

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)

LEGISLATIVE ACTION AGREEMENT

THIS AGREEMENT is made and entered into as of this 21 day of FEBRUARY 2019, by and between the City of Merced, a California Charter Municipal Corporation ("City") and Merced Mall LP, a California Limited Partnership ("Owner").

WITNESSETH

WHEREAS, Owner has applied for a Site Utilization Plan Revision to Planned Development (P-D) #1 (the "Entitlements") for the Merced Mall Property generally located on the north side of Olive Avenue between M and R Streets, 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, City is willing to consider the Owner's request provided that certain conditions are met; and

WHEREAS, the Owner is willing to enter into this Legislative Action 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 Owner, 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 #4014, 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 Owner desires 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 Owner’s development of the Project on the Property or are necessary to offset the costs to the City generated by the Owner’s 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 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 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 Owner 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 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 approve the Entitlements in accordance with Exhibits "D," "E," and "F" (Site Plan, Phase I, Site Plan Phase II, Alternate 1, or Site Plan Phase II, Alternate 2, with the final Site Plan for Phase II to be determined by the Owner.

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 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 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 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.

10. In the event of default by the 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.

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 Municipal Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Pineda A mhm 2-1-19
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

OWNER
MERCED MALL LP,
a California limited partnership
By: MERCED MALL LLC,
a California limited liability company
Its General Partner
By: CODDING ENTERPRISES LP,
a California limited partnership
Its Sole Member
By: CODDING INVESTMENTS, INC.,
a California corporation
Its General Partner

BY:  _____
Lisa Coddington

ITS: CEO _____

Taxpayer I.D. No. 94-2379331

ADDRESS: 3510 Unocal Place, Ste. 300
Santa Rosa, CA 9540

TELEPHONE: 707-978-5800

FAX: _____

EMAIL: leroyk@coddington.com

ACKNOWLEDGMENT

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

State of California

County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

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

State of California

County of Sonoma

On 02-21-2019 before me, Catherine Wilhoite, Notary Public
(insert name and title of the officer)

personally appeared Lisa Coddington
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

C Wilhoite

(Seal)

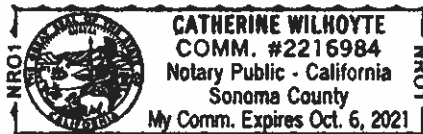


EXHIBIT A
LEGAL DESCRIPTION

Parcel C as shown on the map entitled "Parcel Map for Merced Mall," recorded in Book 58 at Page 19 of Merced County Records.

APN: 236-220-038

Parcel C-C as shown on the map entitled "Parcel Map for Pacific Telephone," recorded in Book 33 at Page 49 of Merced County Records.

APN: 236-220-014

Parcel A as shown on the map entitled "Parcel Map for "U.A. Regency Theatre," recorded in Book 60 at Page 28 of Merced County Records.

APN: 236-220-015

Parcel B as shown on the map entitled "Parcel Map for "U.A. Regency Theatre," recorded in Book 60 at Page 28 of Merced County Records.

APN: 236-220-016

**Site Utilization Plan Revision #38 to P-D #1
Merced Mall Renovation - Assessor's Parcel Numbers**

LOUGHBOROUGH DR

R ST

M ST

236-220-014

236-220-015

236-220-016

236-220-038

FAIRFIELD DR

OLIVE AVE



Subject Site



EXHIBIT B

CITY OF MERCED
Planning Commission

Resolution #4014

WHEREAS, the Merced City Planning Commission at its regular meeting of January 23, 2019, held a public hearing and considered **Site Utilization Plan Revision #38 to Planned Development #1**, initiated by Merced Mall LTD, property owners. This application is a request to allow the renovation and expansion of the Merced Mall located at 851 W. Olive Avenue. The Project would increase the leasable retail area of the Merced Mall and construct a new movie theater at one of two possible locations within the project site. The project site consists of approximately 52 acres and is generally located on the north side of Olive Avenue between M and R Streets. The site has a General Plan designation of Regional/Community Commercial (RC) and is zoned Planned Development (P-D) #1; also known as Assessor's Parcel No. 236-220-038; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through J of Staff Report #19-04; and,

WHEREAS, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Mitigated Negative Declaration and Mitigation Monitoring Program (Exhibit B) regarding Initial Study #18-02, and approval of Site Utilization Plan Revision #38 to Planned Development (P-D) #1, subject to the Conditions set forth in Exhibit A attached hereto.

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

AYES: Commissioners Camper, Drexel, Harris, Martinez, Padilla, Rashe and Chairperson Dyline

NOES: None

ABSENT: None

ABSTAIN: None

EXHIBIT C

PLANNING COMMISSION RESOLUTION # 4014

Page 2

January 23, 2019

Adopted this 23rd day of January 2019



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 #4014
Site Utilization Plan #38 to Planned Development (PD) #1

1. The proposed project shall be constructed/designed in substantial compliance with the Site Plan for Phase I (Attachment C of Planning Commission Staff Report #19-04), the Site Plan for either Phase II, Alternative 1, or Phase II, Alternative 2 (Attachments D and E of Planning Commission Staff Report #19-04), and the conceptual elevations found at Attachment F of Planning Commission Staff Report #19-04, except as modified by the conditions or as approved by the Site Plan Review Committee.
2. The following conditions apply to the new renovation areas of the Merced Mall and not to existing development that won't be modified under this renovation. Details to be worked out with Planning Staff.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. The Project shall comply with all applicable conditions previously approved for this site
5. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
6. Approval of the Site Utilization Plan Revision is subject to the applicant's entering into a written (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.

7. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (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.
8. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
9. The project shall comply with all mitigation measures required by the mitigation monitoring program for Initial Study #18-02 (Exhibit B of Draft Planning Commission Resolution at Attachment H of Staff Report #19-04).

10. 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) #1.
11. Umbrellas, fencing, or other outdoor features used for the outdoor seating areas shall not include advertising for any specific business or brand and shall be uniform in color to complement the buildings.
12. The site shall be provided with pedestrian access between the buildings and connection to public ways (i.e., public sidewalks, streets, etc.).
13. All walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment. Pedestrian access shall be reviewed and approved by the Site Plan Review Committee prior to a building permit being issued.
14. All mechanical equipment shall be screened from public view.
15. 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.
16. A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access shall be provided for all reconfigured parking areas. .
17. If changes are made to the site that would affect the current system used by the UC Merced Cat Tracks System and the Merced Transit System (The Bus), the developer shall work with UC Merced (Cat Tracks) and the Merced Transit System (The Bus) to determine the best location for public transit facilities. If relocated, the location of these facilities will be subject to review and approval by the Site Plan Review Committee.
18. Any driveways that are modified, added, or relocated shall comply with the City of Merced Design Standards for commercial driveways and are to be reviewed by the Fire Department as part of the review of the improvement plan submittals.

19. Any missing improvements 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.
20. Bicycle parking shall meet the minimum requirements of the California Green Building Code and MMC 20.38.080.
21. The project shall comply with the Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
22. All storm water shall be retained onsite and metered out to the City's storm water system in accordance with City Standards. The City Engineer shall approval final design of the storm drain system prior to construction.
23. All new utilities (including electrical lines) shall be installed underground.
24. A backflow prevention device shall be provided for all water services (i.e., domestic, irrigation, and fire).
25. All landscaping shall comply with the Section 20.36.040 – Landscape and Sprinkler Plans, of the City's Zoning Ordinance in addition to all applicable state laws.
26. Full landscape and irrigation plans shall be submitted at the time of building permit application.
27. 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.
28. Parking lot trees shall be installed per the City's Parking Lot Landscape Standards for any new or modified parking areas. 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 at least one tree for each six parking spaces. The trees may be located in planter areas that protrude into the parking areas, or which run along

EXHIBIT A

OF PLANNING COMMISSION RESOLUTION #4014

the edge of the parking areas and shall be located to accommodate any carport or shade structures. Details regarding the above to be worked out with Planning Staff and/or approved by the Site Plan Review committee.).

29. When possible, mature existing trees should remain or be relocated on the site. Details to be worked out with Planning Staff.
30. As depicted in the elevations provided, landscape planters shall be placed throughout the courtyard area and along the sidewalk area. However, the planters shall not block access to the site, stores, or other facilities. All planters shall provide the necessary clearance to meet handicap accessibility requirements.
31. All landscaping on the site shall be maintained in a healthy and aesthetically pleasing manner.
32. Prior to any demolition work, the applicant shall obtain all necessary approvals from the San Joaquin Valley Air Pollution Control District.
33. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
34. Construction activity shall only take place between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday, unless otherwise approved by the Chief Building Official.
35. The project shall comply with all FEMA Flood Zone requirements and with the California 200-year Urban Level of Flood Protection requirements.
36. The premises shall remain clean and free of debris, weeds, and graffiti at all times.
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. All businesses selling and/or serving alcoholic beverages shall comply with all regulations of the California Alcoholic Beverage

Control and the City of Merced. Any future bar, nightclub, cocktail lounge, or similar use would require a Conditional Use Permit. Any business less than 20,000 square feet in size selling alcoholic beverages for off-site consumption would also require a Conditional Use Permit.

n shared planning PC Resolutions: SUP Rev#38 to PD #1 (Merced mall Expansion) Exhibit A

MITIGATION MONITORING AND REPORTING PROGRAM

This Mitigation Monitoring and Reporting Program (MMRP) has been formulated based upon the findings of the Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the Merced Mall Expansion Project (project). The MMRP, which is provided in Table A, lists mitigation measures recommended in the IS/MND for the project and identifies mitigation monitoring requirements. The MMRP must be adopted when the City Council makes a final decision on the project.

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

As stated above, 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" ordinance (Merced Municipal Code [MMC] 19.28). The City's program was developed in accordance with the advisory publication, Tracking CEQA Mitigation Measures Under AB 3180, from the Governor's Office of Planning and Research.¹

As required by MMC 19.28.050, the following findings are made:

- 1) The requirements of the adopted mitigation monitoring program for the Merced Mall Expansion Project 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 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

¹ Governor's Office of Planning and Research. 1994. Tracking CEQA Mitigation Measures Under AB 3180. Sacramento, California.

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. Development Services 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.

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 initiate an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall require 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. 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 for the project. The columns within the tables are defined as follows:

Impact Statement:	Describes the potential impact that could result from implementation of the proposed project.
Mitigation Measure:	Describes the Mitigation Measure (referenced by number).
Monitoring Responsibility:	This column references any City department or public agency with which coordination is required to satisfy the identified mitigation measure.
Monitoring Timing:	Identifies at what point in time or phase of the project that the mitigation measure will be completed.
Verification:	These columns will be initialed and dated by the individual designated to verify adherence to the project specific mitigation.

Table A: Mitigation Monitoring and Reporting Program

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
INITIAL STUDY IMPACTS AND MITIGATION MEASURES				
4.3 AIR QUALITY				
The project could violate air quality standards during the construction period.	<p>AIR-1: Consistent with SJVAPCD Regulation VIII (Fugitive PM₁₀ Prohibitions), the following controls are required to be implemented at the construction site:</p> <ul style="list-style-type: none"> • All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover. • All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant. • All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking. • When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained. • All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. (The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions. Use of blower devices is expressly forbidden.) • Following the addition of materials to, or the removal of materials from, the surface of out-door storage piles, said piles shall be effectively stabilized of fugitive dust emission utilizing sufficient water or chemical stabilizer/suppressant. 	Development Services, Building Division	Contractors shall be responsible for including in contract specifications prior to issuance building permit and measures are implemented throughout duration of construction activities.	
4.4 BIOLOGICAL RESOURCES				
The project would result in the removal of trees that could adversely affect nesting	<p>BIO-1: The following measures shall be implemented to reduce potential impacts to nesting birds:</p>	Development Services, Building Division	The applicant and contractors shall be	

Table A: Mitigation Monitoring and Reporting Program

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
birds.	<ul style="list-style-type: none"> If tree removal will occur during the nesting season (February 1 to August 31), a qualified biologist shall survey all suitable nesting habitat in the BSA for presence of nesting birds. This survey shall occur no more than 10 days prior to the start of construction. If no nesting activity is observed, work may proceed as planned. If an active nest is discovered, a qualified biologist shall evaluate the potential for the proposed project to disturb nesting activities. The evaluation criteria shall include, but are not limited to, the location/orientation of the nest in the nest tree, the distance of the nest from the BSA, and line of sight between the nest and the BSA. California Department of Fish and Wildlife (CDFW) shall be contacted to review the evaluation and determine if the project can proceed without adversely affecting nesting activity. If work is allowed to proceed after nesting activity has been observed, a qualified biologist shall be on-site daily during construction activities to monitor nesting activity. The biologist shall have the authority to stop work if it is determined the project is adversely affecting nesting activities. 	Division	responsible for implementing the measures throughout duration of construction activities.	
4.5 CULTURAL RESOURCES				
Construction of the project could adversely affect unknown historic resources.	<p>CUL-1: If unknown pre-contact or historic-period archaeological materials are encountered during project activities, all work in the immediate vicinity of the find shall halt until a qualified archaeologist can evaluate the find and make recommendations.</p> <p>Cultural resources materials may include pre-contact resources such as flaked and ground stone tools and debris, shell, bone, ceramics, and fire-affected rock, as well as historic resources such as glass, metal, wood, brick, or structural remnants. If the qualified archaeologist determines that the discovery represents a potentially significant cultural resource, additional investigations shall be required to mitigate adverse impacts from project</p>	Development Services, Building Division	The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.	

Table A: Mitigation Monitoring and Reporting Program

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
	<p>Implementation. These additional studies may include, but are not limited to recordation, archaeological excavation, or other forms of significance evaluations.</p> <p>The applicant shall inform its contractor(s) of the sensitivity of the project site for archaeological deposits, and include the following directive in the appropriate contract documents:</p> <p>"The subsurface of the construction site is sensitive for archaeological deposits. If archaeological deposits are encountered during project subsurface construction, all ground-disturbing activities within 25 feet shall be redirected and a qualified archaeologist shall assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. Project personnel shall not collect or move any archaeological materials. Archaeological deposits can include, but are not limited to, shellfish remains; bones, including human remains; flakes of, and tools made from, obsidian, chert, and basalt; mortars and pestles; historical trash deposits containing glass, ceramics, and metal artifacts; and structural remains, including foundations and wells."</p> <p>The City shall verify that the language has been included in the grading plans prior to issuance of a grading permit or other permitted project action that includes ground-disturbing activities on the project site.</p>			
Construction of the project could adversely affect unknown archaeological resources.	<p>CUL-1: Implement Mitigation Measure CUL-1.</p>	Development Services, Building Division	The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.	

Table A: Mitigation Monitoring and Reporting Program

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
Construction of the project could disturb unknown human remains.	<u>CUL-3</u> : If human remains are identified during construction and cannot be preserved in place, the applicant shall fund 1) the removal and documentation of the human remains from the project corridor by a qualified archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology, 2) the scientific analysis of the remains by a qualified archaeologist, should such analysis be permitted by the Native American Most Likely Descendant, and 3) the reburial of the remains, as appropriate. All excavation, analysis, and reburial of Native American human remains shall be done in consultation with the Native American Most Likely Descendant, as identified by the California Native American Heritage Commission.	Development Services, Building Division	The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.	
4.7 GREENHOUSE GAS EMISSIONS The project would directly or indirectly generate greenhouse gas emissions.	<u>GHG-1</u> : The project applicant shall demonstrate compliance with the applicable BPS strategies to the Planning Division prior to the issuance of a building permit. The following BPS strategies are considered to be applicable, feasible, and effective in reducing GHG emissions generated by the project: <ul style="list-style-type: none"> The project applicant shall provide a pedestrian access network that internally links all uses and connects to existing external streets and pedestrian facilities. The project applicant shall ensure site design and building placement minimize barriers to pedestrian access and interconnectivity. Physical barriers such as walls, berms, landscaping, and slopes between nonresidential uses that impede bicycle or pedestrian circulation shall be eliminated. In addition, barriers to pedestrian access of neighboring facilities and sites shall be minimized. The project applicant shall design roadways to reduce motor vehicle speeds and encourage pedestrian and bicycle trips by featuring traffic calming measures. Traffic calming measures include: bike lanes, center islands, closures (cul-de-sacs), diverters, education, forced turn lanes, roundabouts, and speed humps. 	Development Services, Planning Division	The applicant and contractors shall be responsible for implementing the measures prior to issuance of a building permit.	

Table A: Mitigation Monitoring and Reporting Program

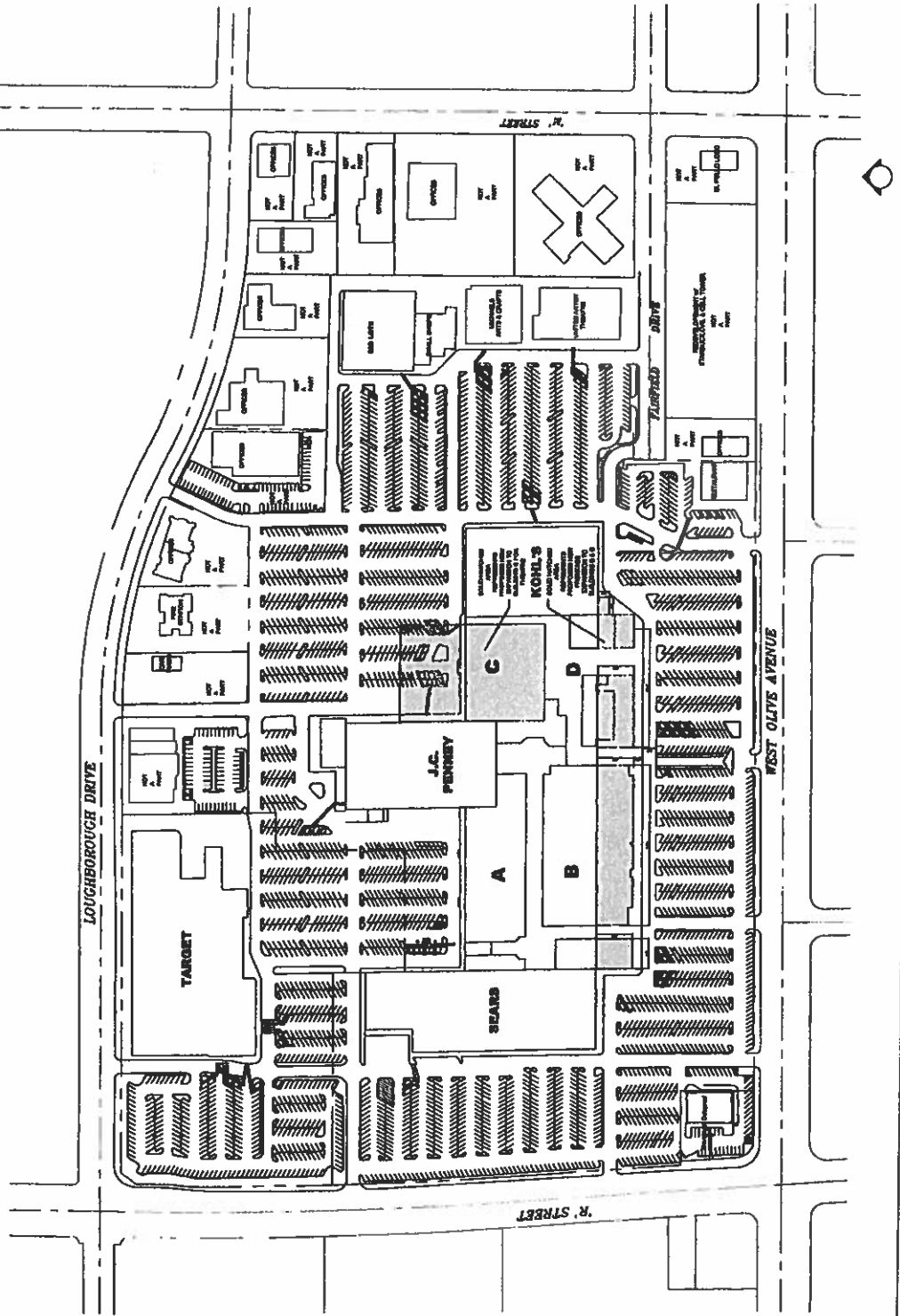
Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
	<ul style="list-style-type: none"> The project shall provide for car sharing programs. Accommodations for such programs could include providing parking spaces for the car share vehicles at convenient locations accessible by public transportation. The project applicant shall plant trees to provide shade. The project applicant shall install energy efficient heating and cooling systems, appliances and equipment, and control systems. 			
4.9 HYDROLOGY AND WATER QUALITY				
The project could result in short-term construction-related water quality impacts.	HYDRO-1: To minimize any potential short-term water quality effects from project-related construction activities, the project contractor shall implement Best Management Practices (BMPs) in conformance with the California Storm Water Best Management Practice Handbook for Construction Activity. In addition, the proposed project shall be in compliance with existing regulatory requirements, including the Water Pollution Control Preparation (WPCP) Manual. In addition, implementation of a Storm Water Pollution Prevention Plan (SWPPP) would be required under the National Pollutant Discharge Elimination System (NPDES) to regulate water quality associated with construction activities.	Development Services, Building Division	The applicant and contractors shall be responsible for implementing the measures throughout duration of construction activities.	
The project could result in stormwater pollution.	HYDRO-2: To reduce the potential for degradation of surface water quality during project operation, a SWPPP shall be prepared for the proposed project. The SWPPP shall describe specific programs to minimize stormwater pollution resulting from the proposed project. Specifically, the SWPPP shall identify and describe source control measures, treatment controls, and BMP maintenance requirements to ensure that the project complies with post-construction stormwater management requirements of the RWQCB.	Development Services, Building Division	The applicant and contractors shall be responsible for implementing the measures prior to issuance of a building permit.	
4.12 NOISE				
Construction could result in a temporary or periodic increase in ambient noise levels in the project vicinity.	NOI-1: The project contractor shall implement the following measures during construction of the project: <ul style="list-style-type: none"> Equip all construction equipment, fixed or mobile, with 		The applicant and contractors shall be responsible for	

Table A: Mitigation Monitoring and Reporting Program

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Initials and Date)
	<p>properly operating and maintained mufflers consistent with manufacturers' standards.</p> <ul style="list-style-type: none"> Ensure that all general construction related activities are restricted to between the hours of 7:00 a.m. and 6:00 p.m. to avoid noise-sensitive hours of the day. Designate a "disturbance coordinator" at the City who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaint (e.g., starting too early, bad muffler) and would determine and implement reasonable measures warranted to correct the problem. 		implementing the measures throughout duration of construction activities.	

Source: LSA (2019).

PHASE II ALTERNATE I EXPANSION SITE PLAN



EXISTING		
Building	Area (sq. ft.)	
Target	100,000	
Sears	150,000	
J.C. Penney	120,000	
Kohl's	180,000	
Other	50,000	
TOTAL	500,000	
PROPOSED PHASE I		
Building	Area (sq. ft.)	
Target	100,000	
Sears	150,000	
J.C. Penney	120,000	
Kohl's	180,000	
Other	50,000	
TOTAL	500,000	
PHASE II ALTERNATE I		
Building	Area (sq. ft.)	
Target	100,000	
Sears	150,000	
J.C. Penney	120,000	
Kohl's	180,000	
Other	50,000	
TOTAL	500,000	

CODDING
 Merced Mall
 700 Oakdale Road
 Merced, California 95368

Merced
 Mall

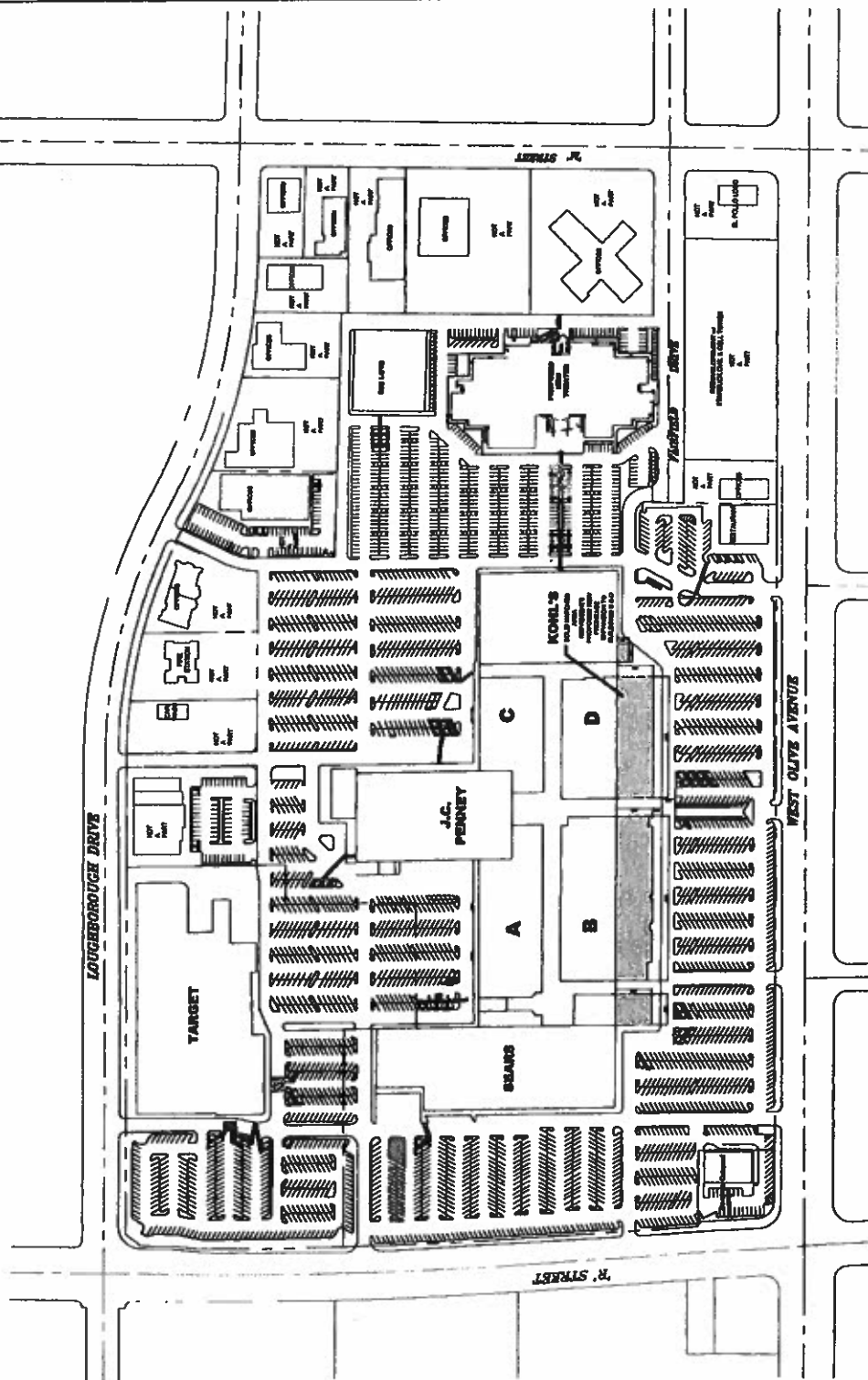
Merced
 CALIFORNIA

Exhibit A3

EXHIBIT A3

EX-A3

PHASE II ALTERNATE II EXPANSION SITE PLAN

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