

LOCATION MAP  
SCALE: 1" = 400'

NO.	DESCRIPTION	DATE	BY	REVISION
1	PRELIMINARY	11/11/09	WAL-MART	1
2	REVISED	11/11/09	WAL-MART	2
3	REVISED	11/11/09	WAL-MART	3
4	REVISED	11/11/09	WAL-MART	4
5	REVISED	11/11/09	WAL-MART	5
6	REVISED	11/11/09	WAL-MART	6
7	REVISED	11/11/09	WAL-MART	7
8	REVISED	11/11/09	WAL-MART	8
9	REVISED	11/11/09	WAL-MART	9
10	REVISED	11/11/09	WAL-MART	10
11	REVISED	11/11/09	WAL-MART	11
12	REVISED	11/11/09	WAL-MART	12
13	REVISED	11/11/09	WAL-MART	13
14	REVISED	11/11/09	WAL-MART	14
15	REVISED	11/11/09	WAL-MART	15
16	REVISED	11/11/09	WAL-MART	16
17	REVISED	11/11/09	WAL-MART	17
18	REVISED	11/11/09	WAL-MART	18
19	REVISED	11/11/09	WAL-MART	19
20	REVISED	11/11/09	WAL-MART	20

**SITE DATA TABLE**

PROJECT: REGIONAL DISTRIBUTION CENTER NO. 7078

OWNER: WAL-MART STORES, L.P.

DESIGNER: CENTER BURGESS, INC.

DATE: 11/11/09

SCALE: AS SHOWN

PROJECT NO.: CB-09-001

PROJECT ADDRESS: 1300 S. CHILDS AVENUE, MERCED, CA 95341

PROJECT PHONE: (209) 386-1000

PROJECT FAX: (209) 386-1001

PROJECT EMAIL: CB@CENTERBURGESS.COM

PROJECT WEBSITE: WWW.CENTERBURGESS.COM

PROJECT CONTACT: JEFFREY BURTON, PROJECT MANAGER

PROJECT PHONE: (209) 386-1000

PROJECT FAX: (209) 386-1001

PROJECT EMAIL: JEFFREY.BURTON@CB-CENTERS.COM

PROJECT WEBSITE: WWW.CENTERS.COM

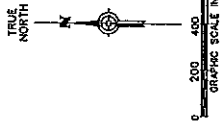
PROJECT CONTACT: JEFFREY BURTON, PROJECT MANAGER

PROJECT PHONE: (209) 386-1000

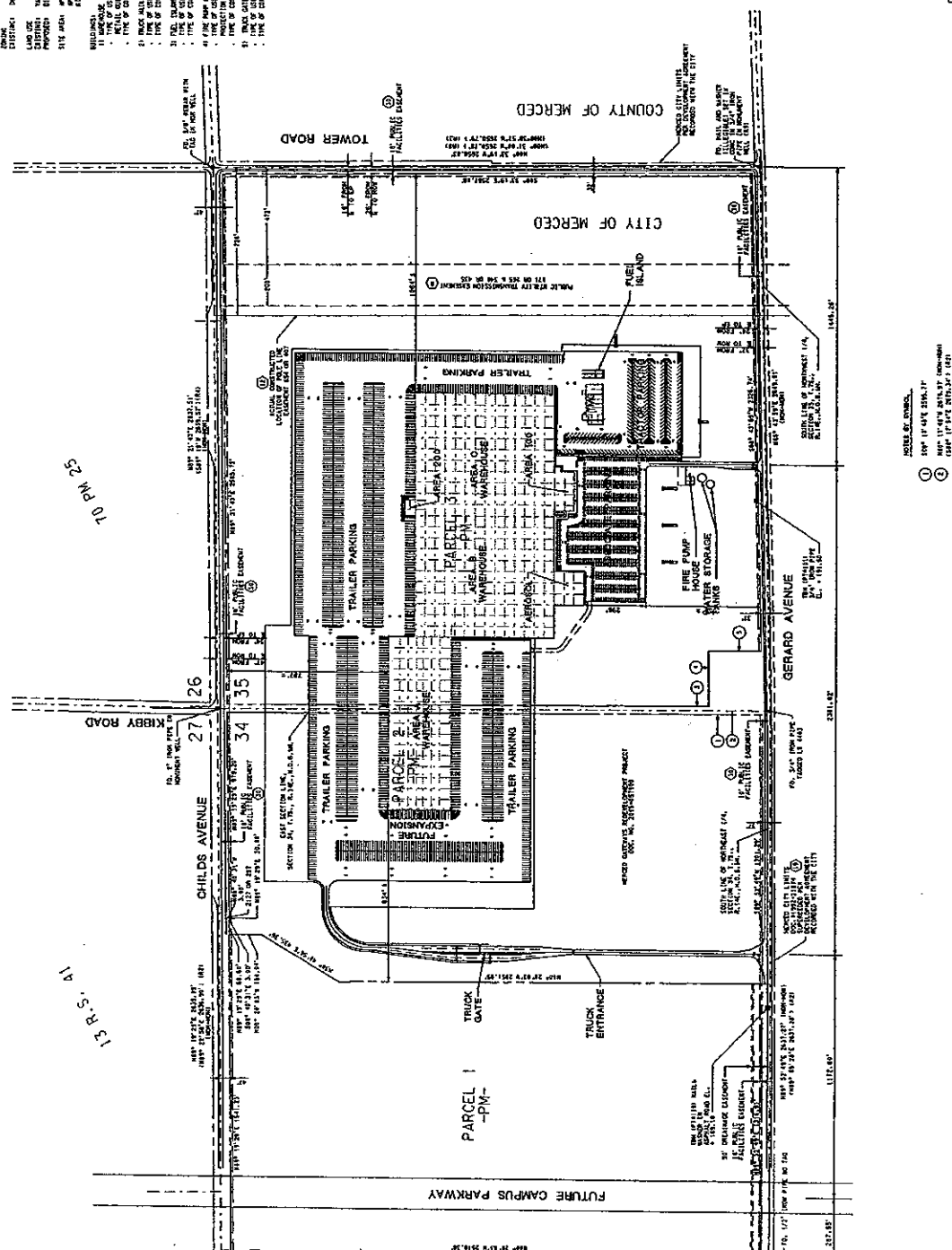
PROJECT FAX: (209) 386-1001

PROJECT EMAIL: JEFFREY.BURTON@CB-CENTERS.COM

PROJECT WEBSITE: WWW.CENTERS.COM



NO.	DESCRIPTION	DATE	BY	REVISION
1	PRELIMINARY	11/11/09	WAL-MART	1
2	REVISED	11/11/09	WAL-MART	2
3	REVISED	11/11/09	WAL-MART	3
4	REVISED	11/11/09	WAL-MART	4
5	REVISED	11/11/09	WAL-MART	5
6	REVISED	11/11/09	WAL-MART	6
7	REVISED	11/11/09	WAL-MART	7
8	REVISED	11/11/09	WAL-MART	8
9	REVISED	11/11/09	WAL-MART	9
10	REVISED	11/11/09	WAL-MART	10
11	REVISED	11/11/09	WAL-MART	11
12	REVISED	11/11/09	WAL-MART	12
13	REVISED	11/11/09	WAL-MART	13
14	REVISED	11/11/09	WAL-MART	14
15	REVISED	11/11/09	WAL-MART	15
16	REVISED	11/11/09	WAL-MART	16
17	REVISED	11/11/09	WAL-MART	17
18	REVISED	11/11/09	WAL-MART	18
19	REVISED	11/11/09	WAL-MART	19
20	REVISED	11/11/09	WAL-MART	20



NO.	DESCRIPTION	DATE	BY	REVISION
1	PRELIMINARY	11/11/09	WAL-MART	1
2	REVISED	11/11/09	WAL-MART	2
3	REVISED	11/11/09	WAL-MART	3
4	REVISED	11/11/09	WAL-MART	4
5	REVISED	11/11/09	WAL-MART	5
6	REVISED	11/11/09	WAL-MART	6
7	REVISED	11/11/09	WAL-MART	7
8	REVISED	11/11/09	WAL-MART	8
9	REVISED	11/11/09	WAL-MART	9
10	REVISED	11/11/09	WAL-MART	10
11	REVISED	11/11/09	WAL-MART	11
12	REVISED	11/11/09	WAL-MART	12
13	REVISED	11/11/09	WAL-MART	13
14	REVISED	11/11/09	WAL-MART	14
15	REVISED	11/11/09	WAL-MART	15
16	REVISED	11/11/09	WAL-MART	16
17	REVISED	11/11/09	WAL-MART	17
18	REVISED	11/11/09	WAL-MART	18
19	REVISED	11/11/09	WAL-MART	19
20	REVISED	11/11/09	WAL-MART	20

**Project Site Plan**  
**ATTACHMENT 2**

SCALE: 1" = 20'



September 2, 2009

City Clerk's Office  
City of Merced  
678 West 18th Street  
Merced, CA 95340

CITY OF MERCED  
SEP3'09 11:01

Re: Appeal of Planning Commission Actions for Wal-Mart Distribution Center Project.

Dear City Clerk:

This office represents the Merced Alliance for Responsible Growth ("Alliance") with respect to the City of Merced's consideration of the proposed Wal-Mart Regional Distribution Center and the Environmental Impact Report ("DEIR") prepared for the project. I am writing on behalf of the Alliance to appeal to the City Council, pursuant to Merced Municipal Code § 20.68.090 and MMC Chapter 20.96, two actions taken on August 24, 2009 by the Merced Planning Commission regarding this project.

**FIRST ACTION APPEALED**

On April 23, 2009, the Site Plan Review Committee referred the Site Plan application for this project to the Planning Commission pursuant to MMC section 20.68.40. On August 24, 2009, the Planning Commission referred the Site Plan application for this project to the City Council with a recommendation for approval.

Subdivision B of MMC section 20.68.40 provides: "In the event the site plan committee is of the opinion that a request is of such magnitude to be a significant policy interpretation and/or of special interest to surrounding property owners and the planning commission, the site plan committee shall refer the request to the planning commission for a hearing and decision."

This section gives the Planning Commission authority to "hear and decide" the Site Plan application. It does not give the Planning Commission authority to avoid making a decision on the Site Plan application by referring it to the City Council for decision.

Nevertheless, this appeal is not based on this legal error, and Alliance does appeal the Planning Commission's decision to refer the Site Plan application to the City Council. Indeed, Alliance believes that as a matter of policy, the Commission's referral of the Site Plan application to the City Council for decision is the appropriate course of action to take.

**MARG Appeal Letter**  
**ATTACHMENT 3**

Instead, Alliance files this appeal to protect against any contention by any party that because MMC section 20.68.40 does not give the Planning Commission authority to refer the Site Plan application to the City Council for decision, the Planning Commission's action on August 24, 2009 must be construed as a decision to approve the Site Plan.

### **Grounds for Appeal**

As a matter of fact, the Planning Commission did not approve the Site Plan application; instead, the Planning Commission referred the Site Plan application to the City Council for decision.

If the Planning Commission did approve the Site Plan application, any such approval would violate the California Environmental Quality Act because (1) Site Plan approval is a discretionary decision subject to CEQA, and; (2) the City's compliance with CEQA is not complete because the Environmental Impact Report prepared for this project has not been certified yet.

If the Planning Commission did approve the Site Plan application, any such approval would violate the California Planning and Zoning Law because the Site Plan is inconsistent with the Merced General Plan in that the General Plan Circulation Element designates Kibby Road as a public right of way and the Site Plan requires abandonment of this right of way.

### **Relief Requested**

Alliance requests that the City Council adopt a resolution confirming that the Planning Commission did not decide whether to approve the Site Plan application. In alternative, if the City Council's position is that the Planning Commission did approve the Site Plan application, Alliance requests that (1) the City Council reverse that decision; (2) take jurisdiction over the decision whether to approve the Site Plan application; and (3) hear the Site Plan application in conjunction with its consideration of the EIR prepared for the Project, and the General Plan Amendment and abandonment of the Kibby Road right of way associated with this project.

## **SECOND ACTION APPEALED**

At its August 24, 2009 hearing on this Project, the Planning Commission also adopted findings that the abandonment of the Kibby Road right of way is consistent with the Merced General Plan. To the extent that any party contends the Planning Commission made final findings that the abandonment of the Kibby Road right of way is consistent with the Merced General Plan, Alliance appeals this action.

### **Grounds for Appeal**

The Staff report (at p. 10-11) states that action by the Planning Commission to adopt findings that the abandonment of Kibby Road right of way is consistent with the Merced General Plan is governed by Streets and Highways Code 8313 and Gov Code 65402.

City Clerk's Office  
City of Merced  
September 2, 2009  
Page 3 of 3

Neither statute authorizes the Planning Commission to adopt final "findings" that the abandonment of a right of way is consistent with a General Plan. Subdivision (a) of Gov. Code section 65402 provides for a planing commission to "report" on whether abandonment of a right of way is consistent with a General Plan, not to adopt final findings.

#### **Relief Requested**

Alliance requests that the City Council (1) adopt a resolution confirming that the Planning Commission's adoption of findings that the abandonment of the Kibby Road right of way is consistent with the Merced General Plan was not "final" and constitutes the "report" referenced in subdivision (a) of Gov. Code section 65402.; (2) take jurisdiction over the question whether the abandonment of the Kibby Road right of way is consistent with the Merced General Plan and the decision whether to the abandon the Kibby Road right of way; and (3) hear the abandonment of the Kibby Road right of way application in conjunction with its consideration of the EIR prepared for the Project, and the General Plan Amendment and Site Plan application associated with this project.

Thank you for your attention to this matter.

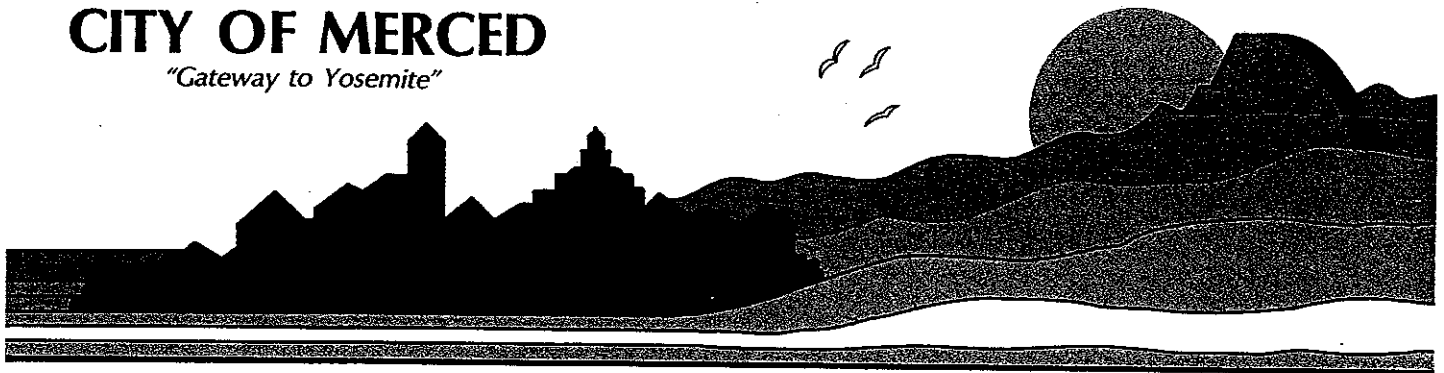
Very truly yours,



Thomas N. Lippe

# CITY OF MERCED

"Gateway to Yosemite"



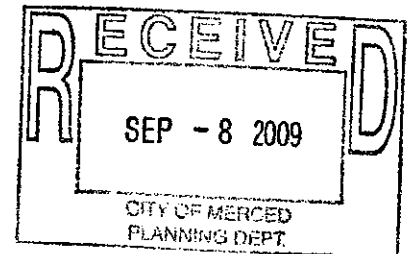
---

Office of the City Clerk Telephone (209) 388-7100 Facsimile (209) 388-7107

---

September 4, 2009

Mr. Thomas N. Lippe  
Lippe, Gaffney and Wagner, LLP  
329 Bryant Street, Suite "B"  
San Francisco, CA 94107



RE: Your September 2, 2009 Appeal of City of Merced Planning  
Commission Actions for the Wal-Mart Distribution Center

Dear Mr. Lippe:

The City of Merced received your letter of "appeal" of the Planning Commission actions regarding the Wal-Mart Distribution Center on September 3, 2009. In reviewing the letter, there is one sentence that is unclear and we ask for clarification.

In the fourth paragraph under the first action appealed, your letter reads as follows: "nevertheless, this appeal is not based on this legal error, and Alliance does appeal the Planning Commission's decision to refer the Site Plan Application to the City Council."

The City does not want to misinterpret your intent. A plain reading of this sentence appears that it is incongruous. What we are asking in this respect is for you to confirm if the word "not" is missing from the second half of the sentence between the word "does" and "appeal"? Therefore, in

*City Clerk Letter*

678 We: **ATTACHMENT 4** 95340

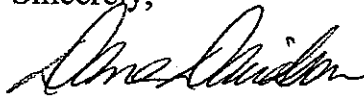
07

*Thomas Lippe*  
*September 4, 2009*  
*Page 2*

order to assist with the analysis of this issue, we would ask that you confirm that the "not" is missing as quoted above or in the alternative confirm that it is not missing so that the City may properly interpret what you intend.

We would ask that you confirm the same in writing as soon as possible in order to allow full consideration to be given to your request.

Sincerely,



DANA DAVIDSON  
Assistant City Clerk

CC: Kim Espinosa, Planning Manager  
Gregory G. Diaz, City Attorney  
Jeanne Schechter, Chief Deputy City Attorney



Appeal of City of Merced Planning Commission Actions

**Davidson, Dana**

**From:** Tom Lippe [tlippe@lgwlawyers.com]  
**Sent:** Tuesday, September 08, 2009 5:45 PM  
**To:** Bingaman, Jamie  
**Cc:** Keith Wagner; Schechter, Jeanne; Diaz, Gregory; Espinosa, Kim; Davidson, Dana  
**Subject:** Re: Appeal of City of Merced Planning Commission Actions

Dear Ms. Davidson:

You are correct. The word "not" is missing from the second half of the sentence. The sentence should read: "Nevertheless, this appeal is not based on this legal error, and Alliance does not appeal the Planning Commission's decision to refer the Site Plan application to the City Council."

Tom Lippe  
Lippe Gaffney Wagner LLP  
329 Bryant St.; Suite 3D  
San Francisco, CA 94107  
Tel: (415) 777-5600  
Fax: (415) 777-9809  
Email: [tlippe@lgwlawyers.com](mailto:tlippe@lgwlawyers.com)  
Web: [www.lgwlawyers.com](http://www.lgwlawyers.com)

CONFIDENTIALITY NOTE: This and any accompanying pages contain information from LIPPE GAFFNEY WAGNER LLP which may be confidential and/or legally privileged. The information is intended to be for the sole use of the individual or entity named above. Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521. If you are not the intended recipient please contact the sender and destroy all copies of the communication.

— Original Message —

**From:** [Bingaman, Jamie](mailto:Bingaman, Jamie)  
**To:** [tlippe@lgwlawyers.com](mailto:tlippe@lgwlawyers.com)  
**Cc:** [Davidson, Dana](mailto:Davidson, Dana) ; [Espinosa, Kim](mailto:Espinosa, Kim) ; [Diaz, Gregory](mailto:Diaz, Gregory) ; [Schechter, Jeanne](mailto:Schechter, Jeanne)  
**Sent:** Tuesday, September 08, 2009 4:38 PM  
**Subject:** Appeal of City of Merced Planning Commission Actions

Good Afternoon Mr. Lippe,

Attached please find a letter from Dana Davidson, Assistant City Clerk in response to your September 2, 2009 Appeal of Merced Planning Commission Actions for the Wal-Mart Distribution Center. The original was sent via the United States Postal Service.

Thank you,  
Jamie Bingaman  
Records Clerk

<<AppealLetter.pdf>>

***MARG E-mail to City Clerk***

**ATTACHMENT 5**

09

**CITY OF MERCED  
Planning Commission**

**MINUTES**

Merced City Council Chambers  
Wednesday, August 19, 2009

Fire Chief MITTEN welcomed everyone to the meeting and reviewed life safety issues and Senior Police Officer CARLIN reviewed the rules regarding the meeting room and the conduct of the meeting.

Chairperson AMEY called the meeting to order at 6:04 p.m., followed by a moment of silence and the Pledge of Allegiance.

**ROLL CALL**

Commissioners Present: Bob Acheson, Mary Ward, Richard Cervantes, Carole McCoy, Lawrence Zuercher, Tena Williams, and Chairperson Dwight Amey

Commissioners Absent: None

Staff Present: Director of Development Services Gonzalves, Planning Manager Espinosa, Principal Planner King, Senior Engineer Franck, Associate Planner Sterling, Planner Nelson, Planner Hamilton, Engineering Technician Fierro, Planning Technician Nutt, Chief Deputy City Attorney Schechter, Deputy City Attorney Rozell, Secretary II Lane, Secretary I Lee, and Recording Secretary Lucas

1. **APPROVAL OF AGENDA**

M/S WARD-ACHESON, and carried by unanimous voice vote, to approve the Agenda as submitted.

2. **MINUTES**

M/S WARD-MCCOY, and carried by unanimous voice vote, to approve the Minutes of August 5, 2009, as submitted.

3. **COMMUNICATIONS**

None.

4. ITEMS

4.1 General Plan Amendment #06-01; Vacation/Abandonment Application #06-01; Site Plan Review Application #260; and Certification of Environmental Impact Report #06-01, initiated by Carter & Burgess, Inc., agent for Wal-Mart Stores East, LP, property owners. The proposed Wal-Mart Distribution Center includes consideration of a general plan amendment and vacation/abandonment application for a change in the General Plan Circulation Element and the abandonment of the right-of-way for Kibby Road (a designated collector) between Childs and Gerard Avenues; a site plan review application to approve the construction of a regional distribution center (approximately 1.1 million square feet, operating 24 hours per day, and employing approximately 1,200 employees) and associated facilities on approximately 230 acres, generally located at the northwest corner of Gerard Avenue and Tower Road within a Heavy Industrial (I-H) zone; and the certification of an environmental impact report regarding the Project.

Secretary's Note: Prior to the meeting, the Planning Commissioners were provided with several additional letters and e-mails that were received after distribution of the Staff Report (Memo from Planning Manager Espinosa dated August 19, 2009). The Commission also received an Errata Sheet for the Draft Findings of Fact and Statement of Overriding Considerations that addressed some minor substantive revisions to Attachment G of Staff Report #09-18.

Director of Development Services GONZALVES thanked the Commission and the public for their participation. He noted the hard work by City Staff to bring this project before the Commission. He introduced Planning Manager ESPINOSA, the project planner, and staff members assisting to facilitate the meeting. He also noted that there were translators available for those that need them. He asked that the audience remain respectful and courteous during the meeting.

Mr. GONZALVES briefly reviewed the process for the project to this point and complimented all parties on their professionalism during the process.

Planning Manager ESPINOSA welcomed everyone and explained the procedure for the meeting and process for those who wish to speak. Following the staff presentation, the public testimony portion would commence. She specifically noted that because of the number of people who wished to speak, each speaker would be limited to three minutes; they would be allowed to speak only once; and could not yield any portion of their time to another speaker.

Ms. ESPINOSA reviewed the proposed project, a 1.1 million-square-foot regional distribution center on 230 acres zoned Heavy Industrial. Ms. ESPINOSA further noted the employment numbers, operation hours, and trip generation. Also reviewed was the site design, building design, elevations, required entitlements, General Plan and Zoning compliance, traffic and circulation, landscaping, public improvements and City services, neighborhood and school interface, neighborhood impacts, and the required abandonment of the Kibby Road right-of-way between Childs and Gerard Avenues due to the project layout.

Ms. ESPINOSA also noted the project timeline since the application was submitted in 2006. She explained the process to date, including selection of consultants for preparation of the Environmental Impact Report (EIR), Site Plan Review Committee Referral, public correspondence, and public noticing.

Regarding the Draft and Final EIR process, Ms. ESPINOSA noted the milestones beginning with the contract with the consultants approved by Council in May 2006 through the release of the Final EIR in July 2009. She reviewed examples of significant impacts identified in the report, including conversion of prime farmland; generation of short-term (construction) and long-term (operation-related) emissions of air pollutants; generation of greenhouse gases; loss of habitat for Swainson's Hawk and Burrowing Owl; light, glare, and visual impacts; water quality and flooding; construction and traffic noise; and impacts on three nearby residences. She further identified significant impacts related to intersections in the area as well as roadway segment impacts.

Ms. ESPINOSA reviewed the process to mitigate these impacts and explained that "significant and unavoidable impacts" would remain

after mitigation and the resulting Draft Findings of Fact and Statement of Overriding Considerations. To ensure compliance with the mitigation measures, a Mitigation Monitoring Program is required for the project and pursuant to the Merced Municipal Code and project conditions, the applicant must pay all costs of the program.

Regarding the Final EIR and response to comments received, she advised that there were 315 comments letters received on the Draft EIR and that a response to each comment letter is contained in the Final EIR. The Final EIR also contains minor modifications to the text and mitigation measures. Prior to the meeting, the Commission was provided an Errata sheet that addressed some minor substantive revisions to Attachment G of Staff Report #09-18.

She also reviewed staff's recommendation to the Commission as outlined in the staff report. For further information regarding the project, staff's recommendations, findings, and conditions, refer to Staff Report #09-18.

Commissioner ACHESON noted for the record that he had previously attended two meetings held by the applicant at the Mainzer Theater, visited the Porterville Wal-Mart Distribution Center, met with River City Communications, and attended a viewing at the local store of a truck from Wal-Mart's hybrid truck fleet.

Public testimony was opened at 6:41 p.m.

AARON J. RIOS, Senior Manager of Public Affairs, Wal-Mart Stores, spokesman for the applicant, spoke in favor of the project. Mr. RIOS thanked Ms. ESPINOSA and the entire staff for their hard work and efforts in preparing this project. Mr. RIOS introduced his team members who were available to answer questions.

Mr. RIOS reviewed a PowerPoint presentation discussing the conceptual plan for the project, the site plan, landscape plan, off-site infrastructure improvements, site access and traffic circulation, zoning, buffer zone, and the facility's sustainability features.

Mr. RIOS explained Wal-Mart's record of being a good neighbor; the economic benefits the project would provide to the community, including the employment figures for this project; local suppliers;

their charitable and outreach programs; disaster relief assistance; and their history in California and the Central Valley.

Mr. RIOS spoke about Wal-Mart's fleet efficiency and the hybrid truck fleet. He also noted their health and wellness programs and employee health coverage.

He noted the over 9,000 Merced area supporters, and survey results showing over 83% of those contacted supported the distribution center.

THOMAS LIPPE of Lippe, Gaffney, Wagner LLP, 329 Bryant Street, San Francisco, CA, attorneys for the citizen group Merced Alliance for Responsible Growth, thanked staff, particularly Ms. ESPINOSA, for their hard work and responsiveness in providing requested documents. City Staff was extremely professional and their hard work was appreciated.

Mr. LIPPE stated that he found the EIR to be defective in a number of ways, the most important being the impact to air quality. Mr. LIPPE also noted deficiencies regarding the assessment of traffic impacts, urban decay, and concerns regarding the City well located near the project site.

Mr. LIPPE said that the way in which the incremental impacts on air and traffic were determined is flawed and in violation of CEQA guidelines because it only took into consideration the project's individual incremental impacts instead of the impacts caused by progressive approvals of individual projects over the course of time. From this methodology, there would never be a finding of significant impact. As a result, the Statement of Overriding Considerations does not address the air quality impacts because they have been defined as not being significant and the public's ability to understand what their elected officials are doing has been significantly compromised since the initial finding of significance was subverted by the methodology used in the report. He questioned the use of the Air District's thresholds of significance and he indicated that the Air District's website did not provide documentation regarding how their thresholds of significance were reached.

Regarding traffic impacts, Mr. LIPPE said that the report used obsolete figures from 2006 which stated that other new developments would occur to contribute their fair share of mitigation funds to traffic improvements to reduce significant traffic impacts to a level of less than significant. By counting on these developments occurring, the project's traffic impacts appear to be less. In order to be accurate, these figures should be updated. He also indicated that the project's traffic impacts should have been compared against the existing baseline and not a projected future condition.

Mr. LIPPE also found fault that Mitigation Measure 4.2-2b, which would have required an enforceable employee trip reduction program, was not included in the Final EIR because it was determined to no longer be enforceable based on a State Health and Safety Code Section that prevents the City from requiring such a program. He contends that the Health and Safety Code Section is only applicable to existing business that would require them to implement a trip reduction program for their employees. He said that it does not apply in this case where an applicant has asked for a permit for a new project. In this regard, the EIR makes a fundamental legal mistake, which is important because employee trips are an important part of the air pollution problem.

Regarding Urban Decay, Mr. LIPPE'S consultant found that the project would have a direct impact on the adjacent neighborhood. He said that the project would contribute to the pressure on that neighborhood, which would prevent it from reaching build out; and would contribute to the foreclosure rate because property values would decrease as a result of the project. Strong overall housing demand in the City addressed in the Final EIR would not help this neighborhood.

Mr. LIPPE also noted that their hydrologist found that one drinking water well nearby had failed several years ago due to contamination from an underground tank. This information caused concern regarding the possibility of corrosive soils in the area and the increased risk of contamination to the existing well near the project site. Regarding the comment, the response in the Final EIR stated that this issue would be addressed once the final geotechnical report

is completed and identifies the soil characteristics and whether there is a high risk or not of the municipal well being contaminated. He said from a policy standpoint that makes no sense and from a legal standpoint, it is simply illegal. He said that there is an environmental setting that exists in terms of soils characteristics that would affect the risk of the project's underground tanks breaching and contaminating the City's well. That environmental setting information is absent in the Draft EIR; it's admitted in the Final EIR that it is absent, and that it will be forthcoming at some undefined time in the future. He said that the law requires that environmental setting information be provided now before the entitlements are granted when a situation with that kind of risk exists.

Mr. LIPPE also noted that he found there to be a common thread to the Final EIR of being non-responsive in many respects and evasive in others regarding the comments on the Draft EIR.

The following members of the audience spoke in favor of the project:

LARRY GONZALES, Planada	DON BERGMAN, Merced
NELLIE MCGARRY, Merced	VICKY RAMIREZ, Le Grand
ADAM LUCIO	HENRY XIONG, Merced
JIM ABBATE, Merced	MOUA THAO, Merced
KAY FLANAGAN-SPINELLI, Merced	JEFF PENNINGTON, Merced
DOROTHY KIELTY, Atwater	DOUG FLUETSCH, Merced
JOE RAMIREZ, Merced	DONNA WINCHESTER, Merced
LEE BOESE, JR, Merced	JOHN BLEIMAN, Merced
GAIL FLANAGAN- MCCULLOUGH, Merced	LLOYD STEPP, Atwater
MICHAEL MALONE, Merced	GARY ROOKER, Merced
BARBARA HOFFMAN, Atwater	RON EWING, Atwater
BUD WALLACE, Merced	BILL BAKER, Merced
LINDA PEOPLE, Merced	GE THAO, Merced
CARL POLLARD, Merced	JOHN HARRELL, Merced
LES MCCABE, Merced	GRANT FORD, Merced
DAVID MELIN, Merced	MARY C. JONES, Merced



Planning Commission Minutes

Page 8

August 19, 2009

BOB AYERS, Merced

RENEE DAVENPORT, Merced

DEBI HAMLIN-WATSON,  
Merced

TOM CLENDENIN, Merced

JACK MOBLEY, Merced

PATRICK TAYLOR, Merced

The main focus of the Proponents of the project was the need for jobs in Merced, specifically jobs that offer opportunities for a diverse workforce.

The president of the Boys and Girls Club spoke about Wal-Mart's great partnership with the community. Specifically, that they provide back-to-school supplies and gifts for the children at Christmas. It was also noted that the site has been properly zoned for this type of project for some time and has easy access to the freeway.

Another proponent said that this project would stimulate the economy following the closure of Ragu and other local businesses. The spokesperson for the Hispanic Chamber of Commerce and other community leaders said that they visited Wal-Mart Distribution Centers and were impressed by the centers; they were clean, efficient, high tech, and local teachers and businesses were enthusiastic about the distribution centers' partnership with their communities.

Other proponents noted that the accusations by opponents such as the Merced Alliance for Responsible Growth (MARG) were not true and they have not seen the issues raised by MARG at either the McLane or Save Mart Distribution Centers. They further said that if this project is not located in Merced, it would be approved in a surrounding community and Merced would have the impacts, but not the benefits. One speaker said that MARG should have to prove their accusations with facts.

Also noted by proponents was the fact that with the closure of Ragu, Gottschalks, Albertson's, Linens and Things, Malibu Boats, and other businesses, there has been a larger reduction in employee trips and truck traffic than what would be generated by this project if approved. A few speakers who are familiar with, or were a part of, the trucking industry said that Wal-Mart has the greenest fleet in the industry and that trucking and trucks are not the problem.

Planning Commission Minutes

Page 9

August 19, 2009

Proponents also felt that the City would be sending the wrong message to other prospective businesses if this project was not approved. It was noted that the City should find ways to attract responsible employers to Merced. This project will create necessary jobs and those employees would be spending their money in Merced.

Several speakers said that Merced should be honored that Wal-Mart, one of the largest retailers in the world, had chosen Merced for this project and had been patient throughout the long process.

A former employee of Merced County Environmental Health said that although there are still pollution problems in the area, there has been progress made. He said that regulations make it difficult and expensive to get projects completed and a lot of "environmentalism" is over done.

One 16-year employee of the local Wal-Mart store said that her job provides her a good salary, benefits, and opportunities she did not have at her previous employment. She said she thought it was important for her to stand up and say Wal-Mart is a good employer, helpful, and like a family.

The following members of the audience spoke in opposition to the project:

SOPHIA CURIEL, Merced

JOEL J. KNOX, Merced

KYLE STOCKARD, Merced

TOM GRAVE, Merced

KARA MIDDLEBROOKS,  
Merced

AUDREY ALORRO, Merced

CRAIG BLAKE, Merced

CARLOS SEIJAS, Merced

DALE LANDIS, Merced

RITO RAMIREZ, Merced

ROD WEBSTER, Merced

JOANNE CLARKE, Merced

MARK OSBORNE, Merced

PHIL TUCKER, Napa

CHARLES BOLIN, Merced

DOUG FLEMING, Merced

RITA MURPHY, Merced

HARRIET LAWLOR, Merced

PAM ROUSSOS, Merced

NICHOLAS ROBINSON, Merced

The main focus of the opposition was the impact to the health of the community from traffic and pollution. Opponents noted that the project was too close to schools and would adversely affect the health

of the children attending those schools. Noting the high rate of asthma in the area, opponents said that rate would only increase as a result of this project.

The president of a nearby neighborhood association said that the response to the Draft EIR by CalTrans noted that the studies regarding traffic are incomplete and should be redone. The noise, light, and traffic impacts on the surrounding neighborhoods would affect the residents' quality of life. Speakers said that there should be more of a buffer around the project to lessen the impacts.

Also noted was the fact that only 40% of the trucks would be from the Wal-Mart fleet and that the remaining independent trucks would not be held to the same standards as Wal-Mart.

Regarding the jobs resulting from the project, speakers said that Wal-Mart has a poor labor record, and that their low wages equal working poor. One former employee said that Wal-Mart was not a good employer. Others said Wal-Mart should be required to show how many of the jobs would go to Merced residents and provide a job guarantee for Merced citizens.

A labor representative said that Wal-Mart has a history of misleading municipalities. He said this project would prove to be an economic nightmare and the environmental cost would be born by the City. He said that the community could not afford lousy jobs and most won't go to Merced residents.

Also noted by the opposition was the fact that the community needs jobs that do not jeopardize the health of its citizens and that it's about sustainability and the health of the community.

The final speaker noted that much was missing in the testimony. He acknowledged the benefits of the project, but said there was a disproportionate impact on the Southeast Merced neighborhood, including the children who attend Pioneer School. He said that if Wal-Mart comes to Merced, it should not be on the backs of the southeast area residents and alternatives should be considered.

The following items were submitted by speakers for the Commission's information:

Planning Commission Minutes

Page 11

August 19, 2009

- *The Grapes of Rathke*, Wall Street Journal, November 8, 2006.
- *Merced: Ghost Town, USA*, Business Week, June 29, 2009.
- Letter from the Citizens for the Betterment of Merced County dated August 19, 2009.
- Letter from Henry Xiong dated April 23, 2009, with Petition.

Public testimony was closed at 10:25 p.m.

Secretary's Note: During the public comment period, the Commission recessed the meeting at the following times:

7:30 p.m. to 7:45 p.m.

9:05 p.m. to 9:13 p.m.

9:47 p.m. to 10:00 p.m.

Ken ROZELL, Deputy City Attorney, recommended that the matter be continued to Monday night to allow the rebuttal testimony by Wal-Mart and then deliberation by the Commission.

Commissioner ZUERCHER asked if there were others who signed up to speak that did not. Staff advised that there were several that did not speak, but had completed cards. Commissioner ZUERCHER said that if someone signed up to speak they should be allowed the opportunity to speak. He said that this was an issue discussed at the last meeting, and it was decided that only those who signed up at the first meeting would be allowed to speak and he didn't think that should be changed. He said that those who had signed up, but gone home before speaking tonight should be given the opportunity to speak Monday.

Commissioner WILLIAMS said that she is also in favor of leaving the public hearing open to those individuals who have submitted a card. The Commission decided that the meeting on Monday and the following Wednesday would be "as needed" and the Commission should stay consistent. She said that if they were to hear the rebuttal from Wal-Mart tonight, then the item would be discussed, a vote taken, and no one would have another opportunity to speak.

Commissioner WARD said that she did not have an objection to leaving the public hearing open and that she is not in favor of rushing to judgment and discussion at this late hour and said that it is a

disservice to have conversation back and forth from the audience because it is not in the record. She said that although leaving was their prerogative, she has no objection to leaving the public hearing open until Monday night in case there are people who still wish to speak.

Commissioner WILLIAMS asked how the remaining people would know they would be allowed to speak. Planning Manager ESPINOSA said that there is a spot on the speaker card for their phone number and staff would attempt to contact them. She said that the public hearing notice specified that the meeting would be continued to Monday, if necessary, and that with the press in attendance there would probably be something in the paper.

Commissioner CERVANTES said that he too had no objection to leaving it open, at least to those that had completed cards to speak. He said that he would have an objection to allowing someone to speak more than once. He added that he did not want to rush into a decision tonight, and has no objection to coming back on Monday. Commissioner CERVANTES also said that the Commission is only making a recommendation to City Council, and no matter what the outcome this meeting is not the end of the road and the public would have another opportunity to speak during the City Council meetings.

Commissioner MCCOY agreed that only those here tonight that had completed a card and wanted to speak should be able to come forward Monday evening to speak. She agreed with the other Commissioners that they should not rush to judgment, and the meeting should be continued to Monday night.

Commissioner ACHESON said that only those who had a card completed and had not yet spoken should have the opportunity to speak on Monday. His concern was that people would try to come in and speak twice. Commissioner ACHESON said that he is sympathetic to those that left, but the Commission stayed, as well as other audience members, and if a person was that interested in the process, they should have stayed.

Commissioner WARD disagreed only with the restriction. She agreed that it should be one person, one speaking opportunity. Since

it was in the paper that it would be more than one night, if someone planned to attend Monday night to speak they should have that opportunity. She said that it was not a good idea to deny those who read in the paper that they would have an opportunity on more than one evening to speak. She said that in all fairness she did not see the harm in allowing the public hearing to remain open and allow speakers one opportunity to speak during the whole process.

Chairperson AMEY asked how many spoke and staff advised that 83 cards were submitted and 25 did not speak. He said that he was not in favor of opening it up further on Monday. Chairperson AMEY said that he did not mind coming back Monday to allow those who had filled out a card to speak, but not allow new cards to be completed.

Commissioner ZUERCHER concurred and stated that everyone had the opportunity to speak. He is not opposed to calling 25 people and the Commission should err on the side of caution.

Ms. ESPINOSA said that if they left a phone number staff could call them, but if they did not then staff may not be able to contact them, but would make the effort to do so.

M/S CERVANTES-WILLIAMS, and carried by the following vote, to continue the public hearing to Monday, August 24, 2009, at 6:00 p.m., in the Council Chambers of the Merced Civic Center, 678 W. 18<sup>th</sup> Street, Merced, CA, to allow the remaining 25 audience members who submitted Speaker Request Cards to speak before the Commission and allow rebuttal by Wal-Mart before closing public testimony and deliberating.

AYES: Commissioners Acheson, Cervantes, McCoy, Zuercher, Williams, and Chairperson Amey

NOES: Commissioner Ward

ABSENT: None

5. INFORMATION ITEMS

5.1 Calendar of Meetings/Events

There was no discussion regarding the calendar of meetings/events.

6. **ADJOURNMENT**

Chairperson AMEY adjourned the meeting at 10:37 p.m., to the continued public hearing on Monday, August 24, 2009, at 6:00 p.m., in the City Council Chambers, regarding the Wal-Mart Distribution Center project (Item 4.1).

Respectfully submitted,



KIM ESPINOSA, Secretary  
Merced City Planning Commission

APPROVED:



DWIGHT AMEY, Chairperson  
Merced City Planning Commission

**CITY OF MERCED**  
**Planning Commission**

**MINUTES**

Merced City Council Chambers  
Monday, August 24, 2009

Senior Police Officer CARLIN reviewed the location of the public restrooms, the rules regarding the meeting room, and the conduct of the meeting.

Chairperson AMEY called the continued public hearing (continued from August 19, 2009) to order at 6:02 p.m., followed by a moment of silence and the Pledge of Allegiance.

**ROLL CALL**

Commissioners Present: Bob Acheson, Mary Ward, Richard Cervantes, Carole McCoy, Lawrence Zuercher, Tena Williams, and Chairperson Dwight Amey

Commissioners Absent: None

Staff Present: Director of Development Services Gonzalves, Planning Manager Espinosa, Senior Engineer Franck, Associate Planner Sterling, Planner Nelson, Planner Hamilton, Engineering Technician Fierro, Planning Technician Nutt, Chief Deputy City Attorney Schechter, Deputy City Attorney Rozell, Secretary II Lane, and Recording Secretary Lucas

**4. ITEMS**

- 4.1 (Continued from August 19, 2009) General Plan Amendment #06-01; Vacation/Abandonment Application #06-01; Site Plan Review Application #260; and Certification of Environmental Impact Report #06-01, initiated by Carter & Burgess, Inc., agent for Wal-Mart Stores East, LP, property owners. The proposed Wal-Mart Distribution Center includes consideration of a general plan amendment and vacation/abandonment application for a change in the General Plan Circulation



Element and the abandonment of the right-of-way for Kibby Road (a designated collector) between Childs and Gerard Avenues; a site plan review application to approve the construction of a regional distribution center (approximately 1.1 million square feet, operating 24 hours per day, and employing approximately 1,200 employees) and associated facilities on approximately 230 acres, generally located at the northwest corner of Gerard Avenue and Tower Road within a Heavy Industrial (I-H) zone; and the certification of an environmental impact report regarding the Project.

Public testimony was re-opened at 6:05 p.m.

The following members of the audience spoke in favor of the project:

JERRY SCHAFFER, Merced

JULIUS PEKAR, Merced

KATHLEEN CROOKHAM, Merced

EDWARD MORFORD, Merced

The proponents said that the jobs provided by the distribution center are important to the community, because the City needs diverse jobs. One speaker noted that if it is required that Wal-Mart hires 80% of its workforce locally, then that condition would have to be applied to other businesses coming to town. He said that he didn't think that a biotech or other high tech business would be able to find that percentage of qualified workers in Merced. The proponents also said that it is possible to have clean air and jobs, it is not a matter of one or the other.

The following members of the audience spoke in opposition to the project:

ELVIS BROCK, Merced

MARILYNNE PEREIRA, Merced

The opponents to the project spoke about the worsening quality of the air in the Valley and said that the Commission's decision is permanent and they should think about what they could do to make the situation better.

It was also stated that most Wal-Mart Distribution Centers are far from residential neighborhoods, but this project would be too close to schools and residences, and the traffic and noise would adversely affect them. They further stated that this was not the right site for the facility and their quality of life should be worth more.

Secretary's Note: The spokesman for the opposition did not reserve any of his time for rebuttal, so no rebuttal time was allowed for the opposition.

AARON J. RIOS, Senior Manager of Public Affairs, Wal-Mart Stores, spokesman for the applicant, spoke in rebuttal to comments made during the public testimony. (Mr. RIOS reserved 4 minutes, 41 seconds of his testimony time for rebuttal.)

To address the incoming trucks in the CEQA findings, Mr. RIOS explained that the percentages that have been discussed are only inbound trucks. These trucks represent local suppliers and local jobs that are being supported by this project. It is estimated 90% of the outbound trucks would consist of Wal-Mart trucks.

He said that it is illegal to mandate hiring locally and discriminating by where someone lives. Wal-Mart has already begun working with local workforce agencies regarding the jobs available and the skills needed for those jobs. Applicants could then obtain the proper training before applying for the jobs. He explained that the \$17.50 per hour average wage does not include management positions, and is strictly for hourly associates within the facility. Regarding health care, he stated that 94% of their associates have health care coverage and over 50% of that coverage is through a Wal-Mart plan. The remaining associates select other plans through their spouse, parents, or are retired.

Contrary to the statement by the opposition's attorney, the EIR is not defective. All analysis, including the air quality analysis, was appropriately carried out and reached conclusions supported by substantial evidence. While Mr. LIPPE took issue with some of the conclusions, he has not introduced any substantial evidence to refute the conclusions reached in the EIR; conclusions which were reached by experts in their individual fields. Moreover, he said the thresholds

used in the EIR are based on established methodology and industrial practice. Mr. RIOS urged the Commission to approve the project.

He urged those who have questions, or are unsure about the project, to continue to reach out to Wal-Mart.

Commissioner WILLIAMS asked if Mr. RIOS was aware of the thirty-five conditions set by the City and if they had any issue with those conditions. Mr. RIOS responded that they were aware of the conditions and had raised their concerns after the Draft EIR was released. He acknowledged that there were some adjustments to the conditions based on further analysis, and they were now prepared to move forward with them as is.

Commissioner MCCOY asked Mr. RIOS to respond to the opposition attorney's comment that the geotechnical reports were not complete. Mr. RIOS said that he would refer that question to staff or the EIR consultant.

Chief Deputy City Attorney SCHECHTER said that it is staff's position that no new substantive issues were raised by any of the comments and all issues raised by the comments were adequately addressed in the DEIR or in the responses to comments. However, there were several comments directed at the handling of certain issues in the EIR from a legal standpoint and she would address those issues.

With regard to air quality, she said that there were criticisms directed at the thresholds that the City used, both at the project level and for cumulative impacts. She pointed out that Master Response Number 13, which is contained in Volume 1 of the FEIR, explained the relationship between the ambient air quality standards, the non-attainment status of Merced County with respect to those standards, and the San Joaquin Valley Air Pollution Control District's recommended thresholds of significance. The key point in this response is that the Air District's CEQA thresholds of significance are designed to limit emissions from new development to a level that would be consistent with attainment planning efforts.

Appendix G of the CEQA Guidelines issued by the State provides that significance criteria established by the applicable air quality

management or air pollution control district may be relied upon by lead agencies to determine the level of significance of a project's impacts. She said there is no basis for selecting an alternative threshold, and this is further explained in response to Mr. LIPPE'S comment letter as Response to Comment 5- 7.

With regard to cumulative impacts, she noted that Responses to Comment 5-7 also explained that the Guide For Assessing and Mitigating Air Quality Impacts states that for reactive organic gases and nitrogen oxide emissions, lead agencies should use the project level thresholds of significance for determining whether a project would result in a considerable contribution to a cumulative impact. This is because reactive organic gases and nitrogen oxide are precursors to ozone, a pollutant of regional concern. For PM10, a pollutant of localized concern, the Guide For Assessing and Mitigating Air Quality Impacts recommends analyzing whether the concentrations of PM10 from a project, in combination with other PM10 sources, would result in an exceedance of the Ambient Air Quality Standards for PM10 at an affected receptor. She also explained that the Air District recommends that the threshold of significance for PM10 at 15 tons per year be used as shown in the Response to Comment 21-4. The comments made by Mr. LIPPE at the previous meeting, and the comments in his letter, do not recommend why any other threshold should be used or even what that threshold should be.

Ms. SCHECHTER further noted that Mr. LIPPE commented that the City had been intimidated into eliminating the trip reduction measures in the Final EIR, and that the EIR mistakenly interpreted the relevant Health and Safety Code Section that prohibits local agencies from imposing these types of trip reduction measures. He further commented that this measure only applied to existing businesses, not new businesses. She indicated that these comments are misguided. Staff was not intimidated into making the changes, they were made based upon the law. A Mitigation Measure that violates the law is unenforceable, and Staff stands behind the interpretation of this section. She said there is no distinction between existing businesses and new businesses as was claimed. She also pointed out that this code section not only applied to the City of Merced, but to all local

agencies, including the Air Pollution Control Districts. There are very limited exceptions to imposing the employee trip reduction measures and none of those exceptions would appear to apply in this case. This measure could be one of several alternative mitigation measures an applicant would be free to choose from. Regardless of how one might interpret the statute, the revision of this measure does not change any of the conclusions that were reached in the EIR regarding air quality impacts for long-term operational emissions of criteria air pollutants. She also pointed out that a variety of mitigation measures would be imposed to address these impacts.

Ms. SCHECHTER indicated that Mr. LIPPE had said that the assumptions regarding traffic impacts was flawed because they were based on the fact that development has been severely impeded by the current state of our economy. As a result, projects that are not occurring are not contributing their fair share as is assumed in the EIR. The claim is made that these assumptions should be changed; however, CEQA requires the lead agency to establish a baseline and consider all proposed future projects, which is exactly what occurred. Because these projects may or may not be occurring at this time, it is possible that some of the traffic impacts are actually overstated in the EIR rather than understated. She also pointed out that the Mission Interchange is complete, and the Campus Parkway is currently under construction, and these projects will go a long way to alleviate many of the traffic impacts that people are concerned about.

Regarding Commissioner MCCOY'S question about the geotechnical report, Ms. SCHECHTER advised that it has been submitted to the City; however, the report would not be reviewed by staff until the building permit is submitted. Staff would make sure that all appropriate measures are taken to ensure that there is no issue with regard to corrosive soils and the underground storage tanks. Also, the level of detail that was being requested by the commenter is not required by CEQA at this particular point in time. No construction would take place until the report has been reviewed and all measures have been determined. The EIR specifies appropriate mitigation measures to address these issues, and she referred the Commission to Mitigation Measure 4.5-3a on page 4.5-17 of the DEIR.

In response to the comments regarding the risk to the City's water supply, Ms. SCHECHTER stated that the City has an extensive water supply system and if a well were to become contaminated, it would be shut off from the rest of the grid and remediation efforts undertaken.

She further explained that a project of this size is required to prepare a water supply assessment, which was done, and is found at Appendix F of the DEIR. The assessment determined that there is adequate water supply to serve the project, and the City's water supply plan indicates that there is sufficient water supply to meet projected future needs.

Public testimony was completed at 6:30 p.m.

Chairperson AMEY stated for the record that he had previously met with a Wal-Mart representative.

Commissioner ACHESON said that he had contacted the Air Quality Board in Fresno and read their response into the record. In summary, the Air Board said that it does appear that the air quality in Merced has been improving since 2003. Commissioner ACHESON said that he agrees that there is a health problem, but that health problem is not solely due to air quality, but is contributed to by the lack of jobs and the ability to earn income and feed their families. He said that was a bigger concern to him than some of the other issues.

Commissioner WARD stated for the record that she has had educational and informational meetings with both proponents and opponents of the proposed distribution center; she has attended public forums sponsored by proponents and opponents; she has read materials published by proponents and opponents, including a video on Wal-Mart; she has read the Environmental Impact Reports, including the comments received and the additional 826 pages of correspondence provided to the Planning Commission; she has participated in a field trip to visit the Porterville Wal-Mart Distribution Center with City Council members, City Staff, and Planning Commission members, which included meeting with local Porterville business leaders, residents, employees of the facility, and their family members; and has visited the proposed facility location in Merced.

Commissioner MCCOY stated that she also participated in a field trip and visited the Porterville Wal-Mart Distribution Center.

Commissioner MCCOY responded to a statement made during the public comment period regarding dissatisfaction with the way the meeting was being conducted and that the Commissioners were not paying close attention to the testimony due to the lateness of the hour. She wanted to assure the public that the Commission listens carefully and that they appreciate everyone who speaks. They listen very carefully to what is being said by each individual because their concerns are important. She said that she took notes regarding what each person said so she would know whether they were for or against the project. She further stated that the calling of the public as signed in to speak, regardless of their opinion of the project, kept her very alert and focused on the comments so she would know how they felt. She thanked all of the participants for being there, and thanked the City and her fellow Commissioners for the work they do.

Commissioner CERVANTES disclosed that he had one informational meeting with representatives from Wal-Mart, and also read all the different letters and information items received from staff.

Commissioner WILLIAMS said that she did not have an opportunity to meet with any proponents or opponents to the project, nor did she go on any tours. She said that she read all of the information that was provided by staff, including letters received from the public. She did not want to be biased and wanted to hear what the citizens had to say. She thanked everyone for coming forward and participating in the process.

Commissioner ZUERCHER disclosed that he intentionally attended no previous meetings so that he could come to this meeting with an open mind. He said that there were volumes of information to read and a lot of the comments that have been made have been very good. He said that he personally devoted most of the last week to this project, reviewing both sides.

Commissioner WARD reported on what she personally saw at the Porterville site. She watched for trucks of all kinds, including Wal-Mart trucks, while they were traveling in and around town and on

their way to the distribution center. She said she saw very few trucks and only one Wal-Mart truck as it left the facility. The traffic was normal, there was no congestion, and no stream of trucks. At the facility, there were only a few trucks at the staging area with their engines off as they were being checked in at the gate. She said there were numerous signs posted telling drivers to turn off their engines, and there was a large staging area for more trucks that was also clearly posted. A sound barrier wall had been constructed between the facility and the closest residence, and there was also a fully developed residential area nearby that was constructed and occupied after the distribution center was completed.

She said that they had an opportunity to speak to local business leaders, employees of Wal-Mart, and their family members. The two people she spoke to lived in Porterville and commented on the fair benefits and wages they received. Business leaders commented on the economic benefit of the large number of employees who shopped at local businesses. There were representatives from charitable organizations that talked about the distribution center being a good community partner. She said the comments did not appear to be orchestrated for their benefit.

While at the site, she specifically looked for evidence of oil spillage or dumping on the grounds and saw none. She said she found it to be a very orderly maintained facility with the appropriate drainage and capture for mechanical repairs. She appreciated and respected the opinions and comments by all of the speakers, even if she did not see a threat as serious as some stated. When Ragu was in operation, with many more trucks than Wal-Mart will have, she did not recall the same outrage in the papers that this project has generated, but there was concern about the loss of jobs and revenue when it closed. She is sure that every one of the Commissioners will have their comments and may not agree with her opinion or have witnessed the same things she did, but the jobs are needed and she is confident that City staff and the concurrent peer review of the EIR have addressed the impacts from the project.

M/S WARD-ACHESON, to recommend to City Council certification of Final Environmental Impact Report (FEIR) #06-01,



including the Errata Sheet; adoption of the Draft Findings of Fact and Draft Statement of Overriding Considerations, including the Errata Sheet; adoption of a Mitigation Monitoring Program; and find that in making its recommendation to certify the FEIR, has independently reviewed the report and considered the information contained therein in taking action on the Project itself, and further find that the Mitigation Monitoring Program recommended for adoption meets the requirements of and is in compliance with Public Resources Code Section 21081.6 (RESOLUTION #2959).

Commissioner WILLIAMS said that the majority of the citizens spoke in support of the project and asked that the Commission do the greater good for the community. The project is consistent with the General Plan, it complies with the industrial zone, and would be very good for Merced.

Commissioner CERVANTES said that when he looks at projects he has three approaches: environmental impact, the economic impact, and the social and moral impact. He said that although he heard the concerns regarding this project, it seems that staff and the consultants did the best that they could to mitigate the environmental impacts and trusts that staff has made sure that the EIR is certifiable and sound. Regarding economics, it is apparent that Merced needs an economic boost, not only for the revitalization of the City and its infrastructure, but for the morale of the City. This project does not have a social or moral impact other than one side being disappointed by the decision. This project is good for the community and a major step towards rebuilding Merced.

Commissioner ZUERCHER said that his understanding of what they are to do is look at the proposal to make sure it meets the general plan designation and consider what kind of environmental impact it will have on the City. He said that the Wal-Mart Distribution Center is a good project for the community, but it is proper to ask them to hide the building to the greatest extent possible. There isn't anything beautiful about hundreds of trucks backed into the bay doors, and landscaping is important to the overall appearance of the project site. One tree planted every forty feet on center around the perimeter of the building is not sufficient to hide it. He proposed an amendment to

Planning Commission Minutes

Page 11

August 24, 2009

staff's recommendation that would require the entire perimeter, except for the side with the orchard, be bermed with plantings to provide screening. He suggested that the berms range in height from 3-5 feet and be planted with deciduous and coniferous trees and ground cover. They should vary from 15 to 25 feet apart with a maximum 3:1 slope. He provided an illustration and additional language that provides an effective solution and would enhance the appearance of the overall project site. He would like a commitment from Wal-Mart to include landscaping that would provide beautification.

Commissioner CERVANTES said that although Commissioner ZUERCHER'S recommendation was valid, he was uncomfortable with adding additional conditions and costs to the project at this time.

Planning Manager ESPINOSA confirmed with Commissioner WARD that her motion only dealt with the certification of the EIR. She continued that if the Commission would like to add additional language as proposed by Commissioner ZUERCHER, it should be added to Condition #25, which concerns landscaping. She said it would be more appropriate to amend that condition than the mitigation measures, and it could be done as part of the motion regarding the recommendation for the Site Plan Review Application.

Commissioner WARD said that she is not agreeable to adding anything to her motion at this time, it is premature, and not appropriate to this particular motion. She noted that this might be a superfluous requirement considering the majority of the traffic would be on the west and north sides where there are orchards in place.

Commissioner ZUERCHER said that the reason he mentioned it at this time was because he is concerned that planning staff is left without guidelines to have to deal with applicants, and he would like to have tighter guidelines for staff in terms of the landscaping and the overall appearance of the project. He said that he would address the issue during the motion regarding the Site Plan Review Application.

Chairperson AMEY said that this is an important project for Merced. After Castle Air Force Base closed, Merced became a ghost town and fell apart financially. After it built back up, the economy failed and

Merced is once again at a crossroads. There is a problem regarding jobs and Merced needs a company that will pay a decent wage. This project fills that need.

Motion carried by the following vote:

AYES: Commissioners Cervantes, Acheson, Ward, McCoy, Zuercher, Williams, and Chairperson Amey

NOES: None

ABSENT: None

M/S WARD-WILLIAMS, and carried by the following vote, to recommend to the City Council approval of General Plan Amendment #06-01, based upon the reasons and findings set forth in Staff Report #09-18 (RESOLUTION #2959):

AYES: Commissioners Cervantes, Acheson, Ward, McCoy, Zuercher, Williams, and Chairperson Amey

NOES: None

ABSENT: None

M/S WARD-ACHESON, and carried by the following vote, to adopt a Finding of Consistency with the General Plan for Vacation/Abandonment Application #06-01 for the Kibby Road right-of-way between Gerard and Childs Avenues, contingent upon General Plan Amendment #06-01 being approved by the City Council, and based upon the reasons and findings set forth in Staff Report #09-18 (RESOLUTION #2959):

AYES: Commissioners Cervantes, Acheson, Ward, McCoy, Zuercher, Williams, and Chairperson Amey

NOES: None

ABSENT: None

Commissioner WILLIAMS said that the staff report states that prior to, or concurrent with, submittal of a building permit, the owner shall submit a detailed landscape and irrigation plan which includes, at a minimum, designated planting areas as required by Mitigation Measure 4.13-2. That measure addresses street trees, parking lot trees in employee parking lot areas, perimeter landscaping, and the preservation of existing orchard trees on site. She asked

Commissioner ZUERCHER if that language would be sufficient to address his earlier comments.

Commissioner ZUERCHER said that language is not sufficient. It only requires one tree every forty feet around the perimeter. He said the Commission should give staff the ability to require more landscaping. He is not trying to make it economically burdensome on Wal-Mart. His recommendation is that the landscaping consist of earth berms or mounds to be used as physical barriers to block and screen the entire perimeter abutting the streets of Childs Avenue, Gerard Avenue, and Tower Road. He said this requirement would not be onerous and recommends real screening instead of a stick tree every forty feet. His proposed language would allow Planning Staff and Code Enforcement the ability to inspect the site to insure appropriate landscaping is provided.

Commissioner ACHESON asked Mr. RIOS for his opinion on behalf of Wal-Mart, and Mr. RIOS said that they have concerns with the potential condition. He said they would not be able to agree to it at this time, and if adopted, would have to move forward to see if it is something that is affordable after determining exact costs.

Commissioner WILLIAMS said she is concerned that they are considering something outside their role in making a recommendation to City Council. She said that there would be further opportunity to discuss the additional landscaping once it is before the City Council, and that the Commission should not be coming up with additional project conditions at this time.

Commissioner CERVANTES concurred with Commissioner WILLIAMS, and added that it was unfair to ask Wal-Mart to make a decision at this time. There would be an opportunity for staff to look at it further and work with Wal-Mart prior to the City Council meeting.

Commissioner WARD agreed and said that it would be burdensome and is too much too soon. She said she would like to see what the site looks like once the roads are in and ground has been broken so you could tell what is actually visible from the freeway and surrounding roads. She said that she would rather see clean industry,

even if it is a big box facility, than the blighted homes and abandoned business properties currently existing in Merced.

Commissioner ACHESON said he appreciated Commissioner ZUERCHER'S input and although there is some validity to it, he is concerned that Wal-Mart didn't hear about it until the meeting and that is unfair. He said that Wal-Mart didn't say no to the suggestions, and could determine, after further consideration, that it is possible to work with some of the suggestions.

Commissioner ZUERCHER said that he was going to hold firm and vote no on this portion of the project because he is convinced that if it was required, Wal-Mart would still go ahead with the project.

Commissioner WILLIAMS said that there are not a lot of trees around the McLane Pacific, Save Mart, and Wellmade sites, and it does not seem to be a problem. She said that she has confidence in Wal-Mart as a community partner to work with the City to make sure that everything that is needed is provided.

M/S WARD-CERVANTES, and carried by the following vote, to recommend to City Council approval of Site Plan Review Application #260, based upon the reasons and findings set forth in Staff Report #09-18 and subject to the conditions as listed in Staff Report #09-18 (RESOLUTION #2959):

AYES: Commissioners Acheson, Ward, Cervantes, McCoy,  
Williams, and Chairperson Amey

NOES: Commissioner Zuercher

ABSENT: None

5. **INFORMATION ITEMS**

5.1 Calendar of Meetings/Events

There was no discussion regarding the calendar of meetings/events.

6. ADJOURNMENT

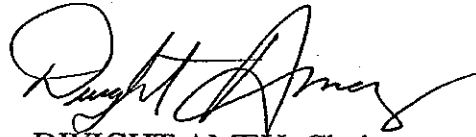
There being no further business, Chairperson AMEY adjourned the meeting at 7:32 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary  
Merced City Planning Commission

APPROVED:



DWIGHT AMEY, Chairperson  
Merced City Planning Commission

**CITY OF MERCED  
Planning Commission**

**RESOLUTION #2959**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MERCED, CALIFORNIA, RECOMMENDING CERTIFICATION BY THE CITY COUNCIL OF THE FINAL ENVIRONMENTAL IMPACT REPORT, #06-01, RECOMMENDING ADOPTION BY THE CITY COUNCIL OF THE MITIGATION MONITORING AND REPORTING PROGRAM AND THE STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE WAL-MART DISTRIBUTION CENTER; RECOMMENDING APPROVAL OF GENERAL PLAN AMENDMENT #06-01; ADOPTING A FINDING OF CONSISTENCY WITH THE GENERAL PLAN FOR VACATION/ABANDONMENT OF KIBBY ROAD RIGHT OF WAY (CONTINGENT ON APPROVAL OF GENERAL PLAN AMENDMENT #06-01); AND RECOMMENDING APPROVAL OF SITE PLAN REVIEW APPLICATION #260**

WHEREAS, The Planning Commission of the City of Merced conducted a noticed public hearing on August 19, 2009, and continued to August 24, 2009, and reviewed the Final Environmental Impact Report, #06-01, for the Wal-Mart Distribution Center and related land use entitlements, including a General Plan Amendment, Finding of General Plan Consistency for Vacation/Abandonment, and a Site Plan Application; and,

WHEREAS, The Planning Commission has reviewed the Final Environmental Impact Report and the errata sheet, including responses to comments made during the public review period, and a motion was made to recommend certification of the Final Environmental Impact Report, including the errata sheet, subject to the conditions of approval for the related land use entitlements; and,

*Planning Commission Resolution*

N:\SHARED\Attorney\Resolutions\2009\Planning\Walmart E

WHEREAS, The Planning Commission has reviewed the mitigation measures and the mitigation monitoring and reporting program and recommends that the City Council adopt the same in compliance with State law; and,

WHEREAS, The Planning Commission, upon its review of the Environmental Impact Report and as set forth in therein, finds there are certain environmental effects identified in the Final Environmental Impact Report which, despite mitigation measures, will not be reduced to below a level significance; and,

WHEREAS, The Guidelines to the California Environmental Quality Act, Sections 15092 and 15093, require that when unavoidable significant environmental effects are found for a project that the public agency must either deny the project or adopt a Statement of Overriding Considerations; and,

WHEREAS, Guidelines Section 15092 sets forth the balancing and policy considerations which the Planning Commission and City Council must make in order to approve this project; and,

WHEREAS, The Planning Commission, after considering all the evidence and testimony in this matter, recommends that the City Council adopt the Statement of Overriding Considerations because the benefits to the public for this project outweigh the environmental effects which this project may have.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The Planning Commission recommends the City Council certify the Final Environmental Impact Report #06-01 (including the errata sheet) for the Wal-Mart Distribution Center for the reasons set forth in and based upon the findings set forth in Exhibit 1 – Attachment G, attached hereto and incorporated herein by this reference as if set forth in full. The Planning Commission further finds that in making its recommendation to certify the Final Environmental Impact Report that it has independently reviewed the report and considered the information contained therein in taking action on the development project itself.

SECTION 2. The Planning Commission recommends that the City Council adopt the mitigation program and mitigation monitoring and reporting program for the proposed Wal-Mart Distribution Center as set forth in Exhibit 1 –



Attachment F, attached hereto and incorporated herein by this reference as if set forth in full. The Planning Commission further finds that the mitigation program and mitigation monitoring and reporting program recommended for adoption herein meets the requirements of and is in compliance with Public Resources Code Section 21081.6.

SECTION 3. The Planning Commission recommends that the City Council adopt the Statement of Overriding Considerations, including the Errata Sheet, for the Wal-Mart Distribution Center based upon the reasons and findings set forth in Exhibit 1 – Attachment G, attached hereto and incorporated herein by this reference as if set forth in full herein.

SECTION 4. The Planning Commission recommends that the City Council approve General Plan Amendment #06-01, based upon the reasons and findings set forth in Staff Report #09-18, Exhibit 1, attached hereto and incorporated herein by this reference as if set forth in full herein.

SECTION 5. The Planning Commission finds that Vacation/Abandonment of the Kibby Road Right of Way between Gerard and Childs Avenue (contingent upon General Plan Amendment #06-01 being approved by City Council) is consistent with the General Plan, based upon the reasons and findings set forth in Staff Report #09-18, Exhibit 1, attached hereto and incorporated herein by this reference as if set forth in full herein.

SECTION 6. The Planning Commission recommends that the City Council approve Site Plan Review Application #260, based upon the reasons and findings set forth in Staff Report #09-18, Exhibit 1, and subject to the conditions as set forth in Exhibit 1, attached hereto and incorporated herein by this reference as if set forth in full herein.

SECTION 7. The Secretary of the Planning Commission shall cause this Resolution to be transmitted to the City Council for further proceedings in accordance with State Law.

///

///

///

Upon motion by Commissioner Ward, seconded by Commissioner Acheson, in accordance with Sections 1 through 3 above, carried by the following vote:

AYES: Commission Members: Acheson, Ward, Cervantes, McCoy, Zuercher, Williams, and Chairman Amey

NOES: Commission Members: None

ABSENT: Commission Members: None

ABSTAIN: Commission Members: None

Upon motion by Commissioner Ward, seconded by Commissioner Williams, in accordance with Section 4 above, carried by the following vote:

AYES: Commission Members: Acheson, Ward, Cervantes, McCoy, Zuercher, Williams, and Chairman Amey

NOES: Commission Members: None

ABSENT: Commission Members: None

ABSTAIN: Commission Members: None

Upon motion by Commissioner Ward, seconded by Commissioner Acheson, in accordance with Section 5 above, carried by the following vote:

AYES: Commission Members: Acheson, Ward, Cervantes, McCoy, Zuercher, Williams, and Chairman Amey

NOES: Commission Members: None

ABSENT: Commission Members: None

ABSTAIN: Commission Members: None

Upon motion by Commissioner Ward, seconded by Commissioner Cervantes, in accordance with Section 6 above, carried by the following vote:

AYES: Commission Members: Acheson, Ward, Cervantes, McCoy, Williams, and Chairman Amey

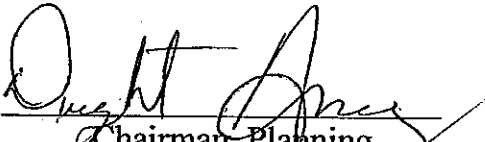
NOES: Commission Members: Zuercher

ABSENT: Commission Members: None

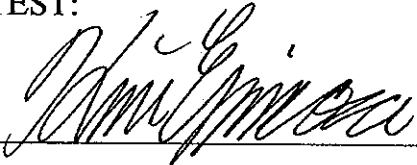
ABSTAIN: Commission Members: None

PASSED AND ADOPTED by the Planning Commission of the City of Merced at a meeting held on the 24<sup>th</sup> day of August, 2009, which was continued from their regularly scheduled meeting held on the 19<sup>th</sup> day of August, 2009.


APPROVED:

  
Chairman, Planning  
Commission of the City  
of Merced, California

ATTEST:

BY: 

APPROVED AS TO FORM:

 8/25/09  
City Attorney Date

**CITY OF MERCED**  
**Planning & Permitting Division**

**STAFF REPORT:** #09-18

**AGENDA ITEM:** 4.1

**FROM:** David B. Gonzalves,  
Director of Development Services

**PLANNING COMMISSION**  
**MEETING DATE:** August 19, 2009;  
August 24, 2009 (If Needed); and  
August 26, 2009 (If Needed)

**PREPARED BY:** Kim Espinosa,  
Planning Manager

**CITY COUNCIL** (Tentative Dates)  
**MEETING DATE:** September 21, 2009;  
Sept. 23, 2009; Sept. 26, 2009; and  
Sept. 28, 2009 (If Needed)

---

**SUBJECT:** **General Plan Amendment #06-01; Vacation/Abandonment Application #06-01; Site Plan Review Application #260; and Certification of Environmental Impact Report #06-01**, initiated by Carter & Burgess, Inc., agent for Wal-Mart Stores East, LP, property owners. The proposed Wal-Mart Distribution Center, includes consideration of a general plan amendment and vacation/abandonment application for a change in the General Plan Circulation Element and the abandonment of the right-of-way for Kibby Road (a designated collector) between Childs and Gerard Avenues; a site plan review application to approve the construction of a regional distribution center (approximately 1.1 million square feet, operating 24 hours per day, and employing approximately 1,200 employees) and associated facilities on approximately 230 acres, generally located at the northwest corner of Gerard Avenue and Tower Road within a Heavy Industrial (I-H) zone; and the certification of an environmental impact report regarding the Project. \*PUBLIC HEARING\*

**ACTION:**

**PLANNING COMMISSION:**

Recommendation to City Council

- 1) Certification of Final Environmental Impact Report (FEIR) #06-01 [including the errata sheet]; Adoption of Draft Findings of Fact and a Draft Statement of Overriding Considerations; and Adoption of a Mitigation Monitoring Program
- 2) General Plan Amendment #06-01
- 3) Finding of General Plan Consistency for Vacation/Abandonment Application #06-01
- 4) Site Plan Review Application #260

**CITY COUNCIL:**

Approve/Disapprove/Modify

- 1) Certification of Final Environmental Impact Report (FEIR) #06-01 [including the errata sheet]; Adoption of Findings of Fact and a Statement of Overriding Considerations; and Adoption of a Mitigation Monitoring Program
- 2) General Plan Amendment #06-01
- 3) Vacation/Abandonment Application #06-01
- 4) Site Plan Review Application #260

**EXHIBIT 1 – PLANNING COMMISSION RESOLUTION #2959<sup>4</sup>**

**ATTACHMENT 2**

### SUMMARY

The applicants are proposing to construct a 1.1-million-square foot, Wal-Mart regional distribution center, operating 24 hours per day and employing up to 1,200 people, on 230 acres in the East Merced Industrial Area. Entitlements required for the project include a general plan amendment and street vacation/abandonment to vacate the Kibby Road right-of-way between Childs and Gerard Avenues, a site plan review application, and the certification of an environmental impact report. Since the project was announced in 2006, significant public discussion has already taken place, and the City has received hundreds of letters and emails about the Project, both in support and in opposition to the Project.

The Project is located within an area designated in the General Plan and zoned for industrial uses for many years. In fact, a smaller distribution facility (McLane Pacific) has been operating in the Project vicinity for many years. The environmental impacts of the project have been carefully analyzed and mitigation measures proposed to reduce most impacts to a level of less than significant. For those impacts that can not be reduced to a level of less than significant, a Draft Statement of Overriding Considerations has been prepared to outline reasons why the project's benefits outweigh its negative impacts on the environment. Conditions of approval have also been proposed by City staff to address other project concerns, such as aesthetics, City services and utilities, and circulation. City staff recommends, for the reasons above and for those described in the Findings in this staff report, that the Planning Commission should recommend approval of the Project to the City Council.

*Public Hearing:* In anticipation of significant numbers of individuals wishing to testify about the Project, City staff has scheduled time for the Planning Commission public hearing on the project to be heard over 3 nights if necessary and has moved the meeting times up to 6:00 p.m. instead of the regular 7:00 p.m. time. The Planning Commission has previously noted that they do not want to take public testimony past 11:00 p.m., so the meetings will be adjourned on that schedule. If the City Council Chamber is full, the "overflow" audience may listen to the public hearing in the Sam Pipes Room on the 1<sup>st</sup> floor of the Civic Center. Translation services will be available upon request to those who have made arrangements with City staff ahead of time. These services will allow non-English speakers to hear the public testimony via headsets in Spanish or Hmong, but any person intending to testify before the Planning Commission must bring his/her own translator, as public testimony will only be taken in English.

Those individuals wishing to testify at the hearing, will need to fill out and submit a "Request to Speak" card on August 19 before the public hearing begins, which will be after the staff report presentation by City staff. The Project Applicant will be asked to speak first and they may speak up to 15 minutes (including rebuttal time), then a representative spokesperson for the organized opposition (if there is one) may speak for 15 minutes (including rebuttal time). Using the "Request to Speak" card system, individuals will be called up to testify in groups of 3 or 5 in the order in which their speaker cards were submitted. Each speaker will be limited to 3 minutes each if there are more than 3 speakers or 5 minutes each if there are less. Those individuals in the Sam Pipes Room will need to come up to the City Council Chambers in order to testify. Individuals will only be allowed to address the Commission once during the public hearing. If by the end of the first night all individuals who have submitted speaker cards have not spoken, then the public hearing will be continued to the 2<sup>nd</sup> night. When all those who have submitted speaker cards have had a chance to speak and rebuttals have taken place, the public testimony portion of the public hearing can be closed and Planning Commission discussion and deliberation can begin. There will be no City staff report on the 2<sup>nd</sup> or 3<sup>rd</sup> nights (if needed)—only public testimony and Planning Commission deliberation.

### RECOMMENDATION

Planning staff recommends that the Planning Commission recommend approval of:

- A) Certification of Final Environmental Impact Report (FEIR) #06-01 [including the errata sheet at Attachment H]; Adoption of Draft Findings of Fact and a Draft Statement of Overriding Considerations (Attachment G); and Adoption of a Mitigation Monitoring Program (Attachment F); and,
- B) General Plan Amendment #06-01; and,
- C) A Finding of Consistency with the General Plan for the Vacation/Abandonment Application #06-01 for the Kibby Road right-of-way between Gerard and Childs Avenues (contingent on General Plan Amendment #06-01 being approved by the City Council); and,
- D) Site Plan Review Application #260, subject to the following conditions, and in accordance with the draft resolution at Attachment I:

#### General

- \*1) The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (elevations) -- Attachments B and C.
- \*2) All conditions contained in Site Plan Approval Resolution #79-1 ("Standard Conditions for Site Plan Approval") shall apply, unless modified by these conditions (Attachment E).
- \*3) The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
- \*4) The Project shall comply with the relevant conditions set forth in Resolution #871 for Lot Split Application #05-15 previously approved for this parcel (Attachment E).
- \*5) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
- \*6) Approval of the *General Plan Amendment* is subject to the applicants entering into a written (developer) agreement, which requires 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 shall be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
- \*7) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel

selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

- \*8) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
- \*9) Annexation to Community Facilities District (CFD) No. 2003-2 (Services) is required for annual operating costs for police and fire services as well as storm drainage (if publicly maintained), street trees, and street lights, as applicable to industrial properties. CFD annexation procedures shall be initiated before final building permit 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 the receipt of the first CFD special tax.

Mitigation Monitoring

- 10) Full compliance with the adopted Mitigation Monitoring and Reporting Program (Program) and all mitigation measures of the Final Environmental Impact Report for the proposed Wal-Mart Regional Distribution Center (SCH# 2006071029) as described in Merced Municipal Code Section 19.28, is required of this Project by the applicant. The applicant shall pay all actual direct and indirect costs incurred by the City for the Program, including but not limited to, the cost of a consultant to perform the mitigation monitoring and City staff time to manage such contract. Prior to issuance of the first building permit for the project, a contract for mitigation monitoring must be in place. The applicant shall pay the initial fee estimate, prepared by the Planning Manager/Environmental Coordinator in coordination with the consultant, with the payment made prior to issuance of the building permit for this project. After compliance with the Program, but prior to issuance of a "program completion certificate," the Planning Manager/Environmental Coordinator will determine whether or not a refund or additional fees are due.
- 11) A bond or similar security shall be posted by the applicant to assure performance of all mitigation measures, including any construction, alteration, repair, or other work required by the Program. The bond or similar security in the amount as determined by the Planning Manager/Environmental Coordinator, based on estimates provided by the applicants and confirmed by the City Engineer, shall be in a form approved by the City Attorney, and be deposited with the City prior to commencement of any work on the real property that is the subject of the Project.

Fees

- 12) The Project applicant shall pay all fees as required under the City's Public Facilities Impact Fees (Chapter 17.62 of the Merced Municipal Code), the Regional Transportation Impact Fees (Chapter 17.64 of the Merced Municipal Code), and all other fees/charges for wastewater, water, and other City utilities prior to issuance of building permits for the project.
- 13) Prior to the issuance of building permits, the applicant shall be responsible for the payment of school facility impact fees as adopted by the Weaver Union School District and Merced Union High School District.
- 14) This Project is subject to the special fee for a traffic signal at Highway 140 and Kibby Road spelled out in Section 3.06 of the Development Agreement for Lyons Investments (dated October 19, 1998) of which this property is a part. Section 3.06 reads as follows:

*"In lieu of having to install a traffic signal at Highway 140 and Kibby Road, Owner agrees to pay the City the sum of Three Hundred and Fifty Thousand Dollars (\$350,000), increased by percent change in the All Urban Consumers Index, U.S. City Average (USCA), as supplied by the Bureau of Labor Statistics (base index of \_\_\_ ) and payable at building permit at \$0.125 per square feet of building. For example, for 10,000 square feet of construction, Owner would pay \$1,250 adjusted by multiplying \$1,250 by current quarter CPI (USCA divided by the base index. The funds collected shall be used for the signal at Highway 140 and Kibby Road and/or arterial roads, Eastern Beltway [now known as Campus Parkway], or collection streets within the vicinity of the Property."*

Circulation

- 15) The developer shall construct all arterial, collector, or local streets along the Project's perimeter, in accordance with the *City of Merced Standard Designs for all Engineering Structures* and the *Merced Vision 2015 General Plan* and any amendments thereto, as set forth below. This includes Childs Avenue (a Minor Arterial at 94-foot right-of-way; City Standard ST-2), Gerard Avenue (a Collector at 74-foot right-of-way; City Standard ST-2), and Tower Road (a Local road at 64-foot right-of-way; City Standard ST-1):
  - a) On the Project's side of center line, full public improvements (including, but not limited to, curb and gutter, street trees, street lights, bike lanes, etc., along the Project's complete frontage) shall be installed and the existing street paving shall be reconstructed or repaired, depending on the condition of the road as determined by the City Engineer.
  - b) On the opposite side of center line, the Project shall construct new pavement to the existing right-of-way line or to a maximum width required by City standards, whichever is less. If right-of-way exists, installation of the curb on the opposite side of the center line is also required.
- 16) Left-turn pockets and acceleration/deceleration lanes shall be provided on Gerard Avenue for both driveway connections. Details shall be worked out with City staff prior to issuance of the first building permit.
- 17) In accordance with Mitigation Measure 4.11-2b(c), the applicant shall regularly and routinely instruct its employees, contract truck drivers, and vendors that tractor trailers approaching and departing from the distribution center shall be limited to the following roadways from Highways



99 and 140: Campus Parkway, Mission Avenue west of the Campus Parkway, Gerard Avenue east of the Campus Parkway, and Tower Road. In addition to the requirements of this mitigation measure, truck drivers shall be directed to not park their trucks within any of the residential subdivisions west of the Campus Parkway, and shall utilize the waiting area located on site. The applicants will demonstrate to the City on a yearly basis that the truck drivers are being advised of these restrictions.

- 18) The applicants shall be required to contribute on a pro-rata basis to the following improvements based on Improvement Measures 6-1 through 6-8 (described in detail in Tables 2-1 on pages 2-61 through 2-65 of the Draft EIR) and Table 2-2 on page 2-69 of the Draft EIR. The pro-rata share shall be determined by the City Engineer based on estimates of the improvement costs and the Project's share of traffic at these locations (based on Table 2-2) prior to issuance of the first building permit for this Project.
- a) Revised traffic signal timing plan for Highway 140 & Parsons Ave intersection;
  - b) Signalization of intersection of Highway 140 & Baker Dr;
  - c) Signalization of intersection of Highway 140 & Kibby Road;
  - d) Signalization of and widening of intersection of Childs Ave & Highway 99 Northbound off-ramp;
  - e) Signalization of and widening of intersection of Childs Ave & Highway 99 Southbound off-ramp; and,
  - f) Revised traffic signal timing plan for intersection of Childs & Parsons.

#### City Services/Utilities

- 19) To avoid any impacts to City Well R2 on the adjacent parcel, any fuel storage and dispensing facilities must be a minimum of 660 feet away from the well. Details shall be worked out with City Public Works staff prior to issuance of the building permit for the project.
- 20) Solid waste storage and pick-up locations meeting City Standards need to be indicated on the site plan and approved by City Public Works staff prior to issuance of the building permit for the project.
- 21) The applicant will work with City Information Technology staff to develop a plan to install "smart" infrastructure in the adjacent public streets around the perimeter of the facility. This plan should include, but is not limited to, fiber/conduit installation in public streets, wireless systems to connect to traffic signal and crime surveillance cameras, etc. The Plan should be developed and approved prior to issuance of the building permit for the project.
- 22) Any existing sewer and/or water lines in the Kibby Road right-of-way shall be re-routed around any proposed new structures prior to issuance of a certificate of occupancy. New exclusive right of access and maintenance easement(s) shall be dedicated to the City for such sewer and/or water lines prior to the issuance of the first building permit for the project.
- 23) Prior to issuance of the first building permit for this project, the City shall review the Project to ensure that water, wastewater, and storm water facilities are adequate to meet Project service demands; and/or the applicants shall provide improvements necessary to meet the demands. Any improvements shall be designed and constructed to be consistent with City master plans and City standards. All new "utilities" are to be underground.

- 24) The Project will be required to comply with all applicable requirements of the City's Flood Damage Prevention Ordinance (Merced Municipal Code 17.48).

Aesthetics

- 25) Prior to or concurrent with submittal of a building permit, the owner shall submit a detailed landscape and irrigation plan to the Director of Development Services, which includes at a minimum, designated planting areas as required per Mitigation Measure 4.13-2 (which addresses street trees, parking lot trees in employee parking areas, perimeter landscaping, and the preservation of existing orchard trees on site), and the following additional requirements:
- a) *Storm water Detention Basins:* Landscape plans shall be submitted by the applicant and approved by the City for all storm water detention areas. The location of these detention area shall be clearly outlined on the Project site plan and their design approved by the City Engineer prior to issuance of a building permit for the Project.
  - b) *Trailer Parking Areas:* Trees shall be planted along the perimeter of the truck and trailer parking areas but not within the parking areas to the maximum extent feasible. Details shall be worked out with City staff at the building permit review stage.
  - c) *Water Efficient Landscaping:* The Project shall be required to comply with the City's Water Efficient Landscaping and Irrigation Ordinance (MMC 17.60).
- 26) The use of barbed-wire fences along the perimeter of the project is prohibited.
- 27) *Building Façade:* Prior to or concurrent with submittal of a building permit, the owner shall submit a detailed architectural plan that enhances the façade of that portion of the building that faces the "associate parking lot" through the use of varied colors, building materials and designs. Color bands, alternating/mixed siding materials or patterns, or cosmetic "pop-outs" (not involving increased interior floor area) shall also be provided to the extent feasible along all of the building's perimeter elevations. (Details shall be worked out with City staff.)
- 28) Per the requirements of Merced Municipal Code 20.36.020 (D), signs appurtenant to any permitted use on the property shall not exceed five hundred square feet of total sign area. All signs visible from the public streets require a sign permit approved by the City. No billboards shall be allowed on the site.

Conditions Requested by the Merced Irrigation District

- 29) If storm water is to be discharged to any MID facility, the owner/applicant shall enter into a "Storm Drainage Agreement" with the Merced Irrigation District Drainage Improvement District No. 1 (MIDDID No. 1), paying all applicable fees.
- 30) MID offered Wal-Mart alternatives regarding discharging storm water to either the Fairfield Canal or the Farmdale Lateral/Doane Lateral. Wal-Mart needs to engage MID to verify discharge rates, means for connection and water quality requirements before MID can set its final requirements. Depending upon the approved route and discharge location, certain improvements, including but not limited to, pipelines, sensors, discharge structure assemblies and their appurtenances would be required. MID will notify the City as these issues are worked out between MID and Wal-Mart

- 31) The property owner must execute an appropriate agreement for all crossings over or under any MID facilities, including utilities, crossings and pipelines prior to construction.
- 32) A signature block will be provided for MID on all Improvement Plans that impact MID facilities.
- 33) A "Construction Agreement" between the owner and the MID shall be executed for any work associated with MID facilities.
- 34) Impact 4.6-1, Short Term Degradation of Water Quality From Project Related Construction Activities, Draft EIR, Page 2-30: Construction runoff into MID facilities is not allowed. In addition, Doane Lateral is in a pipeline assembly. Therefore, no storm runoff into this lateral is possible. Storm water discharges meeting MID requirements during the construction phase can be discussed, subject to proper design considerations to protect water quality within the Doane Lateral and any downstream connected facilities or creeks.
- 35) An MID 21KV electrical line is located within the Kibby Road extension right-of-way that services City Well No. 10 at the south end of the project site. The site plan shows that the west portion of the warehouse would be in direct conflict with this existing electrical line. Mitigation of this problem will require the applicant to realign this electrical line, at its sole expense, within a new, appropriately sized easement dedicated by the applicant.

(\*) Denotes non-discretionary conditions.

**PROJECT DESCRIPTION**

The proposed project, a Wal-Mart Stores East LP regional distribution center, consists of a warehouse, distribution center, and support facilities, and would be located on 230 acres at the northwest corner of Gerard Avenue and Tower Road. The proposed support facilities consist of offices, a cafeteria, and aerosol storage (all located within the warehouse building), as well as a truck gate, a truck maintenance garage, a truck fueling station, a fire pump house, and parking lots for trucks, trailers, and employees. The underlying purpose of the project is storage and distribution of non-grocery goods to Wal-Mart retail stores located throughout the region. No retail commercial is proposed as part of the project. (For a detailed Project Description, refer to Chapter 3 of the Draft EIR.)

Surrounding uses are noted at Attachment A.

Surrounding Land	Existing Use of Land	City Zoning Designations	City General Plan Land Use Designation
North	Various Heavy Industrial uses, including McLane Pacific Distribution Cntr (across Childs Ave)	Heavy Industrial (I-H)	Industrial (IND)
East	Agriculture and Two Residences (across Tower Road)	General Agriculture (A-1) (County)	None, but inside Sphere of Influence
South	City Water Well (north of Gerard) and Agriculture and One Residence (across Gerard Avenue)	Heavy Industrial (I-H)	Industrial (IND)
West	Agriculture/Vacant I-H Land (east of Doane-Hartley Lateral/Future Campus Parkway) and Single-Family Subdivisions/Vacant Multi-Family land (west of Campus Parkway)	Heavy Industrial (I-H) and Single-Family & Multi-Family Residential (R-1-5 and R-3-2)	Industrial (IND) and Low Density and High Medium Density Residential (LD and HMD)

## **BACKGROUND**

The first portion of the East Merced Industrial Area (north of Childs Avenue) was designated as Industrial in the 1968 General Plan and was annexed to the City in 1957 with subsequent annexations in 1973 and 1974. The western portion of the Project site (south of Childs Ave and west of the Kibby Rd right-of-way) was designated as Industrial at least as far back as the General Plan adopted in 1980, almost 30 years ago. This western portion of the Project site was annexed to the City in 1978 as part of the “East Merced Industrial Park Area #3 Annexation” involving over 160 acres of industrial land with a final annexation effective date of November 28, 1978. The eastern portion of the Project site (east of the Kibby Road right-of-way) was designated as Industrial in the General Plan adopted in 1997, over 12 years ago. This eastern portion of the site was annexed to the City in 1999 as part of the “Lyons Family Annexation to the City of Merced” involving over 565 acres of industrial land (approved by the Merced County Local Agency Formation Commission with the final effective date of June 11, 1999).

In February 2006, the City of Merced received applications from Carter & Burgess, Inc., on behalf of Wal-Mart Stores East, LP to construct a regional distribution center. In May 2006, the City Council entered into a contract with EDAW, Inc., to prepare an Environmental Impact Report (EIR) for the project. In February 2009, the Draft EIR was released for a 60-day public comment period. In July 2009, the Final EIR was made available and the Project is now before the Planning Commission for review and recommendation to the City Council. (See Finding Z for a more detailed schedule regarding the EIR preparation.)

## **FINDINGS/CONSIDERATIONS:**

### **General Plan Compliance and Policies Related to This Application (Land Use)**

- A) The proposed project complies with the General Plan designation of Industrial (IND), which provides for “the full range of industrial uses” including manufacturing, wholesale, and storage activities, such as warehouse/distribution facilities, and other similar activities. The proposed project complies with the zoning designation of Heavy Industrial (I-H) as defined in Merced Municipal Code Section 20.36, which allows as a principally-permitted use “any manufacturing, processing, assembling, research, wholesale, or storage uses” and also allows “truck depots.”

As noted previously, the western portion of the Project site (west of the Kibby Road right-of-way) was designated as “Industrial” at least as far back as the General Plan adopted in 1980, almost 30 years ago, and was annexed in 1978 with a “Heavy Industrial” zoning designation. The eastern portion of the project site (east of the Kibby Road right-of-way) was designated as “Industrial” in the General Plan adopted in 1997, over 12 years ago, and annexed to the City in 1999 with a “Heavy Industrial” zoning designation.

- B) Policies from the *Merced Vision 2015 General Plan* related to the proposed Project include, but are not limited to:

*Land Use Policy 2.1.f: “Promote industrial development that offers full-time, non-seasonal employment.”* [The proposed Project involves full-time, non-seasonal employment.]

*Land Use Policy 2.2.a: “Industrial areas should be located where they will have good access to air transportation, rail transportation, or major highway transportation links.”* [The proposed Project is strategically located in close proximity to the Campus Parkway and

Highway 99, thereby maximizing access to and use of major regional transportation infrastructure.]

*Land Use Policy 2.5.a: "Continue to require Site Plan Review of new industrial development and the application of standards regarding landscaping, appearance, circulation, access, and parking." [A Site Plan Review application has been required as part of this Project and the Site Plan Review Committee referred the application to the Planning Commission and City Council for review. Proposed Project conditions and mitigation measures involve the application of standards regarding landscaping, appearance, circulation, access, parking, and other issues.]*

### **General Plan Compliance (Circulation)**

- C) General Plan Amendment #06-01 is proposed as part of this Project in order to allow the abandonment of the Kibby Road right-of-way between Childs and Gerard Avenues. Kibby Road is designated on the General Plan Circulation Map as a "Collector" from Highway 140 to Mission Avenue within the City's growth boundary. Kibby Road also continues outside of the City's growth boundary, running north of Highway 140 to Yosemite Avenue and south of Mission Avenue to Vassar Avenue. Kibby Road, however, is only constructed from Highway 140 to Childs Avenue within the City limits with right-of-way only existing between Childs and Mission Avenues.

In order to accommodate the proposed site design and the configuration of the proposed distribution center buildings, the abandonment of the Kibby Road right-of-way will be necessary. When Kibby Road was designated as a Collector from Childs to Gerard, it was assumed that heavy industrial uses would be developed on either side of Kibby Road as separate business entities. Since the Project encompasses 230 acres on both sides of the Kibby Road right-of-way and will involve internal circulation, Kibby Road is no longer necessary between Childs and Gerard to serve the Project site. It should also be noted that Kibby Road was designated as a Collector prior to the designation of the Campus Parkway (just east of the Doane-Hartley Lateral) as an "Expressway" which will carry significant regional and local traffic. The Campus Parkway is currently under construction from Highway 99 to Childs Avenue and will be completed in 2010. (Funding and construction schedules for the Campus Parkway north of Childs have not yet been determined.)

Besides the Campus Parkway, traffic will also be able to continue to use Tower Road between Childs and Gerard and the proposed Project will be required to make improvements to Tower Road to bring it up to City local street standards (see Condition #15). Improvements will also be required to Gerard and Childs Avenues (Conditions #15 and #16). In conclusion, with construction of the Campus Parkway and improvements to Childs, Gerard, and Tower Roads, adequate circulation will be available to serve the Project site and the rest of the adjacent Heavy Industrial area, and Kibby Road will no longer be needed as a Collector or local road between Childs and Gerard Avenues. Therefore, General Plan Amendment #06-01 and the abandonment of the Kibby Road right-of-way between Childs and Gerard Avenues is justified and is recommended by City staff.

**Kibby Road Right-of-Way Abandonment**

- D) If General Plan Amendment #06-01 is approved, then Vacation/Abandonment Application #06-01 should also be considered. The process of abandoning a public street right-of-way involves the Planning Commission on only a limited basis. (Streets and Highways Code Section 8313, Government Code Section 65402). The Planning Commission's role consists of making a finding that the abandonment is or is not consistent with the General Plan. The Planning Commission is not asked to make a recommendation on whether the abandonment should or should not be approved and the Planning Commission action does not require a public hearing. If the Planning Commission recommends approval of General Plan Amendment #06-01 to the City Council, then the Planning Commission should also make a finding that the abandonment of the Kibby Road right-of-way is consistent with the General Plan (contingent on General Plan Amendment #06-01 being approved by the City Council) based on the discussion in Finding C above.
- E) The City Council's role in the Abandonment application is more extensive. The City Council will be asked to declare its intent to vacate the right-of-way and set a public hearing on the application in accordance with provisions of the Streets and Highways Code of the State of California. Such a resolution shall be considered at the City Council's August 17, 2009 meeting setting the public hearing for September 21, 2009 (such hearing may be continued or postponed). The City Engineer is then directed to post notices on the portion of right-of-way to be abandoned 2 weeks before the public hearing and the Resolution is also published in the newspaper. Utilities which may have utilities within the right-of-way are also notified. The abandonment application will then be considered during the City Council's public hearing on the rest of the Project.

**Traffic/Circulation**

- F) According to the traffic analysis in the Draft EIR (DEIR), the proposed project would generate approximately 2,400 net new daily trips with 143 net new AM peak hour trips (87 inbound, 56 outbound) and 328 net new PM peak hour trips (45 inbound, 283 outbound trips). The traffic analysis is contained in Section 4.11 of the DEIR, and Table 4.11-12 on page 4.11-21 outlines the Project's trip generation and Table 4.11-13 on pages 4.11-21 and 4.11-22 outlines the Project's trip distribution. This increased traffic from the project will result in the impacts requiring improvements to seven intersections (Highway 140 & Parsons; Highway 140 & Baker; Highway 140 & Kibby; Childs & Highway 99 Northbound off-ramp; Childs & Highway 99 Southbound off-ramp; Childs & Parsons; and Mission Ave & Highway 99 Northbound off-ramp) and two roadway segments (Highway 140 between Santa Fe Ave and Kibby; and Tower Road between Highway 140 and Gerard Ave). See Project Condition #18 and Mitigation Measures 6-9 through 6-11 on pages MMP-46 through MMP-47 of the Mitigation Monitoring Program at Attachment F. Project Conditions #15 and #16 and the Merced Municipal Code also require the Project to make improvements to Childs Avenue, Gerard Avenue, and Tower Road.

With the implementation of the mitigation measures summarized above and described in detail in Attachment F and the project conditions, all traffic-related environmental impacts will be reduced to less than significant levels.

**Site Design**

G) The proposed project site plan (Attachment B) depicts a regional warehouse/distribution center and support facilities, located on 230 acres at the northwest corner of Gerard Avenue and Tower Road. The proposed support facilities consist of offices, a cafeteria, and aerosol storage (all located within the warehouse building), as well as a truck gate, a truck maintenance garage, a truck fueling station, a fire pump house, and parking lots for trucks, trailers, and employees. The underlying purpose of the project is storage and distribution of non-grocery goods to Wal-Mart retail stores located throughout the region.

H) *Main Warehouse:* The primary building on the site would be the approximately 1.1-million-square-foot regional distribution warehouse. The warehouse would be primarily a materials-handling operation; it would not handle perishable goods, such as fruit, vegetables, dairy products, bakery goods, and meat. There would also be warehouse support space to house administrative offices, the data processing center, and a cafeteria. Other internal office/support areas for administrative uses would consist of an electric forklift battery charging/maintenance area and an aerosol product storage area. There would be approximately 37,000 square feet of office/support areas within the warehouse. An emergency generator would be located outside, near the warehouse. The generator would have an approximately 500-gallon aboveground diesel fuel tank.

I) *Support Facilities:* Support facilities include a 17,000-square-foot truck maintenance building that would be used for routine maintenance of tractor/trailers serving the facility. The building would include a wash bay for trucks and trailers, service bays, break rooms, offices, storage rooms, and restrooms. The truck maintenance equipment would consist of two underground storage tanks near the building; a storage tank for new oil (6,000-gallon capacity), and a storage tank for waste oil (2,500-gallon capacity). Additionally, a fuel dispensing station with two underground storage tanks, each containing 20,000 gallons of diesel fuel, is proposed for trucks using the distribution center.

Another support facility would be the 1,600-square-foot fire pump house that would house the primary and standby fire pumps serving the building fire-sprinkler systems and site fire hydrants. An electric motor would drive the primary fire pump and a diesel engine would drive the standby pump. An aboveground diesel fuel storage tank for the standby pump, with a capacity of approximately 500 gallons, would be located inside the fire pump house. Adjacent to the fire pump house would be two steel aboveground storage tanks, each containing 300,000 gallons of water. The tanks would be directly connected to the fire pumps to serve as their water source.

The truck gate would be located on the truck driveway serving the site and would contain a storage closet, a restroom, and workspace for two security officers. This would involve a building with approximately 500 square feet of floor space.

J) *Access and Parking:* The site would be served via two driveways connected to Gerard Avenue. One driveway would be dedicated to employee traffic and the other driveway would be dedicated to tractor trailer traffic. The tractor trailer driveway and parking area would be secured by the truck gate and by a 6-foot-high chain-link fence. The site would have up to approximately 850 employee parking spaces, 1,600 tractor trailer parking spaces, 300 tractor (without trailer) parking spaces, and 300 dock doors. There would be approximately 70 acres of pavement, in addition to the area covered by buildings.

### **Building Design**

- K) The proposed building elevations can be seen at Attachment C. All buildings would be single-story and constructed of pre-engineered steel components with metal panels. Maximum building height is proposed to be 40 feet above the finished floor level. On three sides of the building the finished floor would be 4 feet above finished grade. The main office floor would be at finished grade level. Condition #27 requires upgrades to the building facades, including color bands, alternating/mixed siding materials and patterns, and cosmetic “pop-outs” (not adding additional internal floor area), in order to upgrade the appearance of the facility. Condition #27 also requires upgrades to the portion of the building facing the employee parking area. Condition #28 addresses project signage and Condition #26 prohibits the use of barbed wire fences along the project perimeter.

### **Landscaping**

- L) Mitigation Measure 4.13-2 and Project Condition #25 will require extensive landscaping on and around the Project site. This landscaping will consist of street trees (planted every 40 feet) and a 15-foot wide landscape strip with trees planted every 30 feet, shrubs, and turf along the entire Project perimeter which abut public streets (Childs, Gerard, and Tower). Parking lot trees will be planted at one tree for each 6 spaces in the employee and visitor parking areas. Parking lot trees shall not be required in the truck or trailer parking areas, however, due to concerns about the trucks maneuvering around the trees and/or possible damage to the trees. Trees will be planted, however, around the perimeter of the truck and trailer parking areas to the maximum extent feasible. The existing almond trees on site shall be preserved in any areas of the site that are left undeveloped by buildings, parking areas, driveways, drainage basins, etc.

### **Public Improvements/City Services**

- M) The City of Merced provides wastewater, water, storm drainage, solid-waste disposal, street maintenance, fire service, and police service to the project site. Either Pacific Gas and Electric (PG&E) or MID can provide electricity to the site. PG&E would provide natural gas service. AT&T would provide telephone service to the site, and Comcast would provide cable television service. The project site is within the Weaver Union Elementary School District (Grades K–8) and the Merced Union High School District (Grades 9–12).

The sanitary sewer line that exists within the Kibby Road right-of-way would be abandoned and replaced with a new sewer line that would be installed along the western boundary of the site. Similarly, the water line that is located within the Kibby Road right-of-way would also be replaced. Preliminary plans indicate that the replacement water line would be installed on the eastern edge of the site. (See Condition #22 regarding these wastewater and water lines.) The distribution center could receive electrical power from Merced Irrigation District via an overhead line that exists within the Childs Avenue right-of-way. Gas service, to be provided by PG&E, would be extended to the site from a transmission line in Childs Avenue, approximately one-half mile east of Tower Road. AT&T would extend telephone service to the site from lines located in the rights-of-way of Childs Avenue and Gerard Avenue.

A series of storm water management detention ponds would serve the site. These ponds and associated drainage control structures are designed to accommodate storm water runoff from impervious areas such that system discharge flow rates would be equal to or less than predevelopment flow rates for equivalent events.



**Employment**

- N) In the Draft EIR, the Project was assumed to employ approximately 1,200 employees once fully operational in approximately 3 years after opening. 1,050 would be employees at the distribution center, and there would be an additional 150 employees that would be drivers not hired at the facility that would only be on the premises for a limited period of time. The facility would operate 24 hours per day continuously throughout the year.

**Fees**

- O) If approved, the Project will be required by the Merced Municipal Code to pay various fees and charges prior to construction. These fees include the City's Public Facilities Impact Fees, Regional Transportation Impact Fees, school fees, wastewater and water connection fees, building permit fees, etc., in addition to monthly charges for wastewater, water, refuse, and other services once the facility is in operation. A detailed estimate of all fees has not yet been prepared since the fees are subject to change over time and may be different at the time of construction, which may be a few years in the future. To provide the general scope of the fees involved for the project, an estimate of some of the fees, based on the 2009 rates, has been calculated as shown in Findings P and Q below.
- P) *City Public Facilities Impact Fees:* Using 2009 rates of \$3,812 per 1,000 square feet for a 1.1 million square-foot warehouse (a "Light Industrial" use), the City Public Facilities Impact Fees would be approximately \$4.19 million. These impact fees would be used to pay for Project impacts on City roadways (including traffic signals, bridges, etc.), fire and police facilities, and parks and bikeways. City impact fee projects in the Project vicinity include Childs Avenue, Mission Avenue, and a new fire station in the vicinity of Gerard and Coffee.
- Q) *Regional Transportation Impact Fees:* Using 2009 rates of \$1,409 per 1,000 square feet for a 1.1 million square-foot warehouse (a "Heavy Industrial" use), the Regional Transportation Impact Fees would be approximately \$1.5 million. These impact fees would be used to pay for Project impacts on regional roadways, including Mission Avenue, Highway 140, and the Campus Parkway in the Project vicinity.

**Neighborhood Impact/Interface**

- R) *Residences:* There are three residences in close proximity to the Project site within areas zoned for agriculture (A-1) or industrial (I-H) uses. These residences include a farm house located across Gerard Avenue approximately 400 feet from the southwest corner of the project site, a farm house located over 700 feet from the project's southeast corner, and a farmhouse located over 800 feet east of the Project site (across the PG&E easement and Tower Road). Noise impacts on these homes are discussed in detail in Section 4.8 of the Draft EIR and in Table 4.8-9 on page 4.8-19 of the DEIR. Mitigation Measure 4.8-3 addresses the installation of sound attenuation barriers for these residences to address the Project's impacts on those residences.

The nearest residential zoning lies approximately 1,250 feet west of the Project's western boundary, west of the Doane-Hartley Lateral and the Campus Parkway (under construction). This area was annexed to the City in 1998. Two approved subdivisions are located within an area bounded by Gerard Avenue to the south, the Doane-Hartley Lateral to the east, Childs Avenue to the north, and Coffee Road to the west, with a R-1-5 zone. The Sandcastle Subdivision consists of 334 single-family residential lots, a park, and a portion of a school site (see Finding S below), and was approved by the City in 2003. Permits were issued for

approximately 196 of those homes. The Crossing at River Oaks Subdivision consists of 277 approved single-family lots, a vacant 5.5-acre multi-family site, a vacant 5-acre commercial site, and the remaining portion of the proposed school site, and was approved by the City in 2004. Approximately 11 single-family permits have since been issued for that subdivision.

Five subdivisions are located within an area bounded by Childs Avenue to the south, the Doane-Hartley Lateral to the east, Highway 140/Baker Drive to the north, and Coffee Road to the west, within an area zoned R-1-5 and R-1-6, which also includes Weaver School. The five subdivisions (Renaissance I & II, Sierra Vista, Makinson, and Tuscany East) consists of a total of 455 approved single-family lots, of which approximately 264 have been issued permits for construction.

- S) *Schools:* Weaver Elementary School is located on 19.5 acres at the northeast corner of Coffee and Childs. The school's eastern boundary is approximately 3,200 feet from the Project site's western boundary. Pioneer Elementary School is located on 12 acres at the southwest corner of Coffee and Gerard. The school's eastern boundary is approximately 3,800 feet from the Project site's western boundary. Golden Valley High School is located on 45 acres at the northeast corner of Parsons and Childs. The school's eastern boundary is approximately 1.5 miles from the Project site's western boundary.

A proposed school site is located within the Sandcastle/Crossing at River Oaks Subdivisions at the southeast corner of Dinkey Creek Ave and Albert Drive. The Weaver Union School District has not yet acquired the site and in preliminary discussions with City staff have indicated that due to the construction of the new Farmdale School at G and Mission, this proposed school site may no longer be needed. No official action in that respect has been taken, however. It should be noted that although the Weaver and Merced High School Districts were provided copies of the Draft EIR for this Project, neither school district chose to comment.

- T) *Project Impacts:* The Project DEIR describes its impacts on nearby residences and schools and spells out mitigation measures to reduce these impacts to the greatest extent feasible. The Project is located within an area that has been designated for industrial uses for over a decade and for a portion of the site for over 30 years. The East Merced Industrial Area was designated for heavy industrial uses in 1978, long before the residential subdivisions east of the Campus Parkway were planned. The City's General Plan and Zoning Map clearly show that this area is designated for industrial uses and these plans are all available to the public and potential homebuyers. The City's Heavy Industrial zoning district (Merced Municipal Code Section 20.36) allows such conditional uses as steel foundries, poultry slaughterhouses, meat packing, and salvage & wrecking operations, all of which could have potentially more impacts on nearby residential uses than the proposed Project.

The majority of Project traffic, including trucks, traveling to and from the proposed distribution center would be using Highway 99, the Mission Interchange, the Campus Parkway, and Gerard Avenue east of the Campus Parkway. Mitigation Measure 4.11-2b(c) and Condition #17 requires the applicants to direct all their truck drivers only use certain streets (not including Gerard or Childs Avenues west of the Campus Parkway) to travel to or from the distribution center and not to park in any of the residential subdivisions west of the Campus Parkway. As long as the above restrictions are followed, trucks from the distribution center should not be impacting streets directly serving the residential uses described in Finding R above or those streets serving the schools described in Finding S above.

Given the above, City staff has concluded that all possible measures have been implemented to protect nearby residential uses and schools from potential Project impacts to the greatest extent feasible.

### **Public Correspondence**

- U) Since the Project was announced in 2006, the City has received hundreds of letters and emails regarding the project. Due to the volume of this correspondence, a CD-ROM has been enclosed with this staff report (and copies will be posted to the City's website) including all the correspondence received. It should be noted that this correspondence is in addition to the letters received on the Draft EIR during the 60-day public comment period from February 25 to April 27, 2009. Those DEIR comment letters are included in the Final EIR distributed under separate cover.

### **Public Notice**

- V) On July 30, 2009, a public hearing notice for the Project and associated applications was published in the *Merced Sun-Star*. On that same day, notices were mailed to over 427 adjacent property owners (there are actually 884 individual parcels but duplicate names and addresses reduced the number of notices) within 2,600 feet of the project boundary. Legal requirements only require a 300-foot notice boundary but the City chose to increase that boundary to 2,600 feet in order to make sure that all the residential subdivisions between Coffee Road and the Doane-Hartley Lateral were included. Public Hearing Notices were also mailed to over 226 individuals who had requested to be on the mailing list for the project and/or had submitted written correspondence to the City on the project, and notices were also mailed to all those 241 individuals and agencies who had submitted comments on the Draft EIR during the public review period. The Public Hearing Notice was also posted to the City's website.

### **Site Plan Review Committee Referral**

- W) On April 23, 2009, the Site Plan Review Committee considered the proposed Project. The Site Plan Review Committee is made up of the Director of Development Services, the Chief Building Official, and City Engineer per Merced Municipal Code Section 20.68.030. (Currently the Director of Development Services and the Chief Building Official are the same individual.) The Site Plan Review Committee, by a 2-0 vote, made Findings relating to Merced Municipal Code Section 20.68.040 (B), which allows the Committee to refer a Site Plan Application to the Planning Commission for hearing and decision if "*a request is of such magnitude to be a significant policy interpretation and/or of special interest to surrounding property owners and the planning commission.*"
- X) The Site Plan Review Committee determined that "since the proposed Wal-Mart Distribution Center project was announced in 2006, significant public discussion has taken place prior to any public hearings on the project being scheduled. The City has received large amounts of correspondence regarding the project as well as numerous public records requests regarding the project. All the above indicates a 'special interest to surrounding property owners' per MMC 20.68.040 (B)." The Committee also found that since the project required consideration of other City applications (i.e. General Plan Amendment, Abandonment, certification of an EIR, etc.) which would require public hearings before the Planning Commission and City Council, that "it is appropriate for all applications, including Site Plan Application #260, regarding the

proposed project to be set forth for public hearings before the Planning Commission and City Council.” It was also determined that per CEQA section 15025(c), since the Site Plan Review Committee, an advisory body, was not making a recommendation on the project to a decision making body, but was merely referring the project to the decision making body for a public hearing and decision, the Site Plan Review Committee was not required to review the Environmental Impact Report in draft or final form. (See Attachment D for the Site Plan Review Committee Resolution and Minutes.)

**FINDINGS/CONSIDERATIONS (Environmental Impact Report):**

**Purpose of an EIR**

- Y) The purpose of an Environmental Impact Report (EIR) is to evaluate the anticipated physical environmental impacts of a project, and to provide mitigation measures necessary to decrease those impacts to a less than significant level. The EIR process also allows public review of the expected environmental effects by agencies and the public, and provides a method for identifying unavoidable significant impacts and adopting overriding considerations, if deemed necessary. EIRs also identify project alternatives and cumulative impacts of a project.

**Preparation of the Environmental Impact Report**

- Z) The Draft and Final Environmental Impact Reports (EIR) for the proposed Wal-Mart Regional Distribution Center were prepared by EDAW, Inc. Specialized sub-consultants serving with EDAW in the environmental assessment process included DKS Associates (Traffic); Remy Thomas Moose & Manley (Legal Review); and Geocon Consultants, Inc. (Hazards). The contract with EDAW was amended three times in order to make sure that the analysis was as complete and accurate as possible. The City also hired an outside firm, RBF Consulting, to “peer review” the Draft EIR to ensure its completeness. The following table provides a summary of key events leading up to the Final EIR.

<u>Event</u>	<u>Date</u>
EIR Contract Approved by City Council with EDAW	May 15, 2006
Notice of Preparation (NOP) Distributed	July 7, 2006
Comment Period on NOP Ends	August 11, 2006
EIR Contract Amendment #1 Approved by City Council	November 6, 2006
EIR Contract Amendment #2 Approved by City Council	April 16, 2007
Contract for Peer Review of EIR Approved by City Council with RBF Consulting, Inc.	February 19, 2008
Peer Review Completed	May 2008
EIR Contract Amendment #3 Approved by City Council	September 15, 2008
Draft EIR Completed	February 2009
Draft EIR 60-day Public Review Period Begins	February 25, 2009
Draft EIR 60-day Public Review Period Closes	April 27, 2009
Final EIR Made Available to Public & Distributed to Those Who Submitted Comment Letters	July 30, 2009

**Impacts Identified from the Project**

AA) The Draft EIR for the proposed Wal-Mart Regional Distribution Center has identified potentially significant physical environmental impacts that are expected to result from the development proposal. The EIR also provides appropriate measures to mitigate the impacts and to reduce anticipated *physical* environmental impacts to less than significant levels. Significant Environmental Effects Requiring Mitigation include impacts on air quality, biological resources, cultural resources, geology/minerals/soils/paleontological resources, hydrology & water quality, noise, public health & hazards, traffic & circulation, utilities & public services, and visual resources. These impacts and mitigation measures are summarized in the table below and in more detail in Table 2-1 in the Executive Summary of the Draft EIR as well as in the Mitigation Monitoring Program at Attachment F.

<b><u>Impacts</u></b>	<b><u>Mitigation (If Available)</u></b>
4.1-Agricultural Resources	<ul style="list-style-type: none"> <li>◆ Conversion of Prime Farmland remains a Significant and Unavoidable Impact (City previously adopted a Statement of Overriding Considerations for this impact with General Plan adoption in 1997)</li> </ul>
4.2-Air Quality	<ul style="list-style-type: none"> <li>◆ Compliance with SJVAPCD's Indirect Source Rule</li> <li>◆ Implement measures to reduce construction-related diesel equipment exhaust emissions</li> <li>◆ Implement an Emissions Reduction Agreement with SJVAPCD to reduce construction emissions of ROG and NOx</li> <li>◆ Compliance with SJVAPCD's Regulations VIII-Fugitive Dust Prohibitions</li> <li>◆ Implement SJVAPCD-Recommended Enhanced and Additional Dust Control Measures</li> <li>◆ Develop and implement design features and program incentives to reduce employee commute trips</li> <li>◆ Implement recommended and additional mitigation measures to reduce operational emissions, includes funding bikeways</li> <li>◆ Implement an Emissions Reduction Agreement with SJVAPCD to reduce operational emissions of ROG, NOx, and PM10</li> <li>◆ Ensure on-site yard trucks are maintained and meet on-road truck emissions standards</li> <li>◆ Implement effective mitigation measures to reduce operational emissions of CO2, includes measures to reduce energy consumption</li> </ul>
4.3-Biological Resources	<ul style="list-style-type: none"> <li>◆ Implement measures to minimize potential impacts on Swainson's Hawk and Burrowing Owl</li> </ul>
4.4-Cultural Resources	<ul style="list-style-type: none"> <li>◆ Contact cultural resources specialist for potential cultural finds during ground-disturbing activities</li> <li>◆ Stop potentially damaging work if human remains are uncovered, assess significance, and pursue appropriate management</li> </ul>
4.5-Geology, Minerals, Soils, & Paleontological Resources	<ul style="list-style-type: none"> <li>◆ Implement construction personnel training and recover paleontological resources if encountered.</li> <li>◆ Prepare a final Geotechnical design report and implement all applicable recommendations</li> <li>◆ Provide on-site construction monitoring by a Geotechnical Engineer</li> <li>◆ Prepare and implement a Grading and Erosion Control Plan</li> </ul>

<b>Impacts</b>	<b>Mitigation (If Available)</b>
<b>4.6-Hydrology &amp; Water Quality</b>	<ul style="list-style-type: none"> <li>◆ Acquire appropriate regulatory permits and implement Storm Water Pollution Protection Plan (SWPPP) and Best Management Practices (BMP)</li> <li>◆ Establish a maintenance entity for BMPs</li> <li>◆ Develop and implement a BMP and Water Quality Maintenance &amp; Monitoring Plan</li> <li>◆ Comply with SB 5 Criteria establishing 200-year Urban Flood Protection</li> </ul>
<b>4.7-Land Use</b>	<ul style="list-style-type: none"> <li>◆ No significant impacts</li> </ul>
<b>4.8-Noise</b>	<ul style="list-style-type: none"> <li>◆ Regulate short-term construction noise</li> <li>◆ Implement measures to reduce exposure to traffic noise (includes installation of sound barriers for 3 residences on Tower and Gerard)</li> </ul>
<b>4.9 Population &amp; Housing</b>	<ul style="list-style-type: none"> <li>◆ No significant impacts</li> </ul>
<b>4.10-Public Health &amp; Hazards</b>	<ul style="list-style-type: none"> <li>◆ Remediate known or previously undiscovered on-site hazardous materials</li> </ul>
<b>4.11-Traffic &amp; Transportation</b>	<ul style="list-style-type: none"> <li>◆ Accommodate all delivery truck parking on-site</li> <li>◆ Manage truck traffic on local streets</li> <li>◆ Provide emergency access gate and driveway on Childs Ave</li> <li>◆ Update Safe Routes to School Plan</li> <li>◆ Re-striping at Mission Ave and northbound Highway 99 off-ramp intersection (pay 9% project fair share)</li> <li>◆ Widening of Highway 140 between Santa Fe Ave and Kibby Road (pay 3.6% project fair share)</li> <li>◆ Re-paving and proper turning radii for trucks for Tower Road between Highway 140 and Gerard Avenue (pay 74% project fair share)</li> </ul>
<b>4.12-Utilities &amp; Public Services</b>	<ul style="list-style-type: none"> <li>◆ Incorporate energy efficiency features into project designs</li> </ul>
<b>4.13 Visual Resources</b>	<ul style="list-style-type: none"> <li>◆ Prepare and submit a Landscaping Plan</li> <li>◆ Prepare and submit a Lighting Plan</li> </ul>

BB) The EIR for the proposed Wal-Mart Regional Distribution Center also identified Unavoidable Significant Impacts or Significant Environmental Effects That Cannot Be Avoided (summarized in Section 6.4, starting on page 6-36 of the Draft EIR and in the table above). These irreversible impacts cannot be mitigated below the relevant threshold of significance. These impacts include agricultural land conversion; air quality (generation of greenhouse gas emissions); biological resources (special-status species foraging habitat); long-term operational traffic noise at sensitive receptors; and cumulative impacts to agricultural land, air quality (greenhouse gases), biological resources, noise, and visual resources.

**Final EIR and Response to Comments**

- CC) The Draft EIR for the proposed Wal-Mart Regional Distribution Center was distributed to interested agencies and the public for a 60-day-period (beginning on February 25, 2009 and ending on April 27, 2009). The City received 315 letters commenting on the DEIR. Two of those letters arrived after the close of the comment period, but they have been responded to as well. 241 individuals and agencies/organizations submitted letters (some individuals submitted more than one letter). Those letters can be seen in their entirety in Chapter 3 of the Final EIR (distributed to the Planning Commission on July 30, 2009). Responses to comments contained in those letters are located immediately following each letter in Chapter 3 of the Final EIR. As required per Section 21092.5(a) of the State of California Public Resources Code, a copy of the response to comments was sent to each public agency who had submitted a letter on July 30, 2009 (at least 10 days prior to the Planning Commission hearing). A notice was also sent to all those individuals who had commented on the DEIR regarding the availability of the Final EIR, including the Responses to Comments, on July 30, 2009. The Final EIR was made available for public review at City offices, the Main Branch of the Merced County Library, and the City's website. Printed copies and copies on CD-ROM were also made available.
- DD) The Final EIR for the proposed Wal-Mart Regional Distribution Center also contains minor modifications to the text and mitigation measures in response to the comments received (see Chapter 4). An errata sheet (Attachment H) with several additional minor corrections that were inadvertently omitted from the Final EIR has been prepared and included as part of the Final EIR. Appendix A of the Final EIR includes a revised table of proposed mitigation measures, which serves as the Mitigation Monitoring Program and is excerpted at Attachment F of this staff report.

**Findings of Fact and Statement of Overriding Considerations**

- EE) The Environmental Impact Report (EIR) for the proposed Wal-Mart Regional Distribution Center identified significant impacts associated with the proposed development. Approval of a Project with significant impacts requires that findings be made by the City pursuant to the California Environmental Quality Act (CEQA) and State CEQA Guidelines. These findings must state that significant impacts of the Project would either: 1) be mitigated to a less-than-significant level pursuant to the mitigation measures identified in this EIR; or 2) mitigation measures notwithstanding, have a residual significant impact that requires a Statement of Overriding Considerations.
- EDAW in consultation with City staff has prepared Draft "Findings of Fact" (Attachment G). The findings are divided into seven sections: 1) Introduction and background; 2) EIR proceedings; 3) Record of Proceedings; 4) CEQA Findings; 5) Mitigation Monitoring Program; 6) Project Alternatives; and 7) a Draft Statement of Overriding Considerations.
- FF) All significant impacts associated with the Project have been mitigated to a level of insignificance except those described in Finding BB. Therefore, a Draft Statement of Overriding Considerations (beginning on page 71 of Attachment G) has been prepared.

**Mitigation Monitoring**

GG) In accordance with CEQA requirements, the City is required to adopt a Mitigation Monitoring and Reporting Program when approving mitigation measures contained in an EIR or mitigated negative declaration. The Program is to be designed to ensure compliance with the adopted project mitigation measures that were required by the public agency in order to reduce or avoid significant environmental effects. A Mitigation Monitoring Program is required for this project. Per Merced Municipal Code Section 19.28, the applicant shall pay all direct and indirect costs incurred by the City for the mitigation monitoring program (Conditions #10 and #11).

**PLEASE BRING YOUR COPIES OF THE DRAFT AND FINAL EIR FOR THE PROPOSED WAL-MART REGIONAL DISTRIBUTION CENTER TO THE MEETING. (Please contact City staff if you need another copy.)**

**Attachments:**

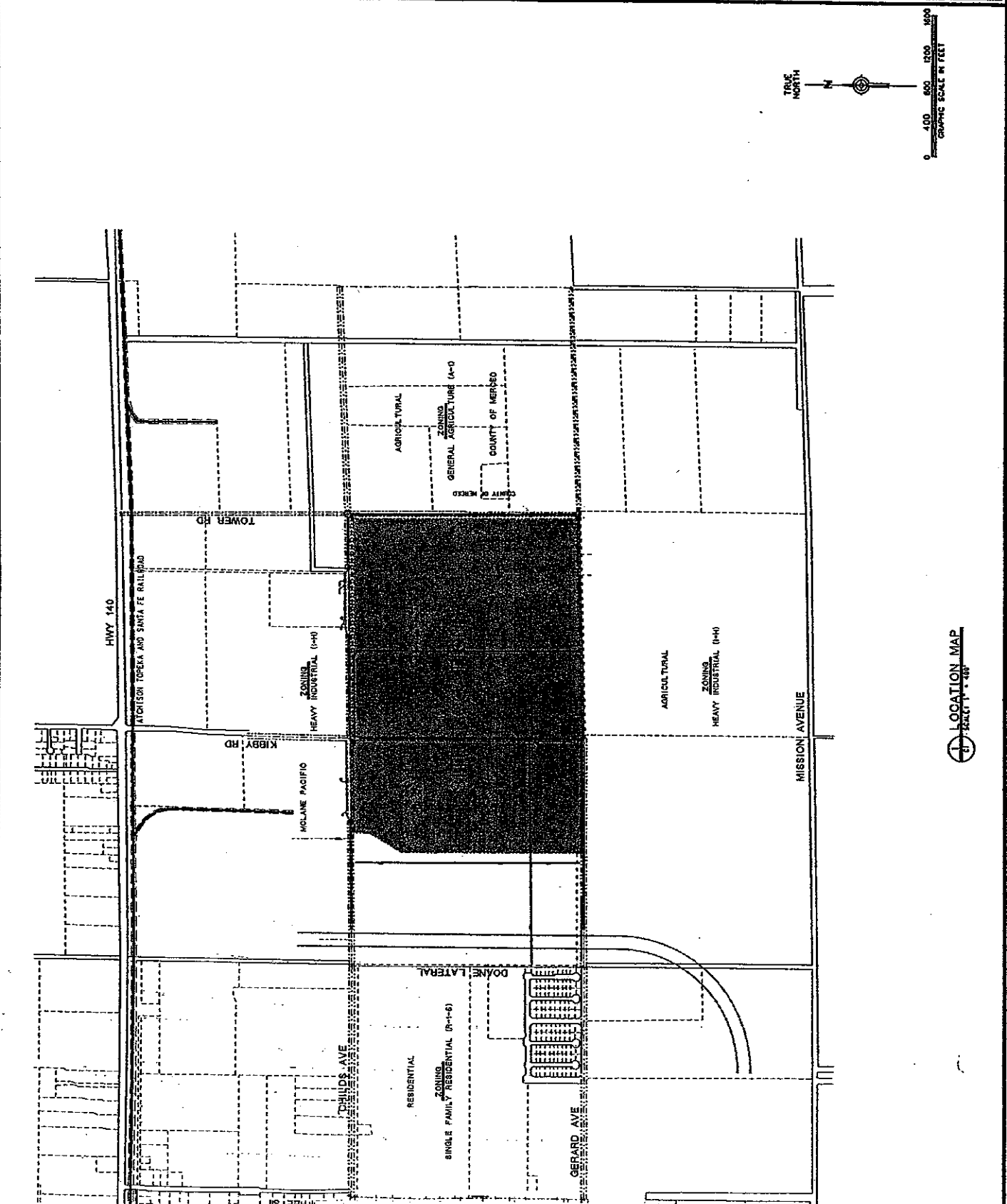
- A) Project Vicinity Map
- B) Project Site Plan
- C) Project Elevations
- D) Site Plan Review Committee Resolution & Minutes from April 23, 2009
- E) Lot Split Resolution #871 & Site Plan Resolution #79-1
- F) Mitigation Monitoring Program
- G) Draft CEQA Findings of Fact and Statement of Overriding Considerations
- H) Final EIR Errata Sheet
- I) Draft Planning Commission Resolution

**Enclosures:**

- 1) CD-ROM of Correspondence from the Public regarding the Project (2006-2009)

[Ref: KE\Projects\2009\Wal-Mart Distribution Center\Public Hearings\Planning Commission\Final Wal-mart PC Staff Rpt #09-18-Aug19-09.doc]





*Project Vicinity Map*  
**ATTACHMENT A**



NO.	DESCRIPTION	DATE	BY
1	PRELIMINARY	11/11/11	J. BURTON
2	REVISED	11/11/11	J. BURTON
3	REVISED	11/11/11	J. BURTON
4	REVISED	11/11/11	J. BURTON
5	REVISED	11/11/11	J. BURTON
6	REVISED	11/11/11	J. BURTON
7	REVISED	11/11/11	J. BURTON
8	REVISED	11/11/11	J. BURTON
9	REVISED	11/11/11	J. BURTON
10	REVISED	11/11/11	J. BURTON

**SITE DATA TABLE**

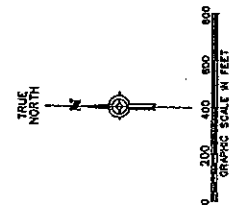
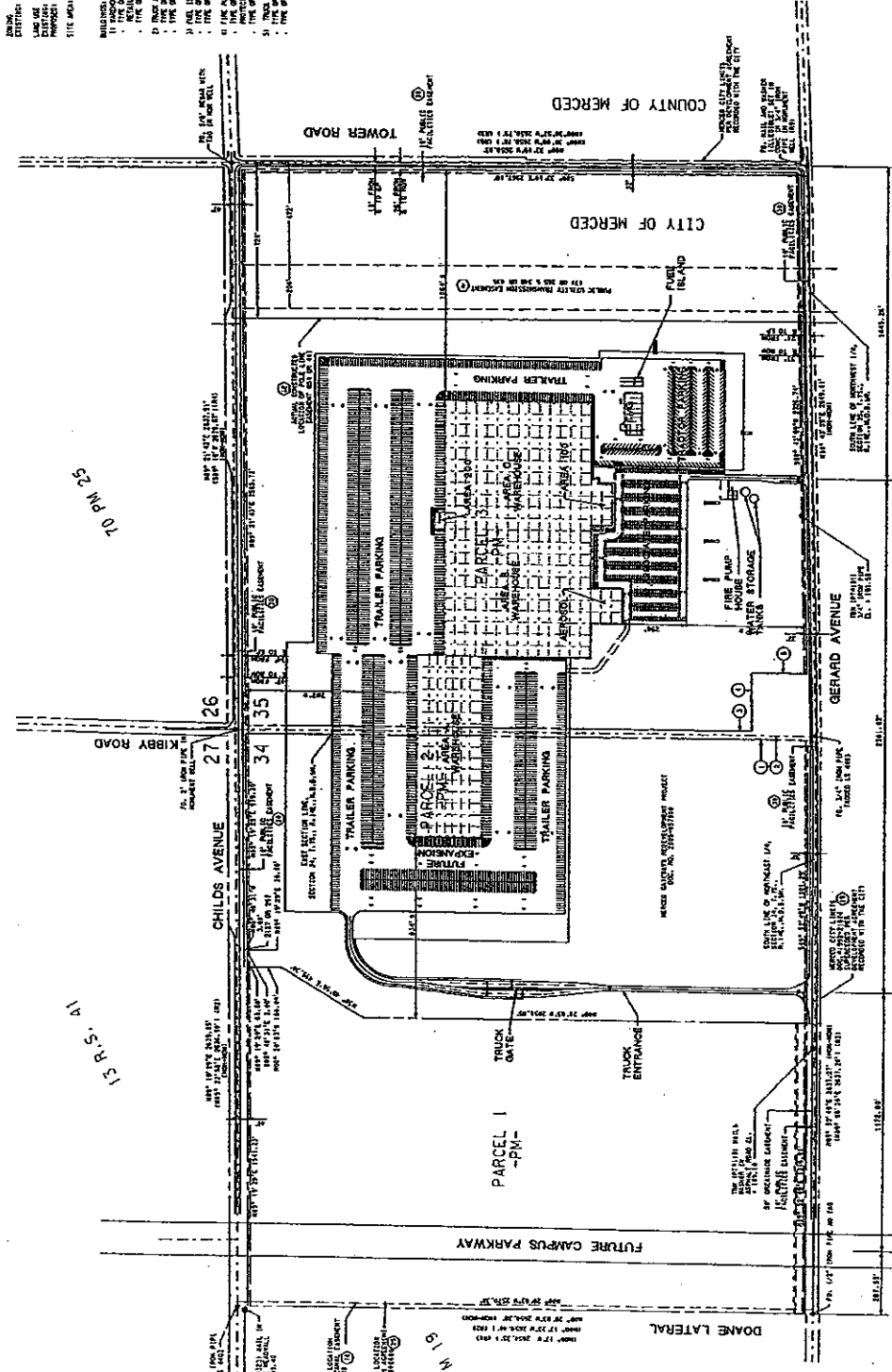
PROJECT: REGIONAL DISTRIBUTION CENTER NO. 1111  
 LOCATION: 13 R.S. 41, 70 P.M. 25, COUNTY OF MERCED, CALIFORNIA  
 DRAWN BY: J. BURTON  
 CHECKED BY: J. BURTON  
 DATE: 11/11/11

**GENERAL NOTES:**

1. ALL UTILITIES SHOWN ARE BASED ON THE CITY RECORDS AND FIELD SURVEY.
2. ALL UTILITIES SHALL BE DEEPENED TO THE CITY RECORDS AND FIELD SURVEY.
3. ALL UTILITIES SHALL BE DEEPENED TO THE CITY RECORDS AND FIELD SURVEY.
4. ALL UTILITIES SHALL BE DEEPENED TO THE CITY RECORDS AND FIELD SURVEY.
5. ALL UTILITIES SHALL BE DEEPENED TO THE CITY RECORDS AND FIELD SURVEY.
6. ALL UTILITIES SHALL BE DEEPENED TO THE CITY RECORDS AND FIELD SURVEY.
7. ALL UTILITIES SHALL BE DEEPENED TO THE CITY RECORDS AND FIELD SURVEY.
8. ALL UTILITIES SHALL BE DEEPENED TO THE CITY RECORDS AND FIELD SURVEY.
9. ALL UTILITIES SHALL BE DEEPENED TO THE CITY RECORDS AND FIELD SURVEY.
10. ALL UTILITIES SHALL BE DEEPENED TO THE CITY RECORDS AND FIELD SURVEY.

NO.	DESCRIPTION	DATE	BY
1	PRELIMINARY	11/11/11	J. BURTON
2	REVISED	11/11/11	J. BURTON
3	REVISED	11/11/11	J. BURTON
4	REVISED	11/11/11	J. BURTON
5	REVISED	11/11/11	J. BURTON
6	REVISED	11/11/11	J. BURTON
7	REVISED	11/11/11	J. BURTON
8	REVISED	11/11/11	J. BURTON
9	REVISED	11/11/11	J. BURTON
10	REVISED	11/11/11	J. BURTON

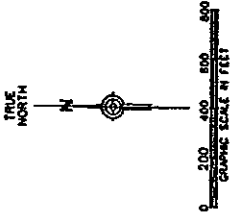
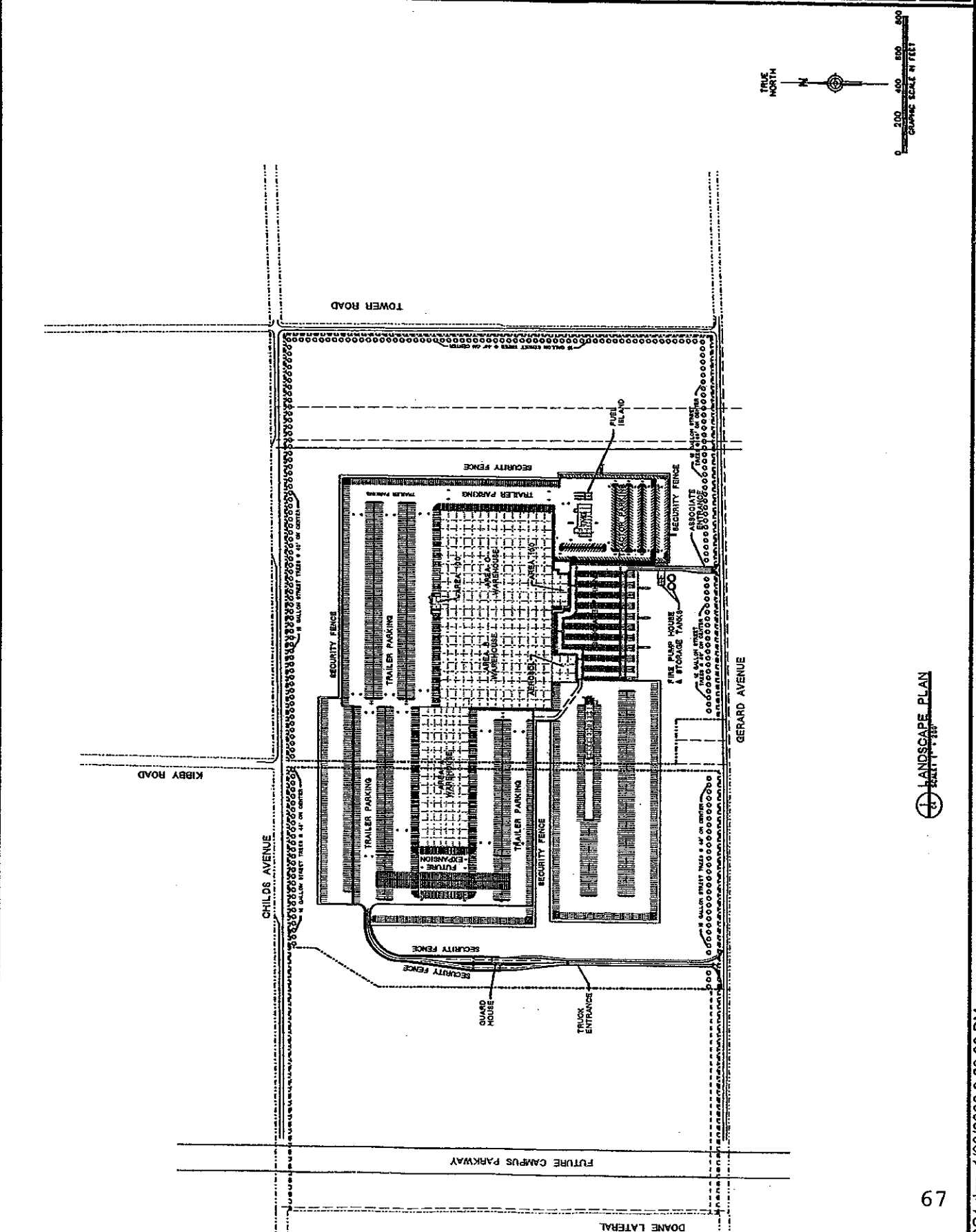
PARKING COUNT	
TOTAL	1117
TRUCKS	1117
TRAILERS	1117
TRUCKS	1117
TRAILERS	1117



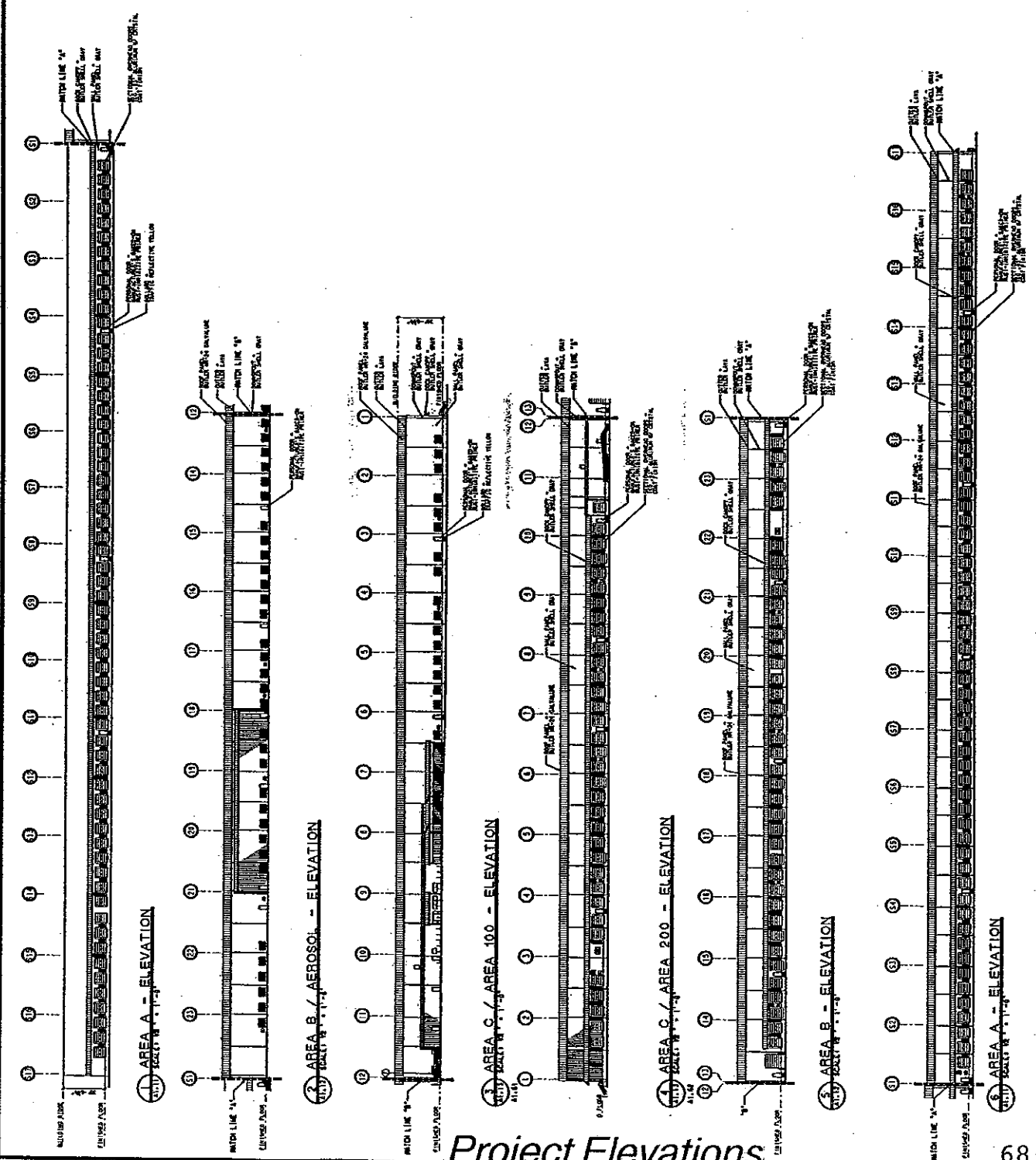
- KEY TO SYMBOLS:**
- 1. 1" = 10' (SEE PLAN)
  - 2. 1" = 20' (SEE PLAN)
  - 3. 1" = 40' (SEE PLAN)
  - 4. 1" = 80' (SEE PLAN)
  - 5. 1" = 160' (SEE PLAN)

**SITE PLAN**  
 SCALE: 1" = 200'

**Project Site Plan**  
**ATTACHMENT B**



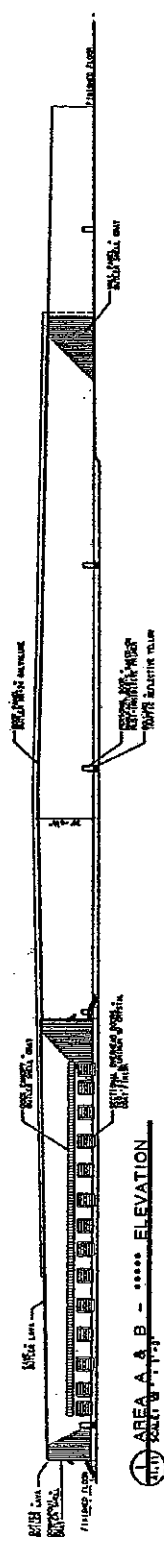
L LANDSCAPE PLAN  
 SCALE 1"=100'



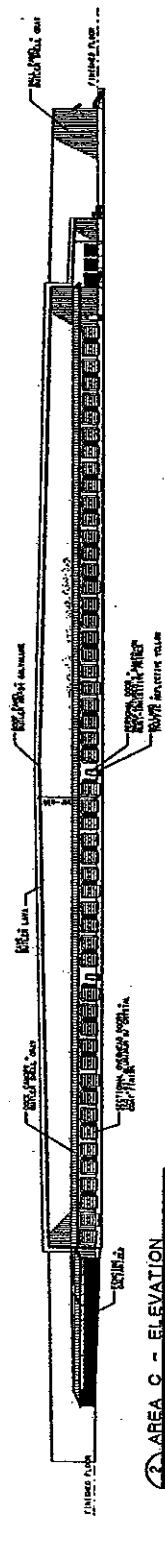
**Project Elevations**  
**ATTACHMENT C**

欄 欄 欄 欄 欄 欄 欄 欄 欄 欄  
 欄 欄 欄 欄 欄 欄 欄 欄 欄 欄

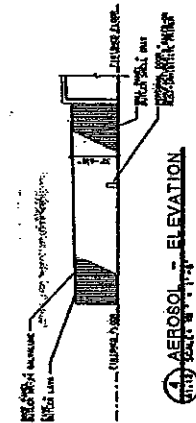
<b>WAL-MART</b> REGIONAL DISTRIBUTION CENTER NO. 7073 MERCED, CALIFORNIA				EXTERIOR ELEVATIONS & LOWER TYPES		<b>Carter-Burgess</b> 1000 North Zeeb Road Merced, California 95358 Phone: (209) 385-1100 Fax: (209) 385-1101 Website: www.carter-burgess.com		SHEET <b>A122</b>



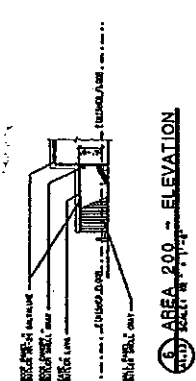
1 AREA A, B, C - ELEVATION



2 AREA A, B, C - ELEVATION

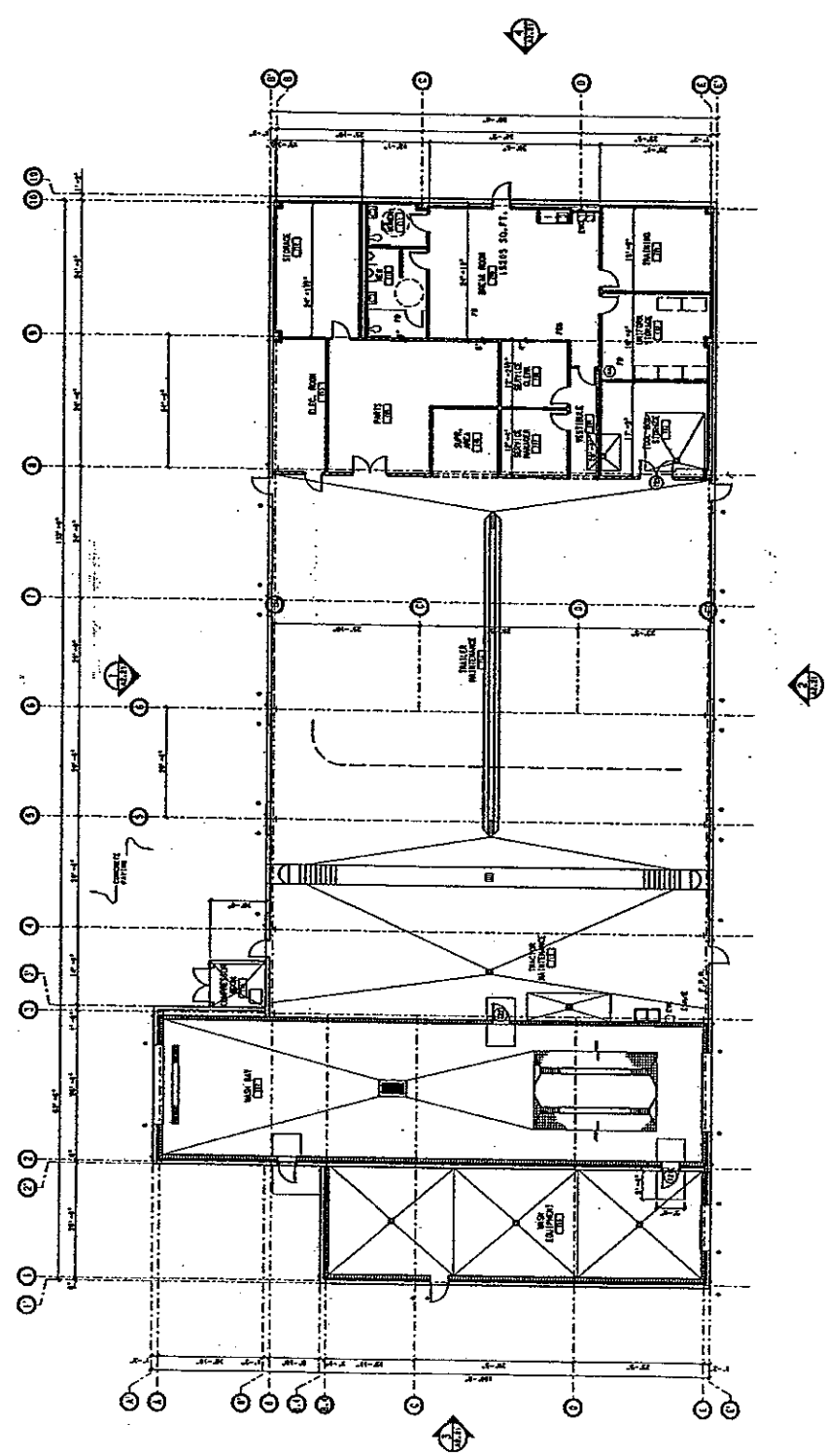


3 AREA A - ELEVATION

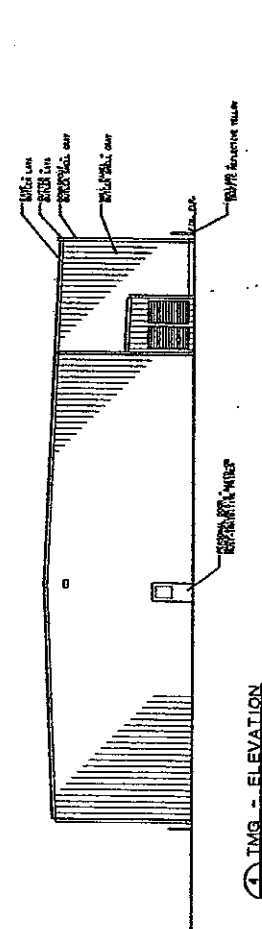
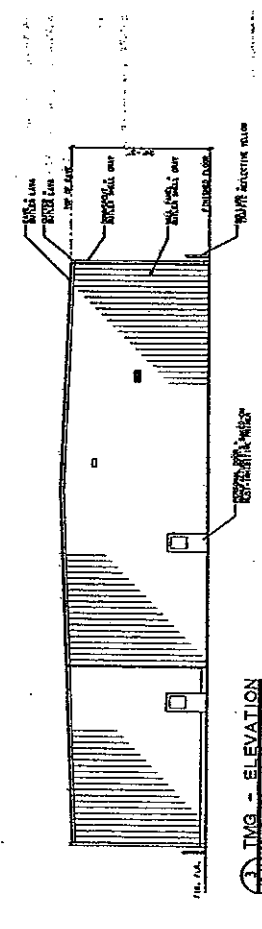
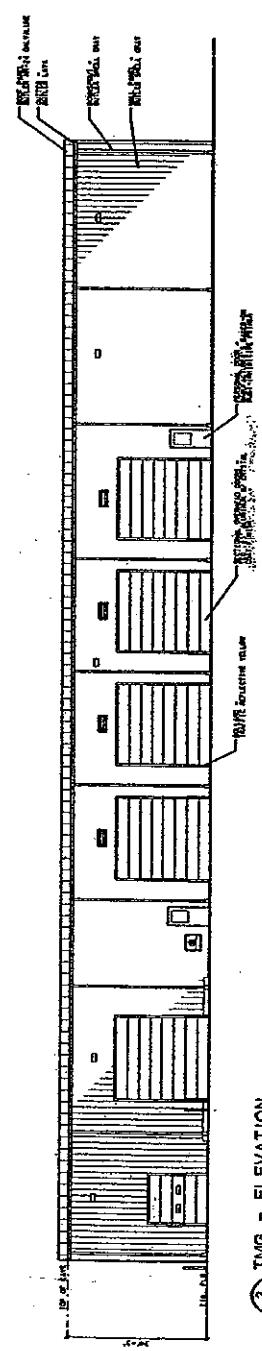
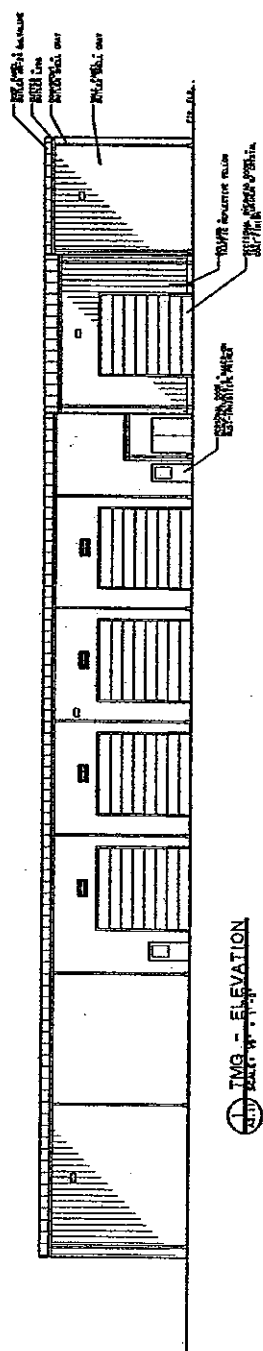


4 AREA 100 - ELEVATION

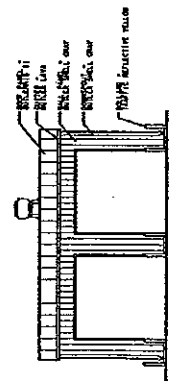
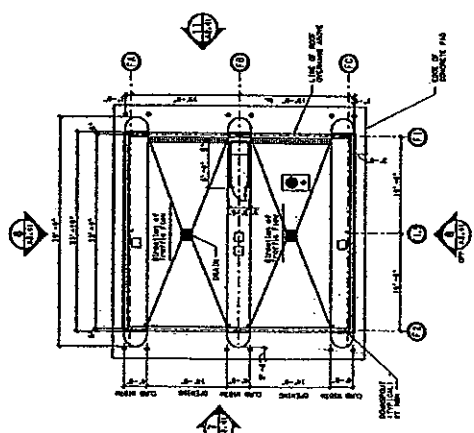
FOR INFORMATION ONLY



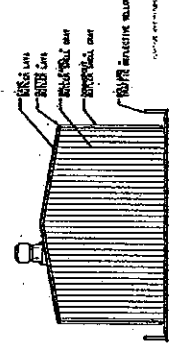
TMG - FLOOR PLAN  
 1/30/2006 4:15:26 PM



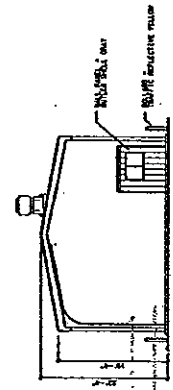
<p>WAL-MART REGIONAL DISTRIBUTION CENTER NO. 7073 MERCED, CALIFORNIA</p>	<p>TMG - FUEL ISLAND &amp; KIOSK</p>	<p>Centerburgess          Construction Services, Inc.          2750 West 14th Street          Merced, CA 95341          Phone: (209) 385-1234          Fax: (209) 385-1235</p>	<p>SHEET A2.41</p>
--	--	--	------------------------



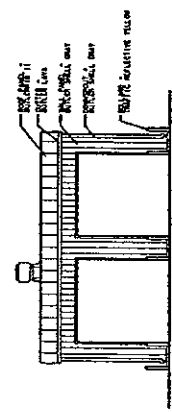
7. ELEVATION  
4000 SCALE W/1/4" = 1'-0"



8. ELEVATION  
4000 SCALE W/1/4" = 1'-0"



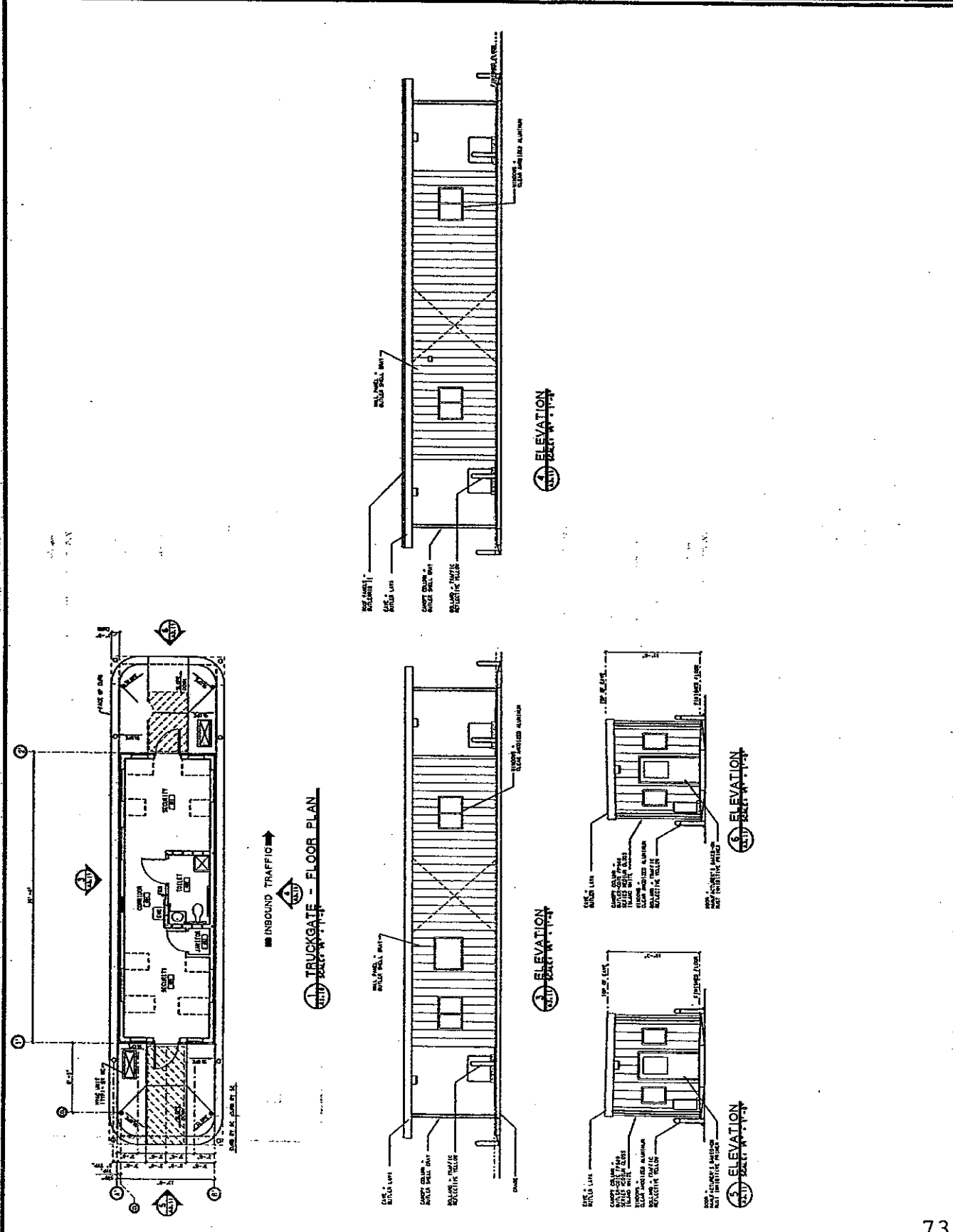
9. BUILDING SECTION  
4000 SCALE W/1/4" = 1'-0"

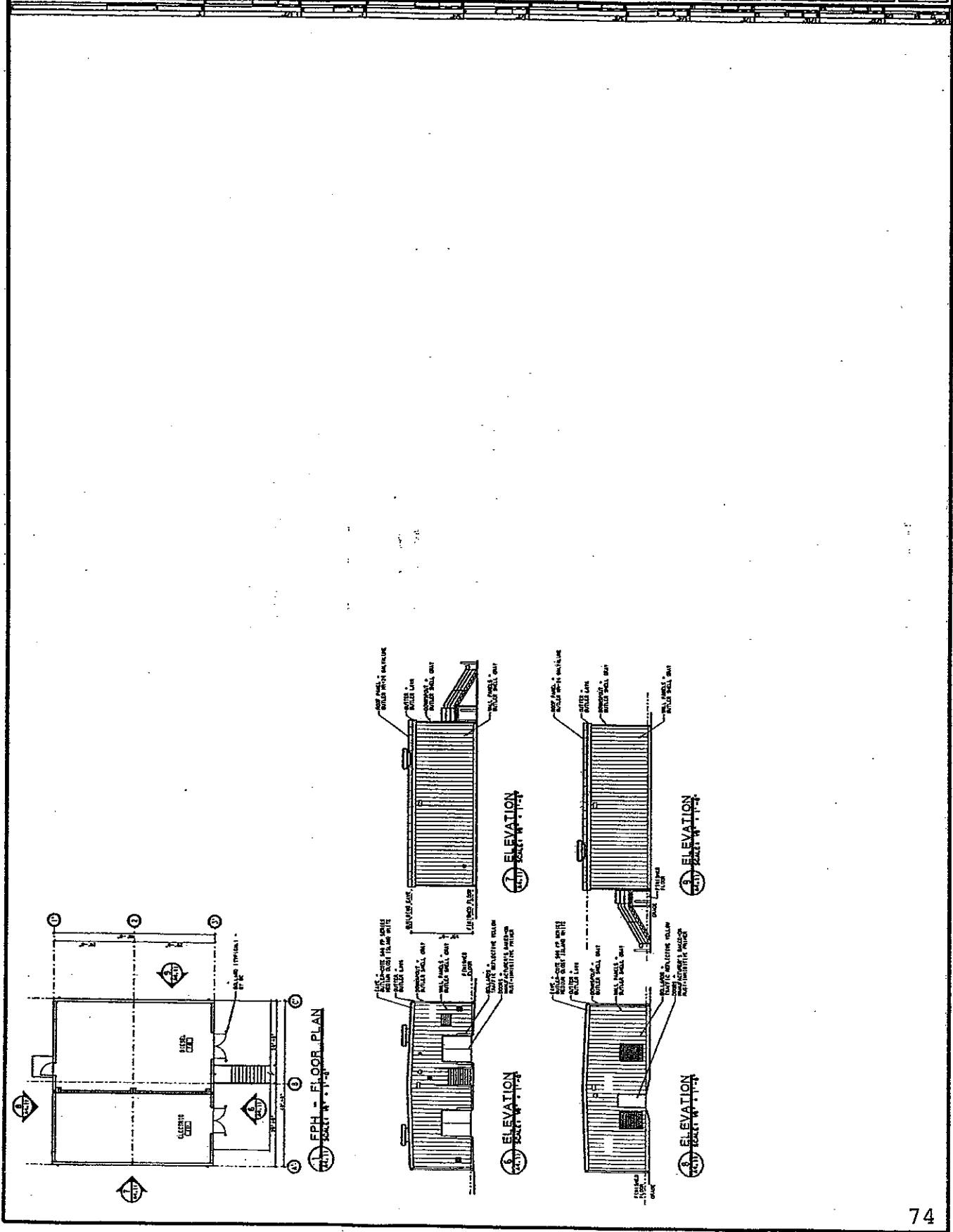


10. ELEVATION  
4000 SCALE W/1/4" = 1'-0"

COPYRIGHT © 2005 BY CENTERBURGESS, INC.







**SITE PLAN REVIEW COMMITTEE MINUTE EXCERPT**  
**APRIL 23, 2009**

- 4.1 Site Plan Application #260, submitted by Carter & Burgess, Inc., agent for Wal-Mart Stores East, LP, property owner. The application would allow for the construction of a regional distribution center (approximately 1.1 million square feet, operating 24 hours per day, and employing approximately 1,200 employees) and associated facilities on approximately 230 acres, generally located at the northwest corner of Gerard Avenue and Tower Road.

Planning Manager ESPINOSA summarized the action under consideration by the Committee, explaining that due to the significant public discussion that the project has already generated prior to any public hearings being scheduled, the project is of "special interest to surrounding property owners and the Planning Commission." Therefore, staff recommends that the Committee take no action other than to refer the application to the Planning Commission for a hearing and decision per MMC Section 20.68.040(B). For further information, refer to the Draft Site Plan Application Resolution #260.

The public comment period was opened at 1:40 p.m. There were no speakers from the audience and the comment period was closed at 1:40 p.m.

Committee Member WEGLEY stated that from the attendance at the meeting, it was obvious that this project meets the definition of a project of significant interest to the public, as stated in Municipal Code Section 20.68.040(B).

M/S WEGLEY-GONZALVES, and carried by the following vote, to refer the application to the Planning Commission for a hearing pursuant to the Findings set forth in Site Plan Resolution #260:

AYES: Committee Member Wegley and Chairperson Gonzalves  
NOES: None  
ABSENT: None (one vacancy)

**CITY OF MERCED  
SITE PLAN REVIEW COMMITTEE  
RESOLUTION #260**

<u>Wal-Mart Stores East, LP</u>	<u>Wal-Mart Distribution Center</u>
APPLICANT	PROJECT
<u>2001 SE 10<sup>th</sup> St, Dept. 9562</u>	<u>Northwest Corner of Gerard Avenue &amp; Tower Road</u>
ADDRESS	PROJECT SITE
<u>Bentonville, AR 72716-0550</u>	<u>061-250-090 and 061-290-047</u>
CITY/STATE/ZIP	APN
<u>(479) 273-8538</u>	<u>Heavy Industrial (I-H)</u>
PHONE	ZONING

In accordance with Chapter 20.68 of the Merced City Zoning Ordinance, the Site Plan Review Committee considered Site Plan Application #260 on April 23, 2009, submitted by Carter & Burgess, Inc., agent for Wal-Mart Stores East, LP, property owner. The application would allow for the construction of a regional distribution center (approximately 1.1 million square feet, operating 24 hours per day, and employing approximately 1,200 employees) and associated facilities on approximately 230 acres; generally located at the northwest corner of Gerard Avenue and Tower Road. Said property being more particularly described as Parcels 2 and 3 as shown on the map entitled "Parcel Map for Lyons Merger Partners, L.P.," filed in Parcel Maps in Volume 101, Pages 47 and 49, Merced County Records, also known as Assessors Parcel Numbers (APN) 061-250-090 and 061-290-047.

WHEREAS, the Merced City Site Plan Review Committee makes the following Findings:

- A) Merced Municipal Code Section 20.68.040 (B) reads as follows: "In the event the site plan committee is of the opinion that a request is of such magnitude to be a significant policy interpretation and/or of special interest to surrounding property owners and the planning commission, the site plan committee shall refer the request to the planning commission for a hearing and decision."
- B) Since the proposed Wal-Mart Distribution Center project was announced in 2006, significant public discussion has taken place prior to any public hearings on the project being scheduled. The City has received large amounts of correspondence regarding the project as well as numerous public records requests regarding the project. All the above indicates a "special interest to

Site Plan Review Resolution # 260

April 23, 2009

Page 2

surrounding property owners" per MMC 20.68.040 (B), and therefore, the Site Plan Committee is referring the request to the Planning Commission for hearing and decision.

- C) In addition to Site Plan Application #260, the project requires the approval of other City development applications before construction could proceed. These applications include General Plan Amendment #06-01 and Vacation/Abandonment Application #06-01 for a change in the General Plan Circulation Element and the abandonment of the right-of-way for Kibby Road (a designated collector) between Childs and Gerard Avenues, as well as the certification of an Environmental Impact Report (EIR #06-01). All of the above applications require public hearings before the Planning Commission and City Council. Therefore, the Site Plan Committee finds that it is appropriate for all applications, including Site Plan Application #260, regarding the proposed project to be set forth for public hearings before the Planning Commission and City Council.
- D) Per CEQA section 15025(c), since the Site Plan Review Committee, an advisory body, is NOT making a recommendation on the project to a decision making body, but is merely referring the project to the decision making body for a public hearing and decision, the Site Plan Review Committee is NOT required to review the Environmental Impact Report in draft or final form.


NOW, THEREFORE, BE IT RESOLVED that the Merced City Site Plan Review Committee does refer Site Plan Application #260 to the Planning Commission for a hearing and decision by the following vote:

AYES: Committee Member Wegley and Chairperson Gonzalves  
NOES: None  
ABSENT: None (one vacancy)

If there are any questions concerning the above, please contact Planning Manager, Kim Espinosa at (209) 385-6858.

April 23, 2009

DATE



SIGNATURE

Planning Manager

TITLE

**CITY OF MERCED**  
**Minor Subdivision Committee**  
**Lot Split Application #05-15**

**RESOLUTION #871**

WHEREAS, the Merced City Minor Subdivision Committee met on December 5, 2005 and continued to the meeting on December 19, 2005, to consider Lot Split Application #05-15, which would provide for the resubdivision of 313 acres generally described as being located north of Gerard Avenue, east of Doane Hartley Lateral, south of Childs Avenue and west of Tower Road; APN 061-290-001 and 061-290-035; and,

WHEREAS, upon due public notice, a public hearing was conducted on above said dates; and,

WHEREAS, said resubdivision would create the following three parcels:

PARCEL 1 - Having approximately 1,541.23 feet of frontage on the south side of Childs Avenue; and 1,316.01 feet of frontage on the north side of Gerard Avenue; said lot will contain approximately 80.45 acres.

PARCEL 2 Having approximately 1,047.80 feet of frontage on the south side of Childs Avenue; and 2,619.77 feet of frontage on the west side of Kibby Road and 1,301.28 feet of frontage on the north side of Gerard Avenue; said lot will contain approximately 76.23 acres.

PARCEL 3 Having approximately 2,597.65 feet of frontage on the south side of Childs Avenue and 2,621.05 of frontage on the west side of Tower Road; and 2,338.91 feet of frontage on the north side of Gerard Avenue and 2,351.22 feet of frontage on the east side of Kibby Road; said lot will contain approximately 155.68 acres.

WHEREAS, said Lot Split #05-15 was reviewed by the Merced Minor Subdivision Committee and found to comply with the provisions of the Subdivision Ordinance and Lot Split Procedures, and finds the following:

1. The proposed minor subdivision complies with the currently adopted City of Merced General Plan.
2. The City of Merced has conducted an environmental review of the proposed minor subdivision in accordance with the California Environmental Quality Act (CEQA) and has concluded this is a categorically exempt Class 15 project.

NOW, THEREFORE, BE IT RESOLVED that the Minor Subdivision Committee does approve Lot Split Application #05-15, submitted by Lyons Investments, L.P., property owner, subject to the following conditions:

1. Survey monuments shall be set at all angle points and lot corners.
2. All construction and improvements, due as part of the building permit stage, shall be in accordance with zoning, building, and all other codes, ordinances, standards and policies of the City of Merced in effect at the time of Lot Split approval, unless superceded by the existing Development Agreement with the Lyons Investments, A California Limited Partnership.
3. Either prior to the sale of any parcel described herein, or within two years of the date of this resolution, whichever is sooner, an official parcel map shall be filed with the Merced County Recorder in accordance with Section 66410 et. seq. of the State of California Government Code (Subdivision Map Act).
4. Prior to the issuance of an occupancy permit on any parcel, the street frontages (except Campus Parkway which is addressed under Condition #7) shall be improved to full City standards. Improvements shall include, but not be limited to, curb, gutter, fire hydrants, paving, street trees, street lights, under grounding of utilities and canals, and traffic control devices. Improvements may be phased in a reasonable manner commensurate with the impacts of the building permit. Parcel 1 shall have reasonable access to Childs Avenue and Gerard Avenue as conceptually shown on Exhibit 1.
5. Prior to the installation of any of the above required improvements, the subdivider shall obtain approval by the City Engineer of the plans for such improvements. Prior to the approval of the improvement plans, the subdivider shall enter into an agreement with the City to install said improvements, furnish bonds as required by the Government code, and shall deposit required inspection fees.
6. As part of the parcel map, the subdivider shall dedicate to the City of Merced 17 feet of right-of way (ROW) along the south side of Childs Avenue to meet arterial standards (47 feet south of the centerline for an overall 94-foot ROW); 12 feet of ROW on the west side of Tower Road to meet local street standards (32 feet west of the centerline for an overall 64-foot ROW); and 17 feet of ROW on the north side of Gerard Avenue along Parcel 3 and 7 feet of ROW on the north side of Gerard Avenue along Parcel 1 and Parcel 2 to meet collector street standards (37 feet north of centerline for an overall 74-foot ROW). In addition to these dedications, a 10-foot wide Public Facilities easement shall be dedicated, on the Parcel Map, adjacent to and along all of these dedications. Additional dedications and improvements may be necessary for turn lanes into project driveways and/or approaches to the

**Lot Split Resolution #871**

**December 28, 2005**

**Page 3**

- intersections of Childs Avenue and the future Campus Parkway and Gerard Avenue and the future Campus Parkway. These dedications shall be addressed at the Site Plan Approval stage.
7. Subdivider shall also dedicate through Parcel 1, on the parcel map, the rights-of-way required for the proposed Campus Parkway, including the area for the storm drainage basin. The areas are shown on Exhibits No. 2 and 3 to the resolution. Subdivider shall be eligible for City credits/reimbursements as allowed per City policy and ordinance. Full improvements, including but not limited to, 4 lanes of paving from Gerard to Childs, curb, gutter, fire hydrants, street trees, street lights, under grounding of utilities and canals, and traffic control devices, shall be constructed prior to issuance of an occupancy permit for Parcel 1 or as may be required by future environmental review for the development of Parcel 1. Improvements may be phased in a reasonable manner commensurate with the impacts of the building permit.
  8. Any subsequent City procedures and/or development approvals shall comply with all standard Merced Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
  9. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
  10. The subdivider 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 or proceedings 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, concerning the project and the approvals granted herein. 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 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.
  11. The subdivider 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 State or Federal law, regulation, or standard, the stricter or higher standard shall control.
  12. Before issuance of a building permit, subdivider shall demonstrate, to the satisfaction of the City Engineer, that storm drainage is designed to function



Lot Split Resolution #871

December 28, 2005

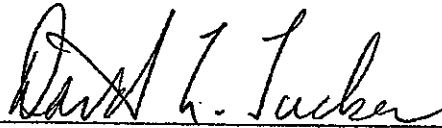
Page 4

as an integral part of a larger system. Interim facilities, including pump station location, may be a consideration. This shall include compatibility with the City's Storm Drain Master Plan.

13. Each parcel shall be individually required to go through the City's Site Plan Approval process prior to development. At the discretion of the Director of Development services, any such application may be referred to the City of Merced Planning Commission.
14. Community Facilities District (CFD) formation is required for annual operation costs for storm drainage and street tree maintenance. CFD procedures shall be initiated before building permit issuance. Subdivider 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.

Upon Motion by Acting Committee Member Dave Tucker, seconded by Acting Committee Member Bill King, and unanimously approved.

Adopted this 19<sup>th</sup> day of December, 2005



Acting Chairperson, Minor Subdivision  
Committee of the City of Merced, California

ATTEST:

  
\_\_\_\_\_  
Acting Secretary

Exhibits

Dh:LSRES:lotsplitres871.doc

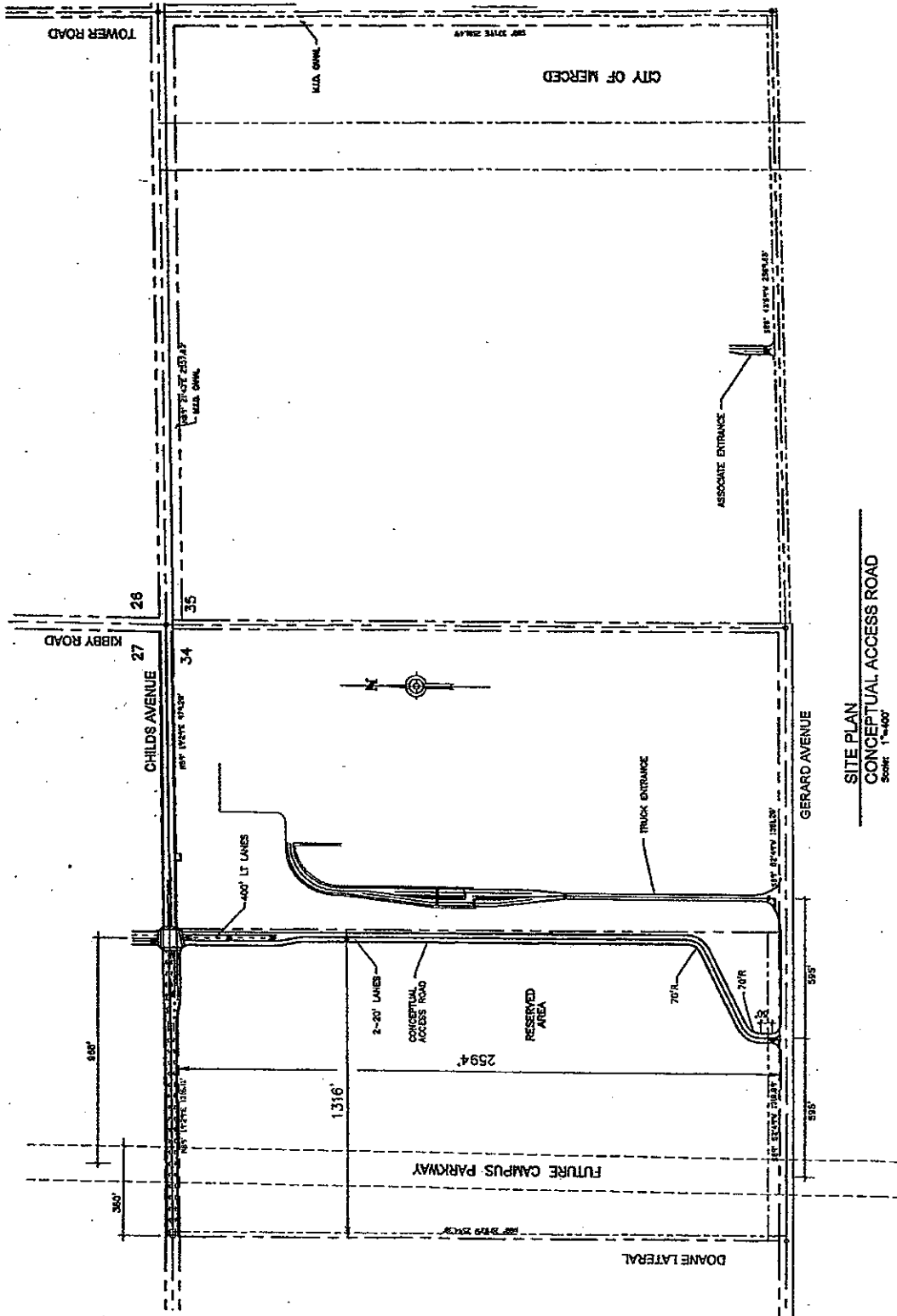


EXHIBIT 1

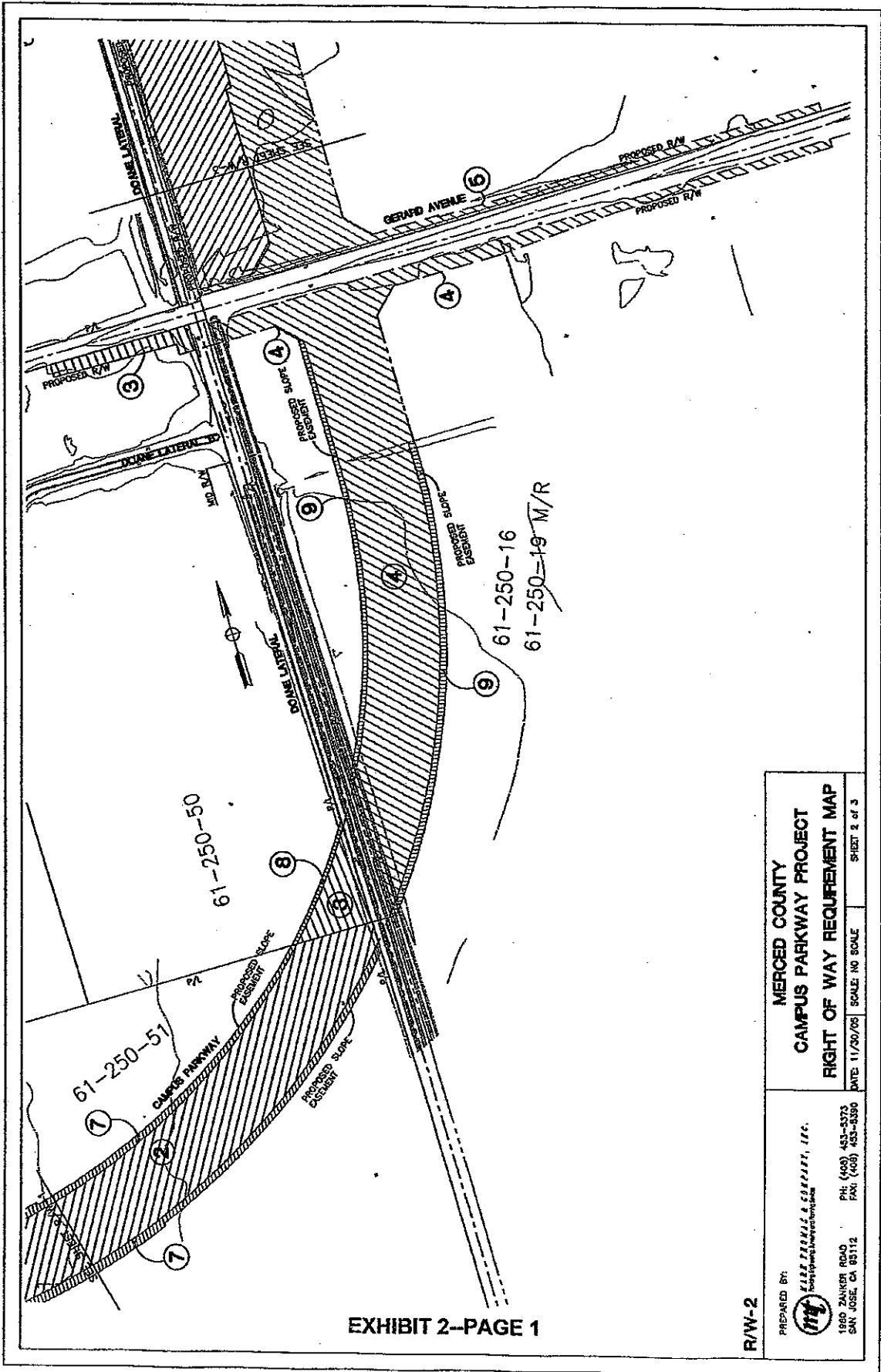

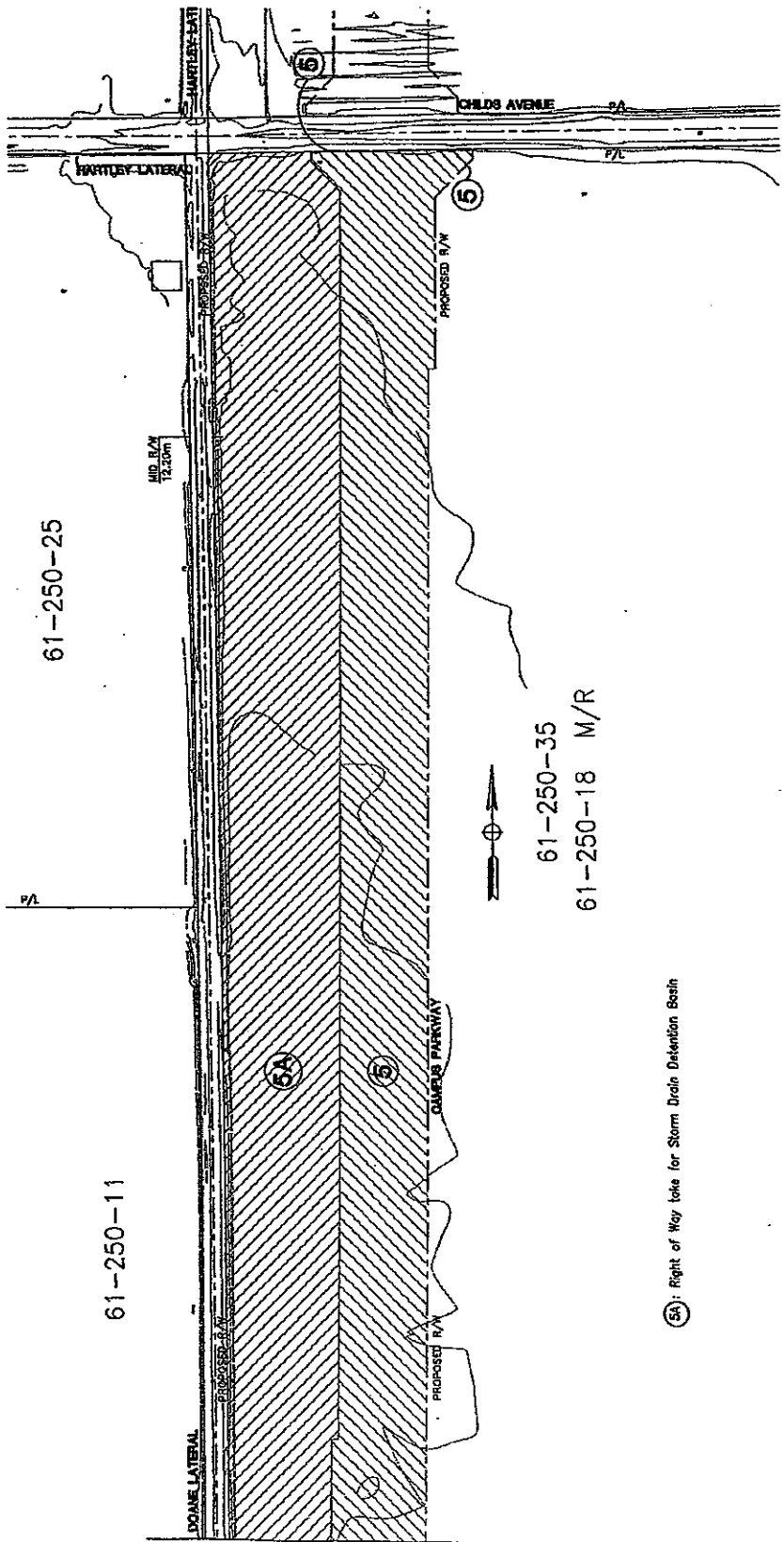


EXHIBIT 2--PAGE 1

R/W-2

PREPARED BY:  K&S ENGINEERS & ARCHITECTS, INC. 1860 ZANKER ROAD SAN JOSE, CA 95112 PH: (408) 453-3373 FAX: (408) 453-5390	DATE: 11/30/05 SCALE: NO SCALE	SHEET 2 of 3
	MERCED COUNTY CAMPUS PARKWAY PROJECT RIGHT OF WAY REQUIREMENT MAP	



61-250-25

61-250-11

61-250-35  
61-250-18 M/R

(S): Right of Way take for Storm Drain Detention Basin

EXHIBIT 2-PAGE 2

R/W-3

MERCED COUNTY  
CAMPUS PARKWAY PROJECT  
RIGHT OF WAY REQUIREMENTS MAP  
DATE: 11/20/08 SCALE: NO SCALE SHEET 3 of 3

PREPARED BY:  
**mt** MERRILL & COMPANY, INC.  
1950 ZANKER ROAD  
SAN JOSE, CA 95112  
PH: (408) 453-3375  
FAX: (408) 453-5390

**Lot Split #05-15 Dedication Matrix**

	Original Request	Property Gains from City	Required by City Ordinance	Eligible for Credit/Reimbursement
<b>Future Kibby Road Abandonment</b>	Applicants wish to abandon Kibby ROW in the future	40 ft ROW width for 2,594 feet of lineal frontage	N/a	N/a
<b>Campus Parkway ROW</b>	150 feet ROW for 2,594 feet of lineal frontage		150 feet ROW minus Collector Equivalent of 74 feet	76 feet ROW for 2,594 feet of lineal frontage*
<b>Storm Basin ROW</b>	200 feet ROW for 2,594 feet of lineal frontage		80 feet ROW for 2,594 feet of lineal frontage required to serve this portion of Parkway**	120 feet ROW for 2,594 feet of lineal frontage*
<b>Street Improvements</b>			Full Improvements on Campus Pkwy with development of Parcel 1 or as required by environmental mitigation	Any street improvements over the Collector Equivalent of 74 ROW are eligible for reimbursement

\* Credit/Reimbursement is calculated per the Public Facilities Financing Plan Administrative Policy according to the most recent appraisal for Park Zones per MMC 18.40.080, which is approximately \$65,000/acre in Park Zone 1 in 2005.

\*\*The storm water basins serve the Parkway from Coffee to Childs, a distance of 6,678.18 feet. The distance from Gerard to Childs, (the frontage of the Lyons property) is 2,657.63 feet. Therefore the percentage attributable to the property, Gerard to Childs, is  $2,657.63/6,678.18 = 0.398$ , say 40%.

CITY OF MERCED  
Site Plan Approval Committee

RESOLUTION #79-1 (AMENDED NOV. 21, 1980)

WHEREAS, the Merced City Site Plan Approval Committee met on October 18, 1979, and considered the possibility of simplifying consideration of site plan approval applications in the City of Merced; and,

WHEREAS, the Merced City Site Plan Approval Committee made the following findings:

1. In considering site plan approval applications in the City of Merced, approval is often subject to numerous conditions, a number of which are applicable to nearly all such permits.
2. Many conditions of approval are simply extracted from existing codes and ordinances and, consequently, are repetitive and redundant.
3. Several conditions included in approval of site plan approval applications are standard Engineering and Recreation & Parks conditions.
4. It would be advantageous to include all "standard" conditions as described above in a separate resolution which would apply to all future site plan approvals. Adoption of such a policy would help to minimize staff time (typing, proofreading, reproduction, etc.), as well as developer and committee review time.

NOW, THEREFORE, BE IT RESOLVED that the Merced City Site Plan Approval Committee does approve the following conditions, which shall hereafter be referred to as "Standard Site Plan Approval Conditions" and which shall become a part of approval of each site plan approval application in the City of Merced unless otherwise approved:

1. All proposed buildings or warehouses shall be completely enclosed structures with construction and structural details to be approved by the City Planning and Engineering Departments.
2. Trash collection points shall be placed outside the proposed building setbacks, exact location and design of trash areas to be approved prior to issuance of building permits pursuant to Section \*8.04.050 of the Merced Municipal Code.
3. All outdoor lighting shall be directed away from all street frontages and adjoining properties or shielded to prevent light spillage onto adjoining properties.
4. All roof-mounted equipment and vents shall be painted to blend with roof materials.
5. Detailed landscape and sprinkler plans, including trees, shrubs, and ground covers, and incorporating foundation and peripheral plantings, along with screening of parking areas, shall be approved by the Planning Department prior to the

\*Previously Section 13.10.

issuance of building permits. All landscaping shall be installed prior to occupancy and shall thereafter be maintained acceptably to these standards.

6. Unless otherwise provided, street trees shall be planted 40 feet on center across the frontage of the property, consistent with Recreation & Parks Department standards.
7. All property not occupied by paving or landscaping (i.e., side yards and rear yards) shall be maintained to acceptable standards for health, fire safety, and aesthetic reasons; grasses and weeds shall be kept to a minimum or as otherwise required by the Planning Department and the County Health Department.
8. Notwithstanding all other conditions, all construction and improvements shall be in strict accordance with zoning, building, and all other codes, ordinances, standards, and policies of the City of Merced.
9. Signing shall conform to Section \*20.34.020I of the Merced City Zoning Ordinance. Computation of square footage shall include all painted signs on all buildings. Proposed developments located within the Airport Industrial Park shall also conform to signing requirements of the Merced Airport Industrial Park Covenants.

\*Previously Section 8.202I.

Upon motion by Committee Member Block, seconded by Committee Member Stroud, and passed by voice vote.

Adopted this 18th Day of October, 1979.

*Philip W. Block*

---

Chairman, Site Plan Approval  
Committee  
City of Merced, California

On November 21, 1980, the Site Plan Approval Committee added the following condition:

10. An approval by this committee shall be for a period of one (1) year, beginning with the date of meeting of the committee unless specified otherwise in the resolution. After one year, Site Plan approval shall be deemed expired if a valid building permit has not been issued for a project, unless written request for extension has been received and is approved by the committee. Conditions may be modified or expanded, and new conditions may be added, during any consideration for extension of an existing approval.

Attachment F of Planning Commission Staff Report #09-18 is the Mitigation Monitoring Program, which is the same as Exhibit 1A of Attachment 9 (City Council Resolution on the EIR) (Pages 183 to 236 of this Administrative Report), so it is not repeated here to avoid confusion and to reduce copying costs.

A copy of the original attachment is on file in the City Planning Division offices at 678 W. 18<sup>th</sup> St. for review upon request.



Attachment G of Planning Commission Staff Report #09-18 is the Draft CEQA Findings of Fact and Statement of Overriding Considerations, which has now been replaced with Exhibit 1 of Attachment 9 (City Council Resolution on the EIR) (Pages 105 to 182 of this Administrative Report), so it is not repeated here to avoid confusion and to reduce copying costs.

A copy of the original attachment is on file in the City Planning Division offices at 678 W. 18<sup>th</sup> St. for review upon request.

**Final Environmental Impact Report  
for the Proposed Wal-Mart Regional Distribution Center  
(SCH #2006071029)**

**ERRATA SHEET**

**REVISIONS TO SECTION 4 OF THE FINAL EIR (starting on page 4-1):**

**4.2 STAFF-INITIATED REVISIONS AND CORRECTIONS TO THE DRAFT EIR**

**ON PAGE 4-2 OF THE FINAL EIR UNDER REVISIONS TO SECTION 2 “EXECUTIVE SUMMARY,” the following should be added:**

**Page 2-55 and Table 2-1 of the Draft EIR under “Biological Resources-Mitigation” is revised as shown below:**

Implementation of the proposed project would result in loss of approximately 150 acres of suitable foraging habitat for Swainson’s hawk and could result in destruction and/or disturbance of occupied burrowing owl burrows. These special-status species are very susceptible to impacts as a result of land development activities occurring throughout the San Joaquin Valley. While it is possible to minimize impacts through avoidance and to preserve compensation habitat, a net loss nevertheless results from the impact. Mitigation included in Section 4.3, “Biological Resources,” would be implemented to address potential direct effects on these resources. Preservation and management of Swainson’s hawk foraging habitat at an off site location, and surveys and other avoidance measures for burrowing owl as described in Mitigation Measure 4.3-2 would reduce potential impacts to Swainson’s hawk and burrowing owl to a less-than-significant level. However, there is a cumulatively considerable incremental contribution, and the project would result in a significant cumulative impact.

Under “Significance After Mitigation” column, it should read “SU LTS”

---

**PAGE 4-8 OF THE FINAL EIR UNDER REVISIONS TO SECTION 4.10 “PUBLIC HEALTH AND HAZARDS” AND IN TABLE 1 ON PAGES MMP-42 AND MMP-43 OF THE FINAL EIR (APPENDIX A), should be revised as follows:**

**Page 4.10-11 of the Draft EIR in “Impact Analysis” section and in Table 2-1 on Pages 2-43 and 2-44 is revised as shown below:**

**Mitigation Measure 4.10-1: Remediate Unknown or Previously Undiscovered On-Site Hazardous Materials.** If, during site preparation and construction activities, previously undiscovered or unknown evidence of hazardous materials contamination is observed or suspected through either obvious or implied indicators (i.e., stained or odorous soil), construction activities shall immediately cease in the area of the find. MCDEH and the City of Merced Environmental Health Control Division staff shall be immediately consulted, and the project applicant shall contract with a qualified consultant registered in DTSC’s Registered Environmental Assessor Program to assess the extent to which soil and/or groundwater has been

*Final EIR Errata Sheet*

Errata Sheet to Final EIR for Proposed Wal-Mart Regional Distribution Center

Page 1

**ATTACHMENT H**

adversely affected by past activities. This investigation shall follow DTSC guidelines and shall include, as necessary, analysis of soil and/or groundwater samples taken at or near the potential contamination sites. If necessary, risk assessments shall include a DTSC Preliminary Endangerment Assessment or no further action determination, or equivalent. Any required remediation shall include a DTSC Remedial Action Work Plan or equivalent. The site shall be remediated in accordance with recommendations made by a qualified environmental consultant registered in DTSC's Registered Environmental Assessor Program; MCDEH; the City of Merced Environmental Control Health Division staff; Central Valley RWQCB; DTSC; or other appropriate federal, state, or local regulatory agencies as generally described above. The agencies involved would be dependent on the type and extent of contamination. Site preparation and construction activities shall not proceed until remediation is completed to the satisfaction of MCDEH and the City of Merced Environmental Control Health Division.

Implementation of this mitigation measure would remove any known or previously undiscovered contaminated soil or other hazardous materials from the site in accordance with County standards and would reduce the potential hazards associated with known or unknown contaminated soil or other hazardous materials to a *less-than-significant* level.

Implementation of Mitigation Measures 4.2-1c and 4.2-1d would reduce exposure to contaminants through airborne emissions by ensuring compliance with Regulation VIII, which is required by law, and include additional San Joaquin Valley Air Pollution Control District-recommended control measures. As a result, generation of construction-related dust emissions would be reduced to a *less-than-significant* level.

---

**PAGE 4-10 OF THE FINAL EIR AND TABLE 1 ON PAGES MMP-44 (APPENDIX A) OF THE FINAL EIR, should be revised as follows:**

**Page 4.11-30 of the Draft EIR and in Table 2-1 on Pages 2-46, 2-47, and 2-48 is revised as shown below:**

**Mitigation Measure 4.11-2b: Manage Truck Traffic on Local Streets.** To reduce hazards on local roadways associated with truck traffic during *construction operations*, Wal-Mart Stores East LP shall ensure that its primary construction contractor implements the following measures:

a. *Develop and implement a construction truck traffic safety plan in coordination with the City of Merced, County of Merced, and Caltrans.* The construction contractor shall develop a plan for traffic safety assurance for the City and County roadways in the project vicinity. The contractor shall submit the plan to the City Development Services Department for approval before the initiation of construction-related activity that could adversely affect traffic on City, County, and State roadways. The plan(s) may call for the following elements, based on the requirements of each agency:

- ▶ posting warnings about the potential presence of slow-moving construction vehicles;
- ▶ using traffic control personnel when appropriate;
- ▶ scheduling truck trips outside of peak morning and evening traffic periods to the extent feasible;

- ▶ placing and maintaining barriers and installing traffic control devices necessary for safety, as specified in Caltrans's *Manual of Traffic Controls for Construction and Maintenance Works Zones* and in accordance with City and County requirements; and
- ▶ maintaining routes for passage of emergency response vehicles through roadways affected by construction activities.

The contractor shall train construction personnel in appropriate safety measures as described in the plan(s), and shall implement the adopted plan(s).

- b. *Minimize the accumulation of mud and dirt on local roadways.* All operations shall limit or expeditiously remove the accumulation of project-generated mud or dirt from adjacent public streets at least once every 24 hours when operations are occurring. The construction contractor shall sweep the paved roadways (water sweeper with reclaimed water recommended) at the end of each day if substantial volumes of soil material have been carried onto adjacent paved, public roads from the project sites. To reduce hazards on local roadways associated with truck traffic during ongoing operations, Wal-Mart Stores East LP shall ensure implement the following measures:
- c. *Develop and implement a truck route plan in consultation with the City and the County.* Tractor trailers approaching and departing from the distribution center shall be limited to the following roadways from SR 99 and SR 140: Campus Parkway, Mission Avenue west of Campus Parkway, Gerard Avenue east of Campus Parkway, and Tower Road. Wal-Mart shall regularly and routinely instruct its employees, contract truck drivers, and vendors of these roadway limitations.

**ON PAGE 4-18 OF THE FINAL EIR UNDER REVISIONS TO SECTION 5 "ALTERNATIVES TO THE PROPOSED PROJECT," the following should be revised as follows:**

**Page 5-36 of the Draft EIR in Section 5.9.11 ("Utilities and Public Services") is revised as shown below:**

~~The proposed project would have cumulatively considerable impacts on wastewater treatment and disposal. The Alternative Site #3 alternative would not change that conclusion. [Greater].~~

**ON PAGE 4-20 OF THE FINAL EIR UNDER REVISIONS TO SECTION 6 "CUMULATIVE AND GROWTH-INDUCING IMPACTS," the following should be added:**

**Page 6-41 of the Draft EIR in Section entitled "Cumulative Impacts" is revised as shown below since those traffic impacts have been reduced to a Less Than Significant Impact per the text:**

**CUMULATIVE IMPACTS**

The following cumulative impacts are identified earlier in this section as "significant."

- ▶ Cumulative Agricultural Land Impact
- ▶ Cumulative Air Quality Impact (Greenhouse Gas Emissions)
- ▶ Cumulative Biological Resources Impact (Special Status Species Foraging Habitat)
- ▶ Cumulative Noise Impact

- ▶ ~~Cumulative Traffic Impact—Intersection Operations (2030 with Project)~~
- ▶ ~~Cumulative Traffic Impact—SR 140 Between Santa Fe Avenue and Kibby Road Roadway Segment Operations (2030 with Project)~~
- ▶ ~~Cumulative Traffic Impact—Traffic Signal Operations (2030 with Project)~~
- ▶ ~~Cumulative Traffic Impact—Tower Road between SR 140 and Gerard Avenue~~
- ▶ Cumulative Visual Impact

Mitigation measures would not reduce these cumulative impacts to a less-than-significant level. Please refer to the discussion under 6.1.2 “Cumulative Impacts of the Proposed Project” above for more detailed discussion.

**ON PAGE 4-20 OF THE FINAL EIR UNDER REVISIONS TO SECTION 6 “CUMULATIVE AND GROWTH-INDUCING IMPACTS,” the following should be added:**

**Page 6-30 “Cumulative Traffic Impact—Traffic Signal Operations (2030 With Project)” is revised as shown below:**

*2030 Cumulative with Project Condition Traffic Signal Warrant Analysis*

**Cumulative Traffic Impact—Traffic Signal Operations (2030 with Project).** Based on the signal warrant analysis results, all of four ~~five~~ study area intersections would meet the signal warrant during the a.m. peak hour while three ~~four~~ intersection would meet the signal warrant during the p.m. peak hour. The project’s contribution to these intersections is a cumulatively considerable incremental contribution, and the project’s cumulative impact would be significant.

Table 6-9 summarizes the traffic signal warrant analysis performed at the four ~~five~~ unsignalized intersections that would operate at an unacceptable level of service under the 2030 Cumulative No Project Condition. For more information on existing, 2010, and cumulative traffic conditions, please refer to Appendix E. Similar to the 2030 Cumulative No Project Condition, a signal warrant would be met at all four ~~five~~ of these intersections during the a.m. peak hour and three ~~four~~ intersections during the p.m. peak hour.

Impacts to these intersections will be reduced to a less-than-significant level by mitigation measures 6-9, 6-10, and 6-11.

**4.4 REVISIONS AND CORRECTIONS TO THE DRAFT EIR AIR QUALITY SECTION 4.2**

**ON PAGE 4-63 (SECTION 4.4 OF THE FINAL EIR) AND TABLE 1 ON PAGES MMP-14 THROUGH MMP-16 (APPENDIX A) OF THE FINAL EIR, Mitigation Measure 4.2-2b, should be revised as follows:**

- ▶ “Provide adequate bicycle parking/racks in a covered, secure area”

The bullet point above should NOT have been deleted from the “Required Design Features to Reduce Employee Commute Trips and Associated Mobile-source Emissions” section and moved to the “Additional Measures to Reduce Employee Commute Trips and Associated Mobile-source

Emissions” section. It should remain in the “Required Design Features to Reduce Employee Commute Trips and Associated Mobile-source Emissions” section.

---

ON PAGE 4-64 AND 4-65 (SECTION 4.4. OF THE FINAL EIR) AND TABLE 1 ON PAGES MMP-16 (APPENDIX A) OF THE FINAL EIR, Mitigation Measure 4.2-2c, should be revised as follows (the double underline represents the current revisions):

**Mitigation Measure 4.2-2c: Implement Recommended Mitigation Measures to Reduce Operational Emissions**

The following required mitigation measures shall be implemented by the project applicant to reduce operation-related emissions regardless of whether the emission reductions can be quantified and documented for compliance with the ISR rule required by Mitigation Measure 4.2-2a or whether they result in a quantifiable reduction of employee commute trips in single occupancy vehicles. However, any emissions reductions attained by these measures that can be quantified and documented can be credited to achieve the ISR reduction goals discussed in Mitigation Measure 4.2-2a or employee trip reduction goals discussed in Mitigation Measures 4.2-2b. These required measures are listed below.

- The applicant’s participation in EPA’s Smart Way Transport Partnership (EPA 2007) shall include the portion of its haul truck fleet that is based at or serves the Merced distribution center and shall continue participation of this truck fleet in the Partnership for as long as the Partnership or a similar successor program exists. This measure would apply to the 40% of truck trips generated by the project that are operated by Wal-Mart trucks. Once each year the applicant shall provide to the City of Merced a letter from EPA confirming the project’s participation in the SmartWay Transport partnership.
- The Applicant shall ~~fully fund or~~ contribute its fair share of funding for the development of a Class II Bike Lanes along Childs Avenue and Gerard Avenue from Parsons Avenue to the project’s eastern boundary line that would connect the proposed project to nearby land uses, including the residential neighborhoods to the west along Childs Avenue and Gerard Avenue. Building bicycle lanes at these locations is consistent with the City of Merced Bicycle Plan, which was adopted on October 20, 2008 and meets requirements of the California Bicycle Transportation Act (1994) and qualifies the City of Merced to receive state funding for bicycle projects. The City shall determine the applicant’s fair share monetary contribution to the development of these bicycle lanes and the Applicant shall pay its fair share at the same time building permit fees are due to the City.
- ~~Provide on-site shops and services for employees including a cafeteria and a bank/ATM within 6 months of opening the facility.~~
- As part of its landscaping plan to be prepared for the project (which is also mentioned in Mitigation Measure 4.13-2) the Applicant shall select plant species and landscaping coverage that require minimal maintenance with mechanically-powered equipment such as gasoline-powered lawn mowers. The Applicant and/or its contactors shall not use gasoline-powered leaf blowers on site. Use only electric powered landscape maintenance equipment for routine maintenance of to care for landscaped areas, where routine maintenance activities include mowing, leaf blowing, and other activities that occur 3 or

~~more times per year.~~ If this work is hired out to a landscaping company, then the contract shall prohibit the use of gasoline- or diesel-powered leaf blowers. ~~landscape maintenance equipment.~~

- Building and site design shall include electrical outlets around the exterior of the units to enable use of electric landscape maintenance equipment.