

RECORDING REQUESTED BY:

City of Merced, A California charter municipal corporation

WHEN RECORDED MAIL TO:

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

(Above for Recorder's Use Only)

2nd AMENDED AND RESTATED LEGISLATIVE ACTION AGREEMENT

THIS 2nd AMENDED AND RESTATED LEGISLATIVE ACTION AGREEMENT is made and entered into as of this ____ day of _____ 2021 by and between the City of Merced, a California Charter Law Municipal Corporation ("City") and Yosemite and G, LLC, a California Limited Liability Company ("Owner").

W I T N E S S E T H

WHEREAS, Owner has applied to the City for a Site Utilization Plan Revision for seven (7) parcels containing approximately 21.5 acres located at the northeast corner of Yosemite Avenue and G Street, and as legally described on Exhibit "A," and shown on the Map at Exhibit "B," attached hereto and incorporated herein by this reference;

WHEREAS, on January 21, 2020, the City approved General Plan Amendment #19-03, Master Site Plan – Scheme 1.11, Site Utilization Plan Revision #3 to Planned Development #72 and a Legislative Action Agreement dated January 21, 2020 ("Legislative Action Agreement");

WHEREAS, Owner applied for Vesting Tentative Subdivision Map #1314 at Exhibit "D", attached hereto and incorporated herein by this reference;

WHEREAS, Owner has also requested clarification that the Legislative Action Agreement supersedes a prior Development Agreement and deferment;

WHEREAS, on September 9, 2020, the Planning Commission approved Vesting Tentative Subdivision Map #1314, contingent on the City Council's approval of the Amendments to the Legislative Action Agreement;

WHEREAS, on June 21, 2021, the City approved the Final Map for the Yosemite Crossing, Phase 1 Subdivision, as shown on Exhibit "C," attached hereto and incorporated herein by this reference;

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

WHEREAS, City and Owner desire to enter into this 2nd Amended and Restated Legislative Action Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto agree as follows:

1. Owner, for himself and all successors thereto, agrees to pay all City and school district fees, taxes, and/or assessments in effect on the date of subdivision and/or permit approval, any increase in those fees, taxes, and/or assessments, and any new fees, taxes, and/or assessments which are in effect at the time water/sewer connection and/or building or encroachment permits are issued, which may include public facility impact fees, other impact fees as applicable, and any Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc., (and to comply with the additional conditions set forth in Exhibit “D,” (Planning Commission Resolution #4034, attached hereto and incorporated herein by this reference), and Exhibit “E,” (Planning Commission Resolution 4071, attached hereto and incorporated herein by this reference). Payment shall be made at the time of building permit issuance unless an Ordinance or other requirement of the City mandates or permits payment of such fees, taxes, and/or assessments at an earlier or subsequent time.

2. Owner desires to comply with the conditions of approval set forth on Exhibit “C” and within this Agreement, and acknowledges that the conditions are necessary to mitigate the environmental impact 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.

3. 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, except as subsequently agreed (if at all) in a written agreement with the City.

4. The Owner shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and 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, Owner shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against 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 fully in the defense of the action. Should the City fail to

either promptly notify or cooperate fully, the Owner 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. City, on its part, agrees to change the General Plan designation of the subject property to Neighborhood Commercial (CN) and change the Site Utilization Plan (City approval) in accordance with Exhibit "B." In addition, City, on its part, agrees to approve the Vesting Tentative Subdivision Map #1314 subject to all the conditions of approval, attached as Exhibit "D" and subject to the approval of this 1st Amended and Restated Legislative Action Agreement.

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

7. It is expressly agreed that this Agreement is not intended to limit the power of the City to impose other requirements, limitations, or fees, etc., as a condition of development, and does not relieve the Owner from complying with all other requirements that may be imposed as a condition of development, whether now in existence or hereinafter imposed by the City whether by zone change, subdivision map approval, ordinance, resolution, use permit, or otherwise. The parties agree that this Paragraph does not apply to the approval of a final map and issuance of building permits for project(s) subject to this Agreement on the property described in Exhibit "A."

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

9. Owner agrees to comply with and abide by all conditions set forth by the City relating to the development of the property subject to this Agreement, including installation of all required public improvements and the Master Sign Program approved as part of Conditional Use Permit #1241, approved by the City of Merced Planning Commission on May 20, 2020.

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

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

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

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

14. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof. The following instruments are expressly superseded: (i) Development Agreement by and between the City of Merced and Della Wathen, individually, and Della Wathen as Trustee of the Spalding G. Wathen Q-Tip Trust dated August 2, 2010 and recorded August 10, 2020 as Instrument No. 2010-030606, Official Records; (2) Development Agreement by and between the City of Merced and the Prior Developer signed January 17, 2012 and recorded January 25, 2012 as Instrument No. 2012-002753, Official Records; (3) Agreement (Deferment of Construction) by and between City of Merced and Spalding G. Wathen and Della Wathen dated November 30, 1989, recorded December 1, 1989, as Instrument No. 31271 in Book 2788, Page 553 of Official Records, as modified by Partial Termination of Agreement, recorded April 22, 2010 as Instrument No. 2010-015023 in Official Records, and Partial Termination of Agreement, recorded August 28, 2017 as Instrument No. 2017027795, Official Records; and (4) Legislative Action Agreement dated January 21, 2020.

15. This Agreement may be executed in counterparts which, when taken together, constitute one (1) original.

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

CITY OF MERCED
A California Charter Law Municipal Corporation

BY: _____
City Manager

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Kimberly C. Mady 9/9/21
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

OWNER
YOSEMITE AND G LLC,
A California Limited Liability Company

BY: _____
Signature

Print Name

Its: _____

ADDRESS: 1155 W. Shaw Ave., Suite 104
Fresno, CA 93711

TELEPHONE: 559-222-5768 Ext. 102

FAX: 559-222-5755

E-MAIL: neil@truenorthprops.com

ACKNOWLEDGMENT

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

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

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

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

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

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

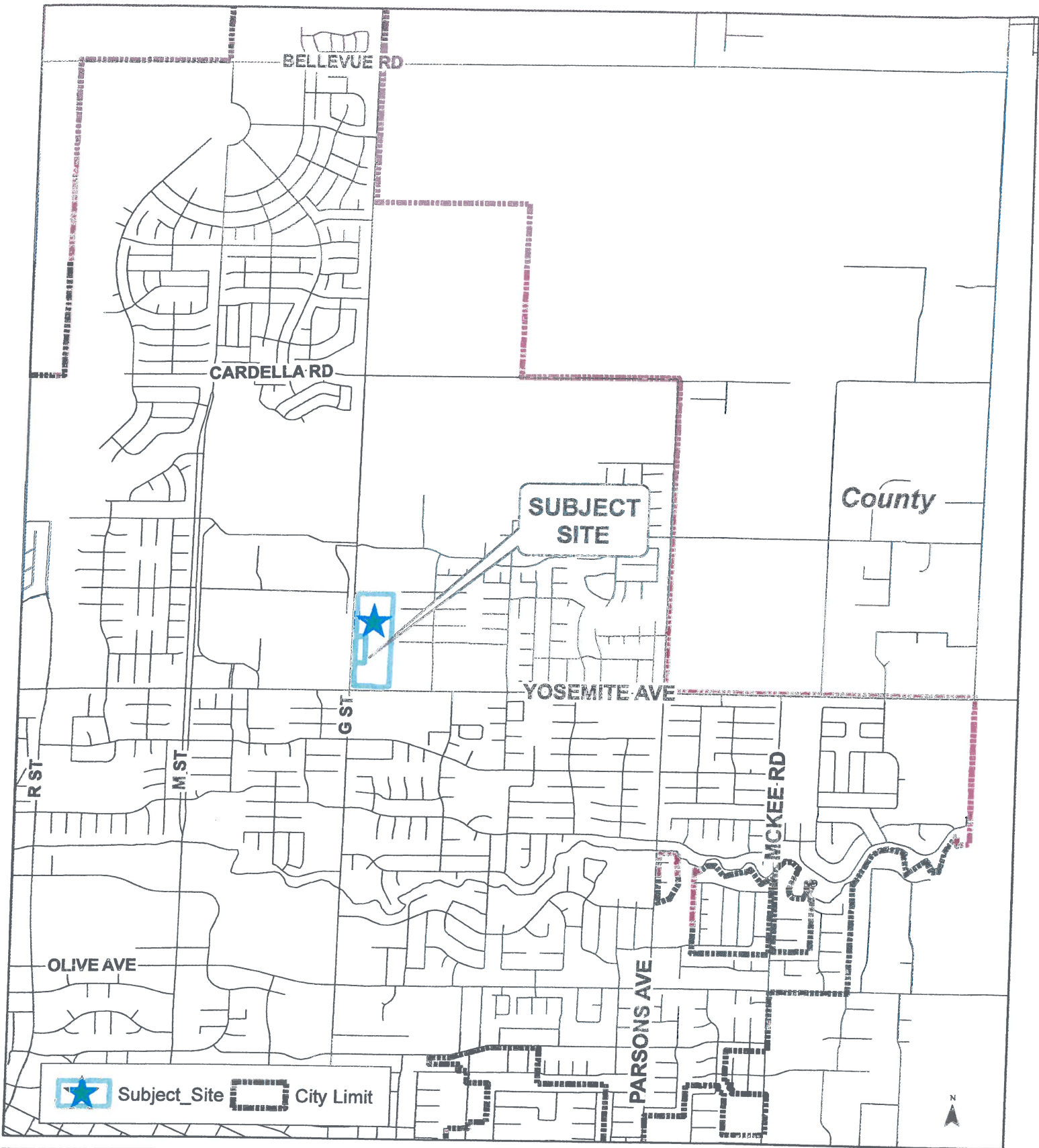
WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"
LEGAL DESCRIPTION

"Remainder C" of Final Map No. 5233, amended map for Mansionette Estates Unit 1, according to the map filed July 13, 2000 in Book 52, Pages 31, 32 and 33 of Official Plats, Merced County Records.

Assessor's Parcel Numbers (APN)- 231-040-026, 231-040-027, 231-040-028, 231-040-029, 231-040-030, 231-040-031, and 231-040-032.



Disclaimer: This document was prepared for general inquiries only. The City of Merced is not liable for errors or omissions that might occur. Official information concerning specific parcels should be obtained from recorded or adopted City documents.

LOCATION MAP

EXHIBIT "B"





CENTERLINE DESIGN, INC.
 15000 N. CENTRAL EXPRESSWAY, SUITE 200
 DALLAS, TEXAS 75244
 TEL: 972.412.1234
 FAX: 972.412.1235
 WWW.CENTRALDESIGN.COM

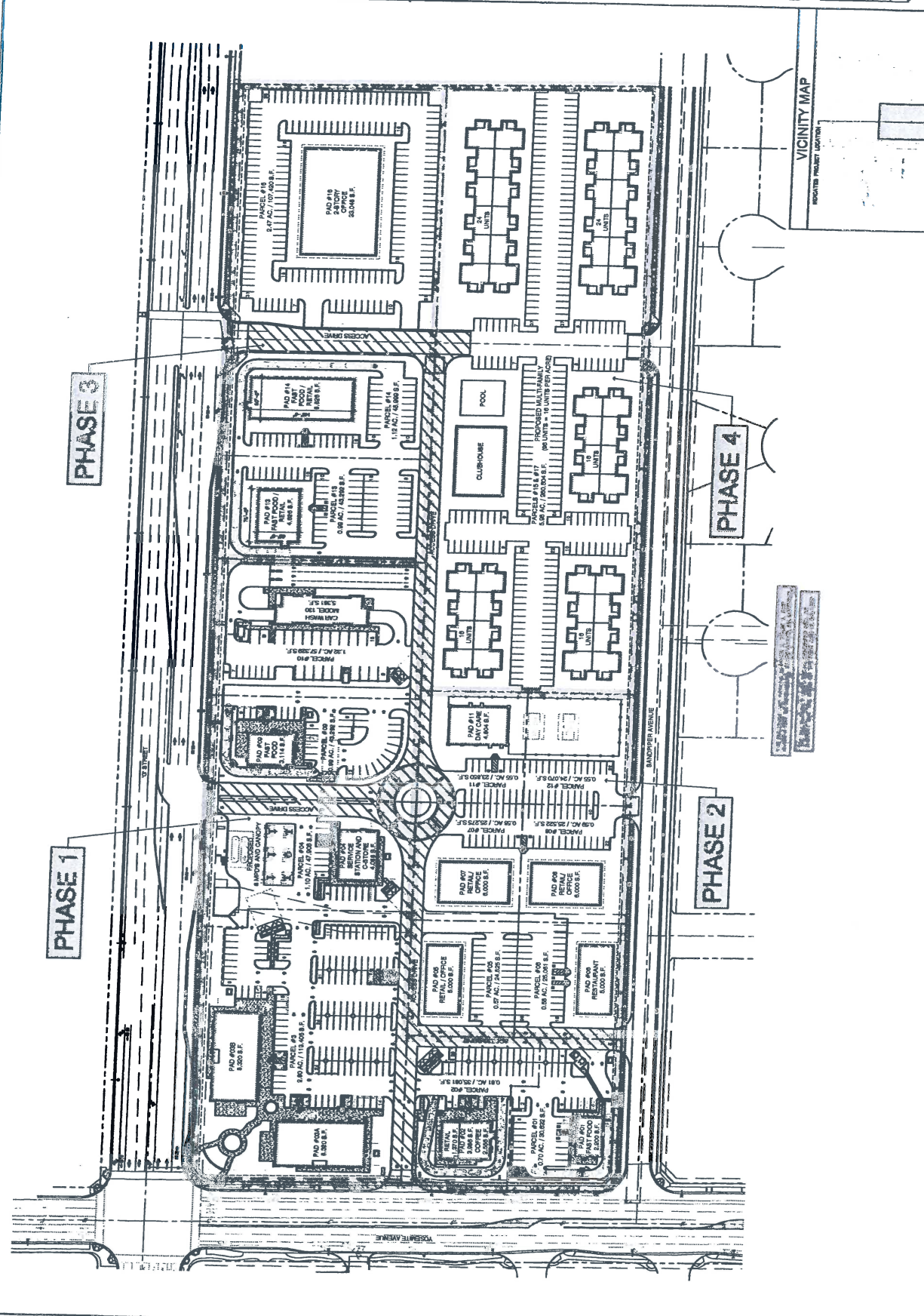
PROPOSED COMMERCIAL DEVELOPMENT FOR:
 YOSEMITE CROSSING
 YOSEMITE AVENUE AND G STREET
 MERCED, CALIFORNIA 95340

STATUS
Site Plan
Final Design
Final Design

REVISIONS

IDENTIFICATION
PROJECT NO. 10000000000000000000
DATE 08/14/2018
DESIGNER

A-0-0



PHASE 1

PHASE 3

PHASE 2

PHASE 4

VICINITY MAP



OVERALL PROPOSED SITE PLAN - SCHEME 3.0

ALL DIMENSIONS ARE IN FEET AND INCHES. DIMENSIONS OF THIS PLAN SHALL BE CONSIDERED AS APPROXIMATE. THE EXACT DIMENSIONS OF THE PROPOSED DEVELOPMENT SHALL BE DETERMINED BY THE FINAL ENGINEERING AND SURVEYING. THE EXACT DIMENSIONS OF THE PROPOSED DEVELOPMENT SHALL BE DETERMINED BY THE FINAL ENGINEERING AND SURVEYING.

RESOLUTION NO. 2021- 49

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
APPROVING THE FINAL SUBDIVISION MAP
FOR THE YOSEMITE CROSSING, PHASE 1
SUBDIVISION (#5382)**

WHEREAS, a Tentative Subdivision Map for the Yosemite Crossing, Phase 1 Subdivision was approved on September 9, 2020, by the Planning Commission; and,

WHEREAS, a Final Map conforming to the approved Tentative Map has been filed with the City of Merced; and,

WHEREAS, the City Engineer has reviewed the Final Map and certified that the Final Map substantially conforms to the conditionally approved Vesting Tentative Subdivision Map; and,

WHEREAS, all required certificates on said Final Map have been signed and, where necessary, acknowledged; and,

WHEREAS, the City has determined that the Final Map is statutorily exempt from the California Environmental Quality Act (CEQA) Statutory Exemptions, Title 14 of the California Code of Regulations Section 15268(b)(3) Ministerial Projects, Approval of Final Subdivision Maps and a Notice of Exemption is attached hereto.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES RESOLVE AS FOLLOWS:

SECTION 1. FINDINGS. The City Council finds and declares that:

1. The Final Map is statutorily exempt from the California Environmental Quality Act (CEQA), Statutory Exemptions, Title 14 of the California Code of Regulations Section 15268(b)(3) Ministerial Projects, Approval of Final Subdivision Maps.

2. The Final Map is in substantial compliance with the Tentative Map.
3. The discharge of waste from the proposed subdivision into the sewer system will not result in violation of existing requirements of the Water Quality Control Board.
4. The Final Map is consistent with applicable general and specific plans.
5. The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.
6. The site is physically suitable for the proposed type of development.
7. The site is physically suitable for the proposed density of development.
8. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife of their habitat.
9. The design of the subdivision or the type of improvements are not likely to cause serious public health problems.
10. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.
11. An agreement has been entered into with the developer satisfactory to guarantee completion of public improvements within the subdivision.

SECTION 2. APPROVAL OF MAP. The City Council hereby approves the Final Map for the Yosemite Crossing, Phase 1 Subdivision and hereby accepts on behalf of the public

CITY OF MERCED
Planning Commission

Resolution #4034

WHEREAS, the Merced City Planning Commission at its regular meeting of December 4, 2019, held a public hearing and considered **General Plan Amendment #19-03, and Site Utilization Plan Revision #3 to Planned Development (P-D) #72**, initiated by Yosemite and G, LLC, property owner. this application is a request to change the General Plan designation from Commercial Office (CO) and High to Medium Density Residential (HMD) to Neighborhood Commercial (CN) for approximately 21.5 acres of land generally located at the northeast corner of Yosemite Avenue and G Street within Planned Development #72. The SUP Revision includes a four-story hotel of approximately 80,104 square feet, two medical office buildings totaling approximately 66,465 square feet, 44 Units of Multi-Family Residential Housing totaling approximately 29,887 square feet, fast food uses with drive-thru windows totaling approximately 5,494 square feet, and a mixed-use development with approximately 59,616 square feet of other retail and office uses; also known as Assessor's Parcel Numbers (APN) 231-040-004 and 231-040-005; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through J (Exhibit B) of Staff Report #19-29; and,

NOW THEREFORE, 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 Mitigation Monitoring Program (Exhibit C) regarding Environmental Review #19-31, and approval of General Plan Amendment #19-03 and Site Utilization Plan Revision #3 to Planned Development (P-D) #72, subject to the Conditions set forth in Exhibit A, the Findings set forth in Exhibit B, and the Mitigation Monitoring Program set forth in Exhibit C attached hereto and incorporated herein by this reference.

Upon motion by Commissioner BUTTICCI, seconded by Commissioner CAMPER, and carried by the following vote:

AYES: Commissioners Butticci, Camper, Delgadillo, Dylina, Rashe, White, and Chairperson Harris

NOES: None

EXHIBIT D

PLANNING COMMISSION RESOLUTION #4034

Page 2

December 4, 2019

ABSENT: Commissioner(s) None

ABSTAIN: Commissioner(s) None

Adopted this 4th day of December 2019



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

Exhibit B – Findings

Exhibit C – Mitigation Monitoring Program

Conditions of Approval
Planning Commission Resolution # 4034
General Plan Amendment #19-03, Site Utilization Plan #3 to Planned
Development (PD) #72

1. The proposed General Plan Amendment and SUP Revision shall be constructed/designed in substantial compliance with the Site Plan, Rendering, and Typical Elevations and Floor Plans (Attachments D, F, and E of Planning Commission Staff Report #19-29), except as modified by the conditions.
2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
3. The Project shall comply with the applicable conditions set forth in Resolution #2974 for General Plan Amendment #10-02 and Zone Change #410 previously approved for this site.
4. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
5. Approval of the General Plan Amendment and Site Utilization Plan Revision is subject to the applicant's entering into a written (developer) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
6. 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.

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. De-annexation from the existing Maintenance District and Annexation to Community Facilities District (CFD) #2003-2 is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, streetlights, parks and open space. CFD procedures shall be completed prior to any final map approvals or issuance of any building permits, whichever comes first. 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.
9. The project shall comply with all mitigation measures outlined in the

Mitigation Monitoring Program for Initial Study #19-28 (Attachment H of Planning Commission Staff Report #19-29) and all applicable mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #10-06 (Appendix C of Initial Study #19-28, Attachment G of Staff Report #19-29).

10. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
11. All signs shall comply with the North Merced Sign Ordinance and Section 20.62.040 (B)(2) of the City's Zoning Ordinance for signs in a Neighborhood Commercial (C-N) zone.
12. The applicant shall construct all missing improvements along the property frontage on Yosemite Avenue and G Street including, but not limited to, sidewalk, curb, gutter, street lights, and street trees.
13. All necessary right-of-way along the property frontage, including Yosemite Avenue, G Street, and Sandpiper Avenue needed for public improvements shall be dedicated prior to the issuance of the first building permit or recordation of a parcel map, whichever comes first.
14. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access.
15. Parking lot trees shall be installed per City Parking Lot Landscape Standards and Section 20.38.070 (F). At a minimum, parking lot trees shall be provided at a ratio of one tree for every six parking spaces. 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).
16. All projects on this site 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).
17. Prior to issuance of the first grading/building permit for any project on the site, the applicant shall demonstrate compliance with San Joaquin Valley Air Pollution Control District Rule 9510 to the Planning Department. Changes to the site plan resulting from compliance with Rule 9510 are subject to review by City Staff or the Planning Commission, as determined by the Director of Development Services.

18. Bicycle parking for all projects on the site shall meet the minimum requirements of the California Green Building Code and Merced Municipal Code Section 20.38.080.
19. All landscaping on the site 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.
20. 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.
21. 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 park strips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
22. For buildings over 30 feet tall, a minimum 26-foot-wide drive aisle shall be provided for emergency vehicle access. The developer shall work with the Fire Department to determine the areas that need the 26-foot-wide drive aisle. An emergency access lane made of an all-weather surface shall be constructed to the south of the southernmost multi-family building. This lane shall either be able to meet the turnaround needs of emergency vehicles if it is 150 feet long or more, or it shall be less than 149 feet long but still meet the needs of emergency access for the residential building. In the event that the southernmost residential building is 30 feet tall or less, this path shall be a minimum of 22 feet wide. If the southernmost residential building is more than 30 feet tall, the path shall be a minimum of 26 feet wide. These details shall be confirmed as acceptable by the Fire Chief or designee prior to the issuance of occupancy permits for any of the multi-family residential buildings.
23. A fire control room may be required for the buildings on the site. The applicant shall work with the Fire Department to determine the location of the fire control room. Additional fire control rooms may be required at the discretion of the Fire Chief.

24. Each building shall be provided with a Fire Department Connection.
25. Buildings that do not provide an elevator (other than a freight elevator) shall be provided with an additional exit. The developer shall work with the Chief Building Official to determine the number of exits required for each building.
26. 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.
27. All storm water shall be retained onsite or in the basin immediately to the east of the project site and metered out to the City's storm water system in accordance with City Standards, subject to a storm drain plan approved by the City Engineer. The applicant shall submit calculations to the City showing, to the satisfaction of the City Engineer or designee, that the basin to the east of the project site has enough capacity for the proposed plans.
28. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
29. All parking lot and other exterior lighting shall be oriented in such a way so that it does not spill over onto adjacent properties.
30. Containers for refuse and recycled goods shall be stored in enclosures that are designed with colors compatible with the buildings and shall be constructed to meet City Standards. At the Building Permit stage, the developer shall work with the City Refuse Department to determine the best location for these enclosures to ensure proper access is provided for City Refuse Trucks as well as the number of containers needed to adequately serve the site. Use of a trash compactor should be considered to reduce the number of pick-ups per week.
31. All construction activity shall be conducted between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday.
32. All walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment.
33. All mechanical equipment shall be screened from public view.

34. Instead of the typical requirements for additional Conditional Use Permits and Site Plan Review for interface, this Site Utilization Plan process will address interface regulations, additional review, and permissibility of specific uses in Planned Development #72. These modifications apply in the portions of Planned Development #72 covered by the subject site parcels (Assessor's Parcel Number 231-040-004 and 231-040-005) in the following manner, taking into consideration that the adjacency of parcels may change in the event of parcel modifications in the future:
- a. Multi-family housing will require a Site Plan Review Permit rather than a Conditional Use Permit, and if on a parcel abutting or across from (per the definitions in Section 20.32.020 of the Zoning Ordinance) a property with R-1 zoning, will require a publically noticed public hearing at the Site Plan Review meeting per Section 20.32 of the Zoning Ordinance; and,
 - b. The hotel, rather than being "use not allowed", shall require a Site Plan Review Permit rather than a Conditional Use Permit, and if on a parcel abutting or across from (per the definitions in Section 20.32.020 of the Zoning Ordinance) a property with R-1 zoning, will require a publically noticed public hearing at Site Plan Review meeting per Section 20.32 of the Zoning Ordinance, but will not require an additional Conditional Use Permit; and,
 - c. Restaurants selling alcohol for consumption on-site will require only a Site Plan Review Permit use without further requirement for a Conditional Use Permit or public hearing for interface considerations; and,
 - d. Gas and service stations will require only a Site Plan Review Permit without further requirement for a Conditional Use Permit unless the gas and service station wishes to sell alcohol, in which case a Conditional Use Permit is required, and a letter of Public Convenience and Necessity may be required, but an additional public hearing for interface consideration is not required; and,
 - e. Day care centers require only a Site Plan Review Permit without further requirement for a Minor Use Permit or public hearing for interface considerations; and,

- f. Drive-through and drive-up sales require only a Site Plan Review Permit without further requirement for a Conditional Use Permit or public hearing for interface considerations; and,
 - g. General retail uses, professional offices, restaurants, and banks require only a Site Plan Review Permit without further requirement for a public hearing for interface considerations .
35. The traffic signal at G Street and Project Driveway 1, north of the proposed hotel, shall be connected into the City's street synchronization system to the satisfaction of the City Engineer or designee.
 36. Sandpiper Drive, at a minimum, shall be constructed from Yosemite Avenue north to "Children's Avenue". Upon completion of the traffic signal at G Street and Project Driveway 1, north of the proposed hotel, Sandpiper Drive shall be constructed to Project Driveway 1. Prior to the issuance of any occupancy permit for any of the multi-family residential buildings, the two office buildings at the northern portion of the project site, or the hotel, Sandpiper Drive shall be constructed in its entirety to connect to Mercy Avenue.
 37. Safe pedestrian access from the multi-family residential portion of the project to the commercial portions of the site shall be provided.
 38. In the event that the parcels of the subject site are ever subdivided or modified, in the manner suggested by the site plan or otherwise, cross-access and use agreements shall be put into place such that parking for all uses meets or exceeds City standards.
 39. The entire development should be designed with a similar or complimentary aesthetic to the renderings shown at Attachment F of Planning Commission Staff Report #19-29.
 40. For any illuminated signs placed above the ground floor, all illumination shall be located and directed in such a manner that light does not spill over to the east or north. Prior to installation, illuminated signs shall be approved by the Planning Manager or designee, and may require an analysis of lumens or other measurements of illumination as deemed necessary. Monument signs are not subject to this condition.

Findings and Considerations
Planning Commission Resolution # 4034
General Plan Amendment #19-03, Site Utilization Plan #3 to Planned
Development (PD) #72

General Plan Compliance and Policies Related to This Application

- A) With the proposed General Plan Amendment and Site Utilization Plan (SUP) Revision, the proposed project will conform with the General Plan designation of CN and zoning of P-D #72. The Site Utilization Plan (SUP) Revision includes changes to a number of aspects of Planned Development #72, including a four-story, 128-room hotel of approximately 80,104 square feet, and two medical office buildings totaling approximately 66,465 square feet. It also includes 44 Units of Multi-Family Residential Housing totaling approximately 29,887 square feet, fast food uses with drive-through windows totaling approximately 5,494 square feet, and a mixed-use development with approximately 59,616 square feet of other retail and office uses, shown on the Site Plan at Attachment D of Planning Commission Staff Report #19-29

The Zoning Ordinance describes uses that are allowed within a specific zone “by right” and those allowed with a discretionary review such as a Conditional Use Permit. Under ordinary circumstances, drive-through sales, alcoholic beverage sales in restaurants for on-site consumption, multi-family dwellings, and gas and service stations are allowed within a C-N zone with approval of a Conditional Use Permit. Day care centers require a Minor Use Permit and hotels are listed as “use not allowed” in an ordinary C-N zone.

The SUP Revision proposes to condense a number of the typical public hearings for interface along with Conditional Use Permits into the single SUP Revision. Notable exceptions are that the hotel and multi-family residential components will still require publicly noticed public hearings for their Site Plan Review Permits if they are on a parcel that is abutting or across from a parcel with R-1 or R-2 zoning. Section 20.32 of the Zoning Ordinance sets out the requirements for interface regulations to help integrate potentially incompatible zones. See Condition #34 for details.

The Zoning Ordinance does not specify a density for multi-family housing allowed within a C-N zone. The General Plan has a range of multi-family densities: Low-Medium Density (LMD) – 6 to 12 units/acre; High-Medium

Density (HMD) – 12 to 24 units/acre; and High Density (HD) 24 to 36 units/acre. The Zoning designations that correlate to the multi-family General Plan designations would be R-2; R-3-1.5; R-3, and R-4. The proposed density for this project, based on the number of units is approximately 16.4 units per acre, considering the size of the proposed parcel. This density fits into an HMD General Plan designation comfortably; the site also currently has the HMD designation for the portion of the site where the multi-family residential component is proposed.

The Housing Element of the *Merced Vision 2030 General Plan* includes policies supporting affordable housing, mixed-use development, and higher densities.

Policy H 1.1.c *Encourage Mixed Use Development*

The proposed project would provide a mixture of retail commercial uses to serve the neighborhood and multi-family efficiency dwelling units.

Policy 1.8b *Prioritize City efforts to encourage residential development by focusing on in-fill development and densification within the existing City Limits.*

The proposed project is on an in-fill site and proposes a density that is equal to the City's HMD density classification.

The following are Land Use Policies and Implementing Actions of the General Plan that could be met with the proposed project:

Policy L-1.1 *Promote Balanced Development Which Provides Jobs, Services, and Housing.*

Implementing Action 1.1.a: *Promote mixed use development combining compatible employment, service and residential elements.*

Implementing Action 1.1.c: *Determine the types of housing opportunities needed for the type of employment opportunities being created in the City.*

Additionally, Policy L 2.7.a notes that there are very unique circumstances under which retail commercial destinations can be located at the intersections of two arterial streets. Among the criteria are a project of minimum size of 20 acres, strong connectivity to the adjacent neighborhood,

provision of a mix of uses, and provision of good transit and pedestrian access. This project is approximately 21.5 acres, will connect to the adjacent neighborhood via Sandpiper Avenue and the future “Children’s Avenue”, provides for multi-family residential use in addition to commercial retail and office uses, and is on a site that is already near to existing transit routes. Planning staff believes that this project meets the criteria to proceed forward at the proposed location while being compatible with the guidelines laid out in Policy L 2.7.a.

Traffic/Circulation

- B) The project site is located at the northeast corner of Yosemite Avenue and G Street. The Project proposes to develop 66,465 square feet of medical-dental office space, a 128-room hotel, 11,458 square feet of fast-food restaurant with drive-through window(s), a gasoline/service station with convenience market (12 fueling positions), 18,222 square feet of shopping center, 5,000 square feet high turnover (sit-down) restaurant, 12,000 square feet of general office space, 4,804 square feet of day care center, and 44 multifamily units. At present, all intersections studied in the Traffic Impact Analysis operate at an acceptable Level of Service (LOS) during both peak periods. The City of Merced has determined that roads must operate at LOS of “D” or greater in order to be acceptable. The Traffic Impact Analysis, prepared by JLB Traffic Engineering, Inc. appears at Appendix B of Attachment G of Planning Commission Staff Report #19-29.

Project Access

Based on the Project Site Plan, access to and from the Project site will be from five (5) access driveways located along Sandpiper Avenue, G Street, and Yosemite Avenue. Two (2) access points are proposed to be located along the east side of G Street. One is located approximately 1,250 south of Mercy Avenue and is proposed as a full access (with a future signal), with left turns in and out. The other is located approximately 625 feet north of Yosemite Avenue and is proposed as left-in, right-in and right-out access only. The access point off of Yosemite Avenue is located approximately 300 feet east of G Street and is limited to right-in and right-out access only. The remaining two access points are proposed to be located along the extension of Sandpiper Avenue. While Sandpiper Avenue will eventually go through to Mercy Avenue, at the beginning of the project, access to Sandpiper

Avenue will be limited to Yosemite Avenue, which will be limited to right-in and right-out access only onto Sandpiper. Sandpiper will connect to The future “Children’s Avenue,” which will go through to Mansionette Drive.

Walkways

Currently, walkways exist in the vicinity of the proposed Project site along G Street, Yosemite Avenue, and Mercy Avenue. The *Merced Vision 2030 General Plan* recommends that walkways be implemented during all phases of a Project to guarantee adequate and safe pedestrian facilities at all times. Therefore, it is recommended that the Project implement a walkway along its frontage to Sandpiper Avenue and complete the walkway along its frontage to G Street.

Bikeways

Currently, bikeways exist in the vicinity of the proposed Project site along G Street, Yosemite Avenue, Mercy Avenue, and Mansionette Drive. The *Merced Vision 2030 General Plan* recommends that a Class II Bike Lane be implemented on G Street north of Yosemite Avenue and a Class I Bike Lane beginning on G Street and extending approximately 950 feet north of Mercy Avenue. Therefore, it is recommended that the Project implement a Class II Bike Lane along its frontage to G Street.

Transit

The Bus, Merced’s Regional Transit System, is the single public transportation service provider for all of Merced County. At present, there are three routes - M3, M4 and UC - that have stops adjacent to the proposed Project and two more - M1 and M2 - that stop approximately 0.5 miles from the Project. Retention of the existing and expansion of future transit routes is dependent on transit ridership demand and available funding.

Trip Generation

Trip generation rates for the proposed Project were obtained from the 10th Edition of the Trip Generation Manual published by the Institute of Transportation Engineers (ITE). The Project buildout is estimated to generate a maximum of 13,160 daily trips, 1,009 AM peak hour trips and 1,059 PM peak hour trips (before internal capture and pass-by rate reductions are taken into account). JLB also analyzed the estimated maximum trip generation of a prior version of the Project Site Plan. Due to a lack of secured users for the site, the exact square footages of the pads

EXHIBIT B

OF PLANNING COMMISSION RESOLUTION #4034

shown on the latest Project Site Plan may differ. At buildout, the prior Project Site Plan is anticipated to generate a maximum of 13,741 daily trips, 1,092 AM peak hour trips and 1,074 PM peak hour trips (before internal capture and pass-by rate reductions are taken into account). Compared to the prior Project Site Plan, the latest Project Site Plan is estimated to yield less traffic by 581 daily trips, 83 AM peak hour trips and 15 PM peak hour trips (before internal capture and pass-by rate reductions are taken into account). The TIA assumed the trip generation of the prior Project Site Plan, as it is the more impactful.

The following Mitigation Measure is recommended in Initial Study #19-28 for this project to ensure intersections operate at an acceptable level of service (see the Mitigation Monitoring Program at Attachment H of Planning Commission Staff Report #19-29).

Mitigation Measures

- TRA-01** Project Driveway 1 shall have a minimum throat depth of 150 feet before any vehicular openings to the north.
- TRA-02** The Project shall implement a walkway along its frontage to Sandpiper Avenue and complete the walkway along its frontage to G Street. Based on the implementation progress of the project, the timing of these improvements shall be at the discretion of the City Engineer.
- TRA-03** The Project shall implement a Class II Bike Lane along its frontage to G Street. Based on the implementation progress of the project, the timing of this improvement shall be at the discretion of the City Engineer.
- TRA-04** The intersection of G Street and Project Driveway 1 shall be signalized with protective left-turn phasing in all directions prior to the issuance of any occupancy permits.
- TRA-05** The intersection of Sandpiper Avenue and Mercy Avenue shall be modified as an All-Way Stop with the following details:
- Stripe a westbound left-turn lane;
 - Modify the westbound left-through-right lane to a through-right lane;
 - Stripe a northbound left-turn;

- Modify the northbound left-through-right lane to a through-right lane;
- Implement an all-way stop control; and,
- Based on the implementation progress of the project, the timing of these improvements shall be at the discretion of the City Engineer.

TRA-06 The intersection of G Street and Yosemite Avenue shall have a second southbound left-turn lane added, the traffic signal shall be modified to implement overlap phasing of the northbound right-turn with the westbound left-turn phase, and westbound to eastbound U-turns shall be prohibited. Prior to implementation of this measure, design details and timing are to be approved by the City Engineer.

TRA-07 The intersection of Paulson Road and Yosemite Avenue shall have an eastbound through-right lane with a receiving lane east of Paulson Road added. Prior to implementation of this measure, design details and timing are to be approved by the City Engineer.

In addition, all applicable previously approved mitigation measures from Initial Study #10-06 would still apply. A copy of the mitigation monitoring program for Initial Study #10-06 can be found at Appendix C of Initial Study #19-28, which is Attachment G of Planning Commission Staff Report #19-29.

Parking

- C) Parking for the non-residential portions of the project are based on projected uses, and their requirements per Table 20.38-1 of the Zoning Ordinance. The Zoning Ordinance allows a 15% reduction in floor area for non-usable commercial space such as restrooms, storage areas, etc. Using this formula, the parking requirements for the commercial portion of the project would be 606 spaces.

The Zoning Ordinance requires 1.75 spaces of parking for each multi-family unit up to 30 units, plus an additional 1.5 spaces for each unit over 30. Based on this calculation, the residential portion of this project would require 74 parking spaces.

The total project requires 680 parking spaces. The proposed site plan

envisions 964 parking spaces in total, meeting and exceeding the City’s parking requirements. The Zoning Ordinance (MMC Section 20.38.050) also allows for reductions in parking requirements for mixed used projects, projects near transit, and other reductions which could be applied to this project. Although this project has not formally applied for a modification to the final map of the parcels, the site plan is drawn in such a way that future subdivision is possible, if not likely. Reviewing the individual uses in such a way that the parking on each potential parcel is tracked separately yields some uses (the Medical Offices, the Hotel, and the Multi-Family residences) that are slightly deficient on parking. The Parking Analysis table below provides more detail. Since the overall parking provided is significantly higher than the overall parking required for the project, staff believes that with proper cross-access and use agreements in place (Condition #38), parking needs for the proposed uses are met and exceeded.

Parking Analysis

	SF	Units	Reduction	Spaces per SF	Req. Spaces	Prov. Spaces	Difference
Gen. Retail	18,222	N/A	15%	1/300	52	113	61
Restaurants	7,404	N/A	30%*	1/100	52	93	41
Bank	3,560	N/A	15%	1/250	13	35	22
Gas/Service	3,150	N/A	15%	1/250 + 3	14	19	5
Office	12,000	N/A	15%	1/250	41	87	46
Fast Food	5,494	N/A	15%	1/350	14	111	97
Day Care	4,804	N/A	15%	1/400 +1/employee**	23	63	40
Hotel	80,104	128	N/A	Per Unit***	114	111	-3
Multi-Family	29,887	44	N/A	Per Unit****	74	62	-12
Medical Office	66,465	N/A	15%	1/200	283	270	-13

*70% of total square footage assumed for seating

**10 employees assumed

***Hotel requires 1 space/unit for the first 100 units, and 0.5 spaces/unit thereafter

****Multi-family requires 1.75 spaces/unit for the first 30 units and 1.5 spaces/unit thereafter

Public Improvements/City Services

D) Water

There is a 16-inch water line in Yosemite Avenue and another 16-inch line in G Street to serve the project site. The City’s water supply would be

sufficient to serve the proposed project.

Sewer

An 18-inch sewer line exists in Yosemite Avenue which flows to G Street, then continues out to the Waste Water Treatment Plant (WWTP). The G Street sewer line is 27 inches wide at the project location. There is sufficient capacity at the WWTP, and the existing lines in Yosemite Avenue and G Street have enough capacity during peak hours to accommodate the additional wastewater and transmit it to the WWTP for processing.

Stormwater

A 24-inch storm drain exists in G Street. The project would be required to retain storm water onsite or in the collection basin to the east of the site that is part of P-D #72, and meter it into the City's system (Condition #27).

Building Design

- E) As shown on the Rendering and Typical Elevations and Floor Plans, Attachments F and E, the retail buildings on the site would stand one story tall and have a modern design with wood or faux wood fascia, stone, glass, and metal as primary features and elements. The buildings would have clean lines and use a variety of building materials to provide interest and differentiate between businesses. The retail portion of the project is proposed as the first phase of development, and future phases, including the hotel, the residential buildings, and the office buildings, would all use the retail phase's stylistic elements as a template for a cohesive, but not identical, thematic design for the entire site. Final design details will be approved by staff at the Site Plan Review stage.

Site Design

- F) The project site is bounded by Yosemite Avenue to the south, G Street to the west, the future extension of Sandpiper Avenue to the east, and approximately a hypothetical extension of University Avenue or Bobolink Court to the north. For clarity, Sandpiper Avenue is projected to extend between Yosemite Avenue and Mercy Drive during the lifespan of this project, while neither Yosemite Avenue nor Bobolink Court have such projections and are mentioned for the purpose of illustration only.

The site plan is still conceptual, especially as potential tenants are concerned, which may lead to modifications as development proceeds. Changes to the site plan could be approved by the Site Plan Review Committee. As proposed, the project site includes:

- 3,150 SF for a Gas/Service Station
- 3,560 SF for a Bank
- 4,804 SF for a Day Care
- 5,494 SF of Fast Food with Drive-Through
- 7,404 SF of Restaurants
- 12,000 SF of General Offices
- 18,222 SF of General Retail
- 29,887 SF for Multi-Family Residential; 3 Two-Story Buildings of 44 Rooms Total
- 66,465 SF of Medical Offices
- 80,104 SF for a 4-Story Hotel with 128 Rooms

The first phase of the project would include the development of the retail spaces, including the restaurants, the fast food, the gas/service station, and potentially the bank. Later phases will largely be determined by tenant interest and opportunity, but it is projected that the hotel, office uses, and day care are the most likely to proceed in a second phase, with the multi-family residential development as the third phase. There are not timing projections on these phases at this point.

The developers held a Neighborhood Outreach meeting at Cruickshank Middle School, 601 Mercy Avenue, near the project site on May 30, 2019, beginning at 6 PM. At this meeting, the applicants presented the project concepts as they stood at the time to interested residents, and solicited feedback. In response to comments received at this outreach meeting, the applicants modified their site plan to the current version, eliminating the plans for a car wash that residents suggested could have noise impacts on surrounding properties, and modifying the site layout such that the multi-family residential portion of the site is further north than was originally proposed. These changes have made the site design more congruent with its surroundings, with the multi-family housing acting as a buffer for other uses that would generate more noise and potential impacts to the existing

neighborhood. Also in response to comments that City staff heard at the meeting regarding the concerns over hotel signage, Condition #40 regarding the illumination of signs has been added.

Landscaping

- G) As shown in the rendering (Attachment F), the area between the retail buildings would be landscaped to create a welcoming outdoor area. Parking lot trees would be provided throughout the site in compliance with the City's Parking Lot Landscape Standards (Condition #15).

According to Table 20.36-1 of the Zoning Ordinance, the site is required to provide a minimum landscape area equal to 15% of the project site. Landscaping and irrigation shall be required to meet the City's Water Efficient Landscape Ordinance (Condition #19).

Neighborhood Impact/Interface

- H) As previously described, the project site is bordered on the east by residential uses as well as Merced College to the west across G Street. The developer held a neighborhood meeting on May 30, 2019, at Cruickshank Middle School, the impacts of which on the proposal are detailed further in Finding F, above.

The Zoning Ordinance describes uses that are allowed within a specific zone "by right" and those allowed with a discretionary review, such as a Conditional Use Permit. Under ordinary circumstances, drive-through sales, alcoholic beverage sales in restaurants for on-site consumption, multi-family dwellings, and gas and service stations are allowed within a C-N zone with approval of a Conditional Use Permit. Day care centers require a Minor Use Permit and hotels are listed as "use not allowed" in an ordinary C-N zone.

Additionally, Section 20.32 of the Zoning Ordinance sets out the requirements for interface regulations to help integrate potentially incompatible zones. This section requires Site Plan Review be obtained prior to construction on a parcel with a Neighborhood Commercial (C-N) zone when it is adjacent to or across the street from an R-1-6 zone. In this case, several properties to the east are zoned R-1-6. The uses in this area include single-family dwellings located on approximately 0.2-acre lots. This project is designed in such a way that may at a future time be desirable to separate

EXHIBIT B

OF PLANNING COMMISSION RESOLUTION #4034

the parcels, as noted by the “proposed parcel line” notations on the Site Plan, shown at Attachment D; however, no parcel modifications have been submitted at this time.

Instead of the typical requirements for additional Conditional Use Permits and Site Plan Review for interface, this Site Utilization Plan process will address interface regulations, additional review, and permissibility of specific uses in Planned Development #72 (Condition #34). These modifications apply in the portions of Planned Development #72 covered by the subject site parcels (Assessor’s Parcel Number 231-040-004 and 231-040-005) in the following manner, taking into consideration that the adjacency of parcels may change in the event of parcel modifications in the future:

- Multi-family housing will require a Site Plan Review Permit rather than a Conditional Use Permit, and if on a parcel abutting or across from (per the definitions in Section 20.32.020 of the Zoning Ordinance) a property with R-1 zoning, will require a publicly noticed public hearing at the Site Plan Review meeting per Section 20.32 of the Zoning Ordinance.
- The hotel, rather than being a “use not allowed,” shall require a Site Plan Review Permit rather than a Conditional Use Permit, and if on a parcel abutting or across from (per the definitions in Section 20.32.020 of the Zoning Ordinance) a property with R-1 zoning, will require a publicly noticed public hearing at a Site Plan Review meeting per Section 20.32 of the Zoning Ordinance, but will not require an additional Conditional Use Permit.
- Restaurants selling alcohol for consumption on-site will require only a Site Plan Review Permit use without further requirement for a Conditional Use Permit or public hearing for interface considerations.
- Gas and service stations will require only a Site Plan Review Permit without further requirement for a Conditional Use Permit unless the gas and service station wishes to sell alcohol, in which case a Conditional Use Permit is required, and a letter of Public Convenience and Necessity may be required, but an additional public hearing for interface consideration is not

EXHIBIT B

OF PLANNING COMMISSION RESOLUTION #4034

required.

- Day care centers require only a Site Plan Review Permit without further requirement for a Minor Use Permit or public hearing for interface considerations.
- Drive-through and drive-up sales require only a Site Plan Review Permit without further requirement for a Conditional Use Permit or public hearing for interface considerations.
- General retail uses, professional offices, restaurants, and banks require only a Site Plan Review Permit without further requirement for a public hearing for interface considerations.

Public hearing notices were sent to all property owners within 300 feet of the site. To date, staff has not had any comments other than those heard at the community meeting held by the applicants.

Signage

- I) All signs on the site would be required to comply with the North Merced Sign Ordinance and the Neighborhood Commercial sign regulations (Condition #11) as well as Condition #40 dealing with illumination. Final sign/design details will be addressed by staff at the Site Plan Review phase.

Environmental Clearance

- J) The Planning staff has conducted an environmental review (Initial Study #19-28) 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 #19-28) is being recommended (Attachment G of Planning Commission Staff Report #19-29).

ENVIRONMENTAL REVIEW #19-28
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:

- 1) The requirements of the adopted mitigation monitoring program for the General Plan Amendment #19-03 and Site Utilization Plan Revision #3 to Planned Development #72 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 #19-28 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 General Plan Amendment #19-03 and Site Utilization Plan Revision #3 to Planned Development #72. 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.

**General Plan Amendment #19-02/Site Utilization Plan Revision #3 to Planned Development #72
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).

3) Air Quality				
<i>Impact</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<p>AIR-1)</p> <p>c</p>	<p>Consistent with SJVAPCD Regulation VIII (Fugitive PM10 Prohibitions), the following controls are required to be included as specifications for the proposed project and implemented at the construction site:</p> <ul style="list-style-type: none"> -All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover. -All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant -All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking. -When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained. -All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. <p><i>(continued on next page)</i></p>			

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
c	<p>-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.</p> <p>- Following the addition of materials to, or the removal of materials from, the surface of out-door storage piles, said piles shall be effectively stabilized of fugitive dust emission utilizing sufficient water or chemical stabilizer/suppressant.</p>	Building Permits	Planning Department	
c	AIR-2) The project contractor shall ensure all off-road diesel-powered construction equipment of 50 horsepower or more used for the project meet the California Air Resources Board (CARB) Tier 2 with a Level 3 Diesel Particulate Filter emissions standards or equivalent.	Building Permits	Planning Department	

4) Biological Resources				
Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
<i>a</i>	<p>BIO-1) Impacts of the proposed project upon vegetation and wildlife habitat can be mitigated by preserving as many of the existing trees as possible (if any still exist) and incorporating them into the proposed project. The Cottonwood trees have the greatest wildlife habitat value, although they are generally less visually attractive and in poorer condition than either the Olive trees or the Eucalyptus trees. However, in spite of appearances, a Cottonwood, even in poor condition, provides good wildlife habitat.</p> <p>Impacts to wildlife habitat can also be reduced by using native plant materials in landscaping to the greatest extent possible. Native plant species provide the best wildlife habitat since native vegetation has co-evolved with the wildlife and affords food sources for which wildlife is best adapted. Native species cannot always be used to produce the desired form and floral characteristics, but some native species can usually be incorporated.</p>	Building Permits	Planning Department	

5) Cultural Resources				
Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
<i>a</i>	<p>CUL-1) If unknown pre-contact or historic-period archaeological materials are encountered during project activities, all work in the immediate vicinity of the find shall halt until a qualified archaeologist can evaluate the find and make recommendations.</p> <p>Cultural resources materials may include pre-contact resources such as flaked and ground stone tools and debris, shell, bone, ceramics, and fire-affected rock, as well as historic resources such as glass, metal, wood, brick, or structural remnants. If the qualified archaeologist determines that the discovery represents a potentially significant cultural resource, additional investigations shall be required to mitigate adverse impacts from project implementation. These additional studies may include, but are not limited to, recordation, archaeological excavation, or other forms of significance evaluations.</p> <p>The applicant shall inform its contractor(s) of the sensitivity of the project site for archaeological deposits, and include the following directive in the appropriate contract documents:</p> <p style="text-align: right;"><i>(continued on next page)</i></p>			

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
	<p>“The subsurface of the construction site is sensitive for archaeological deposits. If archaeological deposits are encountered during project subsurface construction, all ground-disturbing activities within 25 feet shall be redirected and a qualified archaeologist shall assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery.</p> <p>Project personnel shall not collect or move any archaeological materials. Archaeological deposits can include, but are not limited to, shellfish remains; bones, including human remains; and tools made from, obsidian, chert, and basalt; mortars and pestles; historical trash deposits containing glass, ceramics, and metal artifacts; and structural remains, including foundations and wells.”</p> <p>The City shall verify that the language has been included in the grading plans prior to issuance of a grading permit or other permitted project action that includes ground-disturbing activities on the project site.</p>	<p>Building Permits</p>	<p>Planning Department</p>	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
c	<p>CUL-3) If human remains are identified during construction and cannot be preserved in place, the applicant shall fund: 1) the removal and documentation of the human remains from the project corridor by a qualified archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology; 2) the scientific analysis of the remains by a qualified archaeologist, should such analysis be permitted by the Native American Most Likely Descendant; and, 3) the reburial of the remains, as appropriate. All excavation, analysis, and reburial of Native American human remains shall be done in consultation with the Native American Most Likely Descendant, as identified by the California Native American Heritage Commission.</p>	Building Permits	Planning Department	

6) Energy					
a	ENE-1)	The applicant shall comply with all applicable California Energy Code, AB 341, and San Joaquin Valley Air Pollution Control District rules and regulations regulating energy efficiency and waste.	Building Permits	Building Department	
b	ENE-2)	Implementation of Mitigation Measure ENE-1.	Building Permits	Building Department	
7) Geology and Soils					
Impact No.		Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
b	GEO-1)	The project shall comply with all requirements of the State Water Resources Board (SWRCB) and obtain a General Construction Activity Stormwater Permit.	Building/Encroachment Permits	Engineering Department	
b	GEO-2)	The project shall comply with all applicable mitigation measures for Expanded Initial Study #02-27 for General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02.	Building/Encroachment Permits	Engineering Department	

<p>8) Hydrology and Water Quality</p>	<p>HYDRO-1) To minimize any potential short-term water quality effects from project-related construction activities, the project contractor shall implement Best Management Practices (BMPs) in conformance with the California Storm Water Best Management Practice Handbook for Construction Activity. In addition, the proposed project shall be in compliance with existing regulatory requirements, including the Water Pollution Control Preparation (WPCP) Manual. In addition, implementation of a Storm Water Pollution Prevention Plan (SWPPP) would be required under the National Pollutant Discharge Elimination System (NPDES) to regulate water quality associated with construction activities.</p>	<p>Building/ Encroachment Permits</p>	<p>Engineering Department</p>
--	--	---	-----------------------------------

<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<i>a</i>	HYDRO-2 If any storm drainage from the site is to drain into MID facilities, the developer shall first enter into a "Storm Drainage Agreement" with MID and pay all applicable fees.	Building/ Encroachment Permits	Engineering Department	
<i>a</i>	HYDRO-3) To reduce the potential for degradation of surface water quality during project operation, a SWPPP shall be prepared for the proposed project. The SWPPP shall describe specific programs to minimize stormwater pollution resulting from the proposed project. Specifically, the SWPPP shall identify and describe source control measures, treatment controls, and BMP maintenance requirements to ensure that the project complies with post-construction stormwater management requirements of the RWQCB.	Building/ Encroachment Permits	Engineering Department	
<i>c</i>	HYDRO-4 Prior to issuance of a building permit or as required by the City Engineer, the developer shall demonstrate to the City that storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City Standards and the City's Storm Drain Master Plan.	Building/ Encroachment Permits	Engineering Department	

13) Noise	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
<p><i>a</i></p>	<p>NOI-1) To reduce potential construction noise impacts, the following multi-part mitigation measure shall be implemented for the project:</p> <ul style="list-style-type: none"> • The construction contractor shall ensure that all internal combustion engine-driven equipment is equipped with mufflers that are in good condition and appropriate for the equipment. • The construction contractor shall locate stationary noise-generating equipment as far as feasible from sensitive receptors when sensitive receptors adjoin or are near a construction disturbance area. In addition, the project contractor shall place such stationary construction equipment so that emitted noise is directed away from sensitive receptors nearest the project site. • The construction contractor shall prohibit unnecessary idling of internal combustion engines (i.e., idling in excess of 5 minutes is prohibited). • The construction contractor shall locate, to the maximum extent practical, on-site equipment staging areas so as to maximize the distance between construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction. <p><i>(continued on next page)</i></p>	<p>Building Permit</p>	<p>Building Department</p>	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
	<ul style="list-style-type: none"> 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. 	Building Permit	Planning Department	
17) Transportation and Traffic				
a, c	TRA-01 Project Driveway 1 shall have a minimum throat depth of 150 feet before any vehicular openings to the north.	Building Permit	Planning/Engineering Department	

17) Transportation and Traffic				
Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
a, c	TRA-01 Project Driveway 1 shall have a minimum throat depth of 150 feet before any vehicular openings to the north.	Building Permit	Planning/ Engineering Department	
a, c	TRA-02 The Project shall implement a walkway along its frontage to Sandpiper Avenue and complete the walkway along its frontage to G Street. Based on the implementation progress of the project, the timing of these improvements shall be at the discretion of the City Engineer.	Building Permit	Planning/ Engineering Department	
a, c	TRA-03 The Project shall implement a Class II Bike Lane along its frontage to G Street. Based on the implementation progress of the project, the timing of this improvement shall be at the discretion of the City Engineer.	Building Permit	Planning/ Engineering Department	
a, c	TRA-04 The intersection of G Street and Project Driveway 1 shall be signalized with protective left-turn phasing in all directions.	Building Permit	Planning/ Engineering Department	

<p><i>a, c</i></p>	<p>TRA-05 The intersection of Sandpiper Avenue and Mercy Avenue shall be modified as an All-Way Stop with the following details:</p> <ul style="list-style-type: none"> ○ Stripe a westbound left-turn lane; ○ Modify the westbound left-through-right lane to a through-right lane; ○ Stripe a northbound left-turn; ○ Modify the northbound left-through-right lane to a through-right lane; and ○ Implement an all-way stop control. ○ Based on the implementation progress of the project, the timing of these improvements shall be at the discretion of the City Engineer. 	<p>Building Permit</p>	<p>Planning/ Engineering Department</p>	
<p><i>a, c</i></p>	<p>TRA-06 The intersection of G Street and Yosemite Avenue shall have a second southbound left-turn lane added, the traffic signal shall be modified to implement overlap phasing of the northbound right-turn with the westbound left-turn phase, and westbound to eastbound U-turns shall be prohibited. Prior to implementation of this measure, design details and timing are to be approved by the City Engineer.</p>	<p>Building Permit</p>	<p>Planning/ Engineering Department</p>	

<p><i>a, c</i></p>	<p>TRA-07 The intersection of Paulson Road and Yosemite Avenue shall have an eastbound through-right lane with a receiving lane east of Paulson Road added. Prior to implementation of this measure, design details and timing are to be approved by the City Engineer.</p>	<p>Building Permit</p>	<p>Planning/ Engineering Department</p>	
--------------------	--	------------------------	---	--

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

CITY OF MERCED
Planning Commission

Resolution #4071

WHEREAS, the Merced City Planning Commission at its regular meeting of August 18, 2021, held a public hearing and considered **Site Utilization Plan (SUP) Revision #4 to Planned Development (P-D) #72**, initiated Yosemite and G, LLC., property owner. The application involves a request to update the Site Utilization Plan for the Yosemite Crossing development to include a car wash, additional retail buildings, and 48 additional multi-family units, as well as reconfiguring the location of various buildings on the site. The property has a Neighborhood Commercial (CN) General Plan designation, is zoned P-D #72, and is generally located at the northeast corner of Yosemite Avenue and G Street. The property is more particularly described as “Remainder C” of Final Map No. 5233, amended map for Mansionette Estates Unit 1, according to the map filed July 13, 2000 in Book 52, Pages 31, 32, and 33 of Official Plats, Merced County Records; also known as Assessor’s Parcel Number (APN) 231-040-004 and APN 231-040-005; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through J of Exhibit B of Attachment A to Staff Report #21-637, including Findings required by Merced Municipal Code Section 20.20.020 (J) for Planned Development Revisions; and,

NOW THEREFORE, after reviewing the City’s Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council to find that the previous environmental review [Initial Study #19-28 for General Plan Amendment #19-03 and Site Utilization Plan Revision #3 to Planned Development (P-D) #72] remain sufficient and no further documentation is required (CEQA Section 15162 Findings), and recommend approval of Site Utilization Plan Revision #4 to Planned Development (P-D) #72, subject to the Conditions set forth in Exhibit A and the Findings set forth in Exhibit B attached hereto and incorporated herein by reference.

Upon motion by Chairperson Harris, seconded by Commissioner Dylina, and carried by the following vote:

AYES: Commissioner Camper, Delgadillo, Dylina, and Chairperson Harris
NOES: None
ABSENT: Commissioner White (two vacancies)
ABSTAIN: None

EXHIBIT E

PLANNING COMMISSION RESOLUTION #4071

Page 2

August 18, 2021

Adopted this 18th day of August 2021



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:


Secretary

Attachments:

Exhibit A - Conditions of Approval

Exhibit B - Findings

Conditions of Approval
Planning Commission Resolution #4071
Site Utilization Plan Revision #4 to Planned Development (P-D) #72

1. The proposed Site Utilization Plan Revision shall be constructed/designed in substantial compliance with the Site Plan (Attachment D of Planning Commission Staff Report #21-637), except as modified by the conditions.
2. The project shall be constructed/designed in substantial compliance with all applicable conditions of General Plan Amendment #19-03 and Site Utilization Plan Revision #72, notwithstanding elements modified by Site Utilization Plan Revision #4 to Planned Development (P-D) #72. The Site Plan Review Committee shall approve the final design for the project for any phases that have not already received that body's approval.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. The project shall comply with all mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #19-28 (Attachment I of Planning Commission Staff Report #21-637).
5. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
6. Approval of the Site Utilization Plan Revision is subject to the applicant's entering into a written (developer) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.

7. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, suits, or proceeding. Developer/applicant shall be responsible to immediately prefund the litigation cost of the City including, but not limited to, City's attorney's fees and costs. If any claim, action, suits, or proceeding is filed challenging this approval, the developer/applicant shall be required to execute a separate and formal defense, indemnification, and deposit agreement that meets the approval of the City Attorney and to provide all required deposits to fully fund the City's defense immediately but in no event later than five (5) days from that date of a demand to do so from City. In addition, the developer/applicant shall be required to satisfy any monetary obligations imposed on City by any order or judgment.
8. 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.
9. In compliance with Merced Municipal Code Section 20.20.020 Q, Site Plan Review approval is required prior to development to address conformance with the standards of Planned Development (P-D) #72.
10. All public improvements shall be installed along the project frontage to meet City Standards. Any existing improvements that have been damaged or

otherwise do not meet current City Standards shall be repaired or replaced to meet City Standards. This includes, but is not limited to, sidewalk curb, gutter, street trees, and streetlights.

11. All storm water shall be retained onsite or in the basin immediately to the east of the project site and metered out to the City's storm water system in accordance with City Standards, subject to a storm drain plan approved by the City Engineer. The applicant shall submit calculations to the City showing, to the satisfaction of the City Engineer or designee, that the basin to the east of the project site has enough capacity for the proposed plans.
12. All projects on this site 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).
13. 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.
14. If solar panels are placed on the roof of the buildings, they shall be placed in such a way as not to inhibit Fire Department access with their aerial apparatus.
15. Bicycle parking shall meet the minimum requirements of the California Green Building Code and Merced Municipal Code Section 20.38.080.
16. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
17. All construction activity shall be conducted between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday.
18. 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 Sections 20.36 – Landscaping and Section 20.46.030 (C) - Landscaping.
19. 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.

20. 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 park strips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
21. 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. No trees shall 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 will be required in other portions of the site.
22. All walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment.
23. All parking lot and other exterior lighting shall be oriented in such a way so that it does not spillover onto adjacent properties.
24. All mechanical equipment shall be screened from public view (details to be worked out with Planning Staff at the building permit stage).
25. Containers for refuse and recycled goods shall be stored in enclosures that are designed with colors compatible with the buildings and shall be constructed to meet City Standards.
26. All signs shall comply with the requirements of the approved Master Sign Program for this site per Conditional Use Permit #1241, North Merced Sign Ordinance and Merced Municipal Code (MMC) Section 17.36.572 – Apartments or Condominiums. No free-standing A-Frame or sandwich board-type signs shall be allowed. All other moveable temporary signs are prohibited as well. Temporary banners may be installed on a building wall in compliance with the City's Sign Ordinance and after obtaining a Temporary Banner Permit from the Planning Department. A building permit shall be obtained for all permanent signs.
27. The project shall comply with the Residential Design Standards for Multi-family dwellings as spelled out in Merced Municipal Code (MMC) Section 20.46.030 and 20.46.040, unless otherwise modified by these conditions.

28. For the multi-family residential portion of the project, buildings fronting along Sandpiper Drive shall be no taller than twenty-five (25) feet. Multi-family residential buildings that do not front along Sandpiper Drive shall be no taller than thirty-five (35) feet.
29. For the multi-family residential portion of the project, a minimum of 7 parking spaces must be accessible parking spaces per the requirements of Table 11B-208.2 of Title 24 Part 2 of the California Building Code.
30. Where not otherwise specified, standards for the multi-family portion of the project shall comply with the standards of the R-3-2 Zone (Merced Municipal Code Chapter 20.08).
31. The project shall be designed with a variety of colors and/or textures on the exterior elevations.
32. For buildings over 30 feet tall, a minimum 26-foot-wide drive aisle shall be provided for emergency vehicle access. The developer shall work with the Fire Department to determine the areas that need the 26-foot-wide drive aisle. An emergency access lane made of an all-weather surface shall be constructed to the south of the southernmost multi-family building. This lane shall either be able to meet the turnaround needs of emergency vehicles if it is 150 feet long or more, or it shall be less than 149 feet long, but still meet the needs of emergency access for the residential building. In the event that the southernmost residential building is 30 feet tall or less, this path shall be a minimum of 22 feet wide. If the southernmost residential building is more than 30 feet tall, the path shall be a minimum of 26 feet wide. These details shall be confirmed as acceptable by the Fire Chief or designee prior to the issuance of occupancy permits for any of the multi-family residential buildings.
33. A fire control room may be required for the buildings on the site. The applicant shall work with the Fire Department to determine the location of the fire control room. Additional fire control rooms may be required at the discretion of the Fire Chief.
34. Each building shall be provided with a Fire Department Connection.
35. Buildings that do not provide an elevator (other than a freight elevator) shall be provided with an additional exit. The developer shall work with the Chief Building Official to determine the number of exits required for each building.

36. Prior to the issuance of any certificates of occupancy for the site, cross-access and use agreements shall be provided to the City such that parking for all uses meets or exceeds City standards.
37. Safe pedestrian access from the multi-family residential portion of the project to the commercial portions of the site shall be provided.
38. If a hotel project moves forward on the parcel shown on the Site Plan as a 2-story office building, it shall require a Site Plan Review Permit rather than a Conditional Use Permit, and if on a parcel abutting or across from (per the definitions in Section 20.32.020 of the Zoning Ordinance) a property with R-1 zoning, will require a publicly noticed public hearing at Site Plan Review meeting per Section 20.32 of the Zoning Ordinance, but will not require an additional Conditional Use Permit.
39. For the Site Plan Review for the multi-family residential portion of the project, the City shall provide a public notice to the property owners on the adjacent cul-de-sacs across Sandpiper Avenue. At least two in-person or virtual meetings shall be held by the applicants with the neighbors to consider the design of the apartments.

**Findings and Considerations
 Planning Commission Resolution #4071
 Site Utilization Plan Revision #4 to Planned Development (P-D) #72**

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed project would comply with the General Plan designation of Neighborhood Commercial (CN) and the zoning designation of Planned Development (P-D) #72 if the requested Site Utilization Plan Amendment is approved.

The General Plan does not specify a density for residential uses within commercial zones. The Zoning Ordinance also does not specify a density for multi-family housing allowed within a C-N zone. The General Plan has a range of multi-family densities: Low-Medium Density (LMD) – 6 to 12 units/acre; High-Medium Density (HMD) – 12 to 24 units/acre; and High Density (HD) 24 to 36 units/acre. The Zoning designations that correlate to the multi-family General Plan designations would be R-2; R-3-1.5; R-3-2, and R-4. The proposed density for the increase in units from 44 to 96 is 16.1 units per acre. The original proposal was for 44 units on 2.68 acres which provided a density of 16.4 units per acre. This density fits into an HMD General Plan designation comfortably. Prior to the recent approval of General Plan Amendment #19-03, the site had a General Plan designation of High-Medium Density (HMD) for a portion of the site where the multi-family residential component is proposed. Other multi-family developments recently approved within commercial zones and their density are shown in the table below:

Project Name	Location	Zoning / General Plan	Density
The Hub	Southeast Corner of Yosemite Ave. & McKee Rd.	C-N/CN	34 units/acre
Yosemite Village	Yosemite Ave. between Compass Pointe Ave. and El Redondo Ave.	P-D #46/CN	18 units/acre
Childs Avenue Apartments	Childs Ave. & B St.	P-D #6/CO	24 units/acre

The following Land Use Goals and Policies would be achieved with the approval of this request:

Policy H 1.1.c *Encourage Mixed Use Development*

The proposed project would provide a mixture of retail commercial uses to serve the neighborhood and multi-family efficiency dwelling units.

Policy 1.8b *Prioritize City efforts to encourage residential development by focusing on in-fill development and densification within the existing City Limits.*

Goal Area L-1: Residential & Neighborhood Development

- *A Wide Range of Residential Densities and Housing Types in the City*
- *Quality Residential Environments*

Policy L-1.2: Encourage a diversity of building types, ownership, prices, designs, and site plans for residential areas throughout the City.

Policy L-1.7: Encourage the location of multi-family developments on sites with good access to transportation, shopping, employment centers, and services.

Implementing Action 1.2.e Consider density increases for existing residential sites where the necessary conditions exist for higher densities.

Implementing Action 1.7a Designate areas adjoining arterial streets, major transportation routes, and commercial areas for multi-family development.

Goal Area L-3: Urban Growth and Design

- *Living Environments which Encourage People to Use a Variety of Transportation Alternatives.*

Policy L-3.1: Create land use patterns that will encourage people to walk, bicycle, or use public transit for an increased number of their daily trips.

Policy L-3.3 Promote site designs that encourage walking, cycling, and transit use.

Implementing Action 3.1.a Encourage project designs which increase the convenience safety, and comfort of people using transit, walking, or cycling.

Additionally, Policy L 2.7.a notes that there are very unique circumstances under which retail commercial destinations can be located at the intersections of two arterial streets. Among the criteria are a project of minimum size of 20 acres, strong connectivity to the adjacent neighborhood, provision of a mix of uses, and provision of good transit and pedestrian access. This project is approximately 21.5 acres, will connect to the adjacent neighborhood via Sandpiper Avenue, provides for multi-family residential use in addition to commercial retail and office uses, and is on a site that is already near to existing transit routes. Planning staff believes that this project meets the criteria to proceed forward at the proposed location while being compatible with the guidelines laid out in Policy L 2.7.a.

Zoning Code Compliance

B) Merced Municipal Code Section 20.20.020 (J) establishes specific findings that must be made in order to approve the establishment of a Planned Development or Site Utilization Plan Revision. These findings are as following:

1. The proposed development is consistent with the goals, policies, and actions of the General Plan and any applicable specific plan and community plan.

The proposed Site Utilization Plan (SUP) Revision would be consistent with the General Plan. As shown in Finding A, the proposed project would accomplish goals and implementing actions of the General Plan.

If the Site Utilization Plan Revision for this site is approved, the site would be compatible with the land use plan for Planned Development (P-D) #72.

There are no other applicable specific or community plans for this site.

2. The site for the proposed development is adequate in size and shape to accommodate proposed land uses.

The Zoning Ordinance does not specify a density for multi-family housing allowed within a C-N zone. The General Plan has a range of multi-family densities: Low-Medium Density (LMD) – 6 to 12 units/acre; High-Medium Density (HMD) – 12 to 24 units/acre; and High Density (HD) 24 to 36 units/acre. The Zoning designations that correlate to the multi-family General Plan designations would be R-2, R-3-1.5, R-3, and R-4. The proposed density

EXHIBIT B

OF PLANNING COMMISSION RESOLUTION #4071

for this project, based on the number of units is approximately 16.1 units per acre, considering the size of the proposed site, 5.98 acres. This density fits into an HMD General Plan designation comfortably; the site also previously had an HMD designation for the portion of the site where the multi-family residential component is proposed. Sufficient parking is provided on the site. Therefore, the site is adequate in size to accommodate the proposed project.

3. The site for the proposed development has adequate access considering the limitations of existing and planned streets and highways.

Based on the Project Site Plan, access to and from the Project site will be from five (5) access driveways located along Sandpiper Avenue, G Street, and Yosemite Avenue. Two (2) access points are proposed to be located along the east side of G Street. One is located approximately 1,250 south of Mercy Avenue and is proposed as a full access (with a future signal), with left turns in and out. The other is located approximately 625 feet north of Yosemite Avenue and is proposed as left-in, right-in and right-out access only. The access point off of Yosemite Avenue is located approximately 300 feet east of G Street and is limited to right-in and right-out access only. The remaining two access points are proposed to be located along the extension of Sandpiper Avenue. While Sandpiper Avenue will eventually go through to Mercy Avenue, at the beginning of the project, access to Sandpiper Avenue will be limited to Yosemite Avenue, which will be limited to right-in and right-out access only onto Sandpiper. Based on this information, the site is considered to have adequate access.

4. Adequate public services exist or will be provided to serve the proposed development.

The site will be served by existing water, sewer, and storm drain lines in G Street and Yosemite Avenue. The project would be required to retain storm water onsite or in the collection basin to the east of the site that is part of P-D #72, and meter it into the City's system. No increase in the size of the existing lines would be required. The site will be required to pay for all connection costs and facility fees to off-set any impacts to the existing system.

The site would be adequately served by the City's Police and Fire Departments as well. The project is part of the City-wide Community Facilities District (CFD) which collects special taxes to help cover costs of police and fire services.

5. *The proposed development will not have a substantial adverse effect on surrounding property, will be compatible with the existing and planned land use character of the surrounding area, and will enhance the desirability of the area and have a beneficial effect.*

It is not anticipated that the proposed project would have a substantial adverse effect on the surrounding property. The additional and reconfigured retail buildings are in-character with the approved development. The additional multi-family residential buildings would be across the extension of Sandpiper Avenue from the nearest single-family residential property. The project is also adjacent to commercial uses to the south across Yosemite Avenue, the Merced College across G Street, and vacant land to the north. The proposed 2- and 3-story buildings would not be out of character with the approved development, and the multi-family residential buildings fronting on Sandpiper Avenue, nearest to the existing residences, are proposed to remain two-story while the ones further west on the site would be three-story. The addition of multi-family dwellings to the site on a larger area than previously approved does not increase the overall density of the proposed residential area. The option of additional multi-family units would provide more housing options in an area that is adjacent to commercial uses and services.

The proposed plans site the car wash on the G Street frontage, adding additional distance and the buffer of additional buildings once the multi-family residential development occurs. Additionally, the applicant has performed a noise study showing that the proposed design does not have significant impact on the existing residences (Attachment F of Staff Report #21-637). In order to further mitigate any impacts due to the noise of operation both for existing and proposed residences, the applicant has proposed to build a wall at the exit of the wash tunnel to deflect noise, the impacts of which are shown graphically on Page 23 of the noise study.

The combination of extra space, additional buildings, and the sound-mitigating wall would reduce the impact that this development would have on the existing neighborhood. Staff believes that approval of this request should not have a substantial adverse effect on the surrounding area, and will enhance the desirability of the area and have a beneficial effect.

6. *The proposed development carries out the intent of the Planned Development zoning district by providing a more efficient use of the land and an excellence of site design greater than that which could be achieved through the application of established zoning standards.*

With the approval of Site Utilization Plan Revision #4 to Planned Development (P-D) #72, the project would be consistent with the standards for P-D #72. The site includes high quality materials consistent with the standards for other development within P-D #72. The project provides a high quality, residential development which will help provide needed housing to the City of Merced. As described in Finding A, the proposed project would carry out goals and implementing actions defined in the City's *Merced Vision 2030 General Plan*. Under the current Site Utilization Plan, the car wash and additional residential units would not be allowed. Thus, the proposed change and implementation of standards specific to this development on this site, would be a more efficient use of land by providing a greater number of housing units to the community and the additional use of a car wash facility.

7. *Each individual unit of the proposed development, in each phase as well as the total development, can exist as an independent unit capable of creating a good environment in the locality and being in any stage as desirable and stable as the total development.*

The proposed project would be able to exist as an independent project and create a good environment. The location is surrounded by development, so this is an infill site. The location is prime for development and for development of a mixed-use project due to its location near commercial uses and services.

8. *Any deviation from the standard ordinance requirements is warranted by the design and additional amenities incorporated in the development plan, which offer certain unusual redeeming features to compensate for any deviations that may be permitted.*

The Merced City Zoning Ordinance sets forth specific Residential Design Standards that apply to all multi-family developments. The apartment project will be designed to meet the design standards set forth in Zoning Ordinance Section 20.46 – Residential Design Standards. The apartments are also subject to a Site Plan Review process.

The proposed mixture of two- and three-story buildings is taller than the two-story residential buildings proposed under the approved Site Utilization Plan. The approved Site Utilization Plan included a four-story hotel building, taller than the proposed residential buildings. While the current plan shows a two-story office building on the northwesternmost lot, the hotel could also utilize that space, most likely at a reduced capacity based on market demand. These

changes are warranted by the design and additional amenities incorporated in the development plan.

9. *The principles incorporated in the proposed development plan indicate certain unique or unusual features, which could not otherwise be achieved under the other zoning districts.*

This property currently lies within Planned Development (P-D) #72. The proposed Site Utilization Plan Revision would amend the standards for this parcel to allow for additional housing units and a car wash. Because the site is already established as a Planned Development, changing the zoning to another zoning district would not be the best way to promote development. By amending the Site Utilization Plan within the existing Planned Development, to allow this project with slight variations from the existing approved Plan's requirements, allows the project to move forward in a more streamlined approach and without creating a "spot zone" for another zoning district in the area. Planned Developments were specifically designed to allow such unique designs and the mixture of uses not allowed in other zoning districts.

Traffic/Circulation

- C) The changes to the project site would not have a major impact on the analysis performed as a part of Site Utilization Plan Revision #3 to Planned Development #72. As part of the proposed site plan, the area for a potential office use and the approved hotel use were combined. Only one of those uses would move forward on Parcel #16, depending on future needs. The parking needs of the additional residential units are offset by this change, and the car wash, additional retail buildings, and change in layout do not significantly change the traffic or circulation of the site.

Building Design

- D) The proposed project involves the construction of a car wash, other retail and office buildings, and multi-family residential buildings. The retail buildings on the site would stand one story tall and have a modern design with wood or faux wood fascia, stone, glass, and metal as primary features and elements. The buildings would have clean lines and use a variety of building materials to provide interest and differentiate between businesses. The retail portion of the project is proposed as the first phase of development, and future phases, including the residential buildings and the office buildings, would all use the retail phase's stylistic elements as a template for a cohesive, but not identical, thematic design for the entire site. The residential buildings with frontage on Sandpiper Avenue are proposed as two-story, with those further west on the site proposed as three-story (Condition #28). Final design details will be approved by staff at the Site Plan Review stage.

Site Design

- E) The overall design of the site is generally consistent with that of the approved Site Utilization Plan. As part of the proposed site plan, the area for a potential office use and the approved hotel use were combined. Only one of those uses would move forward on Parcel #16, depending on future needs. Also, retail buildings on Parcels 5, 6, 7, and 8 are currently proposed as separate, but future needs of the site could call for a single large building of approximately the total square footage of those four buildings combined instead. A plan with such a modification would require review of the Site Plan Review Committee, but could be considered substantially compliant with this site plan if parking and circulation needs are still met. While the design of the multi-family residential portion is understood to be preliminary, any final design will be required to provide safe, well-lit pedestrian access from the residential area to the commercial area (Conditions #22 and #37).

Parking

- F) Merced Zoning Ordinance Table 20.38-1 sets forth the parking requirements. A multi-family development based on the number of units, bedrooms, and bathrooms. Based on this table, the project would be required to provide 152 parking spaces. The residential area of the proposed project provides 234 parking spaces, which exceeds the requirement. A minimum of 7 spaces must be accessible parking spaces per the requirements of Table 11B-208.2 of Title 24 Part 2 of the California Building Code (Condition #29).

The City does not have a specific parking requirement for an automated car wash. Similar uses such as gas and service stations require 3 spaces plus one for every 250 square feet of retail sales area. The proposed structure on the site is 5,940 square feet in size, and under the most restrictive assumption that the entire building would count as retail sales area for the purposes of comparison, the applicant would need to provide 27 parking spaces. This would be reduced by an additional 15% to account for non-retail areas such as employee break rooms, lavatories, hallways, stock rooms, and similar as allowed by the Zoning Code. The proposed plan shows 28 parking spaces, which exceeds even the most restrictive assumption under this comparison. This fact combined with the connection to the remainder of the Yosemite Crossing development and its parking areas through the internal road network and cross-access easements, staff believes that the request complies with City parking requirements.

The reconfiguration of the retail buildings and additional retail building have not significantly altered the parking requirements beyond the approved plan. As the overall facility provides parking in excess of the combined requirements for each individual use, the parking for each proposed parcel is in conformity with City parking requirements so long as cross-access agreements are in place (Condition #36).

Additionally, the project would be required to provide bicycle parking in compliance with Merced Zoning Ordinance Table 20-38-4 (Condition #15).

Signage

- G) All signs will be required to conform with the approved master sign program including, but not limited to, location, quantity, dimensions, materials, and layout for this site (Conditional Use Permit #1241). A formal request for permanent signage shall be reviewed by staff with a building permit application and shall require compliance with the North Merced Sign Ordinance in addition to the Master Sign Program.

Neighborhood Impact/Interface

- H) The subject site is surrounded by retail uses to the south across Yosemite Avenue, Merced College to the west, vacant land along with the Mercy Medical Center to the north, and residential uses to the east. Final Map #5382 modified the site, but new Assessor's Parcel Numbers (APN) have not yet been assigned to the modified parcels as a result of Final Map #5382's recordation, and as such, the APNs for the previous parcels have been used in public notice and other documentation identifying the subject site.

Residential uses are located approximately 80 feet east of the subject site. The nearest sensitive use (besides residential properties) is Cruickshank Middle School, which is located approximately 962 feet away from the subject site with the main entrance to the school being approximately 1,200 feet away from the subject site, at the northeast corner intersection of Dominican Drive and Mercy Avenue.

Previously, during the application for General Plan Amendment #19-03 and SUP Revision #3 for P-D #72, a neighborhood meeting regarding proposed uses for the Yosemite Crossing site was held. At that meeting, a car wash was part of the proposed uses, though at the time the location of the car wash was on the eastern side of the parcel, placing it approximately 80 feet from existing residences. The neighborhood objected to the car wash, citing concerns with the noise as a primary reason for the objection. The developer revised the plans in response to these concerns and removed the car wash from the site plan. The proposed plan sites the car wash on the G Street frontage, adding additional distance and the buffer of additional buildings once the multi-family residential development occurs. Additionally, the applicant has performed a noise study showing that the proposed design does not have significant impact on the existing residences (Attachment F of Staff Report #21-637). In order to further mitigate any impacts due to the noise of operation both for existing and proposed residences, the applicant has proposed to build walls at the exit of the wash tunnel to deflect noise, the impacts of which are shown graphically on Page 23 of the noise study.

The combination of extra space, additional buildings, and the sound-mitigating wall would reduce the impact that this development would have on the existing neighborhood. Staff believes that approval of this request should not have a significant impact in the surrounding area.

A public hearing notice was circulated in the Merced County Times and mailed to property owners within 300 feet of the subject site three weeks prior to this public hearing. At the time of this report, the City has received inquiries regarding the project, but has not received any formal comment either for or against.

On August 9, 2021, Planning staff met with Russell Lawrence, a concerned neighbor. Mr. Russell is concerned with the car wash due to the noise generated from the car wash, the vacuums, and the music typically played by customers using the vacuums. Mr. Russell suggested the proposed wall at the eastern end of the car wash be extended across the entire car wash site to help

mitigate the noise from the car wash, the vacuums, and the patrons playing loud music. Mr. Lawrence prepared the flyer at Attachment G of Staff Report #21-637 and is distributing it throughout the Mansionette neighborhood. The flyer outlines his concerns and provides some potential solutions to help alleviate those concerns. Mr. Lawrence also sent the e-mail provided in Attachment H of Staff Report #21-637 to Planning staff and City Council members explaining his concerns.

The applicant provided additional information and clarification regarding the potential noise impacts from the carwash in an e-mail dated August 12, 2021 (Attachment H of Staff Report #21-637). As described in the e-mail from the applicant, Mister Car Wash discourages customers from playing music while using their facilities. However, in an effort to help mitigate any impacts on the adjacent neighborhood from loud music being played during the evening hours, staff is recommending a condition be added to Conditional Use Permit (CUP) #1258 which would prohibit patrons of the car wash from playing music while vacuuming after 9:00 p.m.

Land Use/Density Issues

- I) The proposed density for this project based on the number of units is approximately 16.1 units per acre, considering the size of the proposed site for the multifamily units, 5.98 acres. This density fits into an HMD General Plan designation comfortably (12 to 24 units/acre); the site also previously had an HMD designation for the portion of the site where the multi-family residential component is proposed.

Environmental Clearance

- J) Planning staff has conducted an environmental review (Environmental Review #21-18) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and recommends that the previous environmental review [Initial Study #19-28 for General Plan Amendment #19-03 and Site Utilization Plan Revision #3 for Planned Development (P-D) #72] remains sufficient and no further documentation is required (CEQA Section 15162 Findings) (Attachment J of Staff Report #21-637).