

RESOLUTION NO. 2019-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, APPROVING A MITIGATED NEGATIVE DECLARATION FOR GENERAL PLAN AMENDMENT #19-02 AND ZONE CHANGE #426, APPROVING GENERAL PLAN AMENDMENT #19-02 TO CHANGE THE GENERAL PLAN DESIGNATION FROM LOW DENSITY RESIDENTIAL (LD) TO NEIGHBORHOOD COMMERCIAL (CN) FOR APPROXIMATELY 0.52 ACRES OF LAND GENERALLY LOCATED ON THE EAST SIDE OF MCKEE APPROXIMATELY 360 FEET SOUTH OF YOSEMITE AVENUE, AND APPROVING A LEGISLATIVE ACTION AGREEMENT FOR THE SAME

WHEREAS, the City is processing an application for a General Plan Amendment for 0.52 acres of land generally located on the east side of McKee Road, approximately 360 feet south of Yosemite Avenue, and more particularly described in Exhibit A and shown on the map at Exhibit B, both attached hereto and incorporated herein by this reference, where an environmental review was required; and

WHEREAS, the Planning Commission of the City of Merced held a noticed public hearing on August 21, 2019, at which time all those interested in the matter were provided the opportunity to speak or provide written or oral testimony regarding the application; and

WHEREAS, after hearing all of the evidence and testimony, the Planning Commission adopted Resolution #4025, attached hereto as Exhibit C, and incorporated herein by reference, recommending that the City Council approve the General Plan Amendment and Environmental Review (Mitigated Negative Declaration); and

WHEREAS, The City Council held a noticed public hearing on October 7, 2019, at which time all those interested in the matter were provided the opportunity to speak or to provide written or oral testimony regarding the application.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MERCED AS FOLLOWS:

SECTION 1. CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Based upon the evidence and testimony in the record at the City Council public hearing, the City Council exercising its independent judgment and review, hereby adopts and approves the Mitigated Negative Declaration following Environmental Review #19-18 pursuant to the provisions of the California Environmental Quality Act.

SECTION 2. GENERAL PLAN AMENDMENT ADOPTION.

The General Plan of the City of Merced is hereby amended by approving General Plan Amendment #19-02, which changes the General Plan designation of 0.52 acres of land generally located on the east side of McKee Road, approximately 360 feet south of Yosemite Avenue from Low Density Residential (LD) to Neighborhood Commercial (CN) as shown on Exhibit D, attached hereto and incorporated herein by this reference.

SECTION 3. APPROVAL OF LEGISLATIVE ACTION

AGREEMENT. The Legislative Action Agreement between the City of Merced and Merced Holdings, L.P., a Nevada Limited Partnership, pertaining to the approvals granted herein and the development of the property subject to these approvals is hereby approved. The approvals granted herein are contingent upon the property owner executing and returning the Legislative Action Agreement and the documents being recorded. The City Manager or Assistant City Manager is hereby authorized to execute the Legislative Action Agreement on behalf of the City of Merced.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ day of _____ 2019, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:


Mayor

ATTEST:
STEVE CARRIGAN, CITY CLERK

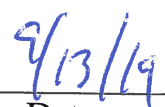
BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:



City Attorney



Date

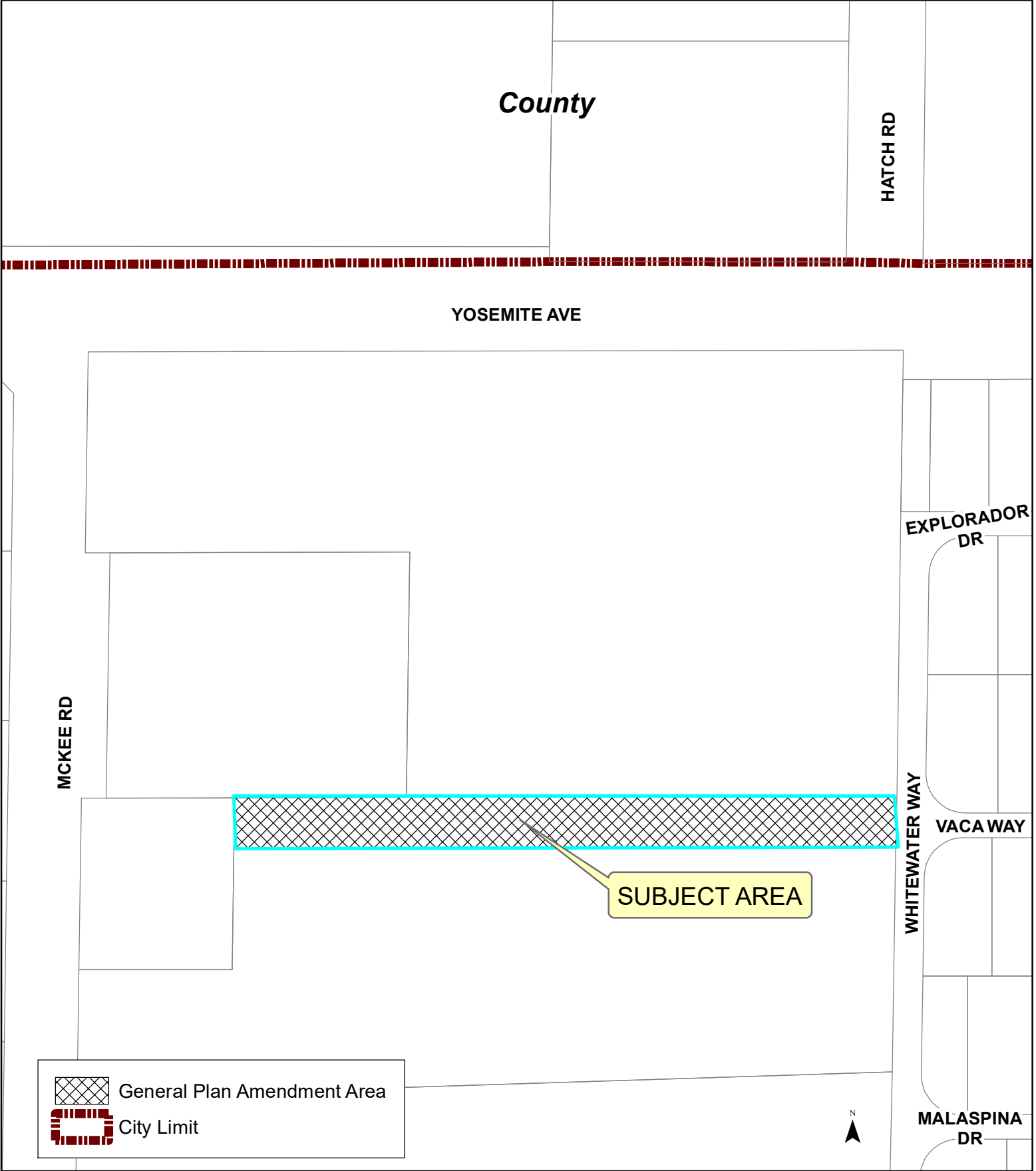
EXHIBIT A
LEGAL DESCRIPTION

The East 539.75 feet of the following described Parcel 2, per Grant Deed recorded as Document No. 2010-045178, Merced County Records; the West line of said east 539.75 feet being the Northerly extension of the East line of Parcel 1 as described in said Grant Deed, said Northerly extension ending at a point on the South line of Parcel 1 as shown on Parcel Map recorded in Book 58 at Page 44, Merced County Records. The above Parcel 2 being described as follows:

All that portion of Lot 150 as shown on the map entitled "Map of Bradley's Addition No. 3 to Merced, California" filed January 4, 1911, in Vol. 4 of Official Plats, at Page 43, Merced County Records, described as follows:

Beginning at a point on the West lines of said Lot 150, said point being S. 0 deg. 51' W. 406.01 feet from the Northwest corner of said Lot 150; thence N. 89 deg. 54' E. parallel with the North line of said Lot 150, a distance of 660 feet to a point on the East line of said Lot 150, said point being S. 0 deg. 51' W. 406.01 feet from the Northeast corner of said Lot 150; thence N. 0 deg. 51' E. along the East line of said Lot 150 a distance of 42 feet; thence S. 89 deg. 54' W. parallel with the North line of said Lot 150, a distance of 660 feet to the West line of said Lot 150; thence S. 0 deg. 51' W. along the West line of said Lot 150, a distance of 42 feet to the point of beginning.

Containing approximately 22,669.57 square feet (0.52 acres +/-)



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.

GENERAL PLAN AMENDMENT #19-02
SUBJECT AREA
(0.52 Acres +/-)
EXHIBIT B



CITY OF MERCED
Planning Commission

Resolution #4025

WHEREAS, the Merced City Planning Commission at its regular meeting of August 21, 2019, held a public hearing and considered **General Plan Amendment #19-02 and Zone Change #426**, initiated by Merced Holdings, LP, property owner. The General Plan Amendment and Zone Change application is a request to change the General Plan designation from Low Density Residential (LD) to Neighborhood Commercial (CN) and change the Zoning designation from R-1-6 to Neighborhood Commercial (C-N) for approximately 22,670 square feet of land located approximately 360 feet south of Yosemite Avenue, on the east side of McKee Road; also known as Assessor's Parcel Number 008-310-038; and,

WHEREAS, the Merced City Planning Commission concurs with Finding K of Staff Report #19-22; and, the following additional finding:

L. To promote orderly development in a community, a single parcel should usually have only a single consistent General Plan land use designation and a single zoning designation. Therefore, the General Plan designation and zoning for the 22,670-square-foot strip of land along the southern property line of this parcel should be changed to match the Neighborhood Commercial (CN) land use designation and the Neighborhood Commercial (C-N) zoning designation as the rest of the parcel.

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 regarding Environmental Review #19-18, and approval of General Plan Amendment #19-02 and Zone Change #426, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

AYES: Commissioners Camper, Dylina, Harris, Padilla, and Chairperson Drexel

NOES: None

ABSENT: Commissioner Rashe

ABSTAIN: None (one vacancy)


EXHIBIT C

PLANNING COMMISSION RESOLUTION # 4025

Page 2

August 21, 2019

Adopted this 21st day of August 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 #4025
General Plan Amendment #19-02
Zone Change #426

1. The proposed General Plan Amendment and Zone Change shall be as shown on the Proposed Land Use Map at Attachment B of Staff Report #19-22.
2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
3. The Project shall comply with the applicable conditions set forth in Resolution #3049 for General Plan Amendment #14-06 and Zone Change #421 previously approved for this site.
4. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
5. Approval of the General Plan Amendment and Zone Change is subject to the applicant's entering into a written (developer) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
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, streetlights, parks and open space. CFD procedures shall be initiated before final map approval or issuance of a building permit, whichever comes first. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.
9. The project shall comply with all mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #19-18 (Exhibit B of Planning Commission Resolution #J of Staff Report #19-22) and all applicable mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #14-32 (Appendix A of Initial Study #19-18, Attachment I of Staff Report #19-22)

n:shared:planning:PC Resolutions:GPA#19-02 ZC #426 Exhibit A

ENVIRONMENTAL REVIEW #19-18

Mitigation Monitoring Program

MITIGATION MONITORING CONTENTS

This mitigation monitoring program includes a brief discussion of the legal basis and purpose of the mitigation monitoring program, a key to understanding the monitoring matrix, a discussion of noncompliance complaints, and the mitigation monitoring matrix itself.

LEGAL BASIS AND PURPOSE OF THE MITIGATION MONITORING PROGRAM

Public Resource Code (PRC) 21081.6 requires public agencies to adopt mitigation monitoring or reporting programs whenever certifying an environmental impact report or mitigated negative declaration. This requirement facilitates implementation of all mitigation measures adopted through the California Environmental Quality Act (CEQA) process.

The City of Merced has adopted its own “Mitigation Monitoring and Reporting Program” (MMC 19.28). The City’s program was developed in accordance with the advisory publication, *Tracking CEQA Mitigation Measures*, from the Governor’s Office of Planning and Research.

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

- 1) The requirements of the adopted mitigation monitoring program for the General Plan Amendment #19-02, Zone Change #426, and Conditional Use Permit #1231 shall run with the real property. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
- 2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

MITIGATION MONITORING PROCEDURES

In most cases, mitigation measures can be monitored through the City’s construction plan approval/plan check process. When the approved project plans and specifications, with mitigation measures, are submitted to the City Development Services Department, a copy of the monitoring checklist will be attached to the submittal. The Mitigation Monitoring Checklist will be filled out upon project approval with mitigation measures required. As project plans and specifications are checked, compliance with each mitigation measure can be reviewed.

In instances where mitigation requires on-going monitoring, the Mitigation Monitoring Checklist will be used until monitoring is no longer necessary. The Development Services Department will be required to file periodic reports on how the implementation of various mitigation measures is progressing or is being maintained. Department staff may be required to conduct periodic inspections to assure compliance. In some instances, outside agencies and/or consultants may be required to conduct necessary periodic inspections as part of the mitigation monitoring program. Fees may be imposed per MMC 19.28.070 for the cost of implementing the monitoring program.

GENERAL PLAN MITIGATION MEASURES

As a second tier environmental document, Initial Study #19-18 incorporates some mitigation measures adopted as part of the *Merced Vision 2030 General Plan Program Environmental Impact Report* (SCH# 2008071069), as mitigation for potential impacts of the Project.

NONCOMPLIANCE COMPLAINTS

Any person or agency may file a complaint asserting noncompliance with the mitigation measures associated with the project. The complaint shall be directed to the Director of Development Services in written form providing specific information on the asserted violation. The Director of Development Services shall cause an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall cause appropriate actions to remedy any violation. The complainant shall receive written confirmation indicating the results of the investigation or the final action corresponding to the particular noncompliance issue. Merced Municipal Code (MMC) Sections 19.28.080 and 19.28.090 outline the criminal penalties and civil and administrative remedies which may be incurred in the event of noncompliance. MMC 19.28.100 spells out the appeals procedures.

MONITORING MATRIX

The following pages provide a series of tables identifying the mitigation measures proposed specifically for General Plan Amendment #19-02, Zone Change #426, and Conditional Use Permit #1231. The columns within the tables are defined as follows:

Mitigation Measure:	Describes the Mitigation Measure (referenced by number).
Timing:	Identifies at what point in time or phase of the project that the mitigation measure will be completed.
Agency/Department Consultation:	This column references any public agency or City department with which coordination is required to satisfy the identified mitigation measure.
Verification:	These columns will be initialed and dated by the individual designated to verify adherence to the project specific mitigation.

General Plan Amendment #19-02/Zone Change #426/Conditional Use Permit #1231
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).

5) Cultural Resources				
<i>Impact</i>		<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>
	CUL-1)	<p>If unknown pre-contact or historic-period archaeological materials are encountered during project activities, all work in the immediate vicinity of the find shall halt until a qualified archaeologist can evaluate the find and make recommendations.</p> <p>Cultural resources materials may include pre-contact resources such as flaked and ground stone tools and debris, shell, bone, ceramics, and fire-affected rock, as well as historic resources such as glass, metal, wood, brick, or structural remnants. If the qualified archaeologist determines that the discovery represents a potentially significant cultural resource, additional investigations shall be required to mitigate adverse impacts from project implementation. These additional studies may include, but are not limited to, recordation, archaeological excavation, or other forms of significance evaluations.</p> <p>The applicant shall inform its contractor(s) of the sensitivity of the project site for archaeological deposits, and include the following directive in the appropriate contract documents:</p>		
<i>a</i>				

(continued on next page)

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
a	<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; 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>	Building Permits	Planning Department	
b	CUL-2) Implementation of Mitigation Measure CUL-1.	Building Permits	Planning Department	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
c	CUL-3) If human remains are identified during construction and cannot be preserved in place, the applicant shall fund: 1) the removal and documentation of the human remains from the project corridor by a qualified archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology, 2) the scientific analysis of the remains by a qualified archaeologist, should such analysis be permitted by the Native American Most Likely Descendant, and 3) the reburial of the remains, as appropriate. All excavation, analysis, and reburial of Native American human remains shall be done in consultation with the Native American Most Likely Descendant, as identified by the California Native American Heritage Commission.	Building Permits	Planning Department	
6) Energy				
a	ENE-1) The applicant shall comply with all applicable California Energy Code, AB 341, and San Joaquin Valley Air Pollution Control District rules and regulations regulating energy efficiency and waste.	Building Permits	Building Department	
b	ENE-2) Implementation of Mitigation Measure ENE-1.	Building Permits	Building Department	

7) Geology and Soils				
Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
b	GEO-1) The project shall comply with all requirements of the State Water Resources Board (SWRCB) and obtain a General Construction Activity Stormwater Permit.	Building/ Encroachment Permits	Engineering Department	
	GEO-2) The project shall comply with all applicable mitigation measures for Expanded Initial Study #02-27 for General Plan Amendment #02-02 and Annexation/Pre-Zoning Application #02-02.	Building/ Encroachment Permits	Engineering Department	
8) Hydrology and Water Quality				
a	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.	Building/ Encroachment Permits	Engineering Department	

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

13) Noise				
Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
NOI-1)	<p>To reduce potential construction noise impacts, the following multi-part mitigation measure shall be implemented for the project:</p> <ul style="list-style-type: none"> • The construction contractor shall ensure that all internal combustion engine-driven equipment is equipped with mufflers that are in good condition and appropriate for the equipment. • The construction contractor shall locate stationary noise-generating equipment as far as feasible from sensitive receptors when sensitive receptors adjoin or are near a construction disturbance area. In addition, the project contractor shall place such stationary construction equipment so that emitted noise is directed away from sensitive receptors nearest the project site. • The construction contractor shall prohibit unnecessary idling of internal combustion engines (i.e., idling in excess of 5 minutes is prohibited). • The construction contractor shall locate, to the maximum extent practical, on-site equipment staging areas so as to maximize the distance between construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction. 	Building Permit	Building Department	
a	(continued on next page)			

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
	<ul style="list-style-type: none"> The construction contractor shall limit all noise producing construction activities, including deliveries and warming up of equipment, to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No such work shall be permitted on Sundays or federal holidays without prior approval from the City. 	Building Permit	Planning Department	
17) Transportation and Traffic				
a	<p>TRA-01 The westbound lane of Yosemite Avenue at Parsons Avenue shall be modified to accommodate an additional 200-foot shared thru/right turn lane. In addition, the existing shared left/thru/right lane shall be restriped to be a shared left/thru lane. (The Traffic Analysis recommended an additional 100 foot lane be installed. The City Engineer recommends the length of the lane be increased to 200 feet.)</p> <p>-or-</p> <p>The applicant shall be required to pay for their proportionate share of the above improvement as determined by the City Engineer.</p>	Building Permit	Planning/Engineering Department	

Impact No.	Mitigation Measures	Timing	Agency or Department	City Verification (date and initials)
TRA-02	<p>The following modifications to the intersection of Olive Avenue and McKee Road shall be made:</p> <p><u>Southbound Approach:</u></p> <ul style="list-style-type: none"> • Remove the adjacent on-street parking for 100 feet on the southbound approach. • Re-stripe the approach as shared left/thru lane and share right/thru lane. • Remove the adjacent on-street parking for 100 feet on the southbound receiving lane and stripe it as a lane drop. <p><u>Northbound Approach</u></p> <ul style="list-style-type: none"> • Remove the adjacent on-street parking for 100 feet on the north bound approach. • Re-stripe the approach as shared left/thru lane and shared right/thru lane. • Remove the adjacent on-street parking for 100 feet on the northbound receiving lane and stripe it as a lane drop. The City Engineer shall determine if this measure is feasible due to the location of residential driveways in this area. 	Building Permit	Planning/Engineering Department	
b	<p>TRA-03 The developer shall work with the Transit Joint Powers Authority of Merced County (The Bus) to locate a bus stop within ½-mile of the project site.</p>	Building Permit	Planning/Engineering Department	

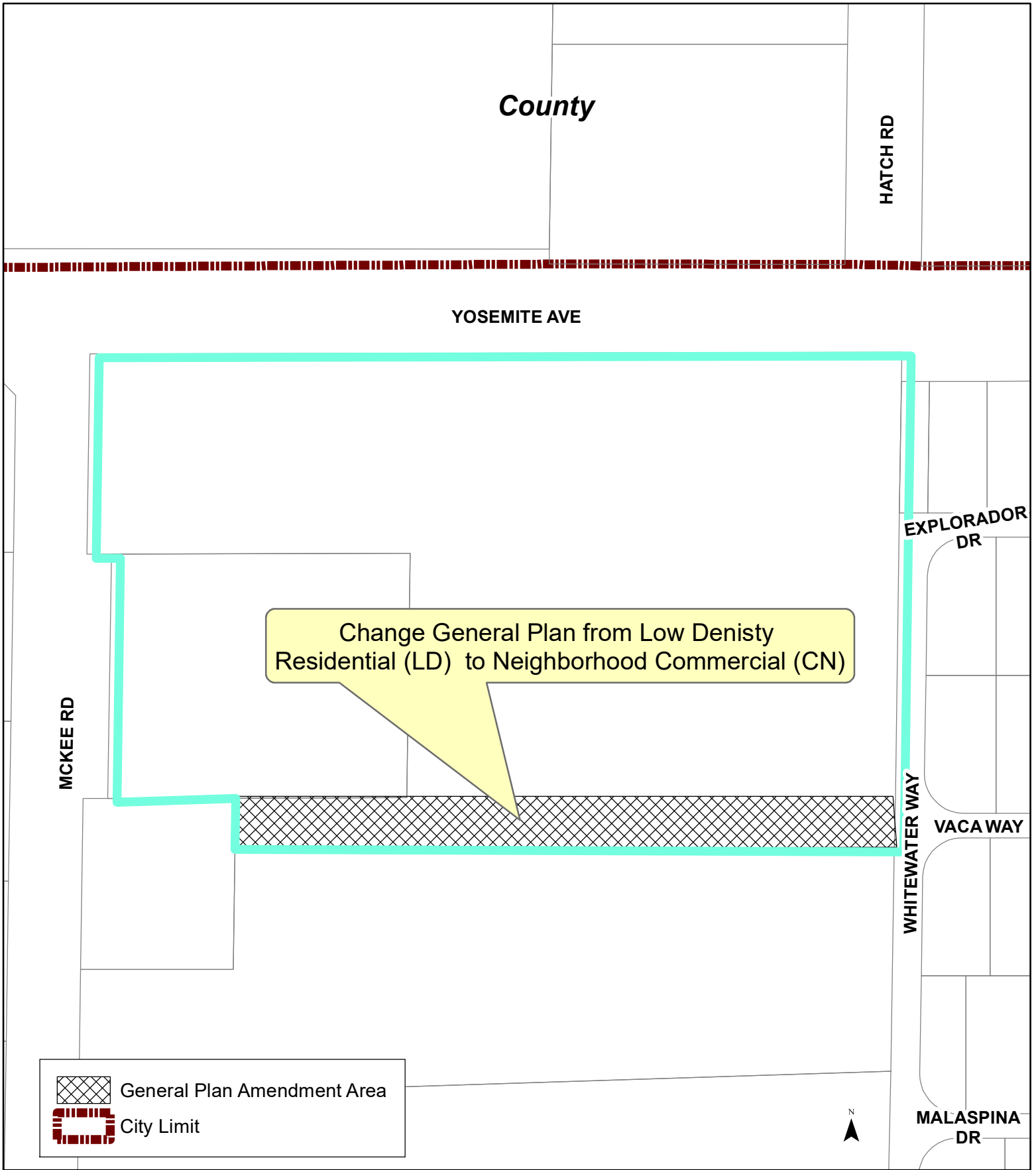
19) Utilities and Service Systems			
c	UTI-01) The project shall provide for on-site storage of wastewater in an underground storage tank, then release the wastewater into the City's system during off-peak hours or an alternative approved by the City Engineer. Details to be worked out with the City Engineer prior to construction.	Building Permit	Engineering Department

Certificate of Completion:

By signing below, the environmental coordinator confirms that the required mitigation measures have been implemented as evidenced by the Schedule of Tasks and Sign-Off Checklist, and that all direct and indirect costs have been paid. This act constitutes the issuance of a *Certificate of Completion*.

Environmental Coordinator

Date



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GENERAL PLAN AMENDMENT #19-02

EXHIBIT D

