

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT: #20-16

AGENDA ITEM: 4.1

FROM: Kim Espinosa,
Planning Manager

PLANNING COMMISSION
MEETING DATE: July 22, 2020

PREPARED BY: Julie Nelson,
Associate Planner

CITY COUNCIL
MEETING DATE: Sept. 8, 2020

SUBJECT: **Modification to the Pre-annexation Development Agreement for the Absolute-Bright Annexation**, initiated by Rick Telegan on behalf of Exposition Properties, LLC, and Leeco, LLC, property owners. This application involves a request to modify Exhibits “D” and “G” of the Pre-Annexation Development Agreement. The requested modification of Exhibit “D” would remove the requirement that development within the annexation area be done from south to north, thus allowing any of the property owners to develop without being delayed by the development of the other property, and the requested modification of Exhibit “G” would modify Condition #7 of Planning Commission Resolution #2871 removing the requirement that all infrastructure on G Street be completed in one construction project, and not be divided by ownership or tentative maps. The affected property consists of approximately 85 acres, generally located on the east side of G Street, north of Merrill Place (extended). The property has General Plan designations of Low Density Residential (LD), Village Residential (VR), and Open Space/Park Recreation (OS-PK); and is zoned R-1-5 and Residential Planned Development (P-D) #61. *PUBLIC HEARING*

ACTION: PLANNING COMMISSION:

Recommendation to City Council

- 1) Environmental Review #20-15 (Categorical Exemption)
- 2) Modification of Pre-Annexation Development Agreement

CITY COUNCIL:

Approve/Disapprove/Modify

- 1) Environmental Review #20-15 (Categorical Exemption)
- 2) Modification Pre-Annexation Development Agreement

SUMMARY

The applicant has requested to modify Exhibits “D” and “G” of the Pre-Annexation Development Agreement for the Absolute-Bright Annexation (Annexation #198) approved April 17, 2006. The annexation area for the Absolute-Bright Annexation included approximately 100 acres located on

the east side of G Street, north of Merrill Place (extended) (Attachment A). The Pre-Annexation Development Agreement has a 20-year term and sets forth conditions and requirements for development within the annexation area. All parties involved in the annexation signed the Pre-Annexation Development Agreement agreeing to the terms of the agreement (Attachment B of Planning Commission Staff Report #20-16). These parties included Absolute, LLC; Leeco, LLC; BP Investors, LLC; and Bright Development, A California Corporation.

The proposed change to Exhibit “G” includes the modification of Condition #7 of Planning Commission Resolution #2871 approved for Annexation #198 and the Establishment of Planned Development (P-D) #61 (Exhibit G of Attachment B of Planning Commission Staff Report #20-16).

The Pre-Annexation Development Agreement describes the procedure for modifying the agreement in Section 22.7 and in Section 25. Section 22.7 lists conditions under which a change to the Pre-Annexation Development Agreement would be considered “minor” and not require an amendment to the agreement. Section 25 requires that if an amendment is made, all parties must agree and consent to the change. Staff has determined the request submitted with this application does not fall under Section 25 to be considered a “minor” change. Therefore, staff’s opinion is that the request is an amendment to the agreement that requires all parties to agree. Although City staff is not opposed to the proposed modifications, Bright Development has not consented to the proposed amendment.

Staff is providing a recommendation to continue this item until Bright Development agrees to the proposed amendment. However, if the Planning Commission determines it is appropriate to take action and forward this request to the City Council, staff has provided an alternative action for the Planning Commission to take approving the proposed modifications and recommending approval to the City Council. The Planning Commission may also vote to recommend denial of the request and instruct staff to prepare findings to that effect.

RECOMMENDATION

Staff Recommendation

Planning staff recommends the Planning Commission open the public hearing and continue this item to the Planning Commission meeting of August 19, 2020, to allow time for the applicant and Bright Development to agree upon the proposed amendments to the Pre-Annexation Development Agreement.

Alternative Action

If the Planning Commission desires to take action on this request without the agreement of Bright Development, the Planning Commission may recommend to the City Council: 1) approval of Environmental Review #20-15 (Categorical Exemption); and, 2) the Modification to Exhibits “D” and “G” of the Pre-Annexation Development Agreement for the Absolute-Bright Annexation (Annexation #04-01) as shown on Attachments F and G of Planning Commission Staff Report #20-16 (including the adoption of the Resolution at Attachment J of Planning Commission Staff Report #20-16).

PROJECT DESCRIPTION

The requested modifications to the Pre-Annexation Development Agreement are to modify Exhibit “D” and Exhibit “G.” See details in the Findings Section.

Surrounding Zones and Land Uses (Attachment A):

Surrounding Land	Existing Use of Land	City Zoning Designation	City General Plan Land Use Designation
North	Vacant Land	County	Low Density (LD) Residential
South	Vacant Land	Planned Development (P-D) #53	Low/Medium Density (LMD) Residential/ Village Residential (VR)
East	Vacant	County	Open Space/Park (OS/P)/Low Density Residential (LD)
West	Single-family	Planned Developments (P-D) #46	Low Density Residential (LD)

BACKGROUND

The Absolute-Bright Annexation was approved by City Council on April 17, 2006, and become effective December 12, 2006. The Pre-Annexation Development Agreement was negotiated between the City and the owners at the time – Absolute, LLC; Leeco, LLC; BP Investors, LLC; and Bright Homes. In 2008, Absolute, LLC granted the property they owned to Exposition Properties, LLC. In order to comply with the terms of the Pre-Annexation Development Agreement, an assignment and assumption agreement was recorded which basically transferred the responsibilities of the Pre-Annexation Development Agreement from Absolute, LLC to Exposition Properties, LLC.

In 2007, Vesting Tentative Subdivision Maps #1291 (Bright Development) and #1292 (Palisades) were approved. The plan at that time was that the subdivisions would be developed close to the same time. Therefore, the conditions placed in the agreement regarding infrastructure were not an issue. Once the economic downturn hit, both developments stalled. Since that time, VTSM #1291 (Bright Development) has been modified and received three extensions keeping the map valid until January 16, 2021. The VTSM for Palisades (VTSM #1292 expired in 2018. However, a new map was approved (VTSM #1312) on June 3, 2020.

FINDINGS/CONSIDERATIONS:

General Plan/Zoning Compliance

- A) The proposed project complies with the General Plan designations of Low Density Residential (LD), Village Residential (VR), and Open Space/Park Recreation (OS-PK); and the zoning classification of Planned Development R-1-5 and Residential Planned Development (RP-D) #61.

Development Agreement Findings

- B) Merced Municipal Code (MMC) Chapter 20.86--Development Agreements (Attachment H of Planning Commission Staff Report #20-16) spells out procedures for adopting and amending Development Agreements, which includes the requirement for public hearings before the Planning Commission and City Council for adoption and amendments (MMC 20.86.050—Public Notice and Hearings and MMC 20.86.140—Amendment or Termination). Per Merced Municipal Code Section 20.86.080, the City Council may approve an application for a Development Agreement only if the following finding can be made.

MMC 20.86.080--Finding.

1. *The City Council may approve an application for a Development Agreement only if the Development Agreement is consistent with the General Plan and any applicable specific or community plan.*

As noted in Finding A of Staff Report #20-16 (above), the proposed project complies with the General Plan designations of Low Density Residential (LD), Village Residential (VR), and Open Space/Park Recreation (OS-PK); and the zoning classification of Residential Planned Development (RP-D) #61.

- C) In addition to the Finding above, Merced Municipal Code Section 20.86.030—Review Authority, states that “Procedures for considering Development Agreements are spelled out in this chapter and in City Council Resolution No. 1995-06, adopted on February 6, 1995.” Resolution No. 1995-06, in Section 301, spells out that the Planning Commission’s recommendation to the City Council should include the following determination whether or not the Development Agreement proposed:

1. *Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan?*

As noted in Finding A of Staff Report #20-16 (above), the proposed project complies with the General Plan designations of Low Density Residential (LD), Village Residential (VR), and Open Space/Park Recreation (OS-PK). There is no applicable specific plan for this area.

2. *Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located?*

As noted in Finding A of Staff Report #20-16 (above), the proposed project complies with the uses and regulations in the zoning classifications of R-1-5 (Low Density Residential) and Residential Planned Development (RP-D) #61.

3. *Is in conformity with public convenience, general welfare, and good land use practice?*

The annexation area contains a mixture of uses including Low Density Residential, Village Residential, and Open Space/Park land. These land uses are consistent with the City’s General Plan and reflect the City’s goals regarding land use and development as prescribed in the General Plan. Therefore, the subject site represents

good land use practice. There are no uses, policies, or requirements related to this annexation area that interferes with public convenience or the general welfare.

4. *Will be detrimental to the health, safety, and general welfare?*

Because the land uses and Pre-Annexation Development Agreement conform to the City's General Plan and Zoning Ordinance, development within the area will not be detrimental to the health, safety, or general welfare.

5. *Will adversely affect the orderly development of property or the preservation of property valued?*

The Pre-Annexation Development Agreement were designed to ensure the orderly development of the area and the preservation of property values by addressing land use, circulation, public facilities and services, parks and open space, and infrastructure phasing and financing for all future development in the area. The proposed changes would not adversely affect the development of the property within the annexation area.

Amendments to the Pre-Annexation Development Agreement

- D) Section 22.7 "Changes and Amendments" of the Pre-Annexation Development Agreement states that "a change to the Existing Development Approvals shall be deemed 'minor' and not require an amendment to this Agreement provided such change does not:
- (a) Alter the permitted uses of the Property as a whole; or,
 - (b) Increase the density or intensity of use of the Property as a whole; or,
 - (c) Increase the maximum height and size of permitted buildings; or,
 - (d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,
 - (e) Constitute a project requiring a subsequent or a supplemental Environmental Impact Report pursuant to Section 21166 of the Public Resources Code."

Although the proposed changes do not fall into the above categories, staff's opinion is that because the proposed modifications affect the order of development, making it possible for the Palisades subdivision to develop before the Bright subdivision, the proposed changes should be considered an amendment to the Agreement and fall under the provision for such under Section 25 of the Agreement. Additionally, because the proposed changes include modifying Condition #7 of Planning Commission Resolution #2871, the changes must be acted on by the Planning Commission and City Council.

Section 25 of the Pre-Annexation Development Agreement entitled "Amendment or Cancellation of Agreement" states "This Agreement shall not be amended, modified, or canceled, in whole or in part, unless in writing signed by both parties hereto, and only by mutual consent of the parties..." As explained above, the City has determined the requested modifications do not constitute a "minor" change and are subject to Section 25 of the Agreement. As such, all parties must mutually consent to the changes. To date, City staff has not received consent from Bright Development to make the proposed changes to the Agreement.

Modifications to Exhibits “D” – Public Benefits

- E) Remove Public Benefit #9 which states “Owner shall submit a development phasing plan that phases construction and development from south to north along with all infrastructure extensions.” One of the considerations for annexation, is the public benefits that would be provided by the annexation. In this case, Exhibit “D” provides 10 public benefits that would be provided. Benefit #9 requires that the phasing and construction be done from south to north. At the time, both developers were working together and development of the annexation area was imminent. Thus it was reasonable to expect the development to occur from south to north in order to prevent there being a gap in City infrastructure. Currently, water and sewer lines exist in G Street to serve the annexation area. However, sidewalks, curbs, gutters, and other typical street improvements are needed on the east side of G Street along the annexation frontage. By removing the requirement for the development to occur south to north, there could be a gap in street improvements. Each developer with frontage along G Street would be required to install street improvements along the frontage of their property. Currently, there are two tentative subdivision maps approved that are conditioned to install the frontage improvements along G Street – Tentative Subdivision Map (TSM) #1291 for Bright Development and TSM #1312 “The Palisades” (Attachments C and D of Planning Commission Staff Report #20-16). By removing the requirement that the development must occur south to north, it would allow the Palisades subdivision to develop without having to wait on the Bright Development subdivision to be constructed. While this may not accomplish the public benefit envisioned by the Pre-Annexation Development Agreement, it would allow each development to function independently of each other and could ultimately result in development taking place sooner rather than later, which could be considered a public benefit. It should also be noted that sidewalks, curbs, gutters, etc. end at the north end of the Mercy Hospital property. When development occurs within this annexation area, there will still be a gap in infrastructure from Mercy Hospital to the annexation area (Attachment E of Planning Commission Staff Report #20-16). The proposed changes to Exhibit “D” are shown at Attachment F of Planning Commission Staff Report #20-16.

Modifications to Exhibit “G” – Planning Commission Resolution #2871

- F) Condition #7 of Planning Commission Resolution states, in part, “All the “G” Street improvements required for this annexation (amounting to 1,651 fee of frontage), shall be completed in one construction project, and not be divided by ownership or tentative maps.” This requirement was in keeping with the public benefits outlined in Exhibit “D.” The requested change is to eliminate this language from Condition #7. By requiring all the frontage improvements to be done as one development, it creates an unfair burden on whichever property develops first. It is more reasonable to require frontage improvements be installed along the project frontage (which is typical for development projects). By eliminating this requirement, the approved subdivisions would be required to install improvements along their project frontage only. The proposed changes to Exhibit “G” are shown at Attachment G of Planning Commission Staff Report #20-16.

Environmental Clearance

- A) Planning staff has conducted an environmental review (#20-15) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (Attachment I of Planning Commission Staff Report #20-16).

Attachments:

- A) Location Map/General Plan Designations
- B) Pre-Annexation Development Agreement
- C) TSM #1291 – Bright Development
- D) TSM #1312 – The Palisades
- E) Infrastructure Gap
- F) Proposed Changes to Exhibit “D”
- G) Proposed Changes to Exhibit “G”
- H) MMC Section 20.86
- I) CEQA Section 15162 Findings
- J) Draft Planning Commission Resolution

ATTACHMENT REFERENCE TABLE	
Planning Commission Staff Report Attachment	Administrative Report Attachment
Attachment A	Attachment 1
Attachment B	Attachment 2
Attachment C	Attachment 4
Attachment D	Attachment 5
Attachment E	Attachment 6
Attachment F	Attachment 3
Attachment G	Attachment 7

Chapter 20.86 - DEVELOPMENT AGREEMENTS

Sections:

20.86.010 Purpose

20.86.020 Applicability

20.86.030 Review Authority

20.86.040 Application Submittal and Review

20.86.050 Public Notice and Hearings

20.86.060 Planning Commission Action

20.86.070 City Council Action

20.86.080 Finding

20.86.090 Conditions of Approval

20.86.100 Content of the Development Agreement

20.86.110 Recordation

20.86.120 Effect of Development Agreement

20.86.130 Periodic Review

20.86.140 Amendment or Termination

20.86.150 Pre-Annexation Development Agreements

20.86.010 Purpose

A Development Agreement is a contract between the City and an applicant for a development project, in compliance with Government Code Section 65864 et seq. The purpose of a Development Agreement is to:

- A. Facilitate development projects for which there is significant applicant contribution toward infrastructure, public facilities, open space or other amenities, or other programs of benefit to the City and its residents.
- B. Assure the applicant that upon approval of the subject project, the project may proceed in accordance with existing City policies, rules, and regulations in place at the time of Development Agreement approval.
- C. Encourage private participation in comprehensive planning and provision of public facilities, including, but not limited to, streets, sewage, transportation, potable water, schools and utilities.
- D. Provide a net benefit to the City and its residents not otherwise obtainable through other processes.

ATTACHMENT H - Page 1

20.86.020 Applicability

- A. The City may enter into a Development Agreement with any person or their authorized agent who has legal or equitable interest in real property for the development of the property.
- B. The procedures and regulations of this chapter are not meant to preclude or limit the power of the City to approve and implement Development Agreements by other means.

20.86.030 Review Authority

A Development Agreement is a legislative act. The City Council shall take action on all Development Agreement applications after considering the recommendation of the Planning Commission and City staff. Procedures for considering Development Agreements are spelled out in this chapter and in City Council Resolution No. 1995-06, adopted on February 6, 1995.

20.86.040 Application Submittal and Review

An application for a Development Agreement shall be filed and reviewed in compliance with Chapter 20.66 (Permit Application and Review). The application shall include the information and materials specified by the Development Services Department, together with all required fees.

20.86.050 Public Notice and Hearings

Public notice and hearing for an application for a Development Agreement shall be provided in compliance with Chapter 20.70 (Public Notice and Hearings).

20.86.060 Planning Commission Action

After the public hearing on a Development Agreement application, City staff shall forward a written recommendation of the Planning Commission. The recommendation shall be transmitted to the City Council within 90 calendar days after the date the hearing was closed to the public.



20.86.070 City Council Action

A. Approval or Denial.

1. Upon receipt of the Planning Commission's recommendation on a Development Agreement application, the City Council shall conduct a public hearing and take action on the application.
2. The action by the City Council shall be by a majority vote of the entire Council and shall be final and conclusive.

B. Referral to Commission.

1. If the City Council proposes to adopt a substantial modification to the Development Agreement not previously considered by the Planning Commission, the proposed modification may be first referred to the Planning Commission for its recommendation.
2. Failure of the Planning Commission to report back to the City Council within 60 calendar days following the referral or other such time set by the Council shall be deemed an approval by the Planning Commission of the proposed modification.



- #### C. Adoption by Ordinance.
- If the City Council approves the Development Agreement, it shall do so by adoption of an ordinance. The effective date of the Development Agreement shall be the effective date of the ordinance approving the Development Agreement.

20.86.080 Finding

The City Council may approve an application for a Development Agreement only if the Development Agreement is consistent with the General Plan and any applicable specific or community plan.

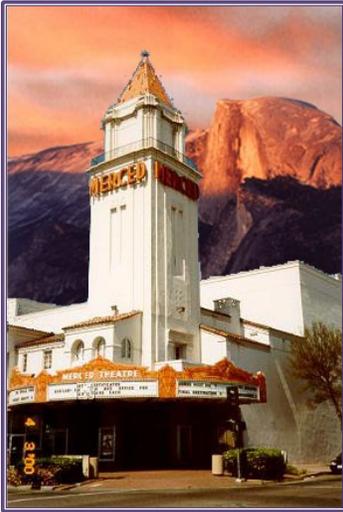
20.86.090 Conditions of Approval

The City Council may attach conditions to the approval of a Development Agreement as needed to ensure compliance with all applicable policies, standards, and regulations in the General Plan, Zoning Ordinance, and other titles of the Merced Municipal Code.

20.86.100 Content of the Development Agreement

A. Mandatory Contents. All Development Agreements shall specify all of the following:

1. The specified duration of the Development Agreement.
2. The permitted uses of the subject property.
3. The permitted density or intensity of development of the subject property.
4. The maximum permitted height and size of proposed structures.
5. Provisions for the dedication or preservation of land for public purposes, if applicable.



B. Optional Contents. Development Agreements may specify any of the following:

1. The conditions, terms, restrictions, and requirements for subsequent discretionary actions, as long as such provisions do not prevent development of the land for the uses and the density or intensity as set forth in the agreement.
2. Requirements that construction be commenced within a specified time and that the project or any phase of the project be completed within a specified time.
3. Terms and conditions related to applicant financing

of necessary public facilities and subsequent reimbursement over time.

20.86.110 Recordation

- A.** Within 10 calendar days after the City enters a Development Agreement, the City Clerk shall record the agreement with the County Recorder.
- B.** The City Clerk shall record with the County Recorder if at any time the Development Agreement is amended, cancelled, terminated, or modified.

20.86.120 Effect of Development Agreement

Unless otherwise provided by the Development Agreement, the rules, regulations, and official policies governing allowed uses of the land, density, design, improvement, and construction standards and specifications applicable to development of the property subject to a Development Agreement are the rules, regulations, and official policies in force at the time of execution of the Agreement.

20.86.130 Periodic Review

- A.** The City may perform a periodic review of the Development Agreement at any time that the City considers to be appropriate, but no more than once every 12 months, at which time the property owner shall demonstrate good faith compliance with the terms and conditions of the Development Agreement. The review shall be limited in scope to compliance with the terms and conditions of the Development Agreement.



- B.** The City Manager or the City Manager's designee shall begin the review by giving notice to the property owner that the City intends to undertake a review of the Development Agreement. The Planning Commission shall hold a noticed public hearing to assess compliance with the terms and conditions of the Development Agreement. Public notice shall be given at least 10 calendar days in advance of the day the Planning Commission will be conducting the review.
- C.** The costs of notice and related costs incurred by the City for review shall be borne by the property owner.
- D.** If the Planning Commission finds the property owner has complied in good faith with the terms and conditions of the Development Agreement during the period under review, the review for that period is concluded.
- E.** Failure of the City to conduct a periodic review shall not constitute a waiver by the City of its rights to enforce the provisions of the Development Agreement. The property owner shall not assert any defense to the enforcement of the Development Agreement by reason of the failure of the City to conduct a periodic review.

20.86.140 Amendment or Termination**A. General.**

1. Either the property owner or the City may propose an amendment to or cancellation in whole or in part of an existing Development Agreement.
2. Except as specified in Section B below, the procedure for proposing and adopting an amendment to or cancellation in whole or in part of the Development Agreement is the same as the procedure for entering into an Agreement.

ATTACHMENT H - Page5

- B. Amendment or Termination Following Periodic Review.** If, as a result of review under Section 20.86.130 (Periodic Review), the City determines that the property owner has not complied in good faith with the terms and conditions of the Development Agreement, the City may modify or terminate the Development Agreement.

20.86.150 Pre-Annexation Development Agreements

A. Pre-Annexation Development Agreement Required.

Prior to annexation into the City of Merced, the owner of any property located in unincorporated Merced County shall enter into a Pre-Annexation Development Agreement with the City in a manner consistent with the requirements of this chapter and City Council Resolution No. 2005-101, adopted on September 6, 2005.



- B. Operative Date.** A Pre-Annexation Development Agreement established prior to annexation shall not become operative unless annexation proceedings are completed by the Local Agency Formation Commission (LAFCO) within the period of time specified by the Agreement. If the annexation is not completed within the time specified in the Agreement or any extension of the Agreement, the Agreement is null and void.



NOTICE OF EXEMPTION

To: _____ Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

From: (Public Agency)
City of Merced
678 West 18th St.
Merced, CA 95340

County Clerk
County of Merced
2222 M Street
Merced, CA 95340

Project Title: Modification of the Pre-Annexation Development Agreement for the Absolute-Bright Annexation

Project Applicant: Rick Telegan, on behalf of Exposition Properties, LLC & Leeco, LLC

Project Location (Specific): The affected property consists of approximately 85 acres, generally located on the east side of G Street, north of Merrill Place (extended). Assessor’s Parcel Numbers (APN) 060-030-037; -038; and -039; and 060-080-001; -002; -003; and -004.

Project Location - City: Merced

Project Location - County: Merced

Description of Nature, Purpose, and Beneficiaries of Project: The proposed modifications to the Pre-Annexation Development Agreement include changes to Exhibits “D” and “G” of the agreement to remove the requirement that the development within the annexation area be constructed south to north and that all improvements on G Street be done in one construction project.

Name of Public Agency Approving Project: City of Merced

Name of Person or Agency Carrying Out Project: City of Merced

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State Type and Section Number: Section 15321, Class 21
- Statutory Exemptions. State Code Number: _____.
- General Rule (Sec. 15061 (b)(3))

Reasons why Project is Exempt: The proposed modification of a portion of the Pre-Annexation Development Agreement fits within the Class 21 Categorical Exemption, which includes actions by regulatory agencies to enforce a lease, permit, license, certificate, or other entitlement OR the enforcement of a law, general rule, standard, or objective administered by the regulatory agency. For the purposes of this Categorical Exemption, the Pre-Annexation Development Agreement (adopted by Ordinance) could be deemed a law, general rule, or standard adopted by the City as well as an entitlement to develop the annexation area in a manner consistent with the pre-Annexation Development Agreement.

Lead Agency: City of Merced

Contact Person: Julie Nelson, Associate Planner **Area Code/Telephone:** (209) 385-6858

Signature:  _____
Title: Associate Planner

Date: June 19, 2020

Signed by Lead Agency

Authority Cited: Sec. 21083 & 21110. Public Resources Code; .Reference: Sec. 21108, 21152, & 21152.1. Public Resources Code

**CITY OF MERCED
Planning Commission**

Resolution #4044

WHEREAS, the Merced City Planning Commission at its regular meeting of July 22, 2020, held a public hearing and considered Modifications to the Pre-Annexation Development Agreement for the Absolute-Bright Annexation, initiated by Rick Telegan, on behalf of Exposition Properties, LLC, and Leeco, LLC, This application involves a request to modify Exhibits “D” and “G” of the Pre-Annexation Development Agreement. The requested modification of Exhibit “D” would remove the requirement that development within the annexation area be done from south to north, thus allowing any of the property owners to develop without being delayed by the development of other property, and the requested modification of Exhibit “G” would modify Condition #7 of Planning Commission Resolution #2871 removing the requirement that all infrastructure on G Street be completed in one construction project, and not be divided by ownership or tentative maps. The affected property consists of approximately 85 acres, generally located on the east side of G Street, north of Merrill Place (extended). The property has General Plan designations of Low Density Residential (LD), Village Residential (VR), and Open Space/Park Recreation (OS-PK); and is zoned R-1-5 and Residential Planned Development (P-D) #61; Also known as Assessor’s Parcel Numbers (APN) 060-030-037; -038; and -039; and 060-080-001; -002; -003; and -004; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through D of Staff Report # 20-16 (Exhibit A); and,

WHEREAS, the Merced City Planning Commission concurs with the Findings for Development Agreements per Merced Municipal Code Section 20.86.0809 and Resolution No. 1995-06, Section 301, as outlined in Exhibit A; and,

NOW THEREFORE, after reviewing the City’s Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review # 20-15, and recommend approval of the modifications to the Pre-Annexation Development Agreement for the Absolute-Bright Annexation as shown on the modified Exhibit “D” and Exhibit “G”, both attached hereto as Exhibit B.

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

AYES:

NOES:

ABSENT:

PLANNING COMMISSION RESOLUTION #4044

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July 22, 2020

ABSTAIN:

Adopted this 22nd day of July 2020

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Exhibits:

Exhibit A – Findings/Considerations

Exhibit B – Modified Exhibits “D” and “G” for Pre-Annexation Development Agreement
for Absolute-Bright Annexation

**Findings and Considerations
Planning Commission Resolution #4044
Modification to the Pre-Annexation Development Agreement for the
Absolute-Bright Annexation**

FINDINGS/CONSIDERATIONS:

General Plan/Zoning Compliance

- A) The proposed project complies with the General Plan designations of Low Density Residential (LD), Village Residential (VR), and Open Space/Park Recreation (OS-PK); and the zoning classification of Planned Development R-1-5 and Residential Planned Development (RP-D) #61.

Development Agreement Findings

- B) Merced Municipal Code (MMC) Chapter 20.86--Development Agreements (Attachment F of Planning Commission Staff Report #20-16) spells out procedures for adopting and amending Development Agreements, which includes the requirement for public hearings before the Planning Commission and City Council for adoption and amendments (MMC 20.86.050—Public Notice and Hearings and MMC 20.86.140—Amendment or Termination). Per Merced Municipal Code Section 20.86.080, the City Council may approve an application for a Development Agreement only if the following finding can be made.

MMC 20.86.080--Finding.

- 1. The City Council may approve an application for a Development Agreement only if the Development Agreement is consistent with the General Plan and any applicable specific or community plan.*

As noted in Finding A of Staff Report #20-16 (above), the proposed project complies with the General Plan designations of Low Density Residential (LD), Village Residential (VR), and Open Space/Park Recreation (OS-PK); and the zoning classification of Residential Planned Development (RP-D) #61.

- C) In addition to the Finding above, Merced Municipal Code Section 20.86.030—Review Authority, states that “Procedures for considering Development Agreements are spelled out in this chapter and in City Council Resolution No. 1995-06, adopted on February 6, 1995.” Resolution No. 1995-06, in Section 301, spells out that the Planning

Commission's recommendation to the City Council should include the following determination whether or not the Development Agreement proposed:

1. *Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan?*

As noted in Finding A of Staff Report #20-16 (above), the proposed project complies with the General Plan designations of Low Density Residential (LD), Village Residential (VR), and Open Space/Park Recreation (OS-PK). There is no applicable specific plan for this area.

2. *Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located?*

As noted in Finding A of Staff Report #20-16 (above), the proposed project complies with the uses and regulations in the zoning classifications of R-1-5 (Low Density Residential) and Residential Planned Development (RP-D) #61.

3. *Is in conformity with public convenience, general welfare, and good land use practice?*

The annexation area contains a mixture of uses including Low Density Residential, Village Residential, and Open Space/Park land. These land uses are consistent with the City's General Plan and reflect the City's goals regarding land use and development as prescribed in the General Plan. Therefore, the subject site represents good land use practice. There are no uses, policies, or requirements related to this annexation area that interferes with public convenience or the general welfare.

4. *Will be detrimental to the health, safety, and general welfare?*

Because the land uses and Pre-Annexation Development Agreement conform to the City's General Plan and Zoning Ordinance, development within the area will not be detrimental to the health, safety, or general welfare.

5. *Will adversely affect the orderly development of property or the preservation of property valued?*

The Pre-Annexation Development Agreement were designed to ensure the orderly development of the area and the preservation of property values by addressing land use, circulation, public facilities and services, parks and open space, and infrastructure phasing and financing for all future development in the area. The proposed changes would not adversely affect the development of the property within the annexation area.

Compliance with Section 25 of the Pre-Annexation Development Agreement

- D) Section 25 of the Pre-Annexation Development Agreement allows for modifications to the agreement as long all parties mutually consent to the changes in writing. To date, staff has not received written consent from Bright Development, but hope to have that prior to the Planning Commission meeting on July 22, 2020. If staff is unable to obtain Bright Development’s consent, this item may be continued to a future meeting.

Modifications to Exhibits “D” – Public Benefits

- E) Remove Public Benefit #9 which states “Owner shall submit a development phasing plan that phases construction and development from south to north along with all infrastructure extensions.”

One of the considerations for annexation, is the public benefits that would be provided by the annexation. In this case, Exhibit “D” provides 10 public benefits that would be provided. Benefit #9 requires that the phasing and construction be done from south to north. At the time, both developers were working together and development of the annexation area was imminent. Thus it was reasonable to expect the development to occur from south to north in order to prevent there being a gap in City infrastructure. Currently, water and sewer lines exist in G Street to serve the annexation area. However, sidewalks, curbs, gutters, and other typical street improvements are needed on the east side of G Street along the annexation frontage. By removing the requirement for the development to occur south to north, there could be a gap in street improvements. Each developer with frontage along G Street would be required to install street improvements along the frontage of their

property. Currently, there are two tentative subdivision maps approved that are conditioned to install the frontage improvements along G Street – Tentative Subdivision Map (TSM) #1291 for Bright Development and TSM #1312 “The Palisades” (Attachments C and D of Planning Commission Staff Report #20-16). By removing the requirement that the development must occur south to north, it would allow the Palisades subdivision to develop without having to wait on the Bright Development subdivision to be constructed. While this may not accomplish the public benefit envisioned by the Pre-Annexation Development Agreement, it would allow each development to function independently of each other and could ultimately result in development taking place sooner rather than later, which could be considered a public benefit. It should also be noted that sidewalks, curbs, gutters, etc. end at the north end of the Mercy Hospital property. When development occurs within this annexation area, there will still be a gap in infrastructure from Mercy Hospital to the annexation area (Attachment E of Planning Commission Staff Report #20-16). The proposed changes to Exhibit “D” are shown at Attachment F of Planning Commission Staff Report #20-16.

Modifications to Exhibit “G” – Planning Commission Resolution #2871

- F) Condition #7 of Planning Commission Resolution states, in part, “All the “G” Street improvements required for this annexation (amounting to 1,651 fee of frontage), shall be completed in one construction project, and not be divided by ownership or tentative maps.” This requirement was in keeping with the public benefits outlined in Exhibit “D.” The requested change is to eliminate this language from Condition #7. By requiring all the frontage improvements to be done as one development, it creates an unfair burden on whichever property develops first. It is more reasonable to require frontage improvements be installed along the project frontage (which is typical for development projects). By eliminating this requirement, the approved subdivisions would be required to install improvements along their project frontage only. The proposed changes to Exhibit “G” are shown at Attachment G of Planning Commission Staff Report #20-16.

Environmental Clearance

- G) Planning staff has conducted an environmental review (#20-15) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (Attachment I of Planning Commission Staff Report #20-16).

MODIFICATIONS TO EXHIBITS “D” AND “G”
OF THE PRE-ANNEXATION DEVELOPMENT AGREEMENT
FOR THE ABSOLUTE-BRIGHT ANNEXATION

EXHIBIT B
OF PLANNING COMMISSION RESOLUTION #4044
Page 1

EXHIBIT D
PUBLIC BENEFITS

1. Owner shall participate in the upgrade to the sewer Treatment plan in proportion to the growth attributable to the Project, as called for in Section 20.4. New development properties must be pledged against the future sewer bond. All development shall connect to the City sewer system and Owner shall pay all applicable connection fees.

2. Owner shall improve/upgrade/replace all existing County infrastructure (roads, utilities, etc.) within the Project consistent with City of Merced standards, specifically, but not limited to:
 - (a) Acquire and dedicate additional right-of-way for future widening of "G" Street.
 - (b) Install curbs, gutters, sidewalks, storm drains, and underground power lines (if applicable) on "G" Street and all collector, arterial, and interior roads within the annexation area.
 - (c) Underground overhead telephone lines on "G" Street.
 - (d) Install streetlights as required on "G" Street and all collector, arterial, and interior roads within the annexation area.
 - (e) Install a 4-way traffic signal at the intersection of "G" Street and collector street into the annexation area, subject to applicable reimbursement.
 - (f) Install fire hydrants as required by the City's Fire Department.

3. Owner shall develop a storm drainage plan acceptable to the City, which may require an on-site storm retention/detention facility, and construct the facilities related thereto.

4. To the extent feasible, Owner shall connect all storm drains in the annexation area to storm drain lines in the Open Space area under high-voltage power lines that lead to "G" Street.
5. Owner shall pipe and cover the Merced Irrigation District irrigation canal running north/south and provide connection to school, public park and open space to allow for use of irrigation water for sprinklers at these facilities.
6. Owner shall connect all development to the City water system and pay all applicable connection fees.
7. Owner shall dedicate the northeast corner of the annexation area, identified as Open Space, for a public park.
8. Owner must agree to form a Mello-Roos Community Facilities District (CFD) for infrastructure and maintenance with waiver of protest rights.
9. ~~Owner shall submit a development phasing plan that phases construction and development from south to north along with all infrastructure extensions.~~
- 10- 9. Owner shall insure that at the time the first building permit is pulled that the City Fire Department's response time to an emergency in the annexation area is under 6 minutes.

Note: ~~Strikethrough~~ text is deleted text.

EXHIBIT G
PLANNING COMMISSION RESOLUTION

G-1

**CITY OF MERCED
Planning Commission**

Resolution #2871

WHEREAS, the Merced City Planning Commission at its regular meeting of March 22, 2006, held a public hearing and considered **Pending Annexation and Pre-zoning Applications #04-01 and Establishment of Residential Planned Development #61**, initiated by Golden Valley Engineers for applicants Bright-Homes; Absolute, L.L.C; and Leeco, L.L.C., property owners. This application involves annexing 100 acres into the City of Merced; rezoning the area R-1-5 (Single Family Residential) and Residential Planned Development #61. The annexation is located on the east side of “G” Street, approximately 1,300 feet north of Cardella Road; also known as Assessor’s Parcel Numbers 006-030-036 through -039; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through S of Staff Report #06-24; 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 recommend to City Council adoption of a Mitigated Negative Declaration and Mitigation Monitoring Program (Exhibit A) regarding Expanded Initial Study #04-02 (“Absolute-Leeco Annexation”), and approval of Pending Annexation Application #04-01, Rezoning Application #04-01, and Establishment of Residential Planned Development (RP-D) #61, subject to the following conditions:

1. Approval of the Pending Annexation/Rezoning/Establishment of Residential Planned Development #61 is subject to the applicants entering into a written Pre-Annexation Development 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 regional traffic impact fees, a Parsons Avenue impact fee, Mello-Roos, etc.; said agreement to be approved by the City Council prior to the adoption of the ordinance or resolution.

2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the Engineering Department.
3. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
4. The developer/applicant shall indemnify, protect, defend, and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend 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.
5. 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.

6. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map approval. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.
7. As part of subsequent Tentative Subdivision Map entitlement processes, the applicants shall dedicate sufficient land along “G” Street (project frontage) to provide for a 128-foot right-of-way and construct their fair share of “G” Street (including safe transitions to the north and south) consistent with the Figure 4.4 of the *Merced Vision 2015 General Plan* (Major Arterial Cross-Section). ~~All the “G” Street improvements required for this annexation (amounting to 1,651 feet of frontage), shall be completed in one construction project, and not be divided by ownership or tentative maps. These improvements~~ Improvements along G Street shall include frontage improvements, traffic signals, the piping of the Six Mile Drain and the under-grounding of the existing telephone lines (details to be worked out at the tentative subdivision map process). Consistent with project Mitigation Measure 11-1, a minimum of 15-feet of additional landscaping together with a six-foot tall decorative wall (approved by City Planning Staff) shall be placed to the outside of the right-of-way to the east. The project infrastructure improvement plans for “G” Street may include a meandering sidewalk. Consistent with the City’s Water Efficient Landscaping & Irrigation Ordinance (MMC 17.60), the landscaping along “G” Street shall be comply with the water conservation measures specified in said ordinance. Each development with frontage on G Street shall be responsible for installing the above improvements along the development’s frontage.
8. Collector street locations in subsequent Tentative Subdivision Map and Conditional Use Permit entitlements shall be provided consistent with the adopted circulation plan for this project (Attachment C of Staff Report #06-24), as well as with the local “road design standards”

Modified by
Planning
Commission July
22, 2020

- of Planned Development #61 (Attachment F of Staff Report #06-24 – Exhibit 1).
9. As part of subsequent Tentative Subdivision Map entitlement processes, dedication of land for use as a community park, neighborhood park and the storm-drainage / open space corridor shall be provided consistent with the proposed land use designations for this project (Attachment D of Staff Report #06-24).
 10. Conceptual plans for the off-street bike path route, drainage basins and aesthetically designed open space within the PG&E transmission line easements, shall be included with subsequent Tentative Subdivision Map applications. Details, including any requirements for pedestrian/bike under-crossings, will be worked out during the mapping process
 11. Concurrent with any application for a Conditional Use Permit or Tentative Subdivision Map within the “Village Residential” land use designation, the applicant shall submit a plan to the City showing the minimum densities necessary to attain an average minimum 10 units per acre gross density within the entire “Village Residential” site of the “Absolute-Leeco Annexation,” along with a signed statement from the owner(s) of the other parcel(s) in the “Village Residential” site acknowledging the proposed density and of their obligation to construct a project on the remaining parcel(s) that results in an average minimum 10 units per acre gross density within the entire “Village Residential” site of the “Absolute-Leeco Annexation.”
 12. Except as may be changed by project conditions of approval herein, Residential Planned Development #61 shall be constructed/designed generally as shown on Attachment F (of Staff Report #06-24 - Planned Development Standards, including “road design standards”). The Development Services Director has authority to permit minor modifications to these approved plans.

Upon motion by Commissioner Amey, seconded by Commissioner Burr, and carried by the following vote:

PLANNING COMMISSION RESOLUTION #2871

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March 22, 2006

Upon motion by Commissioner Amey, seconded by Commissioner Burr,
and carried by the following vote:

AYES: Commissioners Acheson, Burr, Conte, Amey, Ward, and
Vice-Chairman Fisher

NOES: None

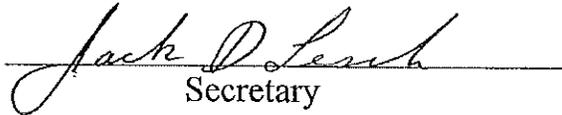
ABSENT: Chairman Shankland

Adopted this 22nd day of March, 2006



Chairman, Planning Commission
of the City of Merced, California

ATTEST:



Secretary

Exhibit A – Mitigation Monitoring Program

n:shared:planning:PC Resolutions:#2871 Absolute-Leeco Annex

**EXPANDED INITIAL STUDY #04-02
for
ABSOLUTE-LEECO ANNEXATION TO
THE CITY OF MERCED**

Appendix A
Mitigation Monitoring Program
Document Date: 2-15-06

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 Absolute-Leeco Project shall run with the real property that is the subject of a General Plan Amendment/Annexation to the City of Merced. 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, the *Expanded Initial Study for Absolute-Leeco Annexation to the City of Merced* incorporates some mitigation measures adopted as part of the *Merced Vision 2015 General Plan Program Environmental Impact Report* (SCH# 95082050), as mitigation for potential impacts of the Project. Therefore, following the Absolute-Leeco Annexation Mitigation Monitoring Checklist is a list of these relevant General Plan mitigation measures.

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 the Absolute-Leeco Annexation. 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.
Verification:	These columns will be initialed and dated by the individual designated to verify adherence to the project specific mitigation.

Absolute-Leeco Annexation Mitigation Monitoring Checklist

Project Name: _____ **File Number:** _____
Approval Date: _____ **Project Location** _____
Brief Project Description _____

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City of Merced’s Mitigation Monitoring Requirements (MMC 19.28) with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6).

<i>Mitigation Measure</i>	<i>Timing</i>	<i>Agency or Department Consultation</i>	<i>City Verification (date and initials)</i>
2. AGRICULTURAL RESOURCES			
2-1 A provision shall be recorded by the applicants/developer or successors, at time of sale of any residentially-zoned property within the project that lies within 1,000 feet of the external boundary of any non-project property which currently has an active agricultural operation (including 4-H projects), or has had an agricultural operation on it during the calendar year preceding the year within which the sale takes place. This provision shall notify the buyer(s) and any subsequent owner(s) of the possible inconvenience or discomfort of farming operations, arising from the use of agricultural chemicals, including pesticides, and fertilizers, as well as from the pursuit of agricultural operations including plowing, spraying, and harvesting which occasionally generate dust, smoke, noise and odor, and the priority to which Merced County places on agricultural operations.	<i>Building Permits</i>	<i>City Planning & Inspection Services</i>	EXHIBIT A

<i>Mitigation Measure</i>	<i>Timing</i>	<i>Agency or Department Consultation</i>	<i>City Verification (date and initials)</i>
3) AIR QUALITY			
3-1. The design and construction of the Project within the Village Residential Portion of the Project shall adhere to <i>the Merced Vision 2015 General Plan</i> “Urban Design Goals, Policies and Actions” (Chapter 6).	<i>Tentative Subdivision Map</i>	<i>City Planning & Inspection Services</i>	
3-2. The high-voltage power line easements shall be developed with a Class I Bike Path / pedestrian way, open space and linear open space storm drain basin, that provides residents an off-street connection to neighborhood parks, schools and commercial areas.	<i>Tentative Subdivision Map</i>	<i>City Planning & Inspection Services</i>	
3-3. Roads between the core-commercial area (in the Bandoni Annexation Project Area to the south) and adjacent and surrounding residential areas shall be provided in a manner where they converge at the core commercial area south of the annexation area. In order to implement this design, the Project shall adhere to the General Plan policies as depicted in the Project’s “Planned Development Standards,” including its road design standards (Appendix F).	<i>Tentative Subdivision Map</i>	<i>City Planning & Inspection Services</i>	

<i>Mitigation Measure</i>	<i>Timing</i>	<i>Agency or Department Consultation</i>	<i>City Verification (date and initials)</i>
3-4. Development within the Village Residential areas shall be “pedestrian in scale” and shall provide direct and easy access to the core commercial area and transit stop. Residential buildings in the urban village shall “front” onto the street (no long uninterrupted walls). Building facades should be varied and articulated to provide visual interest to pedestrians. All through streets shall contain park strips with shade trees. In order to implement this design, the Project shall adhere to these General Plan policies as depicted in the Projects “Planned Development Standards,” including its road design standards (Appendix F).	<i>Conditional Use Permit</i>	<i>City Planning & Inspection Services</i>	
5) CULTURAL RESOURCES			
5-1. If evidence of archaeological artifacts or paleontologic resources are discovered during construction, all operations within an area at and adjacent to the discovered site shall halt until a qualified archaeologist determines the extent of significance of the site.	<i>Building Permits</i>	<i>City Planning</i>	
5-2. If evidence of human remains are discovered during construction, all operations at and adjacent to the discovered site shall halt, and the Merced County Coroner shall be contacted.	<i>Building Permits</i>	<i>City Planning</i>	
5-3. On-site preservation of a resource is the preferred alternative. Preserving a cultural deposit maintains the artifacts in context and may prevent inadvertent discovery of, or damage to, human burials. Preservation may be accomplished through a number of means such as capping or covering the site with a layer of soil, fencing the site area, and/or incorporation of the resource in a park area.	<i>Building Permits</i>	<i>City Planning</i>	

EXHIBIT A

<i>Mitigation Measure</i>	<i>Timing</i>	<i>Agency or Department Consultation</i>	<i>City Verification (date and initials)</i>
11) NOISE			
11-1. Prior to or concurrent with submittal of a tentative subdivision map, the applicant shall provide a project development plan that includes a six-foot tall wall and a landscaped area between said wall and edge of the "G" Street right-of-way (behind the sidewalk) of no less than 15 feet.	<i>Tentative Subdivision Map</i>	<i>City Planning & Inspection Services</i>	

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 _____

APPLICABLE MITIGATION MEASURES OF THE GENERAL PLAN EIR— ABSOLUTE-LEECO ANNEXATION

<i>Mitigation Measure</i>	<i>Timing</i>	<i>Agency or Department Consultation</i>	<i>City Verification (date and initials)</i>
<i>Plant/Animal Life</i>			
3-a) When site-specific development proposals are submitted to the City for review and action, surveys should be conducted for special-status species prior to the disturbance of potentially suitable habitat. All surveys will be conducted in accordance with applicable state and federal guidelines.	<i>Annexation</i>	<i>City Planning</i>	<i>Completed in March 2004 and 2005 with Biological Resources Inventory by Live Oaks Associates (Appendix D)</i>
<i>Traffic/Circulation</i>			
7-a) Appropriate traffic studies shall be prepared for all development projects which can be expected to reduce a road segment or intersection levels of service below “D.”	<i>Annexation</i>	<i>City Planning</i>	<i>Not Applicable (roads operating at LOS D or better.</i>
7-b) The City shall require all development proposals to contribute, based on their proportionate share of impact, to circulation system improvements necessary to maintain at least a level of service “D” on all road segments and intersections impacted by the development project.	<i>Certificate of Occupancy</i>	<i>City Planning</i>	
<i>Public Facilities/Services</i>			
8c) Site designs will need to be reviewed to assure that development does not hinder efficient and cost-effective public services delivery.	<i>Tentative Subdivision Map</i>	<i>City Planning</i>	
8-d) Development projects will be required to pay public facilities impact fees as established by the City in accordance with the requirements of State law.	<i>Certificate of Occupancy</i>	<i>City Planning</i>	

EXHIBIT A