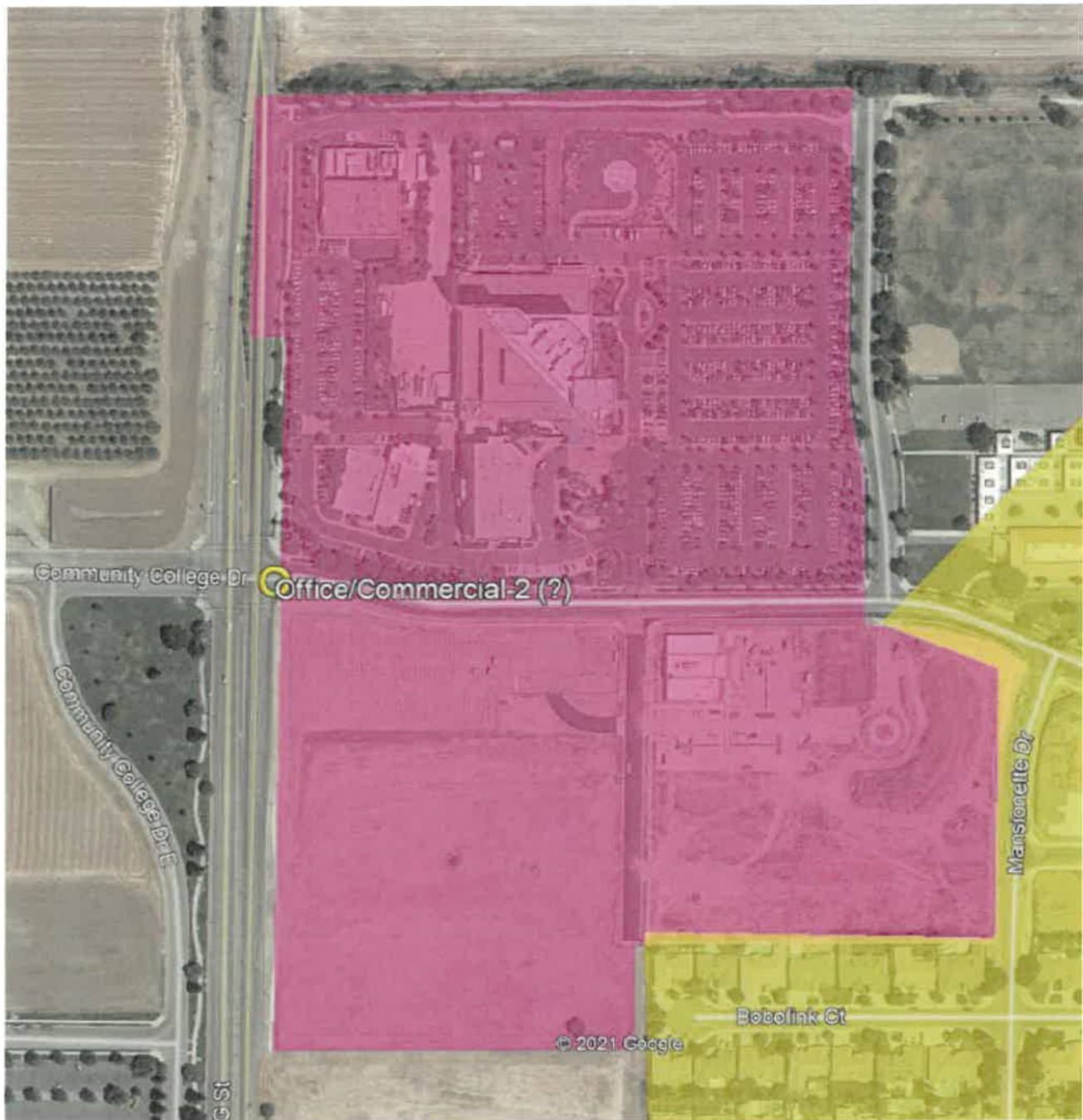
Industrial-2



Industrial-3



Office/Commercial - 2



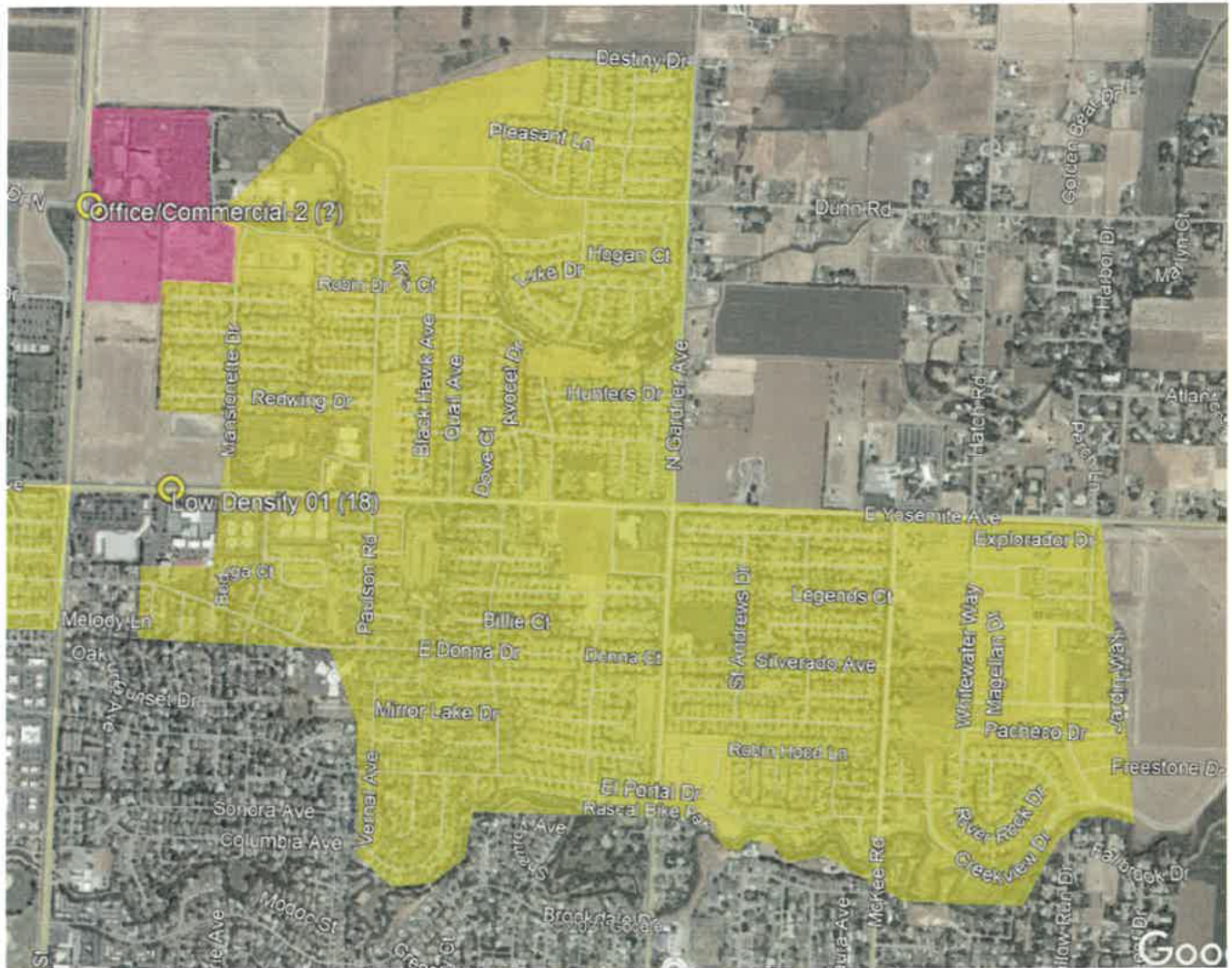
Mobile Home District-1



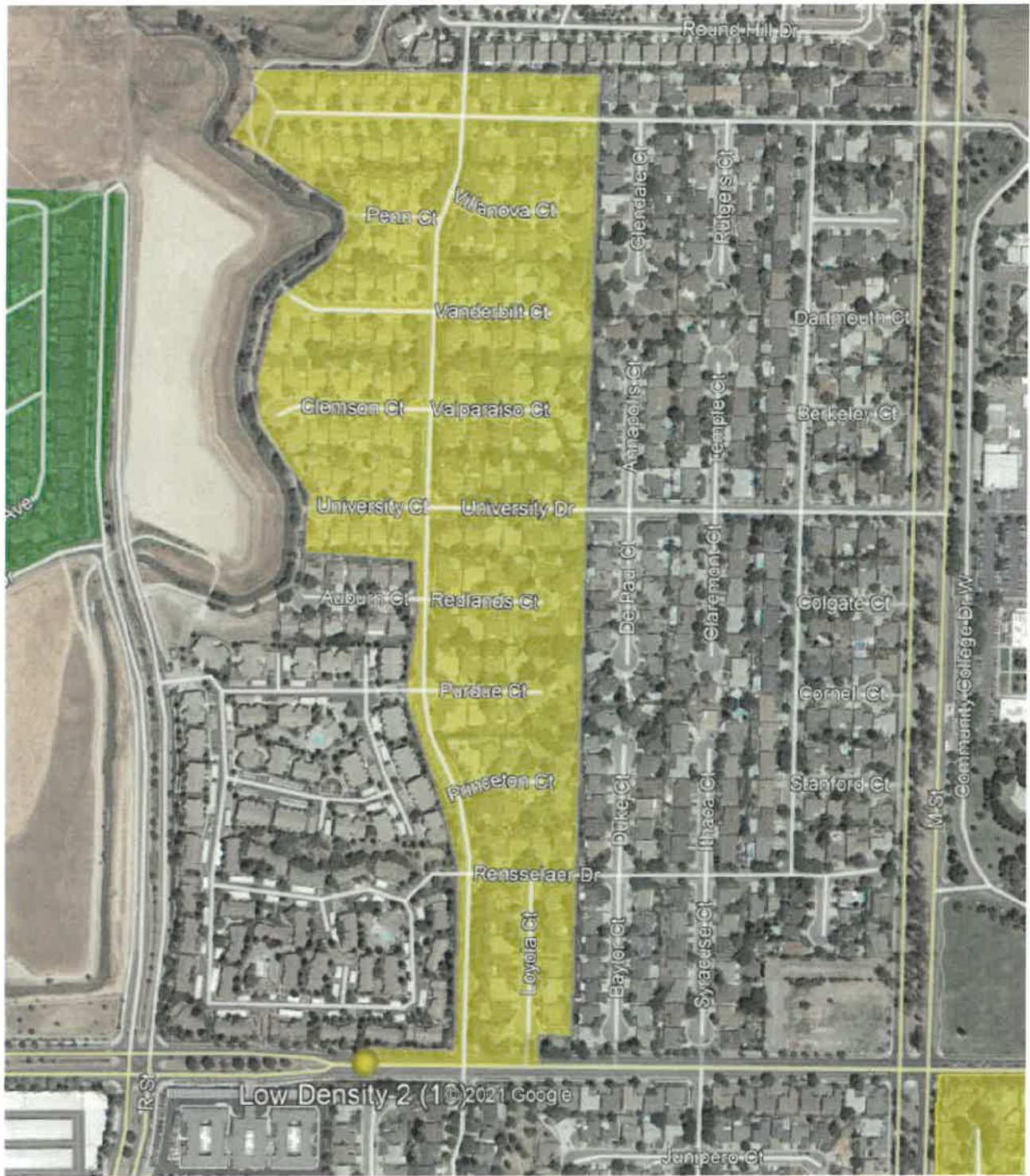
Mobile Home District-1



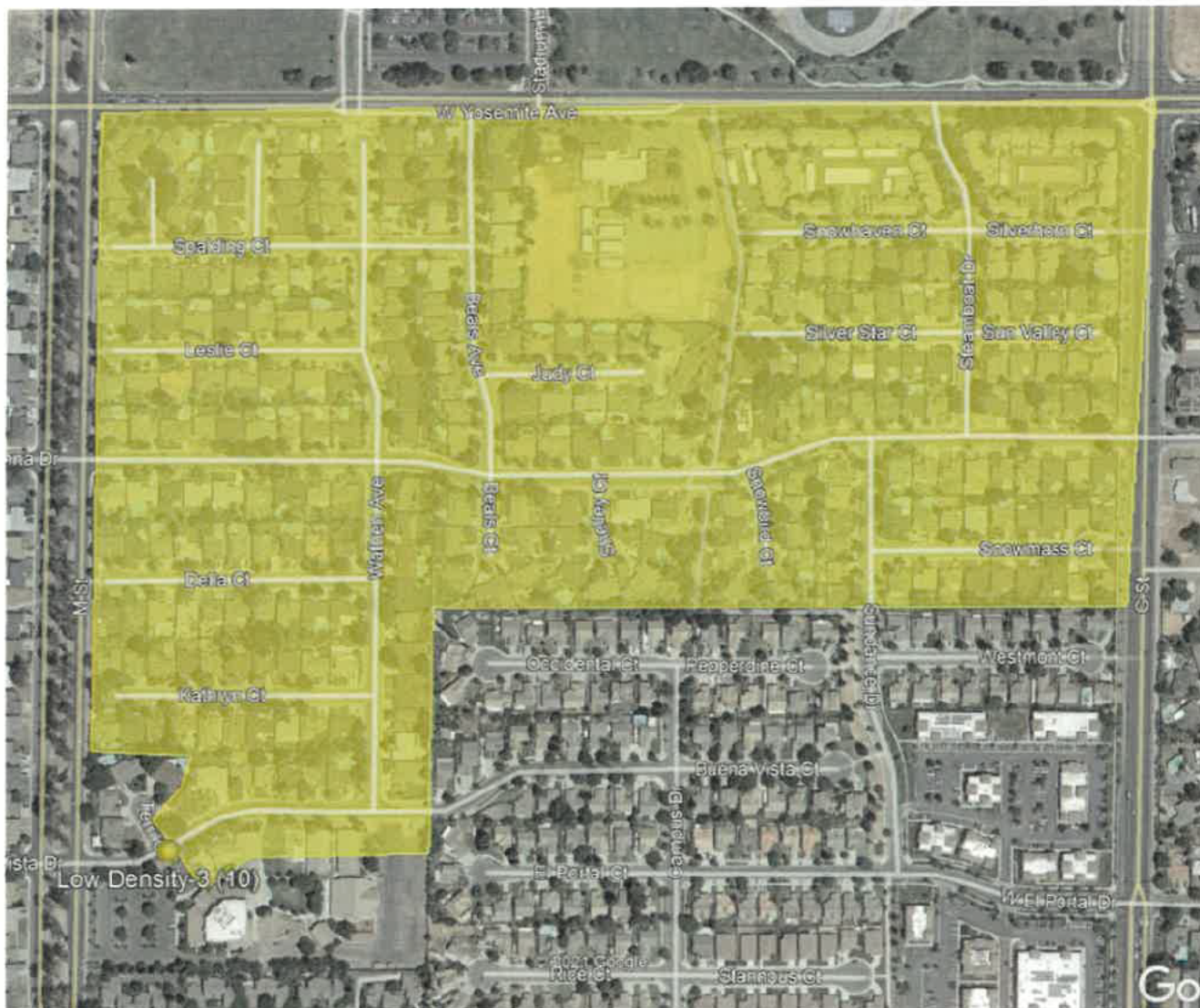
Low Density Residential-1



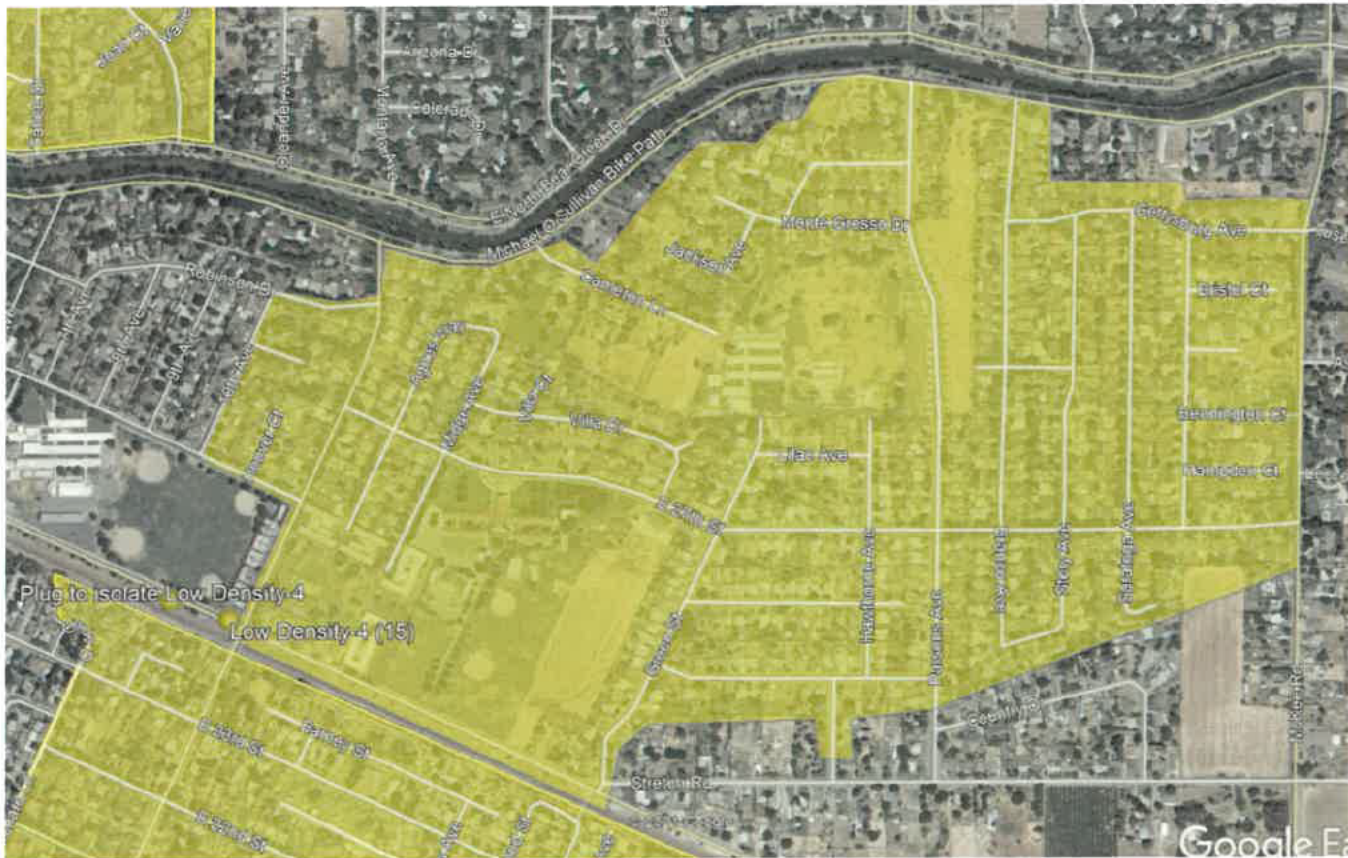
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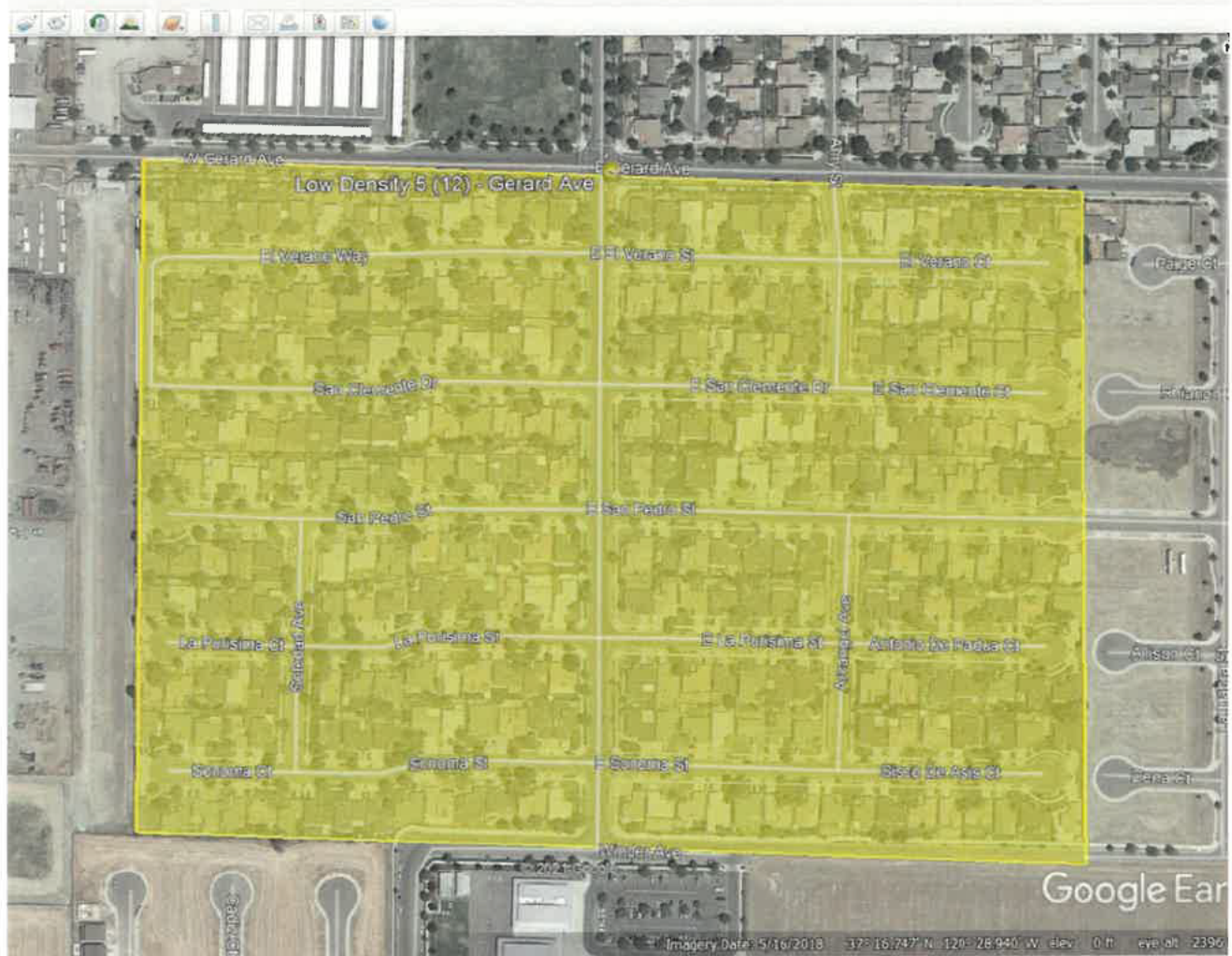
Low Density Residential-3



Low Density Residential-4



Low Density Residential-5



Low Density Residential-6



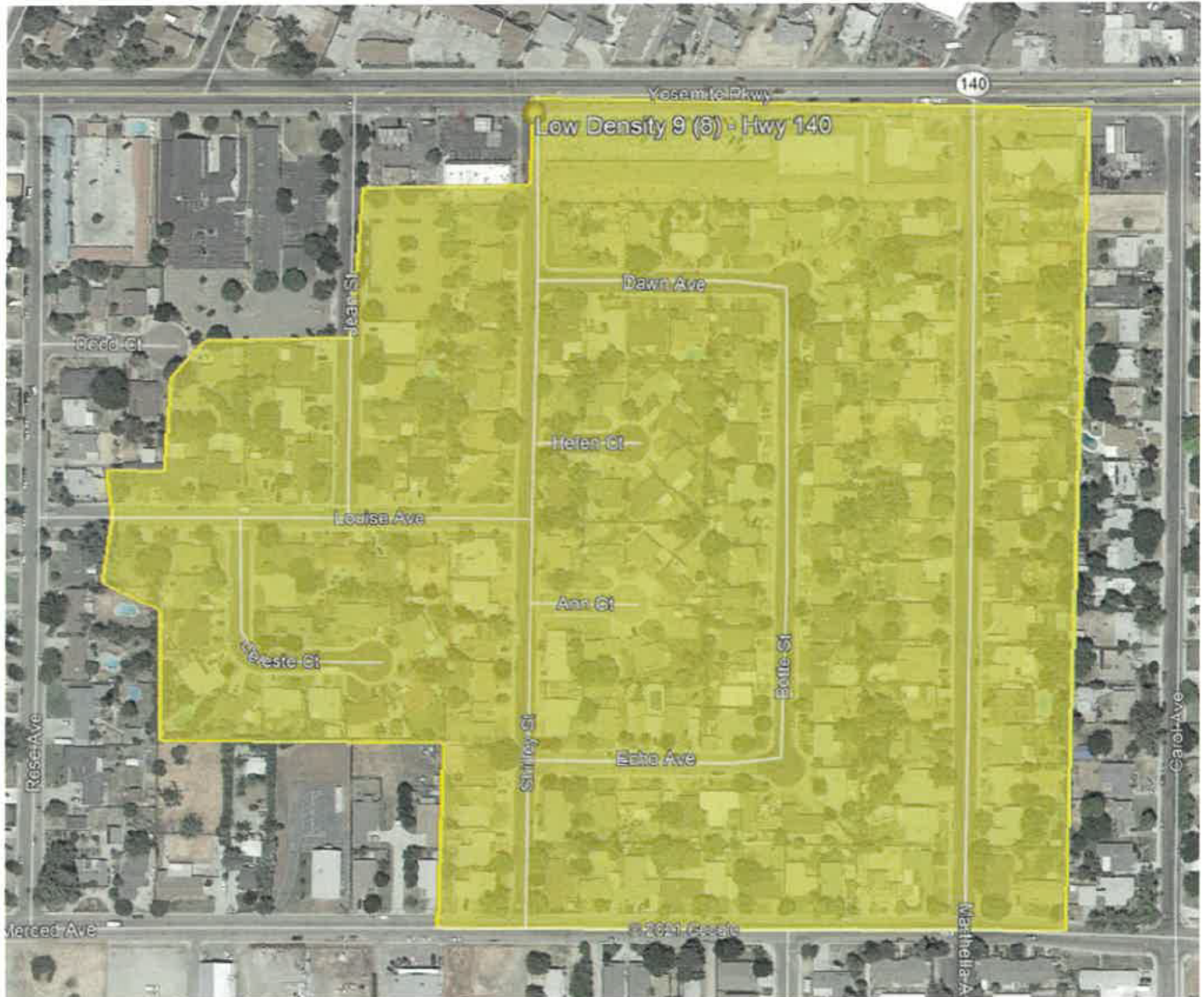
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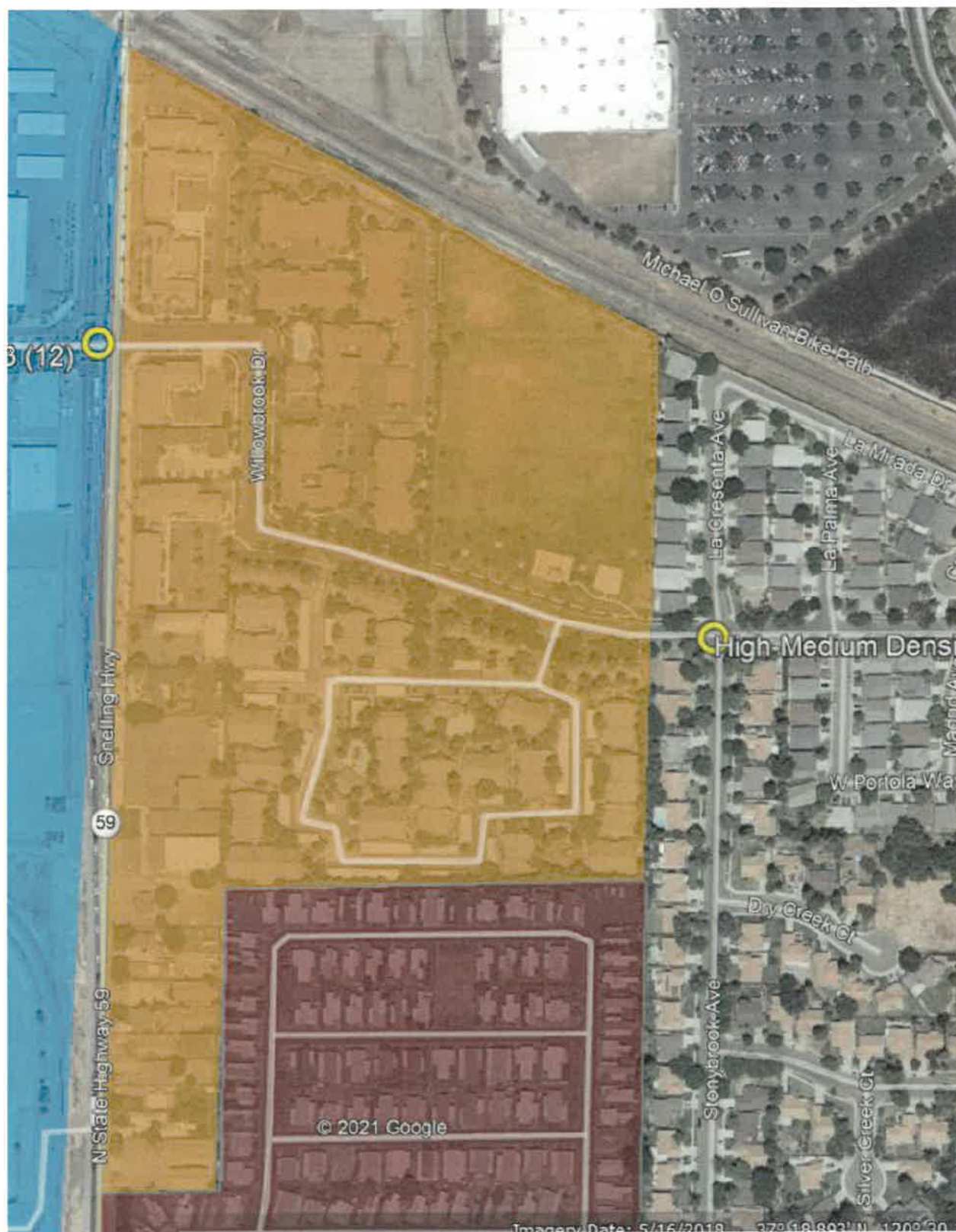
Low Density Residential-8



Low Density Residential-9



High Medium Density Residential-1



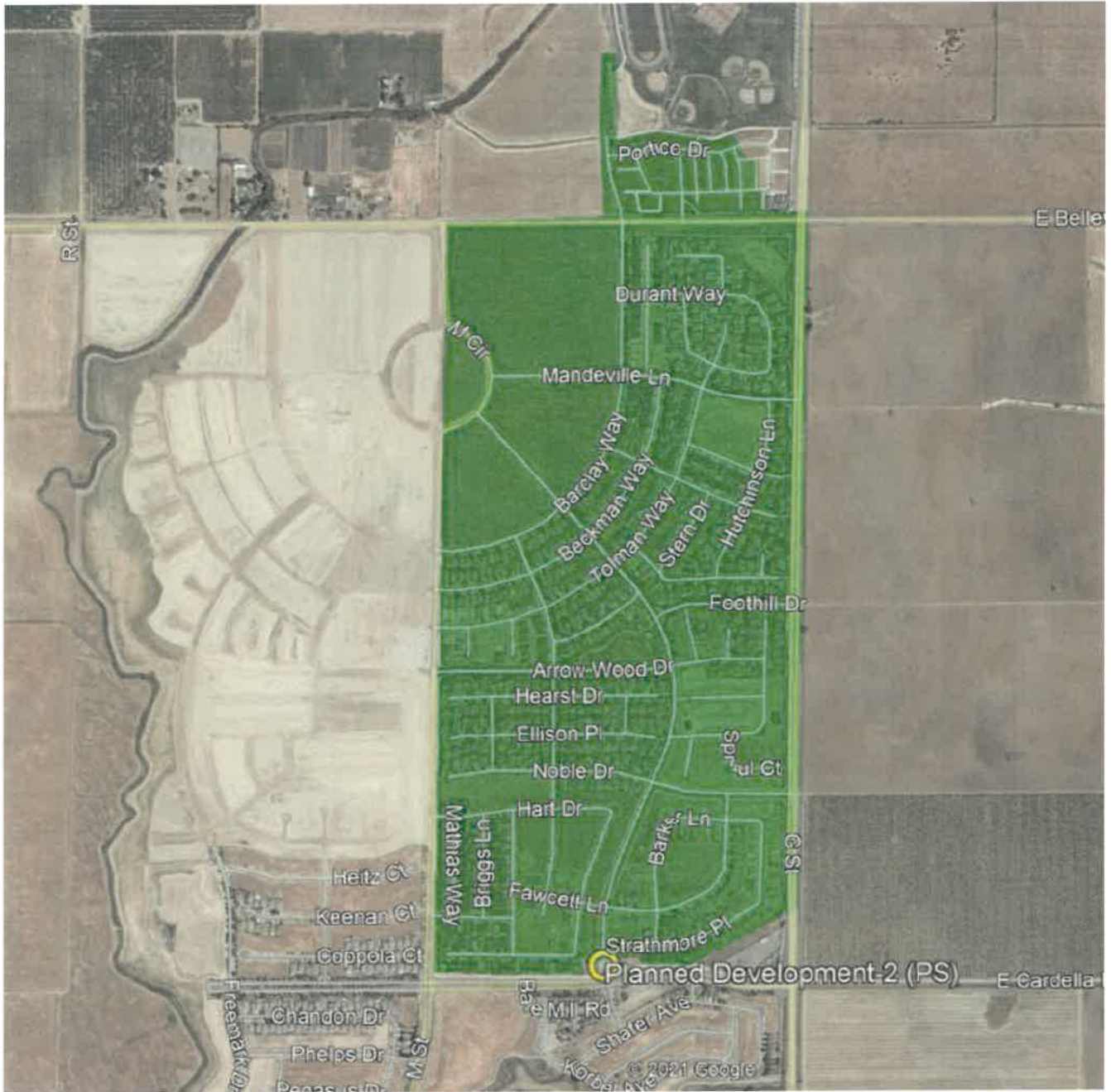
High Density Residential-1



Planned Development-1



Planned Development-2



UC Merced



Treatment Plant Influent

