

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)

DEVELOPER AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____ 2017, by and between the City of Merced, a California Charter Municipal Corporation ("City") and University Village Merced, LLC, a California Limited Liability Company ("UVM"), Fagundes Dairy, a General Partnership ("Fagundes") and CBCP Assets, LLC, a California Limited Liability Company ("CBCP") (collectively "Owners").

WITNESSETH

WHEREAS, UVM, on behalf of Fagundes and CBCP, has applied to the City for General Plan Amendment #16-06 , Zone Change #424, and the Establishment of Planned Development (P-D) #76 ("the Entitlements") for approximately 17.25 acres generally located at the south side of Yosemite Avenue and Lake Road, and as legally described on Exhibit "A" and shown on the map at Exhibit "B," attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, UVM has the right to purchase the Property pursuant to an agreement between UVM and Fagundes (with respect to the 14.68 acre portion of the Property known as Assessor's Parcel No. 088-010-71) and pursuant to an

X:\Agreements\Planning\Developer Agreements\Fagundes Dairy, CBCP Assets & Univ Village - Yosemite Ave & Lake Rd.docx

agreement between UVM and CBCP (with respect to the 2.39 acre portion of the Property known as Assessor's Parcel No. 008-010-070); and

WHEREAS, the Owners have submitted an application for a lot line adjustment to create the Property as a single legal parcel (the "Lot Line Adjustment"); and

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

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

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

1. The Owners, for themselves and all successors thereto, agree to pay all City and school district fees, taxes, and/or assessments applicable to the Property and the Project in effect on the date of subdivision and/or permit approval, any increase in those fees, taxes, and/or assessments, and any new fees, taxes, and/or assessments which are in effect at the time building permits are issued, which may include public facility impact fees, other impact fees as applicable, and any Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc., and to comply with the additional conditions set forth in Planning Commission Resolution #3082, Exhibit "C," attached hereto and incorporated herein by this reference. Payment shall be made at the time of building permit issuance unless an Ordinance or other requirement of the City mandates or permits payment of such fees, taxes, and/or

assessments at an earlier or subsequent time. The foregoing obligation shall apply to each Owner with respect to the portion of the Property owned by that Owner at the time payment or performance is due.

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

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

4. The Owners shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and its/their officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments (hereinafter "Claims") against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul the approval of the Entitlements by the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the Entitlements. Furthermore, the Owners shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims,

actions, suits, proceedings, or judgments against another governmental entity in which the Owners' 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 Owners 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 Owners 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 approve the Entitlements in accordance with Exhibit "D."

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

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

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

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

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

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

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

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

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

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

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

BY:  5-24-2017
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

OWNERS

**UNIVERSITY VILLAGE MERCED,
LLC, A California Limited Liability
Company**

By: Gregory Fish
Gregory Fish
Print Name

Its: Manager
Title

**FAGUNDES DAIRY,
A General Partnership**

Fred Fagundes

Title: Managing Partner

TAX PAYER ID: 77-0303810

ADDRESS: P.O. Box 2717
Merced, CA 95344

TELEPHONE: (209) 383-6046

EMAIL: ehaygood@fagundesdairy.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~~ ^{NEVADA})
County of ~~Merced~~ ^{WASHOE}) ss.

On MAY 24, 2017, before me, STEVIE HERRERA,
a Notary Public, Personally appeared _____

GREGORY FISH

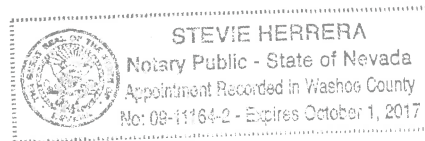
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),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

^{NV}
WITNESS my hand and official seal.

Signature _____

Notary Public



(seal)

ACKNOWLEDGMENT

OWNERS

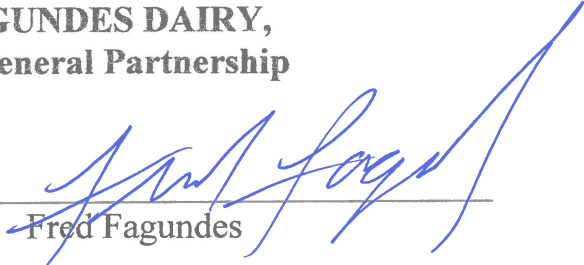
**UNIVERSITY VILLAGE MERCED,
LLC, A California Limited Liability
Company**

By: _____

Print Name

Its: _____
Title

**FAGUNDES DAIRY,
A General Partnership**



Fred Fagundes

Title: Managing Partner

TAX PAYER ID: 77-0303810

ADDRESS: P.O. Box 2717
Merced, CA 95344

TELEPHONE: (209) 383-6046

EMAIL: chaygood@fagundesdairy.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)
) ss.
County of Merced)

On May 30th, 2017, before me, Elizabeth B. Haygood,
a Notary Public, Personally appeared Fred Fagundes

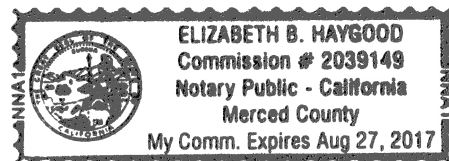
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~
whose name~~(s)~~ ~~is/are~~ subscribed to the within instrument and acknowledged
to me that ~~he/she/they~~ executed the same in his/her ~~their~~ authorized
capacity~~(ies)~~, and that by his/her ~~their~~ signature~~(s)~~ 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 Elizabeth B. Haygood
Notary Public

(seal)



ACKNOWLEDGMENT

CBCP ASSETS, LLC,
A California Limited Liability Company,
By: Common Bond Capital Partners, LLC,
A California Limited Liability Company,
Its Manager

By: 
Ellen E. Jamason

Title: Vice President and Secretary

TAX PAYER ID: 80-0951898

ADDRESS: 720 Glorietta Blvd, Ste. 200
Coronado, CA 92118

TELEPHONE: (858) 232-4894

EMAIL: bhuck@commonbondcap.com

(SIGNATURES MUST BE NOTARIZED)

ACKNOWLEDGMENT

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

State of California)
County of SAN FRANCISCO) SS.
~~Merced~~

On MAY 24th, 2017, before me, PUNAMBHAI PATEL
a Notary Public, Personally appeared _____

ELLEN E. JAMASON

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 _____

Notary Public



(seal)

ACKNOWLEDGMENT

EXHIBIT A

Adjusted Parcel 2 as shown in Resolution #898 for Boundary Adjustment #06-04, recorded November 27, 2006 as Series No. 2006-079691 of Official Records, Merced, County.

Containing 14.86 acres, more or less

Also known as Assessor's Parcel Number (APN): 008-010-071

AND

All that portion of the 62.5 foot wide Pacific Gas & Electrical Easement as described in Deed recorded in Volume 1423 of Official Documents at page 507, Merced County Records, that lies within Adjusted Parcel 1 as described in Document number 2006-079691, Merced County Official Records.

BEGINNING at the northeast corner of said Adjusted Parcel 1;

Thence South 43° 17' 08" East, 1,598.62 feet along the northeast line of said Adjusted Parcel 1 also being the northeast line of said Pacific Gas & Electrical Easement to the east line of said Adjusted Parcel 1;

Thence South 00° 44' 59" West, 89.93 feet to the southwest line of said Pacific Gas & Electrical Easement;

Thence North 43° 17' 08" West, 1,721.95 feet along the said southwest line of the Pacific Gas & Electrical Easement to the north line of said Adjusted Parcel 1;

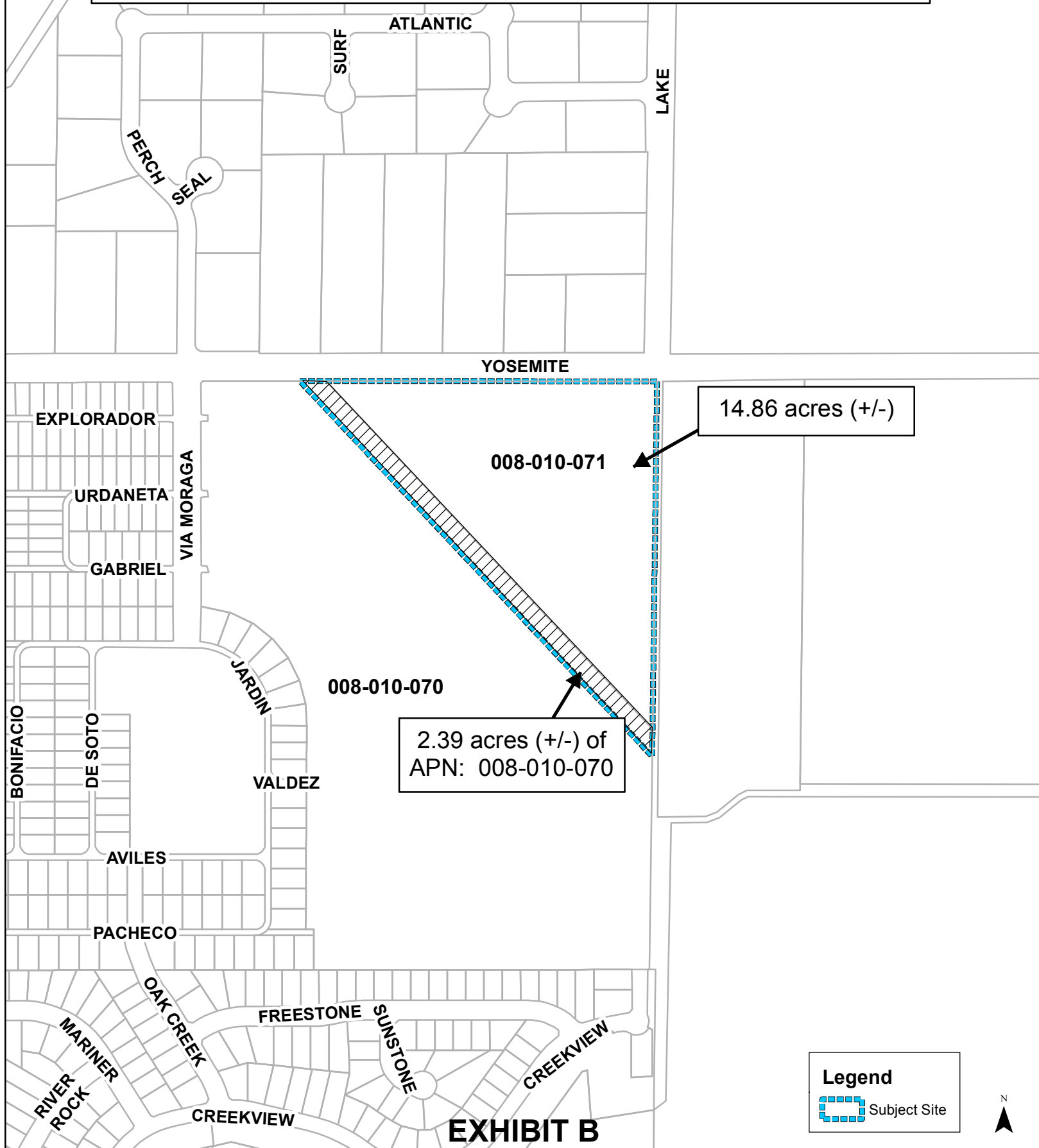
Thence North 89° 54' 08" East, 85.72 feet along said north line to POINT OF BEGINNING.

Containing 2.39 acres, more or less.

Also known as a portion of Assessor's Parcel Number (APN): 008-010-070

EXHIBIT A

LOCATION MAP
GENERAL PLAN AMENDMENT #16-06
ZONE CHANGE #424
ESTABLISHMENT OF PLANNED DEVELOPMENT #76



CITY OF MERCED
Planning Commission

Resolution #3082

WHEREAS, the Merced City Planning Commission at its regular meeting of April 19, 2017, held a public hearing and considered **General Plan Amendment #16-06, Zone Change #424, and the Establishment of Planned Development (P-D) #76**, initiated by University Village LLC, on behalf of Fagundes Dairy, A Partnership and CBCP Assets, LLC, property owners. The application is a request to change the General Plan and Zoning designations and to establish a Planned Development (P-D) for approximately 17.25 acres of land located on the south side of Yosemite Avenue at Lake Road. The requested General Plan Amendment would change the General Plan designation from Low Density Residential (LD) to High-Medium Density Residential (HMD) for approximately 16.25 acres and to Neighborhood Commercial (CN) for approximately 1 acre of the site. The Zone Change would change the Zoning designation for 14.86 acres from R-1-6 to Planned Development (P-D) #76 and 2.39 acres from Planned Development (P-D) #52 to Planned Development (P-D) #76 for the future development of 225 student housing units and a 6,600-square-foot commercial building; also known as Assessor's Parcel No. 008-010-071; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through L of Staff Report #17-08, with the additional Finding as follows:

- M. State law requires the City make a finding related to the California Urban Level of Flood Protection (200-year Flood) for all new development within any Special Flood Hazard Area (SFHA) as defined by FEMA. The project site is located in a FEMA Flood Zone X (shaded). According to the Urban Level of Flood Protection Summary Report prepared for the City in November 2015, projects within this FEMA Flood Zone are only required to meet the FEMA Standard of Flood Protection in order to comply with the California Urban Level of Flood Protection requirements. Condition #38 below has been added to address compliance with all flood requirements.

WHEREAS, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of

PLANNING COMMISSION RESOLUTION #3082

Page 2

April 19, 2017

a Mitigated Negative Declaration and Mitigation Monitoring Program (Exhibit B) regarding Initial Study #16-37, and approval of General Plan Amendment #16-06, Zone Change #424, and the Establishment of Planned Development (P-D) #76, subject to the Conditions set forth in Exhibit A attached hereto.

Upon motion by Commissioner Padilla, seconded by Commissioner Colby, and carried by the following vote:

AYES: Commissioner(s) Baker, Camper, Colby, Padilla, Smith,

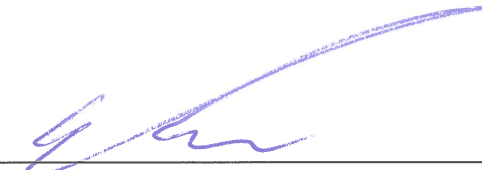
Smoot, and Chairperson Dylina

NOES: Commissioner(s) None

ABSENT: Commissioner(s) None

ABSTAIN: Commissioner(s) None

Adopted this 19th day of April 2017



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

Exhibit B – Mitigation Monitoring Program

Conditions of Approval
Planning Commission Resolution #3082
General Plan Amendment #16-06, Zone Change #424, and
Establishment of Planned Development (P-D) #76

1. The proposed project shall be constructed/designed in substantial compliance with Exhibit 1 (site plan) and Exhibit 2 (elevations), -- Attachments B and C of Staff Report #17-08, 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. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
4. Approval of the General Plan Amendment and Zone Change is subject to the applicant's entering into a written (developer) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc.. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
5. 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.

6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
7. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map approval. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.
8. The project shall comply with all mitigation measures required by the mitigation monitoring program for Initial Study #16-37 (Attachment F of Staff Report #17-08) and all applicable mitigation measures required by Expanded Initial Study #02-27 approved for the Hunt Family Annexation (#02-02).

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) #76.
10. Any missing improvements on Yosemite Avenue along the project frontage shall be installed 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 street lights.
11. Street trees shall be planted along the project frontage on Yosemite Avenue in compliance with City Standards.
12. The project shall be responsible for the installation of a traffic signal at the intersection of Lake Road and the project entrance. The developer shall be eligible for reimbursement of up to 50% of the cost of the traffic signal in accordance with the City's Public Facilities Financing Plan (PFFP).
13. A raised curb shall be installed at the intersection of Lake Road and Yosemite Avenue and shall extend west from the intersection 180 feet. The design of the raised curb shall be approved by the City Engineer prior to construction.
14. The project 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).
15. All storm water shall be retained onsite and metered out to the City's storm water system in accordance with City Standards, subject to the storm drain system approved for the Moraga subdivision.
16. All new utilities shall be installed underground.
17. The existing sewer line in Via Moraga shall be extended to a point to adequately serve the project site. The connection point shall be approved by the City Engineer and Public Works Director.
18. 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.
19. All gated entrances/exits, shall be provided with a Knox-box that is

equipped with “click-to-enter” technology for the Fire Department. Details to be reviewed by Fire Department at the building permit stage.

20. If the entire apartment complex is gated, pedestrian access gates shall be provided to allow pedestrian access to the sidewalk along Yosemite Avenue.
21. Bicycle parking shall meet the minimum requirements of the California Green Building Code and Merced Municipal Code Section 20.38.080.
22. If the apartment complex is gated, a minimum of 20 feet of vehicle stacking room shall be provided onsite at each entrance.
23. Prior to any demolition work, the applicant shall obtain all necessary approvals from the San Joaquin Valley Air Pollution Control District and a demolition permit from the City of Merced Inspection Services Division if required.
24. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
25. All construction activity shall be conducted in accordance with City of Merced standards for times of operation.
26. All landscaping shall be in compliance with the City’s Water Efficient Landscaping and Irrigation Ordinance (Merced Municipal Code Section 17.60) and all state-mandated conservation and drought restrictions as well as the City’s Zoning Ordinance Section 20.36 – Landscaping.
27. 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.
28. All landscaping in the public right-of-way shall comply with the most recently adopted water regulations by the State and City addressing water conservation measures. If turf is proposed to be installed in medians or parkstrips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.

29. 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 may be required at the discretion of the Development Services Director. Trees within the PG&E easement shall comply with the regulations of this easement which limits the height of trees to a maximum of 15 feet at full maturity.
30. The on-site landscape design shall include the use of xeriscape landscaping and comply with all California Building Code regulations or other applicable state and/or local requirements as well as Chapter 20.36 of the City's Zoning Ordinance.
31. All walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment.
32. All mechanical equipment shall be screened from public view.
33. 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's Refuse Department to determine the best location for these enclosures to ensure proper access is provided for City Refuse Trucks.
34. The developer may install carports over some or all of the required parking spaces. Any carports installed near the bike path on the east side of the property shall have a minimum one foot setback from the edge of the easement for all vertical members and all horizontal members shall be a minimum of five feet from the property line. Specific design and location of the carports shall be approved by the Site Plan Review Committee.
35. The owner shall modify the Easement Deed granted in Document #2013-005030 to remove the conditions which reserve the grantor the right "to use the underlying property at any time for any purpose" (paragraph 2 of said document) and allows the grantor to relocate the

bike path (paragraph 3 of said document). The owner/developer shall work with the City's Land Surveyor to prepare a new easement deed prior to the issuance of a building permit for this project.

36. The applicant shall provide written documentation from PG&E agreeing to allow the proposed parking spaces within their easement area. This documentation shall be provided with the submittal of the first building permit that includes the parking in this area.
37. All signs shall comply with the requirements of the North Merced Sign Ordinance. 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.
38. The project shall comply with all FEMA Flood Zone requirements for Zone X (shaded) which will also comply with the California 200-year Urban Level of Flood Protection requirements.

n:\shared\planning\PC Resolutions\GPA#16-06\ZC#242\Est. of PD #76 (Student Housing Village) Exhibit A

ENVIRONMENTAL REVIEW #16-37 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 #16-06, Zone Change #424, and Establishment of Planned Development (P-D) #76 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 #16-37 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 #16-06, Zone Change #424, and Establishment of Planned Development (P-D) #76. 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 #16-06/Zone Change #424/Establishment of Planned Development (P-D) #76
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).

B) Agriculture Resources				
<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<i>B-4</i>	B-1) A provision shall be recorded by the applicants/developer or successors, at time of sale of any residentially-zoned property within the project that lies within 1,000 feet of the external boundary of any non-project property which currently has an active agricultural operation (including 4-H projects), or has had an agricultural operation on it during the calendar year preceding the year within which the sale takes place. This provision shall notify the buyer(s) and any subsequent owner(s) of the possible inconvenience or discomfort of farming operations arising from the use of agricultural chemicals, including pesticides and fertilizers; as well as from the pursuit of agricultural operations including plowing, spraying, and harvesting which occasionally generate dust, smoke, noise, and odor, and the priority to which Merced County places on agricultural operations.	Building Permits	Planning Department	
E) Cultural Resources				
<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
<i>E-1</i>	E-1) If evidence of archaeological artifacts is discovered during construction, all operations within the area and adjacent to the discovered site shall halt until a qualified archaeologist determines the extent of significance of the site and mitigation/preservation of any artifacts.	Building Permit	Planning Department	

E-3	E-2) If evidence of a paleontological resource, site, or unique geological feature is discovered during construction, all operations within the area and adjacent to the discovered site shall halt until a qualified paleontologist or geologist determines the extent of significance of the site and the mitigation/preservation of any resources.	Building Permit	Planning Department	
F) Geology and Soils				
F-2	F-1) Prior to the approval of a tentative subdivision map or building permit, the City shall review plans for drainage and storm water run-off control systems and their component facilities to ensure that these systems are non-erosive in design.	Building Permit	Engineering Department	
	F-2) Upon completion of phased construction, subsequent phases shall re-vegetate all exposed soil surfaces within 30 days, or as otherwise approved by the City, to minimize potential topsoil erosion. Reasonable alternatives to re-vegetation may be employed, especially during peak high temperature periods or to avoid negative impacts to nearby agricultural activities, subject to the approval of the City.	Building Permit	Planning Department	
	F-3) Projects under review shall be required to submit temporary erosion control plans for construction activities.	Building Permit	Engineering Department	
F-4	F-4) All recommendations for addressing expansive soils and site grading recommended in the Geotechnical Study prepared by Kleinfelder and found at Attachment E of Initial Study #16-37 shall be implemented.	Building Permit	Inspection Services Department	
	F-5) Building plans shall be reviewed by a registered engineer or other professional specializing in geo-technical assessments to ensure that the soils can support the load.	Building Permit	Inspection Services Department	

H) Hydrology and Water Quality				
H-5	H-5) Prior to the issuance of a building permit for this project, the applicant shall demonstrate to the City that storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City's Storm Drainage Master Plan and the Post Construction Standards for the City's Phase II MS4 permit.	Building Permit	Engineering Department	
K) Noise				
K-1	K-1) Construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m.	Building Permit	Inspection Services Department	
	K-2) Construction equipment, compressors, and generators shall be fitted with heavy duty mufflers specifically designed to reduce noise impacts.	Building Permit	Inspection Services Department	
	K-3) Prior to the issuance of a building permit, the project applicant or any successor in interest, shall provide documentation showing the interior noise levels of the residential units would meet the City's interior standard of 45 dB ldn.	Building Permit	Inspection Services Department	
O) Transportation/Traffic				
O-1	O-1) The project shall pay all fees as required under the City's Public Facilities Impact Fee Program prior to issuance of a certificate of occupancy for any building.	Building Permit	Planning Department	
R) Greenhouse Gas Emissions				
R-1	R-1) The project shall comply with all mitigation measures outlined in Appendix B of the Greenhouse Gas Study prepared for this project (Attachment D of Initial Study #16-37).	Building Permit	Planning Department/Inspection Services Department	

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

GENERAL PLAN AMENDMENT #16-06
ZONE CHANGE #424
ESTABLISHMENT OF PLANNED DEVELOPMENT (P-D) #76

Change the General Plan Designation for 1.0 acre (+/-) from Low Density Residential (LD) to Neighborhood Commercial (CN).

Change Zoning from R-1-6 to P-D #76 for all of APN: 008-010-071

YOSEMITE

008-010-071

Change Zoning from P-D #52 to P-D #76 for 2.39 acres of APN: 008-010-070

Change the General Plan designation for 16.25 acres (+/-) from Low Density Residential (LD) to High-Medium Density Residential (HMD).

008-010-070

JARDIN

VALDEZ

AVILES

PACHECO

OAK CREEK

FREESTONE

EXHIBIT D

CREEKVIEW

Legend



Subject Site

