

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 _____ day of _____ 2019, by and between the City of Merced, a California Charter Municipal Corporation ("City") and M & B Bruno Family, L.P., a California Limited Partnership ("Owner").

W I T N E S S E T H

WHEREAS, Owner has applied to the City for General Plan Amendment, Revision to the Fahrens Creek Specific Plan, and Site Utilization Plan Revision to Planned Development (P-D #46 (the "Entitlements")) for the property generally located on the west side of San Augustine Avenue at Pacific Drive, 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 #4013, 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” and “E”.

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

(SEAL)

APPROVED AS TO FORM:

BY: Phaedra A. mnh 2-6-19
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

OWNER
M & B BRUNO FAMILY, L.P.,
A California Limited Partnership

By:  _____
Anthony M. Bruno

Its: Manager

TAX PAYER ID: _____

ADDRESS: 1819 S. Walnut Road
Turlock, CA 95380

TELEPHONE: 209-667-6455

FAX: _____

EMAIL: tony@tdr-inc.com

{SIGNATURES MUST BE NOTARIZED}

ACKNOWLEDGMENT

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

State of California
County of Stanislaus

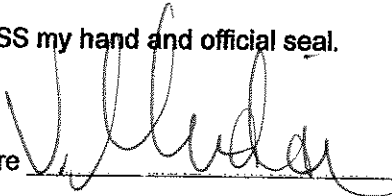
On February 26, 2019 before me, V. Miranda, Notary Public
(insert name and title of the officer)

personally appeared Anthony M Bruno
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.

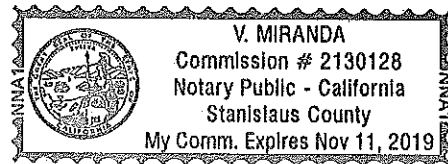
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

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)

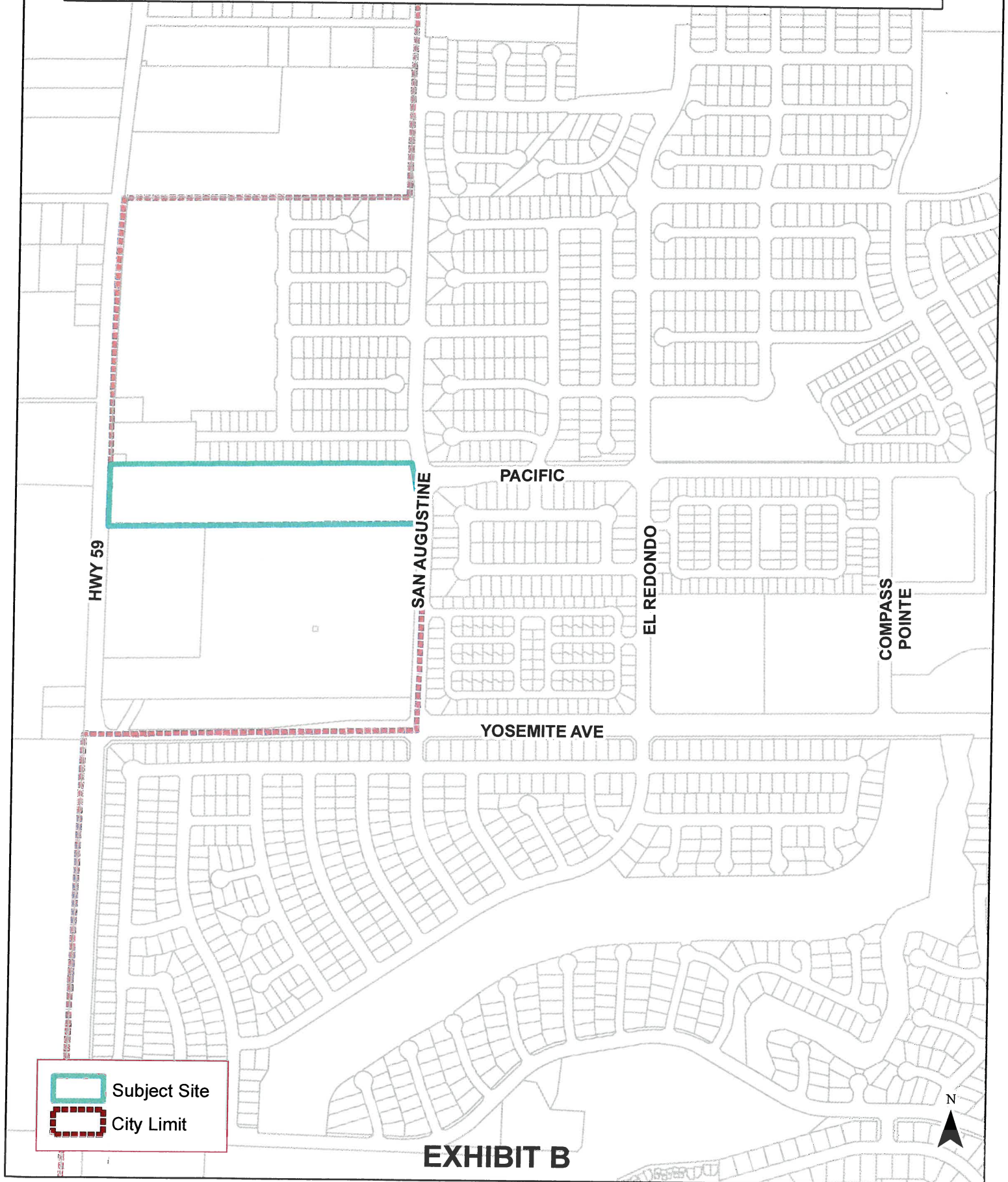
EXHIBIT A
LEGAL DESCRIPTION

Lot 123 of Sunrise at Compass Pointe, County of Merced, State of California, according to the Map thereof Recorded on September 18, 2001, in Volume 60 at Page 12, Official Records of Merced County.

APN: 206-050-017

EXHIBIT A

General Plan Amendment #18-03, Revision #4 to the Fahrens Creek
Specific Plan, & Site Utilization Plan Revision #6 to P-D #46



CITY OF MERCED
Planning Commission

Resolution #4013

WHEREAS, the Merced City Planning Commission at its regular meeting of January 23, 2019, held a public hearing and considered **General Plan Amendment #18-03, Site Utilization Plan Revision #6 to Planned Development (P-D) #46, and Revision #4 to Fahrens Creek Specific Plan**, initiated by M & B Bruno Family LP, property owners. The application is a request to change the General Plan designation for approximately 10.73 acres of land on the west side of San Augustine, approximately 980 feet north of Yosemite Avenue, from Business Park (BP) to High Medium Density Residential (HMD). The request also involves a Revision to the Fahrens Creek Specific Plan and a Site Utilization Plan Revision to Planned Development (P-D) #46 to change the land use designation from “mini-storage” to “multi-family”; also known as Assessor’s Parcel No. 206-050-017; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through K of Staff Report #19-05; and,

NOW THEREFORE, after reviewing the City’s Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Negative Declaration regarding Initial Study #18-60, and approval of General Plan Amendment #18-03, Site Utilization Plan Revision #6 to Planned Development (P-D) #46, and Revision #4 to Fahrens Creek Specific Plan, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

AYES: Commissioners Camper, Drexel, Harris, Martinez, Padilla, Rashe,
and Chairperson Dylina
NOES: None
ABSENT: None
ABSTAIN: None

EXHIBIT C

PLANNING COMMISSION RESOLUTION # 4013

Page 2

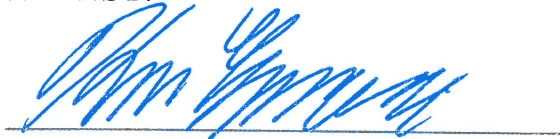
January 23, 2019

Adopted this 23rd day of January 2019



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

Conditions of Approval
Planning Commission Resolution # 4013
General Plan Amendment #18-03, Site Utilization Plan #6 to Planned Development (PD) #46, and Revision #4 to Fahrens Creek Specific Plan

1. The proposed project shall be constructed/designed in substantial compliance with the Revised Site Plan (Attachment E of Planning Commission Staff Report #19-05) and the building elevations and floor plans (Attachments C and D of Planning Commission Staff Report #19-05), except as modified by the conditions. The Site Plan Review Committee shall approve the final design for the project, and may approve up to 176 units.
2. The Project shall comply with the applicable conditions set forth in Planning Commission Resolution #2675 (Attachment F of Planning Commission Staff Report #19-05) for Annexation Application #00-03, Pre-Zone Application #00-03, General (including Specific) Plan Amendment #00-09, and Environmental Review #00-31 (including the Mitigation Monitoring Program found at Attachment G of Planning Commission Staff Report #19-05) previously approved for this project, except as amended by this action.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
5. Approval of the General Plan Amendment, Revision to the Fahrens Creek Specific Plan, and Site Utilization Plan Revision are 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.

6. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
7. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
8. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before the issuance of the first building permit. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.

9. 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) #46.
10. All public improvements shall be installed along the project frontage to meet City Standards. Any existing improvements that have been damaged or otherwise do not meet current City Standards shall be repaired or replaced to meet City Standards. This includes, but is not limited, to sidewalk curb, gutter, street trees, and street lights. All public improvements shall be installed along the SR 59 property frontage in compliance with Caltrans Standards, as well as City of Merced Standards. This may include sidewalk, curb, gutter, street lights, and landscaping along the SR 59 street frontage.
11. Street trees shall be planted along the project frontage on San Augustine Avenue in compliance with City Standards.
12. The project applicant shall contribute to the cost of the future traffic signal at San Augustine Avenue and Yosemite Avenue. This amount shall be determined by the City Engineer based on the proportion of vehicle trips generated by this project expected to utilize the intersection. This amount shall be paid or bonded for prior to the issuance of the first building permit.
13. 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).
14. The project shall extend the sewer line in San Augustine Avenue, south across the entire property frontage or as required by the City Engineer.
15. All storm water shall be retained onsite and metered out to the City's storm water system in accordance with City Standards, subject to a storm drain plan approved by the City Engineer.
16. All new utilities shall be installed underground.
17. The fire access lanes shall be constructed to withstand the weight of a fire truck, but still provide green space and pedestrian access. The use of a turf-block material is recommended or another similar type material, approved by the Fire Department and Site Plan Review Committee.

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION #4013

18. A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access must be provided throughout the project site or as required by the Fire Department.
19. Bicycle parking shall meet the minimum requirements of the California Green Building Code and Merced Municipal Code Section 20.38.080.
20. An Emergency Vehicle Access from SR 59 onto the project site shall be granted prior to the issuance of a building permit. This access shall be constructed to meet Fire Department Standards. This access shall be gated to only allow emergency vehicle access and shall be equipped with a knox-box or other device approved by the Fire Department.
21. The property owner shall dedicate an additional 14 feet of right-of-way along SR 59 prior to the issuance of a building permit, unless otherwise approved by the City Engineer and City Land Surveyor, based on Caltrans requirements.
22. The drive aisles through the parking lot shall be posted as “no parking,” unless otherwise approved by the City Fire Department.
23. The applicant shall provide written documentation from PG&E agreeing to allow the proposed parking spaces within their easement area. This documentation shall be provided with the submittal of the first building permit that includes the parking in this area.
24. 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.
25. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
26. All construction activity shall be conducted between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday.
27. All landscaping shall be in compliance with the City’s Water Efficient Landscaping and Irrigation Ordinance (Merced Municipal Code Section 17.60) and all state-mandated conservation and drought restrictions as well as the City’s Zoning Ordinance Section 20.36 – Landscaping.

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION #4013

28. 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.
29. 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.
30. Parking lot trees shall be installed per the City's Parking Lot Landscape Standards. Trees shall be a minimum of 15-gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list). Trees shall be installed at a ratio of 1 tree for every 6 parking spaces. No trees shall be required where there are carports with solar panels over the parking spaces. However, if all the parking spaces are covered by a carport with solar panels, then additional trees may be required at the discretion of the Development Services Director. Trees within the PG&E easement shall comply with the regulations of this easement which limits the height of trees to a maximum of 15 feet at full maturity.
31. The on-site landscape design shall include the use of xeriscape landscaping and comply with all California Building Code regulations or other applicable state and/or local requirements as well as Chapter 20.36 of the City's Zoning Ordinance.
32. The median between the driveways shall be provided with low-lying landscaping. Nothing in this area shall be taller than 2 ½ feet.
33. All walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment.
34. All parking lot and other exterior lighting shall be oriented in such a way so that it does not spillover onto adjacent properties.
35. All mechanical equipment shall be screened from public view.
36. Containers for refuse and recycled goods shall be stored in enclosures that are designed with colors compatible with the buildings and shall

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION #4013

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.

37. The developer may install carports over some or all of the required parking spaces.
38. All signs shall comply with the requirements of the North Merced Sign Ordinance and Merced Municipal Code (MMC) Section 17.36.572 – Apartments or Condominiums. No free-standing A-Frame or sandwich board-type signs shall be allowed. All other moveable temporary signs are prohibited as well. Temporary banners may be installed on a building wall in compliance with the City's Sign Ordinance and after obtaining a Temporary Banner Permit from the Planning Department. A building permit shall be obtained for all permanent signs.

n:\shared\planning\PC Resolutions\GPA#18-03\SUP Rev#6 to PD #46/Rev #4 to Fahrens Creek Specific Plan Exhibit A

General Plan Amendment #18-03

Amend General Plan
Designation from
Business Park (BP)
to
High/Medium Density (HMD)



SAN AUGUSTINE

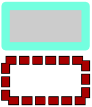
PACIFIC

EL REDONDO

COMPASS
POINTE

YOSEMITE AVE

HWY 59



Subject Site

City Limit



Revision #4 to Fahrens Creek Specific Plan and Site Utilization
Plan Revision #6 to Planned Development (P-D) #46

Amend Fahrens Creek Specific Plan and
Site Utilization Plan for P-D #46 from
"Mini-Storage"
to
"Apartments"

HWY 59

SAN AUGUSTINE

PACIFIC

EL REDONDO

COMPASS
POINTE

YOSEMITE AVE

Subject Site

City Limit

N

EXHIBIT E