

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

**Exempt from Recording Fees Per
Government Code Section 6103**

(Above for Recorder's Use Only)

LEGISLATIVE ACTION AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2022
by and between the City of Merced, a California Charter Law Municipal Corporation ("City")
and Bella Vista, 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 General Plan Amendment and Zone
Change (the "Entitlements") for approximately 4.59 acres of land located on the east side of
Parsons Avenue, south of Yosemite Parkway (1808 Parsons Avenue), and as legally described
on Exhibit "A," and shown on the Map at Exhibit "B," attached hereto and incorporated herein
by this reference; and

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

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 "C," (Planning Commission Resolution #4088), 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.

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 rezone the subject property to Medium Density Residential (R-3-1.5) and change the General Plan (City approval) in accordance with Exhibit "B."

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.

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.

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: Rimber C. Madry 4/8/22
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

OWNER
BELLA VISTA, LLC,
A California Limited Liability Company

Signature

Carol J. Ornelas
Print Name

Its: Chief Executive Officer

ADDRESS: 3115 N. San Joaquin St.

Stockton, CA 95202

TELEPHONE: (209) 466-6811

FAX: _____

E-MAIL: cjornelas@visionaryhomebuilders.org

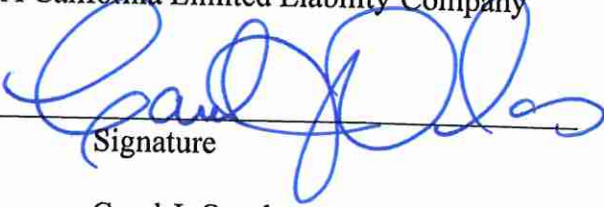
APPROVED AS TO FORM:

BY: Kimberly C. Madry 4/8/22
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

OWNER
BELLA VISTA, LLC,
A California Limited Liability Company


Signature

Carol J. Ornelas
Print Name

Its: Chief Executive Officer

ADDRESS: 3115 N. San Joaquin St.

Stockton, CA 95202

TELEPHONE: (209) 466-6811

FAX: _____

E-MAIL: cjornelas@visionaryhomebuilders.org

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 Ventura
County of _____)

On April 18, 2022 before me, Martha Murillo Notary Public
(insert name and title of the officer)

personally appeared Carol J. Ornelas
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.

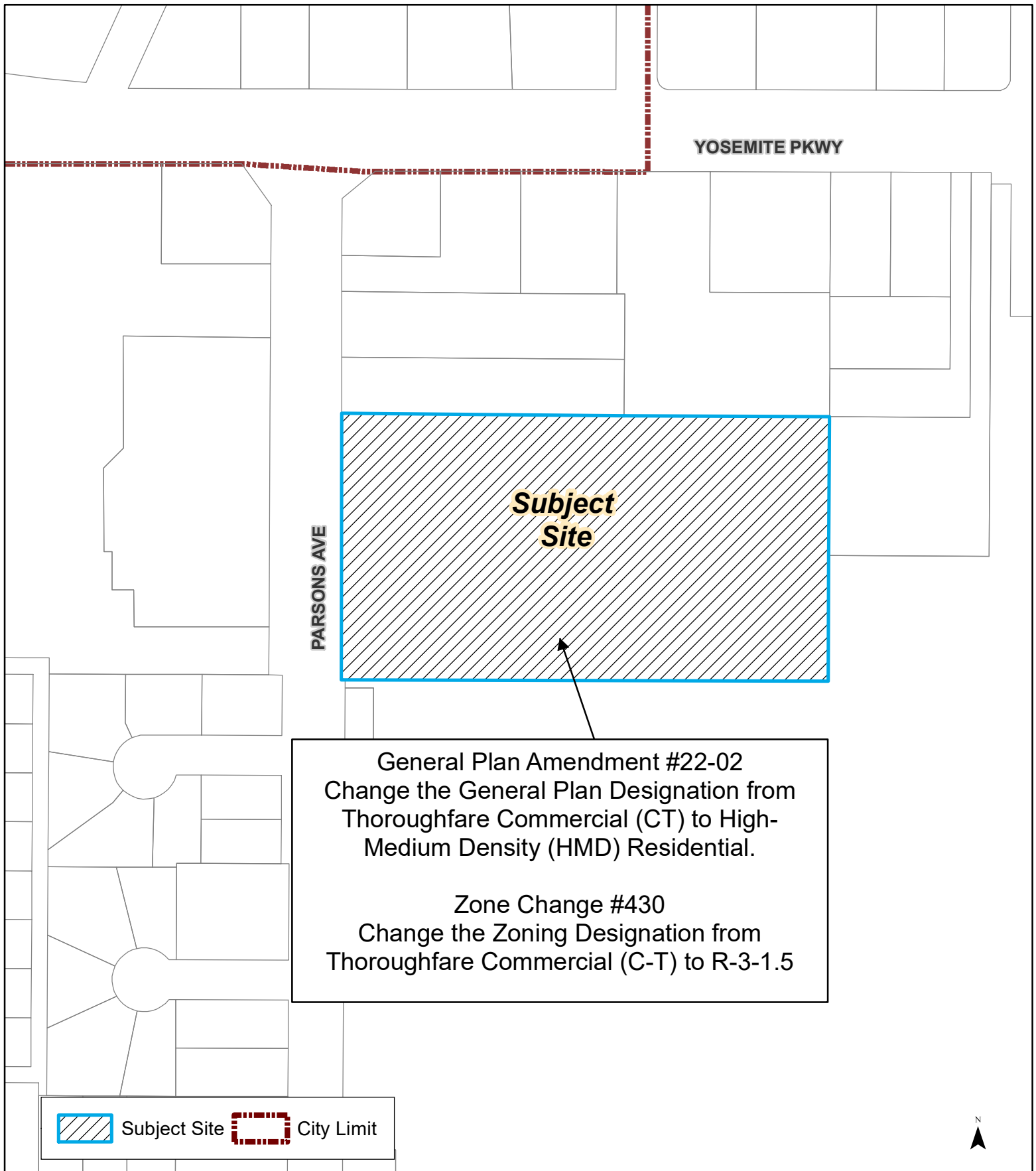
Signature _____ (Seal)

EXHIBIT 'A'

LEGAL DESCRIPTION

Lot 15 according to map entitled, "Map of Merced Colony," recorded February 3, 1910, in Book 4 of Maps, Page 24, Merced County Records, excepting therefrom the property dedicated to the City of Merced by the Grant Deed recorded as Document No. 2010-015016 of Merced County Records.

Also known as Assessor's Parcel Number 061-390-027



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.

GPA #22-02 & ZC #430
Land Use Changes
1808 Parsons Avenue



CITY OF MERCED
Planning Commission

Resolution #4088

WHEREAS, the Merced City Planning Commission at its regular meeting of March 23, 2022, held a public hearing and considered **General Plan Amendment #22-02 and Zone Change #430**, initiated by Visionary Home Builders of California, Inc., on behalf of Evan R. Rahilly and Marlea Massey, Trustees, property owner. This application involves a request to amend the General Plan designation for approximately 5.59 acres from Thoroughfare Commercial (CT) to High-Medium Density Residential (HMD) and the Zoning designation from C-T to R-3-1.5. This property is generally located on the east side of Parsons Avenue, south of Yosemite Parkway (1808 Parsons Avenue); also known as Assessor Parcel: 061-390-027; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through K of Attachment A of Staff Report # 22-200 (Exhibit B); 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 and Mitigation Monitoring Program (Exhibit C) regarding Environmental Review #22-14, and recommend approval of General Plan Amendment #22-02 and Zone Change #430, 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 DYLINEA, seconded by Commissioner WHITE, and carried by the following vote:

AYES: Commissioners Camper, DeAnda, Delgadillo, Dylina, Greggains, and White
NOES: None
ABSENT: Chairperson Harris
ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4088

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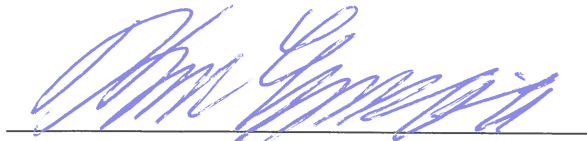
March 23, 2022

Adopted this 23rd day of March 2022.



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Exhibits:

Exhibit A – Conditions of Approval

Exhibit B – Findings/Considerations

Exhibit C – Mitigation Monitoring Program for Environmental Review #22-14

Conditions of Approval
Planning Commission Resolution #4088
General Plan Amendment #22-02
Zone Change #430

1. The proposed General Plan Amendment and Zone Change shall be as shown on the Proposed Land Use Map at Attachment C of Planning Commission Staff Report #22-200.
2. The proposed project shall be constructed/designed in substantial compliance with the Site Plan (Attachment D of Planning Commission Staff Report #22-200) and the floor plans and building elevations (Attachments E and F of Planning Commission Staff Report #22-200), except as modified by the conditions.
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 property owner entering into a written Legislative Action Agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
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, 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.

6. The developer/owner is required to finance the annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, streetlights, parks and open space, which may include a financing mechanism such as a Community Facilities District (CFD) or, assessment district unless an exemption is filed in relation to an affordable housing project. Procedures for financing these services and on-going maintenance shall be initiated before final map approval or issuance of a certificate of occupancy for any building, 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.
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. All public improvements shall be installed along the project frontages 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.
9. Street trees shall be planted along the project frontage on Parsons Avenue in compliance with City Standards.
10. 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).
11. All storm water shall be retained onsite 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.
12. All gates at the entrances/exits shall be set back a minimum of 20 feet from the roadway to allow stacking room for at least two vehicles. The gates shall be provided with a "click-to-enter" access and controls shall be provided to the City of Merced Police, Fire, and Public Works Departments. The device used shall be approved by the City prior to installation.
13. A pedestrian gate shall be provided to allow access to Parsons Avenue in addition to the vehicular gates.
14. 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.
15. A fire department access is required between the building along the northern property line and those in the middle of the site (refer to the Site Plan at Attachment D of Planning Commission Staff Report #22-200). The fire lane shall be integrated into the landscaping with a surface that is durable enough to withstand the fire trucks, but is still aesthetically pleasing, such as turf-block or turf grid. The surface used shall be approved by the Fire Department.
16. 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.
17. Bicycle parking shall meet the minimum requirements of the California Green Building Code and Merced Municipal Code Section 20.38.080.

18. In accordance with Zoning Ordinance Section 20.38.050 (E) and Finding F on Exhibit B of this Resolution, this project is granted a 5% reduction in the number of required parking spaces due to a bus stop being located within 400 feet of the project site.
19. 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.
20. All construction activity shall be conducted between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday.
21. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
22. All landscaping shall be in compliance with the City's Water Efficient Landscaping and Irrigation Ordinance (Merced Municipal Code Section 17.60) and all state-mandated conservation and drought restrictions as well as the City's Zoning Ordinance Sections 20.36 – Landscaping and Section 20.46.030 (C) - Landscaping.
23. Irrigation for all onsite landscaping shall be provided by a low-volume system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other state or city-mandated water regulations dealing with the current drought conditions.
24. All landscaping in the public right-of-way shall comply with the most recently adopted water regulations by the State and City addressing water conservation measures. If turf is proposed to be installed in medians or park strips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
25. Parking lot trees shall be installed per the City's Parking Lot Landscape Standards. Trees shall be a minimum of 15-gallons and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list). Trees shall be installed at a ratio of 1 tree for every 6 parking spaces. 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.

26. All walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment.
27. All parking lot and other exterior lighting shall be oriented in such a way so that it does not spillover onto adjacent properties.
28. A solid fence (wood or other material of similar opacity) shall be constructed along the eastern property line to provide a buffer between the project site and the adjacent residential uses. Additionally, a minimum 5-foot-wide landscape strip with dense landscaping shall be provided in the area adjacent to the parking spaces located along the eastern property line.
29. All mechanical equipment shall be screened from public view. Details of the screen shall be worked out with Planning Staff at the building permit stage.
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's Refuse Department to determine the best location for these enclosures to ensure proper access is provided for City Refuse Trucks. All enclosures shall be fully enclosed, including from the top. A refuse container with a lid and locking device may be used within the enclosure rather than constructing a roof on the enclosure structure. All designs shall comply with City Standards and is subject to approval by the City Engineer and Refuse Department.
31. All signs shall comply with the requirements of the City's 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.
32. 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, except as concessions or waivers may be granted by Density Bonus #22-02.

33. Patios and balconies shall be enclosed with a solid or near solid enclosure to screen items stored in these areas from public view. Details of the enclosure to be worked out with staff at the building permit stage.
34. The project shall be designed with a variety of colors and/or textures on the exterior elevations.
35. The exterior of the buildings and site shall be regularly maintained and kept in an aesthetically pleasing manner. Any graffiti on the site shall be removed within 5 days as required by Merced Municipal Code (MMC) Section 8.36.060. Failure to remove graffiti within this time may result in removal by the City in accordance with MMC Section 8.36.070
36. The Merced Irrigation District (MID) has advised that an irrigation lateral is located near the eastern property line. The developer shall work with MID to determine the exact location of the lateral and if the lateral is located on the property to ensure the development would not interfere with or impede the use of this lateral.

Findings and Considerations
Planning Commission Resolution #4088
General Plan Amendment #22-02
Zone Change #430

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed General Plan and Zoning land use changes are shown on the map at Attachment C. The project would comply with the General Plan designation of High-Medium Density (HMD) Residential and the zoning designation of R-3-1.5 if the requested General Plan Amendment and Zone Change are approved.

The following Land Use and Housing Element Goals and Policies would be achieved with the approval of this request to change 4.59 acres from Thoroughfare Commercial (CT) to High-Medium Density (HMD) Residential:

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.

Housing Element Goal H-1: New Affordable Housing Construction

- *Increase the stock of affordable housing for very low, low, and moderate-income households.*

Policy H-1.2 Support Development of Affordable Housing.

Policy H-1.4 Provide Priority Review and Permitting for Affordable Housing Projects.

Traffic/Circulation

- B) The project site would be accessed from Parsons Avenue. Parsons Avenue is a four-lane, north-south City street that currently extends south from SR 140 to beyond Childs Avenue, from which it proceeds into Merced County. There are plans to connect Parsons Avenue to other road segments to the north, eventually converting it to a main north-south road in Merced. The Merced General Plan classifies Parsons Avenue as a “minor arterial”. The Merced General Plan EIR indicated that traffic volume on Parsons Avenue between Childs Avenue and SR 140 was 9,600 (City of Merced 2010). Since no significant development appears to have occurred in the area since the EIR was released, the current traffic volume on Parsons Avenue would be approximately the same, with small increases each year based on general traffic volume increases.

The City’s General Plan establishes a Level of Service (LOS) D (reflecting a “tolerable delay”) as an acceptable level of service. According to the Transportation section of Initial Study #22-14 at Attachment G of Planning Commission Staff Report #22-200, the proposed multi-family project would generate 587 average daily trips (ADT’s).

As previously described, the *Merced Vision 2030 General Plan* shows the segment of Parsons Avenue from Childs Avenue to SR 140 (Yosemite Parkway) carried 9,600 ADT’s in 2010. This section of Parsons Avenue was

a two-lane road at that time. Table 4.4 estimated that by 2030, the roadway would be expanded to four lanes and carry 43,420 ADT's while still operating at LOS D. Given the fact that there has been no major development in the area since the 2010 analysis done for the General Plan, and the fact that the road has been improved to 4 lanes, it's expected that this section currently operates above LOS D. Therefore, the addition of 587 ADT's would not reduce the level of service below LOS D.

Alternative transportation options are located near the project site. There is a bus stop directly across from the site on Parsons Avenue. In addition, Parsons Avenue has bicycle lanes that provide connection to the City's bicycle transportation system. There are also sidewalks along Parsons Avenue to allow pedestrian access.

In addition to considering the Level of Service for roads, CEQA requires an analysis of Vehicle Miles Traveled (VMT's). This analysis is provided in the Transportation of Initial Study #22-14. The analysis concluded that the impacts related to VMT's is less than significant.

Public Improvements/City Services

- C) The developer would be required to install any necessary utilities to serve the site and repair/replace any existing streets, sidewalks, utilities, and other improvements along the project frontage on Parsons Avenue that are in disrepair or not in compliance with current City Standards. City water and sewer lines currently exist in Parsons Avenue to serve this project.

The proposed project would pay the required Public Facilities Impact Fees (subject to any reductions for affordable housing allowed per City policy) to help fund citywide improvement needs, such as road improvements, traffic signals, bridges, etc. There are no specific improvements required with this development other than frontage improvements.

Building Design

- D) The proposed project includes 5 three-story apartment buildings and a single-story community/office building for the tenants.

The site provides two different building types – Building Types A and B. Building Type A includes 21 units (7 units per story) and Building B includes 24 units (8 units per story). There is a mixture of one, two, three, and four bedroom units throughout the complex. The Table below shows the number of bedrooms and bathrooms by unit type within each building as well as the

number of total units of each type within the complex. Floor plans are provided at Attachment E of Planning Commission Staff Report ##22-200.

Unit No.	Bedrooms	Baths	No. of Units
A1	1	1	6
B1	2	1	30
B1-Alt	2	1	30
C-1	3	1.5	30
D1	4	2	12
TOTAL			108

All of the apartment buildings would have the same building elevations which incorporate a mixture of colors and materials to provide visual interest (Attachment F of Planning Commission Staff Report #22-200). The color palette provides a mixture of dark and light colors to add to the character of the buildings. Metal railings are installed along the balconies and patios. In order to comply with the Design Standards of Merced Municipal Code Section 20.46.030, Condition #33 is added to require that the enclosures for the patios and balconies be solid or near solid to prevent visual blight of the tenant's belongings in these areas.

The buildings would have a maximum height of 45' at the roof peak. The maximum height allowed in the R-3-1.5 zone is 35'. Because this is an affordable housing project, the project would qualify for a Density Bonus. Although a Density Bonus may allow for an increase in density, it may also allow for concessions/waivers to design standards. Because the project would not be feasible without three-story buildings, the applicant will be requesting a Density Bonus (refer to Finding J) to allow a concession/waiver to the maximum height limitation.

The Community/Office building would be a single-story building consisting of approximately 6,000 square feet of floor area. The building would include a leasing office, general office for staff, computer labs, and a Headstart day care. The architecture of the building would match the apartments.

Site Design

- E) The project site is approximately 4.59 acres. The community building would be located near the front of the property with the apartment buildings set back behind the community building (refer to the Site Plan at Attachment D of Planning Commission Staff Report ##22-200). The apartment buildings

would be enclosed with a 6-foot-tall wrought iron fence within gated vehicular access. The Community building would be set back 20' from the western property line along Parsons Avenue. The setback along the northern property line to the nearest building would be 10', the southern property line would have a 23'6" setback, and the eastern property line would have a 10' setback to the nearest buildings. These setbacks meet the minimum standards for the proposed R-3-1.5 zoning district.

The main access to the site would be from the northern driveway off of Parsons Avenue. A secondary access is also provided for emergency vehicles.

The site provides 184 parking spaces distributed throughout the site. The site plan shows 13 parking spaces outside of the gated area and the remaining 171 spaces within the gated area. There is also a circular drive aisle at the rear of the site to provide a turn-around area for Fire trucks and Refuse trucks. All drive aisles are 26' wide per fire department requirements.

An Emergency Vehicle Access is also provided between the center buildings and the building along the northern property line. This access is needed to allow fire trucks access to the northern building. The fire lane would be integrated into the landscaping with a surface that is durable enough to withstand the fire trucks, but is still aesthetically pleasing, such as turf-block or turf grid (Condition #15).

A tot lot/playground are proposed at the center of the project site, between two of the apartment buildings. The site plan also shows an open space area along the northern property line and within the circular drive aisle at the rear of the site.

Public sidewalks exist along Parsons Avenue. A network of sidewalks within the apartment complex connect to the buildings to the public sidewalks. Condition #13 requires a pedestrian access gate in addition to the vehicular access gates.

The Merced Irrigation District advised that one of their irrigation laterals (Hartley Lateral C) runs along the eastern property line. It was unclear at the time this report was written of the exact location of this lateral. Condition #35 requires the developer to work with MID to determine the exact location of the lateral and if the lateral is located on the property to ensure the development would not interfere with or impede the use of this lateral.

Parking

- F) Merced Zoning Ordinance Table 20.38-1 sets forth the parking requirements for a multi-family development based on the number of units, bedrooms, and bathrooms. Based on this table, the project would be required to provide 191 parking spaces. However, Zoning Ordinance Section 20.38.050 (D) allows a 5 percent reduction in parking for multi-family and commercial uses if the site is located within 400 feet a City-approved bus stop. There is such a stop located across Parsons Avenue from the site. Therefore, the required parking spaces are reduced to 181 spaces. The proposed site plan includes 184 spaces.
- In addition to the vehicular parking required, the project would be required to provide bicycle parking in compliance with Merced Zoning Ordinance Table 20-38-4 (Condition #17).

Landscaping

- G) The project site would be landscaped with trees, ground cover, and shrubs throughout the site. A detailed landscape plan in compliance with Zoning Ordinance Section 20.36 and the Design Standards found in Section 20.46 would be required at the building permit stage. Conditions #22-#25 address the landscape and irrigation requirements.

Neighborhood Impact/Interface

- H) The project site is across the street from the Rancho San Miguel Shopping Center and is adjacent to vacant land and commercial uses to the north. To the south and east the site is adjacent to Joe Herb Park and residential uses are also located to the east of the site. The location map at Attachment B of Planning Commission Staff Report #22-200 shows the uses in the surrounding area.

The construction of the proposed apartment complex would add three story buildings to the site with a height of 45' at the peak of the roof. The buildings would be taller than most of the buildings in the area. The Rancho San Miguel building to the west is approximately 33 feet tall. The CVS building is approximately 28 feet tall. The buildings to the north are single story and vary in height from approximately 15 feet to approximately 28 feet tall. The residential uses to the east are approximately 15 to 20 feet tall.

Although additional traffic would be added with this development, it would not reduce the level of service for this section of Parsons Avenue below the acceptable standard of LOS D.

Additional lighting would be added to the site with the development. The Merced General Plan EIR states that the following guidelines will be followed in selecting and designing any outdoor lighting (City of Merced 2010):

- All outdoor lights, including parking lot lights, landscaping, security, path, and deck lights should be fully shielded, full cutoff luminaries.
- Complete avoidance of all outdoor up-lighting for any purpose.
- Avoidance of tree-mounted lights unless they are fully shielded and pointing down towards the ground or shining into dense foliage. Ensure compliance over time.
- Complete avoidance of up-lighting and unshielded lighting in water features such as fountains or ponds.

Additionally, Condition #27 requires that all lighting be shielded so as not to spill-over onto adjacent properties. Condition #28 requires a solid fence (wood or something of equal opacity) instead of wrought-iron and dense landscaping along the eastern property line to provide a buffer between the project site and the existing residential uses.

In order to ensure the site is well-maintained and remains attractive to the area, Condition #35 is being added to require that the exterior of the buildings and site be regularly maintained and kept in an aesthetically pleasing manner and that any graffiti be removed in a timely manner to reduce any impacts to the neighborhood.

It should be noted that in the existing Thoroughfare Commercial (C-T) zone uses allowed as a permitted use (no discretionary review required) could include uses such as commercial recreation uses, equipment sales, gas stations, car washes, hotels, maintenance and repair services, retail uses, and restaurants. The proposed apartment complex would have on-site management and is expected to cause less impacts than some of those uses.

Public hearing notices were sent to all property owners within 300 feet of the project site. At the time of this report, staff had received one call from an adjacent property owner asking for details of the project.

Land Use/Density Issues

- I) The proposed multi-family development would have a density of 23 units/acre (gross). This density is consistent with the High-Medium Density (HMD) Residential General Plan designation and the Zoning designation of R-3-1.5.

Density Bonus

- J) State Density Bonus Law (SDBL) states that a development which meets the requirements of the SDBL is entitled to receive the density bonus to increase the density of a project by right. This means that no discretionary review is required to allow an increase in the density of a project.

The City is required to grant the concession or incentive proposed by the developer unless it finds one of the following:

- That the proposed concession or incentive does not result in identifiable and actual cost reductions: or,
- Would cause a public health or safety problem: or,
- Would cause an environmental problem; or,
- Would harm historical property; or,
- Would be contrary to law.

The applicant has requested the following two concessions that would be considered separately by the Planning Commission as part of Density Bonus application #22-01.

Height (Concession)

The applicant is requesting an increase in height from the maximum of 35' allowed in the R-3-1.5 to a maximum of 45'. This increase allows the construction of three-story buildings rather than two-story buildings. In order to construct a three-story building, an increase in the allowable height is required.

Justification:

Increasing the height of the buildings allows for greater efficiencies by enabling a greater building mass. This enables greater densities which reduces the cost of land per unit.

Roof-mounted Mechanical Equipment (Concession)

The applicant is requesting a waiver from Zoning Ordinance Section 20.46.040 (A)(5a) which prohibits roof-mounted mechanical equipment.

Justification:

Allowing roof-mounted mechanical equipment screened from public view allows more space on the ground for this small parcel. Placing mechanical equipment on the ground takes up space that could be otherwise used for open

space or general outdoor area. Additionally, the cost of a roof-mounted HVAC unit is typically less because the entire unit is on the roof. Ground-mounted units require a portion of the unit to be inside the living area. This not only takes up space, but adds cost to the apartment unit.

Environmental Clearance

- K) An environmental review of the project was conducted by Base Camp Environmental, Inc. under the direction of the City (Initial Study #22-14) in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Draft Mitigated Negative Declaration (i.e., no significant adverse environmental effects have been found that cannot be mitigated to be less than significant) is being recommended (Attachment G of Planning Commission Staff Report #22-200).

ENVIRONMENTAL REVIEW #22-14
Revised
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 #21-02, Site Utilization Plan (SUP) Revision #12 to Planned Development (P-D) #8, and Site Plan Review #473 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 #22-14 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 #22-02, and Zone Change #430. 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 #22-02/Zone Change #430
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).

<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
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<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
3.5) Cultural Resources				
<i>b</i>	CULT-1) If any subsurface cultural resources are encountered during construction of the project, the City of Merced Development Services Department shall be notified and all construction activities within 50 feet of the encounter shall be halted until a qualified archaeologist can examine these materials and determine their significance. If the find is determined to be significant, then the archaeologist shall recommend further mitigation measures that would reduce potential effects on the find to a level that is less than significant. Recommended measures may include, but are not limited to, 1) preservation in place, or 2) excavation, recovery, and curation by qualified professionals. The project developer shall be responsible for retaining qualified professionals, implementing recommended mitigation measures, and documenting mitigation efforts in a written report to the City's Development Services Department, consistent with the requirements of the CEQA Guidelines.	Building Permit	Planning Department	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
c	CUL-2) If project construction encounters evidence of human burial or scattered human remains, all construction activities within 50 feet of the encounter shall be halted and the contractor shall immediately notify the County Coroner and the City, which shall in turn notify the appropriate tribal representatives. The City shall notify other federal and State agencies as required. The City will be responsible for compliance with the requirements of California Health and Safety Code Section 7050.5 and with any direction provided by the County Coroner. If the human remains are determined to be Native American, the County Coroner shall notify the Native American Heritage Commission, which will notify and appoint a Most Likely Descendant. The Most Likely Descendant shall work with the City and a qualified archaeologist to decide the proper treatment of the human remains and any associated funerary objects in accordance with California Public Resources Code Sections 5097.98 and 5097.991. Avoidance is the preferred means of disposition of the burial resources.	Building Permit	Planning Department	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
3.7) Geology and Soils				
f	GEO-1) If any subsurface paleontological resources are encountered during construction of the project, the City of Merced Community Development Department shall be notified and all construction activities within 50 feet of the encounter shall be halted until a qualified paleontologist can examine these materials and determine their significance. If the find is determined to be significant, then the paleontologist shall recommend mitigation measures that would reduce potential effects on the find to a level that is less than significant. Recommended measures may include, but are not limited to, 1) preservation in place, or 2) excavation, recovery, and curation by qualified professionals. The project developer shall be responsible for retaining qualified professionals, implementing recommended mitigation measures, and documenting mitigation efforts in a written report to the City's Community Development Department, consistent with the requirements of the CEQA Guidelines.	Building/ Encroachment Permits	Engineering Department	

<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
3.9) Hazards and Hazardous Materials				
<i>f</i>	HAZ-1) Prior to the start of project construction, the developer shall prepare and implement a Traffic Control Plan, which shall include as necessary such items as control requirements, resident notification of access closure, and daily access restoration. The contractor shall specify dates and times of road closures or restrictions, if any, and shall ensure that adequate access will be provided for emergency vehicles. The Traffic Control Plan shall be reviewed and approved by the City Department Engineering Department and shall be coordinated with the Merced Police Department and the Merced Fire Department if construction will require road closures or lane restrictions.	Building/ Encroachment Permits	Engineering Department	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
3.10) Hydrology and Water Quality				
<i>a</i>	HYDRO-1) The developer shall submit a Storm Water Quality Plan for the project that shall include post-construction Best Management Practices (BMPs) as required by the City's Storm Water Management Program. The Storm Water Quality Plan shall be reviewed and approved by the City of Merced Engineering Department prior to approval of project improvement plans. The developer shall comply with applicable requirements of, and pay all associated fees as required by, the City's Storm Water Management Program as set forth in its NPDES Permit.	Building/ Encroachment Permits	Engineering Department	
	HYDRO-2) If required, the developer shall execute a Maintenance Agreement with the City for stormwater BMPs prior to receiving a Certificate of Occupancy. The developer shall remain the responsible party and provide funding for the operation, maintenance and replacement costs of the proposed treatment devices built for the project.			

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
c-iv	HYDRO-3 Prior to the start of project construction, the project applicant shall obtain a development permit from the City in accordance with Merced Municipal Code Section 17.48.135. The permit application shall include a plan with the information required by Merced Municipal Code Section 17.48.135(A), including base flood elevations and proposed elevations of the lowest floor. The project applicant shall demonstrate compliance with all applicable requirements of Merced Municipal Code Chapter 17.48, including construction standards and adequate drainage paths around structures. All applicable requirements shall be incorporated as development permit conditions			

3.13) Noise			
a	NOISE-1)	The City shall require the construction contractor to implement the following measures during project construction: • Construction activities shall be limited to between 7:00 a.m. and 6:00 p.m. Monday through Saturday to avoid noise-sensitive hours of the evenings and nights. Construction activities shall be prohibited on Sundays and holidays, unless the contractor obtains prior approval from the City. • Construction equipment noise shall be minimized by muffling and shielding intakes and exhaust on construction equipment, per the manufacturer's specifications, and by shrouding or shielding impact tools. • Construction contractors shall locate fixed construction equipment, such as compressors or generators, and construction staging areas as far as possible from nearby sensitive receptors, such as residences, schools, and hospitals.	Engineering Department
		Building/Encroachment Permits	

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 _____