

Attachment I of Planning Commission Staff Report #09-18 is the Draft Planning Commission Resolution, which has now been replaced with Attachment 7 (Planning Commission Resolution #2959) (Pages 39 to 43 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.

**RESOLUTION NO. 2009-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
APPROVING AND CERTIFYING A FINAL  
ENVIRONMENTAL IMPACT REPORT FOR THE  
WAL-MART DISTRIBUTION CENTER, MAKING  
FINDINGS AND DETERMINATIONS, ADOPTING  
A STATEMENT OF FACTS AND OVERRIDING  
CONSIDERATIONS, AND ADOPTING A  
MITIGATION MONITORING PROGRAM**

WHEREAS, Wal-Mart Stores East, L.P., proposes to develop approximately 230 acres of industrial-zoned vacant property in the City of Merced, located at the northwest corner of Gerard Avenue and Tower Road, by constructing a regional distribution center (the "Project"); and,

WHEREAS, Opportunities for public input on the proposed Project have been provided through the two public scoping meetings and the Planning Commission, which were open to user groups, public organizations, neighborhood organizations, neighborhood watch groups, homeowners associations, Merced residents, and all persons or entities interested in the proposed Project; and,

WHEREAS, The Planning Commission and City Council have held public hearings on the Environmental Impact Report and on the proposed Project; and,

WHEREAS, A public hearing was held by the City Council on September 21, 2009, (and continued to September 23, 2009, September 26, 2009, and September 28, 2009, as needed), to consider the proposed Project, General Plan Amendment, and a Final Environmental Impact Report under the provisions of the California Environmental Quality Act ("CEQA").

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

SECTION 1. CEQA FINDINGS. The City Council makes the following findings pursuant to CEQA:

*City Council Resolution (EIR)*

- A. A Notice of Preparation was sent to all organizations and individuals who requested notice with the notice specifying the period during which comments would be received, the date, time, and place of the public scoping meetings on the Project, and Project information, including the Project description, location, and potential environmental effects; and,
- B. The Notice of Preparation was also circulated for public review on or about July 7, 2006, and sent to every responsible, trustee, and public agency with jurisdiction over the resources affected by the Project on or about July 7, 2006; and,
- C. Notice of Availability of the draft Environmental Impact Report was published in the *Merced Sun-Star* on February 25, 2009, and both were circulated for public review on or about February 25, 2009, for a comment period ending on April 27, 2009, with the notice specifying the period during which comments would be received, a brief project description, and the address where a copy of the draft Environmental Impact Report and documents referenced in the draft Environmental Impact Report were available for review, and sent to every responsible, trustee, and public agency, including the State Clearinghouse, with jurisdiction over the resources affected by the Project on or about February 25, 2009, as well as filed with the City Clerk and posted in a public location at 678 West 18<sup>th</sup> Street on February 25, 2009, and a copy posted on the City's website for public review and download at [www.cityofmerced.org](http://www.cityofmerced.org); and,
- D. Notice of Availability and the draft Environmental Impact Report were also sent to every responsible, trustee, and public agency, including the State Clearinghouse, with jurisdiction over the resources affected by the Project on or about February 25, 2009, as well as filed with the City Clerk and posted in a public

location at 678 West 18<sup>th</sup> Street on February 25, 2009;  
and,

- E. Notice of Completion of the draft Environmental Impact Report was filed with the State Clearinghouse on or about February 25, 2009; and,
- F. Comments and responses for the draft Environmental Impact Report were received by the City on or before April 27, 2009; and,
- G. All actions required to be taken by applicable law related to the preparation, circulation, and review of the draft Environmental Impact Report have been taken; and,
- H. Pursuant to applicable CEQA provisions and considering the public comments made, a Final Environmental Impact Report was prepared for this Project and posted on the City's website at [www.cityofmerced.org](http://www.cityofmerced.org); and,
- I. The Planning Commission held a noticed public hearing on August 19, 2009 and August 24, 2009, at which time all those desiring to present evidence or testimony were afforded the opportunity to do so; and,
- J. Notice of the Planning Commission's public hearing was posted on the City's website at [www.cityofmerced.org](http://www.cityofmerced.org) and published in the *Merced Sun-Star* on July 30, 2009, and mailed to surrounding property owners within 2,600 feet of the Project boundary, as well as to all those individuals that had asked to be on the mailing list for the Project, and to every responsible, trustee, and public agency with jurisdiction over the resources affected by the Project; and,
- K. The Planning Commission, after considering the public comments received, the evidence and testimony before it, and after exercising its independent judgment and review, recommended to the City Council to certify the Final Environmental Impact Report, adopt the Findings

and Determinations, adopt the Statement of Facts and Overriding Considerations, adopt the Mitigation Monitoring Program, and amend the General Plan, and the Planning Commission also adopted a finding that the vacation/abandonment of the Kibby Road right-of-way was consistent with the General Plan, contingent on the General Plan Amendment being approved by the City Council; and,

- L. The City Council, after staff analysis of the same, independently reviewed and analyzed all reports and declarations which became a part of the record of this decision; and,
- M. The City Council, in adopting the Final Environmental Impact Report under the provisions of CEQA, finds that adoption of the Project's EIR requires a mandatory finding of significance for those items identified in Section 4 of Exhibit "1," attached hereto and incorporated by reference herein; and,
- N. The City Council finds that the following areas were reviewed in Section 4 of Exhibit "1," attached hereto and incorporated by reference herein: Agricultural Resources, Air Quality (including Greenhouse Gases), Noise, Biological Resources, Visual Resources, Cultural Resources, Geology, Minerals, Soils and Paleontological Resources, Hydrology and Water Quality, Public Health and Hazards, Transportation and Traffic, Utilities and Public Services, Land Use, Population and Housing; and,
- O. The City Council made its decision to adopt the Final Environmental Impact Report for this Project in light of the record as a whole as set forth in these findings; and,
- P. The City Council, in certifying the Final Environmental Impact Report for this Project, of which these findings are a part, did so through the exercise of their independent judgment and review after finding substantial evidence, in light of the record as a whole, to

support the adoption and certification of the Environmental Impact Report; and,

- Q. The City Council has made its decision to certify the Final Environmental Impact Report in the light of all the testimony and evidence presented at or prior to the close of the noticed public hearing, including all letters, reports, comments, analyses, etc., which the City Council after review and comment by its staff critically reviewed, corrected, and augmented where necessary, as set forth in the record and procedural findings on this Project; and,
- R. There is evidence in light of the record as a whole before the City that the Project would continue to have a significant impact on the environment after imposition of feasible mitigation measures or alternatives, and the potential environmental impacts will probably not be mitigated to a point where clearly no significant impact on the environment will occur. Therefore, a Statement of Facts and Overriding Considerations is required to be adopted if the Project is to be approved. Therefore, a Statement of Fact and Overriding Considerations is incorporated herein as set forth in Section 7 of Exhibit "1" hereto.

**SECTION 2. CEQA—EIR CERTIFICATION.** Based on the findings as set forth in Section 1 hereof and on the record of the public hearing, the City Council hereby certifies that the Final Environmental Impact Report, including the Errata Sheet, for the Project is an adequate and complete document prepared in compliance with the California Environmental Quality Act, as amended, and the State and local Guidelines promulgated there under. The City Council hereby adopts, certifies, and approves that document entitled "CEQA Findings of Fact and Statement of Overriding Considerations for the Wal-Mart Regional Distribution Center" identified as Exhibit "1," attached hereto and incorporated herein by this reference.

**SECTION 3. FEIR—CITY COUNCIL INDEPENDENT JUDGMENT AND REVIEW.** The City Council further certifies that the Final Environmental Impact Report, including the Errata Sheet, was presented to the City Council, which reviewed and considered the information contained in said Final

Environmental Impact Report prior to deciding whether to approve the proposed Project. The Final Environmental Impact Report has been thoroughly reviewed and analyzed by the City's Staff, Planning Commission, and the City Council. The draft documents circulated for public review reflected the City's own independent judgment and the Final Environmental Impact Report, including the Errata Sheet, as certified by this Resolution also reflects the independent judgment of the City Council.

**SECTION 4. MITIGATION MEASURES ADOPTED.** The City Council hereby certifies the Final Environmental Impact Report, including the Errata Sheet, for the Project, and adopts the Mitigation Measures in said Final Environmental Impact Report, including the Errata Sheet, as the mitigation measures for this Project, and that it meets the requirements of and is in compliance with Public Resources Code Section 21081.6.

**SECTION 5. CONSTRUCTION MITIGATION MEASURES.** The Final Environmental Impact Report identified impacts related to the Project that would be less than significant when Project activities are in compliance with reasonable policies, rules and regulations related to applicable laws, but for which would be further reduced by additional recommended measures that would further benefit activities related to construction activities.

**SECTION 6. TEMPORARY CONSTRUCTION IMPACTS.** Adverse impacts during construction will be temporary and short-term. Complete mitigation of construction emissions would require the imposition of schedule requirements that would essentially render construction activities infeasible, especially given their temporary nature. Adherence to the San Joaquin Valley Air Quality Control District rules and regulations will substantially reduce adverse construction emissions to the extent that is reasonably feasible.

**SECTION 7. ALL FEASIBLE MITIGATION ADOPTED.** All lawful, feasible mitigation measures which are within the jurisdiction of the City, as identified in the Final Environmental Impact Report, including the Errata Sheet, have been incorporated into the Project and represent the fullest extent to which the Project-related impacts can be reasonably avoided and/or substantially lessened.

**SECTION 8. STATEMENT OF FACTS & OVERRIDING CONSIDERATIONS ADOPTED.** Upon considering the Final Environmental Impact Report in conjunction with the findings contained in the records, and understanding that the proposed Project will have a significant effect on the environment after imposition

of feasible mitigation measures or alternatives, the City Council finds that there are social, economic, and other benefits of the proposed Project that outweigh any unavoidable adverse environmental effects that may occur. Due to such overriding benefits and considerations and, because alternatives to the proposed Project identified in the Final Environmental Impact Report which might lessen these impacts are infeasible, cannot accomplish the basic objectives of this Project, and involve unacceptable adverse consequences, the City Council finds that any unavoidable adverse environmental impacts of the proposed Project are acceptable, and adopts the Statement of Facts and Overriding Considerations based on substantial evidence in the Final Environmental Impact Report and all evidence pertaining to the Project. This determination shall constitute a Statement of Facts and Overriding Considerations within the meaning of CEQA, as set forth in Section 7 of Exhibit "1," attached hereto and incorporated herein by this reference, and is based on the following benefits identified in the Final Environmental Impact Report and the record of proceedings regarding the approval of the proposed Project.

**SECTION 9. FILING OF NOTICE OF DETERMINATION.** The City Council hereby directs the Director of Development Services to file a Notice of Determination within five (5) working days after approval of the Project, and file the required Department of Fish and Game Environmental Review Fee pertaining to the potential impact on fish and wildlife resources.

**SECTION 10. MITIGATION MONITORING AND REPORTING PROGRAM ADOPTED.** The City Council hereby adopts the Mitigation Monitoring Program associated with the Final Environmental Impact Report as set forth in Appendix "A" of the Final Environmental Impact Report, as the mitigation monitoring and reporting program for this Project, which have been adopted or made a condition of approval in order to mitigate or avoid significant environmental impacts. The City Council finds that said Mitigation Monitoring Program has been prepared in accordance with Public Resources Code Section 21081.6, and directs the Director of Development Services to oversee the implementation of the same.

**SECTION 11. DIRECTION TO CITY MANAGER.** The City Council hereby appoints the City Manager as its agent to conduct all negotiations, execute and submit all documents including, but not limited to, applications, agreements, payment requests and so on, which may be necessary for the Project or its environmental documentation.



SECTION 12. AVAILABILITY OF FEIR. The City Council shall make the Final Environmental Impact Report and other related materials that constitute the record of the proceedings upon which its decision is based available at the Merced Civic Center, 678 West 18<sup>th</sup> Street, Merced, California.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2009, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

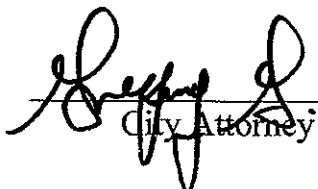
\_\_\_\_\_  
Mayor

ATTEST:  
CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

 9/14/2009  
City Attorney Date

CEQA FINDINGS OF FACT  
and  
STATEMENT OF OVERRIDING CONSIDERATIONS  
FOR THE WAL-MART REGIONAL DISTRIBUTION  
CENTER

State Clearinghouse Number 2006071029

CITY OF MERCED

Adopted September 28, 2009



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# 1 INTRODUCTION AND BACKGROUND

These Findings have been prepared in accordance with the California Environmental Quality Act ("CEQA") and the CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.).

The City of Merced is the lead agency for the environmental review of the Project and has the principal responsibility for its approval. The Project covered by these findings and relevant CEQA documents is the Wal-Mart Regional Distribution Center.

## 1.1 THE PROJECT

The primary building on the site will be a 1.1 million square foot regional distribution warehouse, which will be primarily a materials handling operation whereby most goods typically are conveyed through the distribution center. The facility will not handle groceries, such as fruit, vegetables, dairy products, bakery goods, and meat. There will also be warehouse support space to house administrative offices, the data processing center, and a cafeteria. Other internal office/support areas for administrative uses include an electric forklift battery charging/maintenance area and an aerosol product storage area. Approximately 37,000 square feet of floor space will be devoted to office/support.

Also included are truck maintenance, fueling, fire pump house, truck gate and aerosol storage (located within the warehouse) facilities. All buildings will be single-story and constructed of pre-engineered steel components with metal panels. Maximum building height will be 40 feet above the finished floor level. On three sides of the building, the finished floor will be 4 feet above finished grade.

The 17,000 square foot truck maintenance building will be used for routine maintenance of tractor/trailers serving the facility. The building will include a wash bay for trucks and trailers, service bays, break rooms, offices, storage rooms and restrooms. The truck maintenance equipment includes underground storage tanks near the building as follows: new oil storage tank (6,000 gallon capacity) and waste oil storage tank (2,500 gallon capacity). Additionally, there is a fuel dispensing station with two 20,000-gallon diesel fuel underground storage tanks.

The site will be served via two driveways connected to Gerard Avenue. The site will have approximately 650 (initial) and 850 (ultimate) employee parking spaces, 1300 (initial) and 1600 (ultimate) trailer parking spaces, 200 (initial) and 300 (ultimate) tractor parking spaces and 300 dock doors.

The facility will become fully operational approximately three years after opening. Once fully operational, the facility will employ approximately 1200 employees. The facility will operate 24 hours per day continuously throughout the year.

## 1.2 CEQA REQUIREMENTS

The Wal-Mart Regional Distribution Center EIR (Wal-Mart EIR) is a project EIR that evaluates the environmental impacts of the proposed construction and ongoing operation of the proposed project, which is a regional warehouse distribution center. This EIR evaluates the impacts of implementation of the development of the proposed project with respect to the following issues: agricultural resources; air quality; biological resources; cultural resources; geology, minerals, soils, and paleontological resources; hydrology and water quality; land use; noise; population and housing; public health and hazards; traffic and transportation; utilities and public services; and visual resources. This EIR has been prepared in accordance with State CEQA Statutes and Guidelines.

CEQA provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would *substantially lessen* the significant environmental effects of such projects....” (Public Resources Code Sec. 21002 [emphasis added].) The procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.” (Public Resources Code Sec. 21002)

A public agency is obligated to balance a variety of public objectives including economic, environmental, and social factors, and in particular the goal of providing a decent home and satisfying living environment for every Californian. (CEQA Guidelines Section 15021) A project may be approved despite one or more significant environmental effect if specific economic, social, or other conditions make infeasible project alternatives or mitigation measures. (Public Resources Code Sec. 21002). Decision-makers must balance the benefits of a proposed project against its significant unavoidable adverse environmental impacts, and if the benefits of a proposed project outweigh the significant unavoidable adverse environmental impacts, such impacts may be considered “acceptable” by adopting a Statement of Overriding Considerations. (CEQA Guidelines Section 15093) The Statement of Overriding Considerations must set forth project benefits or reasons why the lead agency is in favor of approving the project and must weigh these benefits against the project’s adverse environmental impacts identified in the FEIR that cannot be mitigated to a less than significant level.

Section 15091 of the CEQA Guidelines requires that, for each significant environmental effect identified in an EIR for a proposed project, the approving agency must issue a written finding reaching one or more of three allowable conclusions. The first is that “[c]hanges or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR.” The second potential finding is that “[s]uch changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.” The third permissible conclusion is that “[s]pecific economic, legal, social, technological, or other considerations, including provisions of employment opportunities for highly trained workers make infeasible the mitigation measures or project alternatives identified in the final EIR.”

For purposes of these findings, the term “mitigation measures” shall constitute the “changes or alterations” discussed above. The term “avoid or substantially lessen” will refer to the effectiveness of one or more of the mitigation measures or alternatives to reduce an otherwise significant environmental effect to a less-than-significant level. Although Section 15091, read literally, does not require findings to address environmental effects that an EIR identifies as merely “potentially significant,” these findings will nevertheless fully account for all such effects identified in the EIR for the proposed Project. When an impact remains significant or potentially significant with mitigation, the findings will generally state that the impact is still “significant.”

In the process of adopting mitigation measures, the City will also be making decisions on whether each mitigation measure proposed in the EIR is feasible or infeasible. Pursuant to Section 15364 of the CEQA Guidelines, “feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.” When the City finds a measure is not feasible, it will provide evidence for its decision.

### 1.3 GENERAL FINDINGS

The EIR is hereby incorporated into these findings in its entirety. Without limitation, this incorporation is intended to elaborate on the scope and nature of mitigation measures, the basis for determining the significance of impacts, the comparative analysis of alternatives, and the reasons for approving the Project in spite of the potential for associated significant unavoidable adverse impacts.

The City Council hereby finds as follows:

- ▶ The Draft EIR and Final EIR has been prepared in compliance with CEQA and the Guidelines;
- ▶ The City and the City Council have independently reviewed and analyzed the Draft EIR and the Final EIR, and these documents reflect the lead agency's independent judgment and analysis;
- ▶ A MMP has been prepared requiring mitigation measures and/or the changes to the proposed project, which the City Council has adopted and made a condition of approval of the proposed project. The MMP is incorporated herein by reference and is considered part of the record of proceedings for the proposed project;
- ▶ In determining whether the proposed project has a significant impact on the environment and in adopting these Findings pursuant to Section 21081 of CEQA, the City has complied with CEQA Sections 21081.5 and 21082.2;
- ▶ The impacts of the proposed project have been fully analyzed to the extent feasible at the time of certification of the Final EIR;
- ▶ The City reviewed the comments received on the Draft EIR, and the responses thereto and has determined that neither the comments received nor the responses to those comments add significant new information regarding environmental impacts to the Draft EIR. The City has based its actions on full appraisal of all viewpoints including all comments received up to the date of adoption of these Findings, concerning the environmental impacts identified and analyzed in the Final EIR;
- ▶ The City of Merced has eliminated or substantially lessened all significant effects on the environment where feasible as shown in the findings provided in this document. The City of Merced has determined that remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns presented in the City's Statement of Overriding Considerations for the Wal-Mart EIR.

## **CERTIFICATION OF FEIR**

In adopting these findings, in accordance with CEQA, the City has considered the environmental effects as shown in the FEIR prior to approving the Project. These findings represent the independent judgment and analysis of the City and the City Council.

## **CHANGES TO THE DEIR**

In the course of responding to comments received during the public review and comment period on the DEIR, certain portions of the DEIR have been modified and some new information has been added. The changes made to the DEIR do not result in the existence of:

1. A significant new environmental impact that would result from the Project or an adopted Mitigation Measure;
2. A substantial increase in the severity of an environmental impact that is not reduced to a level less than significant by adopted Mitigation Measures;
3. A feasible project alternative or Mitigation Measure not adopted that is considerably different from others analyzed in the DEIR that would clearly lessen the significant environmental impacts of the Project; or



4. Information that indicates that the public was deprived of a meaningful opportunity to review and comment on the DEIR.

The City finds that the amplifications and clarifications made to the DEIR do not collectively or individually constitute significant new information within the meaning of Public Resources Code Section 21092.1 and CEQA Guidelines Section 15088.5, and therefore recirculation is not required. A summary of the changes is included in the Response to Comments and the Errata Sheet.

## **EVIDENTIARY BASIS FOR FINDINGS**

These findings are based upon substantial evidence in the entire record before the City as described in Section 4. The references to the DEIR and to the FEIR set forth in the findings are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

## **FINDINGS REGARDING MITIGATION MEASURES**

Except as otherwise noted, the Mitigation Measures herein referenced are those identified in the FEIR. Except as otherwise stated in these findings, in accordance with CEQA Guidelines sections 15091, 15092, and 15093, the City finds that the environmental effects of the Project:

- ▶ Will not be significant; or
- ▶ Will be mitigated to a less than significant level by the Mitigation Measures adopted by the City; or
- ▶ Can and should be mitigated to a less than significant level by the Mitigation Measures within the jurisdiction of another public agency; or
- ▶ Will remain significant after mitigation, but specific economic, legal, social, technological, or other considerations outweigh the unavoidable adverse environmental effects.

The City finds that the Mitigation Measures incorporated into and imposed upon the Project are feasible and fully capable of implementation.

## **FINDINGS REGARDING MONITORING/REPORTING OF CEQA MITIGATION MEASURES**

As required in Section 21081.6 of the California Public Resources Code, the City adopts a monitoring and reporting program regarding changes in the Project or Mitigation Measures imposed to mitigate or avoid significant effects on the environment. The Mitigation Monitoring and Reporting Plan, in the form presented to the City as Appendix A of the Final EIR, is adopted because it effectively fulfills the CEQA mitigation monitoring requirement.

## 2 EIR PROCEEDINGS

On July 7, 2006, the City circulated a Notice of Preparation ("NOP") to the State Clearinghouse, local and regional responsible agencies, and other interested parties. The public comment period on the NOP closed on August 11, 2006. Two public scoping meetings were held on July 27, 2006—one at 2:30 p.m. (primarily for public agencies) and one at 6:30 p.m. (primarily for the general public). A number of comments were received during the NOP comment period, including from other public agencies as well as members of the general public.

Preparation of the Draft EIR for the Wal-Mart Regional Distribution Center was completed in February 2009. During that time, the City also hired an outside consultant to "peer review" the Draft EIR to ensure compliance with CEQA Guidelines, technical accuracy of analysis in support of conclusions of findings of significance, and internal consistency of the document.

The Draft EIR was circulated for public review and comment in compliance with CEQA from February 25 through April 27, 2009, a period of 60 days, 15 days longer than the minimum 45-day period identified in CEQA Guideline Section 15105. Numerous comments were submitted by public agencies, interested organizations and members of the general public. The Draft EIR was made available in the City of Merced Planning Division and in local libraries. Copies were distributed to a number of public agencies and organizations and were provided to others upon request. The Draft EIR was also posted on the City's website.

The Final EIR was circulated on July 27, 2009. Included in the Final EIR were responses to the comments received during the Draft EIR public review and comment period.

A Site Plan Review Committee meeting was held on April 23, 2009, during which the Site Plan Review Committee considered the site plan application for the project. That Committee referred the Site Plan Application to the Planning Commission for hearing and decision, in accordance with Merced Municipal Code Section 20.68.040 (B).

A Planning Commission hearing was held by the City of Merced on August 19, 2009 (and continued to August 24, 2009) and a City Council hearing was held by the City of Merced on September 21, 2009 (and continued to September 23, 2009, September 26, 2009, and September 28, 2009).

The City Council adopted the resolution certifying the Environmental Impact Report, amending the General Plan to allow abandonment of the Kibby Road public right-of-way, approving the application for vacating/abandoning the Kibby Road right-of-way, and approving the site plan for Wal-Mart project with findings and a statement of overriding considerations on September 28, 2009.

### 3 RECORD OF PROCEEDINGS

Various documents and other materials constitute the record of proceedings upon which the City Council bases its findings and decisions contained herein. The record of proceedings is located at the Merced Civic Center at 678 West 18th Street, Merced, California. The custodian for the record of proceedings is the City of Merced Planning Division. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and California Code of Regulations, Title 14, Section 15091(e). For purposes of CEQA and these findings, the record before the City includes, without limitation, the following:

- ▶ The Notice of Preparation and all other public notices issued by the City in conjunction with the Project;
- ▶ The Draft EIR for the Project dated February 2009 and all of the documents referenced therein;
- ▶ Comments submitted by agencies or members of the public during the comment period on the Draft EIR;
- ▶ Comments and correspondence submitted to the City with respect to the Project, in addition to timely comments on the Draft EIR;
- ▶ The Final EIR for the Project dated July 2009, including all written comments submitted by agencies or members of the public during the public comment period on the Draft EIR and responses to those comments, and all of the documents referenced therein;
- ▶ The Mitigation Monitoring Program;
- ▶ Findings and resolutions adopted by the City in connection with the Project and documents cited or referred to therein;
- ▶ Reports, studies, memoranda, maps, diagrams, staff reports, or other planning documents relating to the Project prepared by the City, consultants to the City, or responsible or trustee agencies with respect to the City's compliance with the requirements of CEQA and with respect to the City's action on the Project;
- ▶ Documents submitted to the City (including the Planning Commission and City Council) by other public agencies or members of the public in connection with the Project;
- ▶ Minutes and/or verbatim transcripts of public hearings held by the City in connection with the Project;
- ▶ Documentary or other evidence submitted to the City at such information sessions, public meetings, public workshops and public hearings;
- ▶ Resolutions and/or ordinances adopted by the City regarding the Project, and staff reports, analyses, and summaries related to the adoption of those resolutions;
- ▶ Matters of common knowledge to the City, including, but not limited to federal, state, and local laws and regulations;
- ▶ Documents cited in these findings, in addition to those cited above; and
- ▶ Other materials required for the record of proceedings by Public Resources Code section 21167.6, subdivision (e).

## 4 CEQA FINDINGS

CEQA requires that when a project EIR identifies one or more significant environmental effects of the project the lead agency must make written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The Wal-Mart Regional Distribution Center Final EIR identified significant environmental effects. Each significant effect is listed below with the required written finding and a brief explanation of the rationale for each finding.

### 4.1 POTENTIALLY SIGNIFICANT UNAVOIDABLE IMPACTS

The following environmental impacts have been identified as significant and unavoidable. Implementation measures are included in the project description to reduce environmental impacts and in some cases mitigation measures are imposed, however the following impacts cannot be reduced to a less-than-significant level.

#### AGRICULTURAL RESOURCES

**IMPACT**      **Conversion of Prime Farmland, Unique Farmland, or Farmland of Statewide Importance.** *The proposed*  
**4.1-1**            *project would result in the conversion of Prime Farmland. The project would result in a significant impact.*

The proposed project would result in the conversion of 228.68 acres of Prime Farmland, Farmland of Statewide Importance and Unique Farmland to a nonagricultural use. Conversion of Prime soils to nonagricultural production uses is considered a significant adverse impact under CEQA. Placing an industrial use adjacent to agricultural uses may also produce land use conflicts and may lead to increased conversion of agricultural land. Approximately 70% of the project site consists of Prime Farmland, the conversion of which also would be considered a **significant impact**.

**Finding:** Pursuant to CEQA Guidelines Section 15091(a)(3), the City Council finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make additional mitigation measures infeasible. The City Council finds that all feasible mitigation measures have been incorporated into the project which substantially lessen agricultural impacts, but not to a less-than-significant level. There are no additional feasible mitigation measures that could further reduce the impact to a less than significant level. Pursuant to CEQA Guidelines Section 15093, therefore, the City has balanced the benefits of the project against its unavoidable environmental risks and has determined that this impact is acceptable for the reasons set forth in the Statement of Overriding Considerations.

**Explanation:** The Merced Vision 2015 General Plan Environmental Impact Report concluded that the future industrial, residential, and service area needs must be met through the provision of urban land uses with adequate infrastructure. Compact urban development, as concluded in a report prepared by the American Farmland Trust (Alternatives for Future Urban Growth in California's Central Valley), results in less agricultural land conversion than low-density "sprawl" type of development. The General Plan EIR concluded that to achieve the goals of maintaining a compact urban form to minimize loss of agricultural crop land in the region, protect agricultural areas outside the City's specific urban development plan (SUDP) from urban impacts, relieve pressures on converting areas containing large concentrations of prime agricultural soils to urban uses by providing adequate urban development land within the City's SUDP, and other types of land-use compatibility issues, mitigation that would eliminate the loss of agricultural land to urban development is not feasible and would conflict with the goals and policies identified in the General Plan.

The proposed project would be within the Merced City limits on the fringe of existing development in the southeast portion of the City, on a site that has been planned for future industrial development for many years. The western portion of the project site (south of Childs and west of the Kibby Road right-of-way) was designated

as Industrial in the General Plan adopted in 1980. The eastern portion of the project site was designated as Industrial in the General Plan adopted in 1997 (Merced Vision 2015 General Plan). The surrounding land uses include agriculture as well as industrial uses. With the adoption of the General Plan, the City of Merced recognized that the proposed project would be an appropriate use for this site, and that any loss of agricultural land would be offset by the benefits that would be realized through the development of an industrial use on the site.

Although this impact is significant, the City Council of the City of Merced took this into consideration at the time it adopted policies and goals for the growth and buildout of the City in the General Plan and determined that this impact could not be mitigated. At the time the General Plan was adopted, the City Council adopted a "Statement of Overriding Considerations" (City Council Resolution No. 97-22, April 7, 1997) concerning the loss of agricultural land. This project EIR reveals no new information showing that previously identified effects will be more significant than described in the EIR for the Merced Vision 2015 General Plan.

**CUMULATIVE IMPACT** **Cumulative Agricultural Land Impact.** *The project would contribute to cumulative loss of farmland in the region. This is a cumulatively considerable incremental contribution, and the cumulative impact is therefore considered significant.*

According to the Department of Conservation (DOC), 565 acres of Prime Farmland, 177 acres of Farmland of Statewide Importance, 55 acres of Unique Farmland, and 231 acres of Farmland of Local Importance were converted to urban and built-up land between 2000 and 2002 in Merced County. As of 2004, there were 535,562 acres of Farmland in the County. In the period between 2000 and 2004, 7,149 acres of Prime Farmland and 3,345 acres of Farmland of Statewide Importance were lost, and 71 acres of Unique Farmland were gained for a net loss of 10,423 acres over this four-year period.

**Finding:** Pursuant to CEQA Guidelines Section 15091(a)(3), the City Council finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make additional mitigation measures infeasible. The City Council finds that all feasible mitigation measures have been incorporated into the project which substantially lessen cumulative agricultural impacts, but not to a less-than-significant level. There are no additional feasible mitigation measures that could further reduce the impact to a less than significant level. Pursuant to CEQA Guidelines Section 15093, therefore, the City has balanced the benefits of the project against its unavoidable environmental risks and has determined that this impact is acceptable for the reasons set forth in the Statement of Overriding Considerations.

**Explanation:** The Merced Vision 2015 General Plan Environmental Impact Report concluded that the future industrial, residential, and service area needs must be met through the provision of urban land uses with adequate infrastructure. Compact urban development, as concluded in a report prepared by the American Farmland Trust (Alternatives for Future Urban Growth in California's Central Valley), results in less agricultural land conversion than low-density "sprawl" type of development. The General Plan EIR concluded that to achieve the goals of maintaining a compact urban form to minimize loss of agricultural crop land in the region, protect agricultural areas outside the City's specific urban development plan (SUDP) from urban impacts, relieve pressures on converting areas containing large concentrations of prime agricultural soils to urban uses by providing adequate urban development land within the City's SUDP, and other types of land-use compatibility issues, mitigation that would eliminate the loss of agricultural land to urban development is not feasible and would conflict with the goals and policies identified in the General Plan.

Although the project would result in a loss of approximately 158.2 acres of Prime Farmland, 57.87 acres of Farmland of Statewide Importance, and 12.61 acres of Unique Farmland, this represents .0004 of the farmland located within the County of Merced. Although the impact represents a cumulatively considerable incremental contribution and is a significant cumulative impact, the City Council of the City of Merced took this into consideration at the time it adopted policies and goals for the growth and buildout of the City in the General Plan.

At the time the General Plan was adopted, the City Council adopted a "Statement of Overriding Considerations" (City Council Resolution No. 97-22, April 7, 1997) concerning the loss of agricultural land. This project EIR reveals no new information showing that previously identified effects will be more significant than described in the EIR for the Merced Vision 2015 General Plan.

## AIR QUALITY

**IMPACT 4.2-6** *Generation of Emissions of Greenhouse Gases. Construction- and operation-related activities of the proposed project would result in a considerable net increase in emissions of CO<sub>2</sub> and other greenhouse gases. These levels would constitute a considerable net increase in GHG emissions. In addition, this increase would conflict with the state's AB 32 goals, which require reductions in statewide emissions levels of GHGs. As a result, this impact would be considered significant.*

An individual project does not generate enough Greenhouse Gas ("GHG") emissions to significantly influence global climate change. Global climate change is a cumulative impact; an appreciable impact on global climate change may only occur when GHG emissions from a project combine with GHG emissions from other human activities associated with the industrial/manufacturing, utility, transportation, residential, and agricultural sectors on a global scale. However, for purposes of this EIR, GHG emissions were treated as a project-level impact, since they would incrementally contribute to global effects.

Construction and operation-related emissions of CO<sub>2</sub> associated with implementation of the proposed project were estimated using URBEMIS 2007 Version 9.2.2 computer program (ARB 2007x), which is designed to model construction and operational emissions for land use development projects. Indirect-source GHG emissions were estimated using the California Climate Action Registry Protocol, Version 2.2 (CCAR 2007) and electricity consumption data for the existing Wal-Mart Distribution Center in Porterville, CA. As shown in Table 4.2-9 (FEIR, p. 4-72), construction of the project would generate approximately 5,226.7 tons of CO<sub>2</sub> during the twelve (12) month construction period. As shown in Table 4.2-10 (FEIR, p. 4-73), operation of the project would generate annual emissions of approximately 12,595 tons of CO<sub>2</sub>. These values represent unmitigated levels of construction and operational emissions.

The following mitigation measures have been incorporated into the EIR which will lessen the environmental impacts:

**Mitigation Measure 4.2-6a: Implement Mitigation Measures 4.2-1a and 4.2-1b.** The Applicant shall implement Mitigation Measures 4.2-1a and 4.2-1b, which will have the added benefit of reducing construction-related emissions of CO<sub>2</sub>.

**Mitigation Measure 4.2-6b: Ensure On-Site Yard Trucks are Maintained and Meet On-Road Truck Emissions Standards.** The Applicant shall ensure that all on-site "yard trucks" have ARB-approved on-road truck engines that meet on-road truck emissions standards and are maintained in proper working condition according to manufacturer specifications. The Applicant shall provide an inventory list of all on-site yard trucks to SJVAPCD prior to operating the facility and the Applicant shall grant SJVAPCD permission to verify the inventory at the project site if desired by SJVAPCD.

**Mitigation Measure 4.2-6c: Implement Mitigation Measures 4.2-2a, 4.2-2b, 4.2-2c, and 4.2-2d.** The Applicant shall implement Mitigation Measures 4.2-2a, 4.2-2b, 4.2-2c, and 4.2-2d, which will have the added benefit of reducing project-generated, operation-related emissions of CO<sub>2</sub>.

**Mitigation Measure 4.2-6d: Implement Effective Mitigation Measures.** The following measures, as well as any other effective mitigation measures, shall be implemented by the project Applicant to further reduce operation-related emissions of CO<sub>2</sub>.

- ▶ Install solar panels or other types of alternative energy sources (e.g., wind turbines) in all available areas of the project site, including the roof of the warehouse building, the buffer areas surrounding the paved truck yards and employee parking lot, and covered parking areas, walkways and outdoor areas, to supply electricity for on-site use. This measure would be consistent with the Merced Vision 2015 General Plan Policy SD-3.1, which is to promote the use of solar energy technology (City of Merced 1995). Wal-Mart shall submit a plan to achieve this measure prior to the first day of project operations and this measure shall be achieved within one year after the first day of project operations.
- ▶ If the Applicant purchases electricity and/or natural gas from PG&E for operation of the proposed project then it shall participate in PG&E's ClimateSmart® program for the purchase of any and all electricity and natural gas consumed on-site by the proposed facility. Participation in PG&E's ClimateSmart® program shall commence prior to receiving its first monthly energy bill from PG&E. Participation in the ClimateSmart® program shall continue for as long as the program, or similar program offered by PG&E, is in existence.
- ▶ Retain the portion of the existing almond orchard located between the proposed truck gate and future Campus Parkway. For all almond trees that are subject to removal, participate in an urban and community forestry program (such as the UrbanWood program managed by the Urban Forest Ecosystems Institute [Urban Forest Ecosystems Institute 2007]) in which tree wood is harvested for an end-use that would retain its carbon sequestration (e.g., furniture building, cabinet making). For all nonharvestable almond trees that are subject to removal, develop an off-site tree program that includes a level of tree planting that, at a minimum, increases carbon sequestration by an amount equivalent to what would have been sequestered by the almond orchard during its lifetime. This program shall be funded by the Applicant and reviewed for comment by an independent Certified Arborist unaffiliated with the Applicant. Final approval of the program shall be provided by the City prior to tree removal. Components of the program may include, but not be limited to, providing urban tree canopy in the City of Merced, or reforestation in suitable areas outside the City. Upon its completion, the California Urban Forestry Greenhouse Gas Reporting Protocol shall be used to assess this mitigation program. At the time of writing this document, the Center for Urban Forest Research expects to complete the California Urban Forestry Greenhouse Gas Reporting Protocol with the California Climate Action Registry sometime in 2008 (Center for Urban Forest Research 2007). All unused vegetation and tree material shall be shipped to the nearest composting facility, or landfill that is equipped with a methane collection system, or biomass power plant. Tree and vegetative material should not be burned on or off-site unless used as fuel in a biomass power plant.
- ▶ The Applicant shall inventory all emissions of GHGs associated with operation of the project according to the most recently established methodologies of the CCAR, the Climate Registry, or ARB. The inventory shall be verified by a verifier who is accredited by the applicable registry within one year of opening the facility and the inventory and verification shall be shared with the City of Merced. This inventory shall include mobile-source GHG emissions associated with trips by Wal-Mart trucks traveling to and from the distribution center, and on-site vehicles that are part of Wal-Mart's vehicle fleet. At the time of writing this report, the most recently established methodology is the California Climate Action Registry's General Reporting Protocol, Version 2.2 (CCAR 2007).

**Finding:** Pursuant to CEQA Guidelines Section 15091(a)(3), the City Council finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make additional mitigation measures infeasible. The City Council finds that all feasible mitigation measures have been incorporated into the project which substantially lessen air quality (GHG) impacts, but not to a less-than-significant level. There are no additional feasible mitigation measures that could further reduce the impact to a less than significant level. Pursuant to CEQA Guidelines Section 15093, therefore, the City has balanced the benefits of the project against its unavoidable environmental risks and has determined that this impact is acceptable for the reasons set forth in the Statement of Overriding Considerations.

**Explanation:** Implementation of the above mitigation measures would result in reductions of emissions of CO<sub>2</sub> and offsets; however, at the time of preparation of the EIR, these reductions could not be fully quantified. Applicants will also be required to implement Mitigation Measures 4.2-1a and 4.2-2a, (FEIR, pp. 4-55, 4-62) which require the project to comply with SJVAPCD's Indirect Source Review (ISR) rule, which will also result in a reduction of operational CO<sub>2</sub> emissions. Applicants will also be required to implement Mitigation Measures 4.2-1(c) and 4.2-2(e) (FEIR, pp. 4-57, 4-65), which require that it enter into an emissions reduction agreement with the SJVAPCD to reduce construction and operational emissions of ROG and NO<sub>x</sub> to less than the SJVAPCD established thresholds; such agreement will have the added benefit of reducing construction and operational GHG emissions. At this time, there is no established methodology for verifying the associated GHG reductions from emission reduction agreements. Furthermore, the project would generate GHG emissions during construction and during the life of the project, which will persist in the atmosphere for much longer periods of time, on the order of tens to hundreds of years. There are no adopted numeric thresholds above or below which a significant increase in GHG emissions would occur. Absent this type of guidance, the net increase in GHG emissions would still be in an amount considered substantial and would conflict with the state's AB 32 goals, which require reductions in statewide emissions levels of GHGs, and the impact would remain **significant and unavoidable**.

**CUMULATIVE IMPACT** **Cumulative Air Quality Impact (Greenhouse Gas Emissions).** *Project construction and operations would result in release of carbon dioxide and other greenhouse gases. Even with mitigation measures, the project would result in a net increase of greenhouse gases and conflict with California's Assembly Bill (AB) 32 goals. This would potentially be a cumulatively considerable incremental contribution, and the cumulative impact would be therefore considered significant.*

As discussed in more detail above, project implementation would result in significant air quality impacts with respect to global climate change from both construction and operation-related emissions of carbon dioxide (CO<sub>2</sub>) and other greenhouse gases. Implementation of the Mitigation Measures set forth above and in the FEIR would lessen these impacts. Despite mitigation, this net increase may potentially conflict with the state's AB 32 goal to reduce statewide GHG emissions to 1990 levels by 2020. Moreover, CO<sub>2</sub> emissions attributable to the project would contribute to the existing and projected global warming trend. Thus, the project's contribution to the significant impact of global climate change would be considered cumulatively considerable, and the project would result in a significant cumulative impact.

**Finding:** Pursuant to CEQA Guidelines Section 15091(a)(3), the City Council finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make additional mitigation measures infeasible. Mitigation Measures 4.2-6a, 4.2-6b, 4.2-6c, 4.2-6d, 4.2-1a and 4.2-1b, and 4.2-2a, 4.2-2b, 4.2-1c and 4.2-2d, as set forth above and in the FEIR are incorporated herein by reference as though fully set forth and shall be a condition of project approval. The City Council finds that all feasible mitigation measures have been incorporated into the project which substantially lessen cumulative air quality (GHG) impacts, but not to a less-than-significant level. There are no additional feasible mitigation measures that could further reduce the impact to a less than significant level. Pursuant to CEQA Guidelines Section 15093, therefore, the City has balanced the benefits of the project against its unavoidable environmental risks and has determined that this impact is acceptable for the reasons set forth in the Statement of Overriding Considerations.

**Explanation:** Implementation of the above mitigation measures would result in reductions of emissions of CO<sub>2</sub> and offsets; however, at the time of preparation of the EIR, these reductions could not be fully quantified. Applicant will also be required to implement Mitigation Measures 4.2-1a and 4.2-2a (FEIR, pp. 4-55, 4-62), which require the project to comply with SJVAPCD's Indirect Source Review (ISR) rule, which will also result in a reduction of operational CO<sub>2</sub> emissions. Applicants will also be required to implement Mitigation Measures 4.2-1(c) and 4.2-2(e) (FEIR, pp. 4-57, 4-65, 4-75), which require that it enter into an emissions reduction agreement with the SJVAPCD to reduce construction and operational emissions of ROG and NO<sub>x</sub> to less than the SJVAPCD established thresholds; such agreement will have the added benefit of reducing construction and operational GHG



emissions. At this time, there is no established methodology for verifying the associated GHG reductions from emission reduction agreements. Any concurrent emissions generating activity that occurs worldwide would add additional air emission burdens to the GHG emission levels associated with the project. While there are no adopted numeric thresholds above or below which a significant increase in greenhouse gas emissions would occur, the net increase in GHG emissions would still be in an amount considered substantial and would conflict with the state's AB 32 goals, which require reductions in statewide emissions levels of GHGs.

The EIR has thoroughly disclosed potential GHG emissions and associated cumulative impacts due to the project and expended considerable effort to identify all feasible measures to mitigate these impacts. Therefore, after mitigation, the project's cumulative impact would remain **significant and unavoidable**.

## NOISE

**IMPACT 4.8-3** *Long-Term Operational Traffic Noise. Implementation of the proposed project would result in increases in traffic noise levels greater than 3 dBA and cause traffic noise levels to exceed the City's 60 dBA  $L_{dn}$  exterior noise standard at sensitive receptors within the city limits. This would be a significant impact.*

The increase in daily traffic volumes resulting from implementation of the proposed project would generate increased noise levels along nearby roadway segments. The project's contribution to the 2010 baseline traffic noise levels along area roadways was determined by comparing the predicted noise levels with and without project-generated traffic under 2010 baseline conditions. The traffic volumes used to estimate the traffic noise levels assume that proposed Phase I of the Campus Parkway from the State Route (SR) 99/Mission Interchange to Childs Avenue would be completed before the construction of the distribution center, but Campus Parkway north of Childs would be completed sometime after the buildout of the distribution center but before the year 2030.

Table 4.8-11 (DEIR, p. 4.8-25) displays the day/night noise levels in decibels ( $L_{dn}$ ) at a distance 100 feet from the centerline of each modeled road segment for the 2010 and 2030 baseline years with and without traffic generated by the proposed project. Most of the noise levels presented in Table 4.8-11 would be lower at the nearest sensitive receptors if they are located further than 100 feet from the modeled road segments. Table 4.8-11 also shows the net increase in roadside noise levels as compared to both baseline conditions (i.e., 2010 and 2030 no project).

Table 4.8-11 shows that project-generated traffic would result in a noticeable increase in traffic noise levels (i.e., greater than 3 dBA) on six of the modeled roadway segments (i.e., Gerard Avenue between Campus Parkway and project site entrances, Gerard Avenue between the project site entrances and Tower Road, Mission Avenue between SR 99 and Coffee Street, Campus Parkway between Coffee Street and Gerard Avenue, Tower Road between Gerard Avenue and Childs Avenue, Tower Road between Childs Avenue and SR 140). The roadway noise levels presented in the table represent worst-case potential traffic noise exposures, which assume no natural or artificial shielding between the roadway and a noise receptor located 100 feet from the roadway centerline.

Three residences are located in close proximity to the project site, two in unincorporated Merced County and the other within the City limits. The noise levels at the residences located in the County (one on Tower Road between Gerard Avenue and Childs Avenue, one on Tower Road between Childs Avenue and SR 140) would be less than the County's land use compatibility threshold of 65 dBA  $L_{dn}$ , but the increase at both receptors would be noticeable. (DEIR, p. 4.8-23, Sensitive Receptors in Merced County). The noise levels at the residence located within City limits would exceed the City's standard of 60 dBA  $L_{dn}$  for residential land uses, although the interior noise level at the residence is expected to be 42.3 dBA  $L_{dn}$  which is less than the interior noise level standard of 45 dBA  $L_{dn}$ . (DEIR, p. 4.8-24, Sensitive Receptors within Merced City Limits)

The increases in traffic sound levels along many of the roadway segments are particularly large because the trips generated by the project include a disproportionately high number of truck trips and a disproportionately high number of trips during the more-sensitive nighttime hours (10:00 p.m.–7:00 a.m.).

**Mitigation Measure 4.8-3: Implement Measures to Reduce Exposure to Traffic Noise from Project.** Prior to initiating site preparation, the project Applicant shall implement the following measures to reduce the exposure of existing sensitive receptors to project-generated traffic noise levels:

- ▶ The Applicant shall offer the owners of the two affected residences on the east side of Tower Road between SR 140 and Gerard Avenue and the single residence located on the south side of Gerard Avenue between Campus Parkway and the project site entrances the installation of a sound barrier along the property line of their affected residential properties. The sound barriers must be constructed of solid material (e.g., wood, brick, adobe, an earthen berm, or combination thereof). All barriers shall blend into the overall landscape and have an aesthetically pleasing appearance that agrees with the color and rural character of the houses and the general area, and not become the dominant visual element of the community. Relocation of the driveway at each residence may be necessary in order to preclude having gaps in the sound barrier. Relocation of landscaping may also be necessary to achieve an aesthetically pleasing appearance. The owners of the affected properties may choose to refuse this offer; however, the offer shall not be made available to subsequent owners of the property. If an existing owner refuses these measures, a deed notice must be included with any future sale of the property to comply with California state real estate law, which requires that sellers of real property disclose “any fact materially affecting the value and desirability of the property” (California Civil Code, Section 1102.1[a]). The Applicant shall be responsible for all costs incurred by the implementation of this mitigation measure.
- ▶ To ensure compliance with applicable noise standards, a site-specific noise study shall be conducted by the City or its approved consultant to determine specific noise barrier design. The study shall contain noise levels prior to and after noise barrier installation at all affected sensitive receptors and shall require the full disclosure of the effectiveness of the sound barrier. The Applicant shall be responsible for all costs incurred by the implementation of this mitigation measure.
- ▶ The cost to fully implement this mitigation measure, including related studies, and design and installation shall be completely funded by the Applicant.
- ▶ The Applicant shall maintain its truck fleet in proper working condition, including truck mufflers and exhaust systems, according to manufacturers’ specifications.

**Finding:** Pursuant to CEQA Guidelines Section 15091(a)(3), the City Council finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make additional mitigation measures infeasible. The City Council finds that all feasible mitigation measures have been incorporated into the project which substantially lessen noise impacts on sensitive receptors, but not to a less-than-significant level. There are no additional feasible mitigation measures that could further reduce the impact to a less than significant level. Pursuant to CEQA Guidelines Section 15093, therefore, the City has balanced the benefits of the project against its unavoidable environmental risks and has determined that this impact is acceptable for the reasons set forth in the Statement of Overriding Considerations.

**Explanation:** Through review and action over future development projects, the City will seek to upgrade onsite designs (e.g., walls, building design) to reduce noise impacts. Sound barriers are being and will also be planned, as appropriate, to protect future planned receptors. For instance, at the time sound level measurements were collected, a sound wall was being constructed along the north side of Gerard Avenue east of Coffee Street, which would provide some protection for receptors in the new housing development under construction there.

The sound barriers required along the east side of Tower Road by Mitigation Measure 4.8-3 are considered feasible because they would need to achieve a minimum 4.7 dBA reduction to minimize the traffic noise increase to a *less-than-significant* level under baseline 2030 conditions (i.e., to an increase smaller than 3 dBA); however, this would not occur until some of the project-generated traffic is diverted to the future extended Campus

Parkway. Until the completion of Campus Parkway north of Childs Avenue, it is not feasible to design and construct sound barriers that would reduce the noise levels at these sensitive receptors to less than significant levels and that also meet the aesthetic design elements required by Mitigation Measure 4.8-3, as set forth in the DEIR and above.

The sound barriers required by Mitigation Measure 4.8-3 would not provide enough reduction to offset the traffic noise level increase along the south side of the segment of Gerard Avenue between Campus Parkway and the project site entrances. It is not feasible to design a sound barrier that provides enough reduction to reduce the resulting noise level to less than the City's "normally acceptable" standard of 60 dBA  $L_{dn}$  for residential land uses and that also meets the aesthetic and design requirements of Mitigation Measure 4.8-3. Therefore, this impact remains **significant and unavoidable**.

**CUMULATIVE IMPACT** **Cumulative Noise Impact.** *Transportation source noise would extend beyond the project site along existing and future approved offsite roads. Project traffic can cause significant traffic noise impacts to sensitive uses along these roadways. This is a cumulatively considerable incremental contribution, and the project's cumulative impact would be significant.*

Transportation-source noise may extend beyond a project site along existing and future approved offsite roads. Project traffic can cause significant traffic noise impacts to sensitive uses along these roadways. As more fully described in the DEIR, Section 4.8, "Noise," and in the FEIR at pp. 4-5 – 4-8, implementation of the proposed project would result in significant and unavoidable long-term traffic-generated noise impacts under baseline plus project conditions at residences along the segment of Tower Road between State Route (SR) 140 and Childs Avenue, the segment of Tower Road between Childs Avenue and Gerard Avenue, and the segment of Gerard Avenue between Campus Parkway and the project site entrances. In addition, truck trips generated by the proposed project would result in significant and unavoidable single-event noise level (SENL) impacts at residential land uses located near affected road segments.

As explained in the traffic noise analysis of Section 4.8, traffic noise increases would result in significant and unavoidable impacts at the project level at residential receptors along some area roads, including the farm house located along the south side of the segment of Gerard Avenue between Campus Parkway and the project site entrances. Under cumulative conditions, project-generated traffic would cause the traffic noise level to increase 12.4 dBA along this road segment. A 14.7 dBA traffic noise level increase would occur along the segment of Gerard Avenue between the project site entrances and Tower Road; however, no sensitive receptors are located along this road segment.

The combined cumulative increase in traffic on local roadways anticipated from the proposed project and regional growth would result in a substantial number of additional existing and proposed sensitive receptors. Thus, the traffic noise impacts from the proposed project and related projects, taken together, are considered cumulatively significant.

Future development in the project area may generate additional traffic volume, including truck trips that pass by sensitive receptors, thereby increasing traffic noise, as shown in Table 4.8-10 (DEIR, p. 4.8-21) and the frequency of exposure to SENLs. While some of the future planning projects in the area may result in removal and/or redevelopment of some existing affected receptors, and thereby serve as an opportunity to provide design features that reduce exposure to traffic noise and SENLs, there is no guarantee that these design features would be sufficient.

Because it is considered infeasible to sufficiently reduce noise at every existing and proposed sensitive receptor that would be affected, the project's cumulative contribution to exposure of sensitive receptors to traffic noise would remain cumulatively considerable and the impact would remain significant.

**Finding:** Pursuant to CEQA Guidelines Section 15091(a)(3), the City Council finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make additional mitigation measures infeasible. The City Council finds that all feasible mitigation measures have been incorporated into the project which substantially lessen cumulative noise impacts on sensitive receptors, but not to a less-than-significant level. There are no additional feasible mitigation measures that could further reduce the impact to a less than significant level. Pursuant to CEQA Guidelines Section 15093, therefore, the City has balanced the benefits of the project against its unavoidable environmental risks and has determined that this impact is acceptable for the reasons set forth in the Statement of Overriding Considerations.

**Explanation:** Until the completion of Campus Parkway north of Childs Avenue, a reduction of 8.8 dBA would be needed at the house located on the segment of Tower Road between Gerard Avenue and Childs Avenue and a reduction of 5.1 dBA would be needed along the segment of Tower Road between Childs Avenue and SR 140 to offset noticeable traffic noise increases. Because it would not be feasible to design sound barriers that provide 8.3 dBA levels of reduction and meet the required aesthetic and design elements required by Mitigation Measure 4.8-3 (DEIR, pp. 4.8-24 - 4.8-26; FEIR, pp. 4-5 - 4-6), this impact would be considered significant and unavoidable until Campus Parkway is extended to SR 140.

The sound barriers study required by Mitigation Measure 4.8-3 along the south side of the segment of Gerard Avenue between Campus Parkway and the project site entrances would provide some protection against the increased levels of traffic noise generated by the project; however, these barriers would not provide enough reduction to offset the 10.5 dBA traffic noise level increase along this road segment. Therefore, because it would not be possible to design a sound barrier that provides enough reduction to reduce the resulting noise level to less than the City's "normally acceptable" standard of 60 dBA  $L_{dn}$  for residential land uses and meet the required aesthetic and design requirements, the cumulative impact would be considered **significant and unavoidable**.

## BIOLOGICAL RESOURCES

**CUMULATIVE IMPACT** **Cumulative Biological Resources Impact (Special Status Species Foraging Habitat).** *Project construction would result in the conversion of foraging habitat that supports Swainson's hawk and burrowing owl. However, because of proposed mitigation, the project's contribution to habitat loss would be mitigated to a less-than-significant level. However, there is a cumulatively considerable incremental contribution, and the project would result in a significant cumulative impact.*

Implementation of the proposed project would result in the 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.

**Finding:** Pursuant to CEQA Guidelines Section 15091(a)(3), the City Council finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make additional mitigation measures infeasible. The Mitigation Measures as set forth in the DEIR, Section 4.3, and minor revisions to those measures, as set forth in the FEIR at pp. 4-3 and 4-4, are incorporated herein by reference as though fully set forth and shall be a condition of project approval. The City Council finds that all feasible mitigation measures have been incorporated into the project which substantially lessen cumulative impacts on special-status species foraging habitat, but not to a less-than-significant level. There are no additional feasible mitigation measures that could further reduce the impact to a less than significant level. Pursuant to CEQA Guidelines Section 15093, therefore, the City has balanced the benefits of the project against its unavoidable environmental risks and has determined that this impact is acceptable for the reasons set forth in the Statement of Overriding Considerations.

**Explanation:** Implementation of mitigation measures for the project would result in less-than-significant impacts on sensitive habitats, federally protected wetlands, wildlife corridors, special-status plant species, and special-status wildlife species. Specifically, preservation and management of Swainson's hawk foraging habitat at an offsite location, and surveys and other avoidance measures for burrowing owls 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.

Although the project would preserve off-site habitat, as required by Mitigation Measure 4.3.2, the project's conversion of habitat, considered alongside the conversion of habitat associated with future development that will occur throughout the range of these raptors, would result in a net loss of habitat, despite the preservation of habitat required by many of these projects. Therefore, the project would have a cumulatively considerable effect related to these resources, and the cumulative impact is considered **significant and unavoidable**.

## VISUAL RESOURCES—CUMULATIVE IMPACT

**CUMULATIVE IMPACT** *Cumulative Visual Impact. The cumulative change of agricultural and open space views in the project region to urban land uses and the associated increase in nighttime light and glare and subsequent sky glow from past and planned future projects is a cumulatively considerable incremental contribution, and the project's cumulative impact would be significant.*

As described in Impact 4.13-2 (DEIR, pp. 4.13-7 - 4.13-13), the site contains agricultural fields, fallow agricultural lands, and orchard trees that cover much of the 230 acres of the project site. Various aspects of project development have the potential to alter views of the project site. Grading activities and construction of buildings and appurtenant structures have the greatest potential for creating such impacts. While the existing project vicinity is predominantly agricultural uses, two existing manufacturing warehouses are located directly north of the project site, and continuing progressively northward is the urbanized area of Merced. Extending southward from the project site are existing, primarily agricultural uses and scattered agricultural and residential units. The project site is not readily visible from State Route 99, which is approximately 2 miles west of the site.

**Finding:** Pursuant to CEQA Guidelines Section 15091(a)(3), the City Council finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make additional mitigation measures infeasible. Mitigation Measure 4.13-2, as set forth in the DEIR at p. 4.13-13, and in the FEIR at p. 4-12, is incorporated by reference as though fully set forth and shall be a condition of project approval. The City Council finds that all feasible mitigation measures have been incorporated into the project which substantially lessen cumulative impacts on visual resources, but not to a less-than-significant level. There are no additional feasible mitigation measures that could further reduce the impact to a less than significant level. Pursuant to CEQA Guidelines Section 15093, therefore, the City has balanced the benefits of the project against its unavoidable environmental risks and has determined that this impact is acceptable for the reasons set forth in the Statement of Overriding Considerations.

**Explanation:** The City's General Plan includes a number of goals and policies designed to protect visual resources. These goals and policies are set forth more fully in the FEIR at pp. 4-12 – 4-14. As described therein, the project is consistent with the following goals and policies:

- ▶ **Goal UD-2: Overall Community Appearance**
  - A unique community image
  - Attractive neighborhoods and districts

The project would place a new distribution center within an area that includes several other major warehouses and on a site that has been designated and zoned for industrial use since the City adopted the General Plan in 1997.

- ▶ **Goal OS-1: Open Space for the Preservation of Natural Resources**
  - Preservation of Scenic Corridors and Resources

The project site is not located within a scenic corridor and does not include natural resources.

- **Policy L-2.5: Maintain Attractive Industrial Areas**

The Applicant was required to submit a site plan application and will be required to submit a landscape plan and comply with City standards related to circulation, access and parking. The landscape plan will require shade trees in the employee parking areas, consistent with the requirements of the Merced Municipal Code. Trees will be required no further than thirty (30) feet apart along the perimeter roads surrounding the project site, which would substantially screen views of the site.

- **Policy UD-2.2: Maintain and enhance the unique community appearance of Merced**

The project will be built on a site that has been designated and zoned for industrial use and is consistent with surrounding uses, which include other major warehouse facilities. As indicated above, a landscaping plan is required.

The site is adjacent to existing manufacturing and industrial type development and is visually compatible with these existing and future uses. The project lessens future impacts on scenic resources in planned open space areas and corridors by locating in a planned development area.

Implementation of the proposed project would degrade the existing character of the project site, replacing undeveloped orchards and agricultural fields with industrial development. Substantial changes in visual conditions will continue as agricultural lands and open spaces are replaced by urban development, which will also lead to increased nighttime light and glare. Although these cumulative impacts can be minimized to a degree through screening of structures, use of outdoor lighting that limits glare, appropriate building design and other measures, the significant cumulative impact cannot be fully mitigated. The project's incremental contribution is cumulatively considerable and would result in a **significant and unavoidable** impact.

## **4.2 SIGNIFICANT IMPACTS MITIGATED TO LESS THAN SIGNIFICANT**

The Final EIR identifies significant project-specific and cumulative adverse impacts of the proposed project and proposed mitigation measures to avoid or substantially lessen those impacts. Those impacts and mitigation measures are identified in the following sections. The City Council finds, based on the facts set forth in the record, which include but are not limited to the facts as set forth below, that the incorporation of the identified mitigation measures will mitigate the following identified significant project-specific and cumulative adverse impacts to a level that is considered less than significant.

## AIR QUALITY

**IMPACT 4.2-1** **Generation of Short-Term Construction-Related Emissions of Criteria Air Pollutants and Precursors.** *Project-generated, construction-related emissions of ROG and NO<sub>x</sub> would exceed SJVAPCD's significance threshold of 10 TPY. Project-generated, construction-related emissions of PM<sub>10</sub> would exceed SJVAPCD's significance threshold of 15 TPY. In addition, with respect to construction-related emissions of PM<sub>10</sub>, SJVAPCD-recommended control measures beyond compliance with Regulation VIII-Fugitive Dust Prohibition are not incorporated into the project design. Thus, project-generated, construction-related emissions of criteria air pollutants and precursors could violate or contribute substantially to an existing or projected air quality violation, and/or expose sensitive receptors to substantial pollutant concentrations, especially considering the nonattainment status of Merced County. As a result, this would be a **significant impact**.*

**Finding:** Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effects have been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the FEIR and incorporated into the project:

**Mitigation Measure 4.2-1a: Comply with SJVAPCD's Indirect Source Review Rule (Rule 9510).** Construction of the proposed project shall comply with SJVAPCD's ISR rule (Rule 9510), as required by law. The Applicant shall have an Air Impact Assessment (AIA) application approved by SJVAPCD prior to issuance of a building permit by the City of Merced. The AIA application shall be submitted on a form provided by the SJVAPCD and contain, but not be limited to, the Applicant's name and address, detailed project description, on-site emission reduction checklist, monitoring and reporting schedule, and an AIA. The AIA shall quantify construction NO<sub>x</sub> and PM<sub>10</sub> emissions associated with the project. This assessment shall include: an estimate of construction emissions prior to the implementation of mitigation measures; a list of the mitigation measures to be applied to the project; an estimate of emissions for each applicable pollutant for the project, or each phase thereof, following the implementation of mitigation; and a calculation of the applicable off-site fee, if required by Rule 9510. The general mitigation requirements in the assessment, as contained in the ISR rule, shall include the following:

- ▶ Exhaust emissions for construction equipment greater than 50 horsepower used or associated with the project shall be reduced by 20% of the total NO<sub>x</sub> and by 45% of the total PM<sub>10</sub> emissions from the statewide average as estimated by ARB.
- ▶ Methods employed by the Applicant to reduce construction emissions to the degree noted above include using less polluting construction equipment, including the use of add-on controls, cleaner fuels, or newer lower emitting equipment. The emissions reduction targets listed above shall be met through any combination of on-site emission reduction measures or offset fees, including those required and additional measures listed in Mitigation Measure 4.2-1b below.

The requirements listed above can be met through any combination of on-site emission reduction measures or offset fees, including those required and additional measures listed in Mitigation Measures 4.2-1b and 4.2-1c below; however, any on-site emission reductions must be both quantifiable and verifiable to be credited towards the requirements of the ISR Rule. Any off-site mitigation fees shall be paid by the Applicant to SJVAPCD prior to issuance of a building permit by the City of Merced.

**Mitigation Measure 4.2-1b: Implement Measures to Reduce Construction-Related Diesel Equipment Exhaust Emissions.** The following required mitigation measures shall be implemented by the project Applicant to reduce construction-related diesel equipment exhaust emissions regardless of whether the emission reductions can be quantified and documented. 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 4.2-1a. These required measures are listed below. Prior to construction a requirement to implement these required measures shall be included in the contract language between the Applicant and the builders of the project.

#### **REQUIRED MEASURES TO REDUCE CONSTRUCTION-RELATED DIESEL EQUIPMENT EXHAUST EMISSION**

- ▶ All off-road construction equipment used on the project site shall be powered by engines that meet, at a minimum, Tier II emission standards, as set forth in §2423 of title 13 of the California Code of Regulations and Part 89 of Title 40 of the Code of Federal Regulations. The fleet of off-road construction equipment shall achieve a fleet average emissions factor equal to or less than the Tier II emissions standard of 4.8 grams per horsepower-hour for NO<sub>x</sub>.
- ▶ Cease construction activity on forecasted Spare the Air Days.
- ▶ Staging areas for heavy-duty construction equipment shall be located as far as possible from sensitive receptors. They shall be located on site and not be within 1,000 feet of any off-site receptors.
- ▶ Before construction contracts are issued, the project Applicant shall perform a review of new technology in consultation with SJVAPCD, as it relates to heavy-duty diesel equipment, to determine what (if any) advances in emissions reductions are available for use and are economically feasible. Construction contract and bid specifications shall require contractors to utilize the available and economically feasible technology on a percentage of the equipment fleet, as determined by SJVAPCD.
- ▶ When not in use, idling of on-site equipment shall be minimized. Under no conditions shall on-site equipment be left idling for more than 5 minutes.
- ▶ Prohibit the use of trucks with off-road engines to haul materials on-site. Use trucks with on-road engines instead.

In addition, measures implemented to achieve the ISR reduction goals required by Mitigation Measure 4.2-1a may include, but are not limited, to the additional measures listed below.

#### **ADDITIONAL OPERATIONAL EMISSION REDUCTION MEASURES**

- ▶ Use alternate fuels and emission controls to further reduce NO<sub>x</sub> and PM<sub>10</sub> exhaust emissions above the minimum requirements set forth in the ISR rule.
- ▶ Replace/substitute fossil-fueled (e.g., diesel) equipment with electrically driven equivalents (provided they are not run via a portable generator set).
- ▶ Use ARB-certified alternative fueled engines in construction equipment. Alternative fueled equipment may be powered by compressed natural gas, liquid propane gas, electric motors, or other ARB-certified off-road technologies. (To find engines certified by ARB, see <http://www.arb.ca.gov/msprog/offroad/cert/cert.php>.)
- ▶ Provide commercial electric power to the project site in adequate capacity to avoid or minimize the use of portable electric generators and equipment.



- ▶ Limit the hours of operation of heavy duty diesel equipment and/or the amount of equipment in use at any one time.

**Mitigation Measure 4.2-1c: Implement an Emissions Reduction Agreement with SJVAPCD to Reduce Construction Emissions of ROG and NO<sub>x</sub>.** The Applicant shall enter into an emissions reduction agreement with SJVAPCD to reduce net ROG and NO<sub>x</sub> emissions to less than 10 TPY. This agreement includes an emission reduction program, whereby the Applicant funds projects in the SJVAB, such as replacement and destruction of old engines with new more efficient engines. The agreement requires the Applicant to identify and propose opportunities for the reduction of emissions to fully mitigate the project's construction emissions to less than significant, and includes opportunities for removal or retrofication of stationary, transportation, indirect, and/or mobile-source equipment. Each proposal requires SJVAPCD approval and verification of emission reduction prior to receiving final discretionary approval of the project from the City of Merced. The emissions reduction agreement must be implemented *in addition to* the Required Measures to Reduce Construction-Related Diesel Equipment Exhaust Emission listed in Mitigation Measure 4.2-1b. Development and implementation of the emissions reduction agreement shall be fully funded by the Applicant. To the extent feasible, preference shall be given to off-site emission reduction projects that are located in or in close proximity to the City of Merced. If approved by SJVAPCD, the Applicant may develop an emissions reduction agreement that also fulfills the compliance requirements of SJVAPCD's ISR Rule (Rule 9510). The Applicant shall demonstrate to the City that it has successfully entered into an emission reduction agreement with the San Joaquin Valley Air Pollution Control District before issuance of the first building permit by the City.

**Mitigation Measure 4.2-1d: Comply with SJVAPCD's Regulation VIII-Fugitive Dust Prohibitions and Implement All Applicable Control Measures.** Construction of the proposed project shall comply with SJVAPCD's Regulation VIII-Fugitive Dust Prohibitions and implement all applicable control measures, as required by law. Regulation VIII contains, but is not limited to, the following required control measures:

- ▶ Prewater site sufficient to limit visible dust emissions (VDE) to 20% opacity.
- ▶ Phase work to reduce the amount of disturbed surface area at any one time.
- ▶ During active operations, apply water or chemical/organic stabilizers/suppressants sufficient to limit VDE to 20% opacity.
- ▶ During active operations, construct and maintain wind barriers sufficient to limit VDE to 20% opacity.
- ▶ During active operations, apply water or chemical/organic stabilizers/suppressants to unpaved haul/access roads and unpaved vehicle/equipment traffic areas sufficient to limit VDE to 20% opacity and meet the conditions of a stabilized unpaved road surface.
- ▶ An owner/operator shall limit the speed of vehicles traveling on uncontrolled unpaved access/haul roads within construction sites to a maximum of 15 miles per hour (mph).
- ▶ An owner/operator shall post speed limit signs that meet State and Federal Department of Transportation standards at each construction site's uncontrolled unpaved access/haul road entrance. At a minimum, speed limit signs shall also be posted at least every 500 feet and shall be readable in both directions of travel along uncontrolled unpaved access/haul roads.
- ▶ When handling bulk materials, apply water or chemical/organic stabilizers/suppressants sufficient to limit VDE to 20% opacity.
- ▶ When handling bulk material, construct and maintain wind barriers sufficient to limit VDE to 20% opacity and with less than 50% porosity.

- ▶ When storing bulk materials, comply with the conditions for a stabilized surface as listed above.
- ▶ When storing bulk materials, cover bulk materials stored outdoors with tarps, plastic, or other suitable material and anchor in such a manner that prevents the cover from being removed by wind action.
- ▶ When storing bulk materials, construct and maintain wind barriers sufficient to limit VDE to 20% opacity and with less than 50% porosity. If utilizing fences or wind barriers, apply water or chemical/organic stabilizers/suppressants to limit VDE to 20% opacity or utilize a 3-sided structure with a height at least equal to the height of the storage pile and with less than 50% porosity.
- ▶ Limit vehicular speed while traveling on the work site sufficient to limit VDE to 20% opacity.
- ▶ Load all haul trucks such that the freeboard is not less than 6 inches when material is transported across any paved public access road sufficient to limit VDE to 20% opacity.
- ▶ Apply water to the top of the load sufficient to limit VDE to 20% opacity.
- ▶ Cover haul trucks with a tarp or other suitable cover.
- ▶ Clean the interior of the cargo compartment or cover the cargo compartment before the empty truck leaves the site; and prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate; and load all haul trucks such that the freeboard is not less than 6 inches when material is transported on any paved public access road, and apply water to the top of the load sufficient to limit VDE to 20% opacity; or cover haul trucks with a tarp or other suitable cover.
- ▶ Owners/operators shall remove all visible carryout and trackout at the end of each workday.
- ▶ An owner/operator of any site with 150 or more vehicle trips per day, or 20 or more vehicle trips per day by vehicles with three or more axles shall take actions for the prevention and mitigation of carryout and trackout.
- ▶ An owner/operator shall prevent carryout and trackout, or immediately remove carryout and trackout when it extends 50 feet or more from the nearest unpaved surface exit point of a site.
- ▶ For sites with paved interior roads, an owner/operator shall prevent and mitigate carryout and trackout.
- ▶ Cleanup of carryout and trackout shall be accomplished by manually sweeping and picking-up; or operating a rotary brush or broom accompanied or preceded by sufficient wetting to limit VDE to 20% opacity; or operating a PM<sub>10</sub>-efficient street sweeper that has a pick-up efficiency of at least 80%; or flushing with water, if curbs or gutters are not present and where the use of water would not result as a source of trackout material or result in adverse impacts on storm water drainage systems or violate any National Pollutant Discharge Elimination System permit program.

An owner/operator shall submit a Dust Control Plan to the Air Pollution Control Officer (APCO) before the start of any construction activity on any site that will include 10 acres or more of disturbed surface area for residential developments, or 5 acres or more of disturbed surface area for nonresidential development, or will include moving, depositing, or relocating more than 2,500 cubic yards per day of bulk materials on at least 3 days. Construction activities shall not commence until the APCO has approved or conditionally approved the Dust Control Plan. An owner/operator shall provide written notification to the APCO within 10 days before the commencement of earthmoving activities via fax or mail. The requirement to submit a dust control plan shall apply to all such activities conducted for residential and nonresidential (e.g., commercial, industrial, or institutional) purposes or conducted by any governmental entity. Prior to issuance of grading or building permits from the City of Merced, the Applicant shall demonstrate to the satisfaction of the SJVAPCD that

mitigation measures identified above will be met, and identify an individual responsible for enforcing the measures.

**Mitigation Measure 4.2-1e: Implement SJVAPCD-Recommended Enhanced and Additional Dust Control Measures.**

The following SJVAPCD-recommended enhanced and additional control measure shall be implemented to further reduce emissions of fugitive PM<sub>10</sub> dust.

- ▶ Install sandbags or other erosion control measures to prevent silt runoff to public roadways from adjacent project areas with a slope greater than 1%.
- ▶ Suspend excavation and grading activity when winds exceed 20 mph.
- ▶ Limit area subject to excavation, grading, and other construction activity at any one time.
- ▶ Prior to issuance of grading or building permits from the City of Merced, the Applicant shall demonstrate to the satisfaction of the SJVAPCD that mitigation measures identified above will be met, and identify an individual responsible for enforcing the measures.

Implementation of Mitigation Measures 4.2-1a and -1b would result in the required minimum 20% reduction in NO<sub>x</sub> emissions and a 45% reduction in PM<sub>10</sub> emissions from heavy-duty diesel equipment, as compared with statewide average emissions. Implementation of these measures would also result in a 5% reduction in ROG emissions from heavy-duty diesel equipment. All or part of the reductions may result from on-site equipment and fuel selection; the remainder would result from off-site reductions achieved through the payment of fees.

Implementation of Mitigation Measure 4.2-1c would ensure the additional emissions reduction necessary to reduce construction-generated ROG and NO<sub>x</sub> emissions to levels below 10 TPY. By prohibiting construction activity on forecasted Spare the Air days, Mitigation Measure 4.2-1b will also prevent construction-related emissions of ozone precursors from contributing substantially to an existing or projected air quality violation. As a result, this impact (generation of construction-related ROG and NO<sub>x</sub> emissions) would be reduced to a less-than-significant level.

With respect to fugitive PM<sub>10</sub> dust emissions, implementation of Mitigation Measures 4.2-1d and 4.2-1e would ensure compliance with Regulation VIII, which is required by law, and include additional SJVAPCD-recommended control measures. These dust control measures typically reduce fugitive PM<sub>10</sub> dust emissions by 75% to approximately 4.2 TPY, which is less than SJVAPCD's recommended threshold of 15 TPY. As a result, this impact (generation of construction-related fugitive PM<sub>10</sub> dust emissions) would be reduced to a **less-than-significant level**.

**IMPACT 4.2-2** **Generation of Long-Term Operation-Related (Regional) Emissions of Criteria Air Pollutants and Precursor Emissions.** *Operation-related activities would result in project-generated emissions of ROG and NO<sub>x</sub> that exceed SJVAPCD's significance threshold of 10 TPY (refer to Table 4.2-7). Operation-related activities would result in project-generated emissions of PM<sub>10</sub> that exceed SJVAPCD's significance threshold of 15 TPY (refer to Table 4.2-7). Thus, project-generated, operation-related emissions of criteria air pollutants and precursors could violate or contribute substantially to an existing or projected air quality violation, and/or expose sensitive receptors to substantial pollutant concentrations, especially considering the nonattainment status of Merced County. In addition, because SJVAPCD's significance thresholds approximately correlate with reductions from heavy-duty vehicles and land use project emission reduction requirements in the SIP, project-generated emissions could also conflict with any air quality planning efforts. As a result, this would be a **significant impact**.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the FEIR and incorporated into the project:

### **STATIONARY-SOURCE EMISSIONS**

**Mitigation Measure 4.2-2a: Comply with SJVAPCD's Indirect Source Review Rule (Rule 9510).** Similar to Mitigation Measure 4.2-1a, which addresses construction-related emissions, operation of the proposed project shall comply with SJVAPCD's ISR rule (Rule 9510), as required by law. The Applicant shall have an AIA application approved by SJVAPCD prior to issuance of a building permit from the City of Merced. The AIA application shall be submitted on a form provided by the SJVAPCD and contain, but not be limited to, the Applicant's name and address, detailed project description, on-site emission reduction checklist, monitoring and reporting schedule, and an AIA. The AIA shall quantify operational NO<sub>x</sub> and PM<sub>10</sub> emissions associated with the project. This shall include the estimated operational baseline emissions (i.e., before mitigation), and the mitigated emissions for each applicable pollutant for the project, or each phase thereof, and shall quantify the off-site fee, if applicable. General mitigation requirements, as contained in the ISR rule, include the following:

- ▶ Applicant shall reduce 33.3%, of the project's operational baseline NO<sub>x</sub> emissions over a period of ten years as quantified in the approved AIA.
- ▶ Applicant shall reduce 50% of the project's operational baseline PM<sub>10</sub> emissions over a period of ten years as quantified in the approved AIA.

The requirements listed above can be met through any combination of on-site emission reduction measures or offset fees, including those required and additional measures listed in Mitigation Measures 4.2-2b, 4.2-2c, 4.2-2d, and 4.2-2e for emissions of CAPs and ozone precursors; and Mitigation Measures 4.2-6b and 4.2-6d for emissions of GHGs below; however, any on-site reductions of CAP and ozone precursor emissions must be both quantifiable and verifiable to be credited towards the requirements of the ISR Rule. Any off-site mitigation fees shall be paid by the Applicant to SJVAPCD prior to issuance of a building permit by the City of Merced.

**Mitigation Measure 4.2-2b: Develop and Implement Design Features and Program Incentives to Reduce Employee Commute Trips.** The Applicant shall implement design features and develop program incentives that discourage employees from commuting in single occupant vehicles (SOVs) in order to reduce associated mobile-source emissions. These measures shall be fully funded by the Applicant. Measures that result in quantifiable trip reductions can also be counted as reductions in NO<sub>x</sub> and PM<sub>10</sub> emissions with respect to compliance with the ISR rule mentioned in Mitigation Measure 4.2-2a. The program shall be managed by an on-site Employee Transportation Coordinator employed and appointed by the Applicant. The design measures and development of program incentives and their effectiveness shall be evaluated annually and reported to the City of Merced. The City recognizes that, pursuant to California Health and Safety Code Section 40717.9, no city, air district, county, or congestion management agency can require an employer to implement an employee trip reduction program. However, the City can require feasible mitigation measures, including design features and program incentives that strive to reduce the total number of employee commute trips. Mitigation Measure 4.2-2b consists of a list of measures that are required, as well as a list of additional measures that shall be implemented only if determined to be feasible by the Applicant and the City.

## **REQUIRED DESIGN FEATURES TO REDUCE EMPLOYEE COMMUTE TRIPS AND ASSOCIATED MOBILE-SOURCE EMISSIONS**

The following measures are considered feasible at the time of writing this EIR and shall be implemented within one year of opening the distribution center:

- ▶ Design and provide preferential parking for HOVs. Design features may include a separate parking lot for HOVs that is closer to the employee building entrance than the parking lot for SOVs and/or covered parking spaces for HOVs. Other potential design features include connecting the preferential parking lot for HOVs to the employee entrance of the building with shaded, landscaped walkways or with open-air, covered walkways.
- ▶ Provide an adequate number of showers, changing areas, and locker facilities to accommodate employees who bike to work (typically one shower and 3 lockers for every 25 employees of a shift).
- ▶ Provide adequate bicycle parking/racks in a covered, secure area.
- ▶ Provide a display case or kiosk that displays up-to-date information regarding area bus transit routes, bicycle routes, and other information concerning measures designed to reduce the number of employees commuting in SOVs, in a prominent area accessible to employees (e.g., break room, cafeteria, or entrance).
- ▶ Provide on-site shops and services for employees including a cafeteria and a bank/ATM within 6 months of opening the facility.

## **ADDITIONAL MEASURES TO REDUCE EMPLOYEE COMMUTE TRIPS AND ASSOCIATED MOBILE-SOURCE EMISSIONS**

The following additional measures may be implemented, if feasible:

- ▶ Fund the design and installation of bikeways or bike lanes along local roads that provide access to the site.
- ▶ Operate free employee shuttle or vanpool system that serves employees according to their shift times and places of residence. Low-emissions shuttle or vanpool vehicles shall be used (e.g., hybrid, CGN, or electric). Provide a covered area for the on-site employee shuttle stop or vanpool parking lot and an open-air, covered walkway connection to the employee entrance of the building to provide summertime shade and protection from rain.
- ▶ Provide incentives for employees who take their children to child daycare centers to select nearby centers and designate these centers as official stops of the free employee shuttle or vanpool system. Incentives may include, but are not limited to, the subsidization of daycare rates or the negotiation of group discounts for children of employees at these childcare providers. An on-site child daycare center may be provided only if supported by the findings of a comprehensive HRA performed in consultation with SJVAPCD.
- ▶ Schedule employee work shifts according to the class times at nearby K-12 schools and/or have employee shuttles or vanpools make stops at nearby K-12 schools.
- ▶ Provide carpool ride matching assistance for employees.
- ▶ Provide a separate site entrance or access route exclusively for high-occupancy vehicles (HOVs) (e.g., employee shuttles, carpools, vanpools [if vanpools are used by employees, public transit [when available]], and cyclists that allows for more convenient and expedient access to and from the site during peak turnover periods (i.e., shift changes).

- ▶ If public transit service is expanded to serve the project site during times of the day that serve any of the employee shifts at the facility, subsidize public transit passes to all affected employees.
- ▶ Offer and implement compressed work schedules to employees (e.g., 4 shifts per week for full time employees).
- ▶ Implement parking fees for SOV commuters or a parking cash-out program for employees. A parking cash-out program consists of a financial contribution to employees who do not commute by SOV.

**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 Measure 4.2-2b. These required measures are listed below.

- ▶ The Applicant's participation in EPA's SmartWay 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 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 the 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.
- ▶ 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 contractors shall not use gasoline-powered leaf blowers on site. If this work is hired out to a landscaping company, then the contract shall prohibit the use of gasoline- or diesel-powered leaf blowers.
- ▶ Building and site design shall include electrical outlets around the exterior of the units to enable use of electric landscape maintenance equipment.

**Mitigation Measure 4.2-2d: Implement Additional Operational On-Site Emission Reduction Measures.**

Where feasible, additional measures shall be implemented to reduce operational emissions. Such measures shall include, but are not limited to the additional measures listed below. If, however, the additional measures listed below are technologically or economically infeasible, the Applicant shall submit a written report to the City of Merced Planning & Permitting Division demonstrating such infeasibility. The report shall be reviewed by a sustainability expert who is selected by the City and the review costs should be funded by the Applicant. Approval of this report shall be received by the Applicant prior to City of Merced issuing a building permit for the project.

- ▶ Purchase and operate electric or hybrid-powered yard tractors (e.g., Volk-brand tractors) to serve as “yard trucks” that move trailers to and from the trailer yard and loading docks.
- ▶ Provide electric maintenance equipment, install solar, low-emission, or central water heaters, increase building insulation beyond Title 24 requirements, orient buildings to take advantage of solar heating and natural cooling and use passive solar designs, energy efficient windows (double pane and/or Low-E), highly reflective roofing materials, cool pavement, radiant heat barrier, install photovoltaic cells, programmable thermostats for all heating and cooling systems, awnings or other shading mechanisms for windows, patio, and walkway overhangs, ceiling fans, utilize passive solar cooling and heating designs, utilize day lighting systems such as skylights, light shelves, and interior transom windows.
- ▶ The project shall include as many clean alternative energy features as possible to promote energy self-sufficiency (e.g., photovoltaic cells, solar thermal electricity systems, small wind turbines).

**Mitigation Measure 4.2-2e: Implement an Emissions Reduction Agreement with SJVAPCD to Reduce Operational Emissions of ROG, NO<sub>x</sub>, and PM<sub>10</sub>.** The Applicant shall enter into an emissions reduction agreement with SJVAPCD to reduce net ROG and NO<sub>x</sub> emissions to less than 10 TPY and net PM<sub>10</sub> emissions to less than 15 TPY. This agreement includes an emission reduction program, whereby the Applicant funds projects in the SJVAB, such as replacement and destruction of old engines with new more efficient engines. The agreement requires the Applicant to identify and propose opportunities for the reduction of emissions to fully mitigate the project’s operational emissions of ROG and NO<sub>x</sub> to less than 10 TPY and PM<sub>10</sub> emissions to less than 15 TPY, and includes opportunities for removal or retrofit of stationary, transportation, indirect, and/or mobile-source equipment. Each proposal requires SJVAPCD approval and verification of emission reduction prior to receiving final discretionary approval of the project from the City of Merced. The emissions reduction agreement shall be implemented *in addition to* the Employee Trip Reduction Program required by Mitigation Measure 4.2-2b, the set of Recommended Mitigation Measures to Reduce Operational Emissions required by Mitigation Measure 4.2-2c, and the set of Additional Operational On-Site Emission Reduction Measures required by Mitigation Measure 4.2-d. However, any emission reductions achieved through these measures that are quantifiable and verifiable could effectively reduce the amount of additional, off-site reductions that must be obtained through the emissions reduction agreement. (Furthermore, any quantifiable and verifiable emissions of CAPs and ozone precursors that would result as an added benefit from implementation of Mitigation Measures 4.2-6b and 4.2-6d, which are designed to achieve GHG reductions as discussed under Impact 4.2-6 below, could also effectively reduce the amount of additional, off-site reductions that must be obtained through the emissions reduction agreement.) To the extent feasible, the selection of programs for reducing operational emissions of CAPs and ozone precursors established in the agreement shall give preference to off-site emission reduction projects that are located in or in close proximity to the City of Merced. If approved by SJVAPCD, the Applicant may develop an emissions reduction agreement that also fulfills the compliance requirements of SJVAPCD’s ISR Rule (Rule 9510) discussed in Mitigation Measure 4.2-2a. Development and implementation of the emissions reduction agreement shall be fully funded by the Applicant. The Applicant shall demonstrate to the City that it has successfully entered into an emission reduction agreement with the San Joaquin Valley Air Pollution Control District be achieved before issuance of the first building permit by the City.

Implementation of Mitigation Measure 4.2-2a would result in at least the required minimum 33.3% reduction in NO<sub>x</sub> emissions and a 50% reduction in PM<sub>10</sub>. If these reductions are not attained by the on-site measures described above, they would occur through off-site reductions as a result of payment of fees collected by SJVAPCD. Implementation of Mitigation Measure 4.2-2b would result in a reduction in emissions generated by employee commute trips. (Implementation of Mitigation Measure 4.2-2b may also have the added benefit of lessening traffic congestion and traffic noise levels on area roads.) According to the *Recommended Guidance for Land Use Emission Reductions* (SMAQMD 2007), the measures listed under Mitigation Measure 4.2-2b result in quantifiable reductions in mobile-source emissions associated with industrial land uses and these reductions have been substantiated by research. Implementation of these measures as well as Mitigation Measures 4.2-2c and 4.2-

2d would reduce project-generated, operational emissions of ROG, NO<sub>x</sub> and PM<sub>10</sub>. Implementation of Mitigation Measure 4.2-2e would ensure the additional emissions reduction necessary to reduce operational emissions of ROG and NO<sub>x</sub> to levels below 10 TPY and operational emissions of PM<sub>10</sub> to levels below 15 TPY. As a result, this impact would be reduced to a **less-than-significant** level.

## BIOLOGICAL RESOURCES

**IMPACT 4.3-2** *Effects on Special-Status Wildlife. 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. Other special-status wildlife species known to occur in the project vicinity are unlikely to occur on the project site and would not be affected by project implementation. This impact would be **potentially significant**.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.3-2: Implement Measures to Minimize Potential Project Effects on Swainson's Hawk and Burrowing Owl.** To minimize potential project effects on Swainson's hawk and burrowing owl, the planning director shall ensure that project Applicant shall do the following prior to issuance of grading permits and during construction, as applicable:

### SWAINSON'S HAWK

- ▶ Loss of Swainson's hawk foraging habitat shall be compensated for by preservation and management of foraging habitat of at least a similar quality at an appropriate off-site location. Specific measures to offset the loss of foraging habitat shall be developed in consultation with DFG pursuant to DFG's "Draft Non-Regulatory Guidelines for Determining Appropriate Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*)."
- ▶ Compensatory mitigation shall be provided for any loss of suitable foraging habitat, including fallow or active agricultural fields (not orchards), before any grading on the site begins.
- ▶ Mitigation lands shall be either grassland or croplands (i.e., row crops or alfalfa) that provide suitable Swainson's hawk foraging habitat and shall be located within 10 miles of a known active nest site. In accordance with DFG mitigation guidelines (DFG 1994), habitat shall be provided at a ratio of 0.75 acre of mitigation land for each acre of foraging habitat that would be lost within 5 miles of, but greater than 1 mile from, the nearest active nest.
- ▶ Long-term protection of mitigation lands shall be ensured through fee title acquisition, conservation easement, or other suitable mechanisms. Long-term management of mitigation lands shall be ensured by establishing a management endowment or other suitable funding source.

### BURROWING OWL

- ▶ The project Applicant shall hire a qualified biologist to conduct preconstruction surveys for burrowing owl to determine whether burrowing owls occupy the site during the breeding and/or nesting season. The timing and methodology for the surveys shall be consistent with DFG and Burrowing Owl Consortium survey guidelines. Winter surveys shall be conducted on four separate days between December 1 and January 31. Nesting season



surveys shall be conducted on four separate days between February 1 and August 31, with at least two of the survey days during the peak nesting season (April 15–July 15).

- ▶ If no burrowing owls are documented during the surveys, the site shall be regularly maintained in a manner that ensures owls do not occupy the site in the future (e.g., regular discing of open areas). No further mitigation shall be necessary.
- ▶ If burrowing owls are discovered on the project site, the project Applicant shall immediately notify and coordinate with DFG regarding implementation of passive relocation methods to exclude the owls from the site prior to initiating construction activities. Exclusion shall be conducted through installation of one-way doors at the burrow entrances and subsequent destruction of the burrows to preclude re-occupation. Passive relocation may only be conducted during the non-nesting season (September 31–January 31). After relocation, the site shall be regularly monitored to confirm that burrowing owls have not re-occupied the site. If the site is re-occupied, exclusion measures shall be repeated, in coordination with DFG.
- ▶ In addition to exclusion of the owls from the site, the project Applicant shall consult with DFG to provide appropriate compensation for loss of burrowing owl habitat. To offset the loss of foraging and burrow habitat on the project site, DFG recommends, in their 1995 Staff Report on Burrowing Owl Mitigation, a minimum of 6.5 acres of foraging habitat (calculated on a 100 meter {approximately 300 ft.} foraging radius around the burrow) per pair or unpaired resident bird should be acquired and permanently protected. The protected lands should be adjacent to occupied burrowing owl habitat and at a location acceptable to the Department. Mitigation for loss of Swainson’s hawk foraging habitat could, upon approval by DFG, be used concurrently to mitigate for the loss of burrowing owl habitat.
- ▶ Long-term protection of mitigation lands shall be ensured through fee title acquisition, conservation easement, or other suitable mechanisms. Long-term management of mitigation lands shall be ensured by establishing a management endowment or other suitable funding source.

Implementation of the above mitigation measures would avoid impacts to nesting burrowing owls and compensate for the loss of Swainson’s hawk foraging habitat and potential burrowing owl habitat. Therefore, impacts on these species would be reduced to a **less-than-significant** level.

**IMPACT 4.3-5** *Consistency with Local Plans, Policies, and Ordinances. Implementation of the project could conflict or be inconsistent with the City of Merced General Plan. This impact would be significant.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.3-5: Implement Measures to Minimize Conflict with the City’s General Plan.** Implementation of Mitigation Measure 4.3-2 would reduce the impact on consistency with the City’s General Plan to a **less-than-significant** level. Mitigation Measure 4.3-2, as set forth in the DEIR at pp. 4.3-10 –4.3-11, and in the FEIR at p. 4-3 – 4-4, is incorporated by reference as though fully set forth and shall be a condition of project approval.

## CULTURAL RESOURCES

**IMPACT 4.4-1** *Destruction/Damage to As-Yet Undiscovered Cultural Resources. Subsurface disturbances could potentially destroy or damage as-yet undiscovered prehistoric or historic cultural resources. If these resources were to represent "unique archaeological resources" or "historic resources" as defined by CEQA, a significant impact would occur.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measure as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.4-1: Contact Cultural Resources Specialist for Potential Cultural Finds during Project-Related Ground-Disturbing Activities.** If unrecorded cultural resources are encountered during project-related ground-disturbing activities, the contractor and/or the project proponent shall contact a qualified professional cultural resources specialist to assess the potential significance of the find.

If an inadvertent discovery of cultural materials (e.g., unusual amounts of shell, animal bone, bottle glass, ceramics, structure/building remains) is made during project-related construction activities, ground disturbances in the area of the find will be halted and a qualified professional archaeologist will be notified regarding the discovery. The archaeologist shall determine whether the resource is potentially significant per the CRHR and develop appropriate mitigation. The preferred mitigation would be preservation in place. If that is not feasible, a mitigation plan would be prepared and implemented and could include, but not necessarily be limited to documentary research; subsurface testing; data recovery; the analysis of excavated materials; preparation of a technical report; and curation of the collection and supporting documentation at a qualified institution.

Implementation of the above mitigation measure would reduce potentially significant impacts resulting from inadvertent damage or destruction of unknown cultural resources during construction to a **less-than-significant level**.

**IMPACT 4.4-2** *Potential to Uncover Human Remains. Subsurface disturbances could potentially uncover unmarked historic-era and prehistoric Native American burials. Any such disturbance would represent a significant impact.*

While no evidence of prehistoric or early historic interments was found in the project site in surface contexts, this does not preclude the existence of buried subsurface human remains. California law recognizes the need to protect historic-era and Native American human burials, skeletal remains, and items associated with Native American interments from vandalism and inadvertent destruction. The procedures for the treatment of Native American human remains are contained in California Health and Safety Code Section 7050.5 and 7052 and California Public Resources Code Section 5097. If any human remains were unearthed during project construction, particularly those that were determined to be Native American in origin, a significant impact would occur.

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measure as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.4-2: Stop Potentially Damaging Work if Human Remains Are Uncovered during Construction, Assess the Significance of the Find, and Pursue Appropriate Management.** In accordance with the California Health and Safety Code, if human remains are uncovered during ground-disturbing activities, the contractor and/or the project proponent shall immediately halt potentially damaging excavation in the area of the burial and notify the Merced County Coroner and a professional archaeologist to determine the nature of the remains. The coroner is required to examine all discoveries of human remains within 48 hours of receiving notice of a discovery on private or state lands (Health and Safety Code Section 7050.5[b]). If the coroner determines that the remains are those of a Native American, he or she must contact the Native American Heritage Commission (NAHC) by phone within 24 hours of making that determination (Health and Safety Code Section 7050[c]). Following the coroner's findings, the property owner, contractor or project proponent, an archaeologist, and the NAHC-designated Most Likely Descendent (MLD) shall determine the ultimate treatment and disposition of the remains and take appropriate steps to ensure that additional human interments are not disturbed. The responsibilities for acting on notification of a discovery of Native American human remains are identified in California PRC Section 5097.9.

Implementation of Assembly Bill (AB) 2641 requires that the following procedures be implemented:

Upon the discovery of Native American remains, the procedures above regarding involvement of the County Coroner, notification of the NAHC, and identification of a MLD shall be followed. The landowner shall ensure that the immediate vicinity (according to generally accepted cultural or archaeological standards and practices) is not damaged or disturbed by further development activity until consultation with the MLD has taken place. The MLD shall have 48 hours to complete a site inspection and make recommendations after being granted access to the site. A range of possible treatments for the remains, including nondestructive removal and analysis, preservation in place, relinquishment of the remains and associated items to the descendants, or other culturally appropriate treatment may be discussed. AB 2641 suggests that the concerned parties may extend discussions beyond the initial 48 hours to allow for the discovery of additional remains. AB 2641(e) includes a list of site protection measures and states that the landowner shall comply with one or more of the following:

- (1) Record the site with the NAHC or the appropriate Information Center
- (2) Utilize an open-space or conservation zoning designation or easement
- (3) Record a document with the county in which the property is located

The landowner or their authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance if the NAHC is unable to identify a MLD or the MLD fails to make a recommendation within 48 hours after being granted access to the site. The landowner or their authorized representative may also reinter the remains in a location not subject to further disturbance if they reject the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner. Adherence to these procedures and other provisions of the California Health and Safety Code and AB 2641(e) will reduce potential impacts to human remains to a **less-than-significant** level.

## GEOLOGY, MINERALS, SOILS, AND PALEONTOLOGICAL RESOURCES

**IMPACT 4.5-1** *Disturbance of Paleontological Resources During Earth-Moving Activities. Previously undiscovered paleontological resources could be present in sediments of the Modesto Formation that underlie the project site. Therefore, construction activities could potentially disturb unknown subsurface paleontological resources. Destruction of "significant" paleontological resources would be a **potentially significant** impact.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measure as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.5-1: Implement Construction Personnel Training and Recover Paleontological Resources if Encountered.** To minimize potential adverse impacts on unique, scientifically important paleontological resources, the project Applicant shall do the following:

- ▶ Before the start of grading or excavation activities, construction personnel involved with earth-moving activities shall be informed of the possibility of encountering fossils, the appearance and types of fossils likely to be seen during construction activities, and proper notification procedures should fossils be encountered. This worker training shall be prepared and presented by a qualified paleontologist or archaeologist.
- ▶ If paleontological resources are discovered during earth-moving activities, the construction crew shall immediately cease work in the vicinity of the find and shall notify the City Planning Department. The project Applicant shall retain a qualified paleontologist to evaluate the resource and prepare a proposed mitigation plan in accordance with SVP guidelines (1995). The proposed mitigation plan may include a field survey, construction monitoring, sampling and data recovery procedures, museum storage coordination for any specimen recovered, and a report of findings. Recommendations determined by the lead agency to be necessary and feasible shall be implemented before construction activities can resume at the site where the paleontological resources were discovered. Implementation of the above mitigation measure would result in avoidance of damage to, and further study of, any paleontological resources that were encountered by project-related activities, and would therefore reduce potentially significant impacts of the proposed project on unique, scientifically important paleontological resources to a **less-than-significant** level.

**IMPACT 4.5-3** *Risks to People and Structures From Seismically-Induced Liquefaction and/or Subsidence. While the project site is located in an area of low seismic activity, localized areas of the project site may pose a hazard related to liquefaction and/or subsidence if seismic activity were to occur. Therefore, this impact is considered **potentially significant**.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.5-3a: Prepare a Final Geotechnical Design Report and Implement All Applicable Recommendations.** Before the approval of grading plans for all project phases, a final geotechnical subsurface investigation report shall be prepared by the project Applicant for the proposed development and shall be submitted to the City. The final geotechnical engineering report shall address and make recommendations on the following:

- ▶ site preparation;
- ▶ appropriate sources and types of fill;
- ▶ potential need for soil amendments;
- ▶ road, pavement, and parking areas;
- ▶ structural foundations, including retaining wall design;
- ▶ grading practices;
- ▶ erosion/winterization;
- ▶ expansive/unstable soils; and
- ▶ liquefaction.

The geotechnical investigation shall include subsurface testing of soil and groundwater conditions and determine appropriate foundation designs that are consistent with the CBC. Recommendations contained in the geotechnical engineering report shall be noted on the grading plans and implemented as appropriate before the issuance of building permits. Design and construction of all new development in all phases of the project shall be in accordance with the CBC. It is the responsibility of the project Applicant(s) to provide for engineering inspection and certification that earthwork has been performed in conformity with recommendations contained in the report.

**Mitigation Measure 4.5-3b: Provide On-Site Construction Monitoring by a Geotechnical Engineer.** All earthwork shall be monitored by a geotechnical engineer retained by the project Applicant. The geotechnical engineer shall provide oversight during all excavation, placement of fill, and disposal of materials removed from and deposited on the subject site and other sites. Before export/import of any soil to/from an off-site location, the project Applicant shall obtain a grading permit from the City Inspection Services Division.

With implementation of Mitigation Measures 4.5-3a and 4.5-3b, potentially significant impacts related to construction in areas susceptible to liquefaction and/or subsidence would be reduced to a **less-than-significant** level because buildings and structures would incorporate design recommendations of a geotechnical engineer and on-site monitoring by a geotechnical engineer would provide for appropriate correction in grading activities if unexpected pockets of loose or unstable soils were encountered.

**IMPACT 4.5-4 Potential Temporary, Short-Term Construction-Related Erosion.** *Construction activities during project implementation would involve grading and movement of earth, which could expose soils to erosion and result in the loss of topsoil. This impact is considered potentially significant.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.5-4: Prepare and Implement a Grading and Erosion Control Plan.** A grading and erosion control plan shall be prepared by a California Registered Civil Engineer retained by the project Applicant for all project phases. The grading and erosion control plan shall be submitted to the City Inspection Services Division before issuance of grading permits for all new development within the project site. The plan shall be consistent with

Appendix Chapter A33 of the CBC as well as the City's National Pollutant Discharge Elimination System (NPDES) permit and shall include the site-specific grading associated with development for all project phases. The plan shall include the location, implementation schedule, and maintenance schedule of all erosion and sediment control measures, a description of measures designed to control dust and stabilize the construction-site road and entrance, and a description of the location and methods of storage and disposal of construction materials. Erosion and sediment control measures could include the use of detention basins, berms, swales, wattles, and silt fencing. Stabilization of construction entrances to minimize trackout (control dust) is commonly achieved by installing filter fabric and crushed rock to a depth of approximately 1 foot. The project Applicant shall ensure that the construction contractor is responsible for securing a source of transportation and deposition of excavated materials.

Implement Mitigation Measures 4.5-4 and 4.6-1a, which are incorporated by reference as though fully set forth and shall be a condition of project approval.

Implementation of Mitigation Measures 4.5-4 and 4.6-1a would reduce the potentially significant impacts associated with construction-related erosion hazards to a **less-than-significant** level because a grading and erosion control plan and a Storm Water Pollution Prevention Plan, which would contain specific Best Management Practices to reduce erosion, would be prepared and implemented.

**IMPACT 4.5-5** **Potential Damage to Structures from Construction on Expansive Soils.** *Portions of the project site are underlain by soils that have a moderate to high potential for expansion when wet. Construction in these soils may result in foundation movements that could cause damage to overlying structures. This impact is considered significant.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.5-5:** Implement Mitigation Measures 4.5-3a and 4.5-3b, which are incorporated by reference as though fully set forth and shall be a condition of project approval. With implementation of these measures significant impacts related to construction on expansive soils would be reduced to a level that is **less than significant** because buildings and structures would incorporate design recommendations of a geotechnical engineer and on-site monitoring by a geotechnical engineer would provide for appropriate correction in grading activities if unexpected pockets of expansive soils were encountered.

## HYDROLOGY AND WATER QUALITY

**IMPACT 4.6-1** **Short-Term Degradation of Water Quality from Project-Related Construction Activities.** *Construction disturbances associated with the proposed project would create the potential for soil erosion and sedimentation of stormwater drainage systems and runoff to the Merced Irrigation District Doane Lateral Canal west of the proposed project site. The construction process may also involve the potential for releases of other pollutants to surface waters and/or the future storm drain system, including oil and gas, chemical substances used in the construction process, accidental discharges, waste concrete and wash water. This impact is considered potentially significant.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.6-1a. Acquire Appropriate Regulatory Permits and Implement SWPPP and BMPs.** Before the approval of grading permits and improvement plans, the project Applicant for all project phases shall consult with the City of Merced, the SWRCB, and the Central Valley RWQCB to acquire the appropriate regulatory approvals that may be necessary to obtain a SWRCB statewide NPDES stormwater permit for general construction activity, and any other necessary site-specific Waste Discharge Requirements WDRs or waivers under the Porter-Cologne Act. The project Applicant shall prepare and submit the appropriate Notice of Intent (NOIs) and prepare the SWPPP and any other necessary engineering plans and specifications for pollution prevention and control. After completion of construction and issuance of a Notice of Completion by the City of Merced, the project Applicant shall prepare and submit the appropriate Notice of Termination (NOT) of the NOI. The SWPPP and best management practices (BMPs) therein shall identify and specify:

- ▶ the use of erosion and sediment-control BMPs, including construction techniques that will reduce the potential for runoff as well as other measures to be implemented during construction. These may include but not be limited to sedimentation ponds, inlet protection, perforated riser pipes, check dams and silt fences;
- ▶ the means of waste disposal;
- ▶ the implementation of approved local plans, nonstormwater-management controls, permanent postconstruction BMPs, and inspection and maintenance responsibilities;
- ▶ the pollutants that are likely to be used during construction that could be present in stormwater drainage and nonstormwater discharges, and other types of materials used for equipment operation;
- ▶ spill prevention and contingency measures, including measures to prevent or clean up spills of hazardous waste and of hazardous materials used for equipment operation, and emergency procedures for responding to spills;
- ▶ personnel training requirements and procedures that will be used to ensure that workers are aware of permit requirements and proper installation methods for BMPs specified in the SWPPP; and
- ▶ the appropriate personnel responsible for supervisory duties related to implementation of the SWPPP.

Where applicable, BMPs identified in the SWPPP shall be in place throughout all site work and construction and shall be used in all subsequent site development activities. BMPs shall include the following measures:

- ▶ Implementing temporary erosion-control measures in disturbed areas to minimize discharge of sediment into nearby drainage conveyances. These measures may include silt fences, staked straw bales or wattles, sediment/silt basins and traps, geofabric, sandbag dikes, and temporary vegetation.
- ▶ Establishing permanent vegetative cover to reduce erosion in areas disturbed by construction by slowing runoff velocities, trapping sediment, and enhancing filtration and transpiration.
- ▶ Using drainage swales, ditches, and earth dikes to control erosion and runoff by conveying surface runoff down sloping land, intercepting and diverting runoff to a watercourse or channel, preventing sheet flow over sloped surfaces, preventing runoff accumulation at the base of a grade, and avoiding flood damage along roadways and facility infrastructure.

All construction contractors shall retain a copy of the approved SWPPP on the construction site.

**Mitigation Measure 4.6-1b: Establish a Maintenance Entity for BMPs.** The project Applicant shall establish a maintenance district, Community Facilities District (CFD), or other maintenance entity acceptable to the City of Merced and the MID, prior to recordation of any Final Maps, to provide funding for the operation, maintenance, and replacement costs of the stormwater BMPs. The maintenance entity shall insure that stormwater runoff shall meet all state and local water quality requirements, through modification of BMPs or stormwater pretreatment measures if required.

Implementation of the above measures would reduce the potentially significant impact of water quality degradation from project-related construction activities to a **less than significant** level because the Applicant would be required to comply with all local and state regulations concerning construction discharges, implement the SWPPP and establish a maintenance entity to ensure that BMPs are properly maintained during the life of the project.

**IMPACT 4.6-2 Long-Term Degradation of Surface Water Quality from Project-Related Contaminants.** *The conversion of undeveloped land to urban land uses would alter the types, quantities, and timing of contaminant discharges in stormwater runoff. Overall, the potential for the proposed project to cause or contribute to long-term discharges of urban contaminants (e.g., oil and grease, trace metals and organics, trash) into the stormwater drainage system would increase compared to existing conditions. This impact is considered **potentially significant**.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.6-2. Develop and Implement a BMP and Water Quality Maintenance and Monitoring Plan.** Design standards for water quality treatment are being formulated that would meet or exceed City of Merced Storm Drain Master Plan and Standard Design requirements. The Applicant shall submit the completed design standards to the City's Development Services Department. Prior to issuance of grading permits, the City Engineer shall ensure that the design standards incorporate the adopted City of Merced Master Storm Drain Plan and Design guidance (City of Merced 2002):

- ▶ Excavated Open Channels – 60-foot right-of-way open channels would convey runoff through areas where the estimated peak flow rates from a watershed exceed the capacity of a 66-foot storm drain. These open channels would include landscaping and bike paths for recreational opportunities. They shall be turfed or otherwise protected to prevent erosion. A minimum of 1 foot of freeboard shall be maintained above the design 10-year water surface elevation to the top of the banks. One side of the channel shall provide for all weather maintenance unless the channel is adjacent to a public road.
- ▶ Storm Drains – Underground storm drain pipelines would be utilized. Storm drain trunk lines would be sized to convey the 10-year discharges operating under uniform flow conditions, and shall be located in public streets.
- ▶ Stormwater Detention Facilities – The two stormwater detention basins, one draining the north portion of the proposed project site and the other draining the south portion, have been designed to accommodate runoff generated during a 50-year 24-hour storm event under General Plan buildout conditions, with the rate of outflow being limited to the discharge generated by the watershed during a 2-year storm event under existing conditions. Detention basins have been conceptually designed with a maximum depth of 5 feet below ground



surface due to the relatively shallow depth to groundwater in some of the areas surrounding the proposed Project. One foot of freeboard from the 50-year 24-hour storm to the top of the basin has also been included in the conceptual design.

- ▶ **Pump Stations** – Due to the relative flatness of the proposed project terrain, pump stations would be used to augment the gravity flow draining of the detention basins. The pumps have been conceptually designed to handle the 2-year discharge flow from the basins. Facilities would consist of a low flow pump, a high flow pump, and a backup pump.

The finish floor elevation of each structure on the site would be at least 2 feet above the existing ground elevation at the location of the structure, pursuant to City requirements for development within Zone A. The proposed project would meet or exceed City requirements for development within Zone A, and the stormwater management system would safely convey runoff from the 100-year storm.

Implementation of Mitigation Measure 4.6-2 would reduce the potentially significant impact related to long-term degradation of surface water quality from proposed project-related contaminants to a **less-than-significant** level because the project Applicant would demonstrate to the City and MID that the proposed project would conform to applicable state and local regulations regulating surface water runoff. The design criteria described in detail in the Master Drainage Plan (City of Merced 2002) are designed to meet or exceed the City of Merced Storm Drain Master Plan and Standard Design requirements pertaining to stormwater treatment. The permanent BMPs to be utilized in the stormwater treatment system described in detail in the Master Drainage Plan (City of Merced 2002) have been shown to be effective in reducing contaminant levels in urban runoff (EPA 1999, CASQA 2003).

**IMPACT 4.6-3** **On-Site and Off-Site Flooding Hazards from Increased Stormwater Runoff.** *The proposed project would alter the ground surface and drainage patterns of the majority of the site, creating approximately 110 acres of impervious surface area. This impact is considered **potentially significant**.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measure as identified in the EIR and incorporated into the project:

Implementation of Mitigation Measure 4.6-2, which is incorporated by reference as though fully set forth and a condition of project approval, would reduce the potentially significant impact related to on-site and off-site flooding hazards from proposed project-related stormwater runoff to a **less-than-significant**.

**IMPACT 4.6-7** **Potential Exposure to 200-Year Flood Prior to Implementation of SB 5.** *The project site is located within an area that will require 200-year flood protection as required by SB5, as described in Section 1.2 of the DEIR, "Regulatory Setting". The potential exists for exposure of the proposed project to the 200-year flood. Therefore this impact is **potentially significant**.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measure as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.6-6: Comply with SB 5 Criteria Establishing 200-Year Urban Flood Protection.** Prior to submittal to the City of development agreements, tentative maps or rezones after 2015, but potentially sooner depending on when the Central Valley Flood Protection Plan takes effect, the project Applicant would be required to show that one of three conditions would be met:

- ▶ flood management facilities provide level of protection necessary to withstand 200-year flood event;
- ▶ the development agreement or other entitlements include conditions that provide protections necessary to withstand 200-year flood event; or
- ▶ the local flood management agency has made adequate progress on construction of a flood protection system that will result in protections necessary to withstand 200-year flood event by 2025.

Implementation of this measure would reduce the potential for increased risk of flooding from the 200-year storm event to a **less than significant** level because the Applicant would demonstrate to the City that the proposed project would comply with SB5 criteria.

## NOISE

**IMPACT 4.8-1 Short-Term Construction Noise.** *Short-term construction-generated noise levels could exceed local exterior noise standards for non-transportation noise sources (Table 4.8-6) or result in a noticeable increase in ambient noise levels (i.e., 3 dBA CNEL) at existing nearby off-site sensitive land uses. This would be a significant impact.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.8-1: Regulate Short-Term Construction Noise.** The City shall require the Applicant to regulate construction noise by implementing the measures listed below. These measures shall be clearly indicated on all grading and improvement plans, and the project contractor shall be responsible for ensuring implementation of all measures.

- ▶ Construction shall occur only in the daytime hours between 7 a.m. to 6 p.m., daily.
- ▶ Construction staging areas shall be set back from nearby off-site sensitive receptors, as much as possible, including the new Crossing at River Oaks/Sandcastle housing development located west of the site, the existing farmhouse located across Gerard Avenue near the southwest corner of the site, and the existing farmhouse located east of the site across Tower Road.
- ▶ Construction equipment mufflers shall be well tuned and maintained according to the manufacturer's specifications, and the equipment's standard noise reduction devices shall be maintained in good working order.
- ▶ Construction equipment noise shall be minimized during project construction by muffling and shielding intakes and exhaust on construction equipment (according to the manufacturers' specifications) and by

shrouding or shielding impact tools. All equipment shall have sound-control devices no less effective than those provided by the manufacturer.

- ▶ To further address the nuisance impact of project construction, construction contractors shall implement the following:
  - Signs shall be posted at the construction site that include permitted construction days and hours, a day and evening contact number for the job site, and a day and evening contact number for the City in the event of problems.
  - An on-site complaint and enforcement manager shall be posted to respond to and track complaints and questions related to noise.
- ▶ The transportation management plan that is required by Mitigation Measures 4.11-2a and 2b in Section 4.11, "Traffic and Transportation," shall route construction-related traffic away from Weaver Elementary School, Pioneer Elementary School, and residences in the area.

Combined with the transportation management plan included as a mitigation measure in Section 4.11, this mitigation measure would ensure that construction operations would be consistent with the daytime exemption provided by the Merced County Noise Ordinance and that construction would not result in a noticeable increase in ambient noise levels at noise-sensitive receptors during the more noise-sensitive hours of the day, thereby reducing the potential impacts to a **less than significant** level.

**IMPACT 4.8-4 Intermittent Single-Event Noise from Trucks Passing Off-Site Sensitive Receptors.** *Intermittent Single-Event Noise Level increases from Trucks Passing Off-Site Sensitive Receptors would result in a **significant impact**.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.8-3: Implement Measure to Reduce Exposure to Traffic Noise from Project.** Prior to initiating site preparation, the project Applicant shall implement the following measures to reduce the exposure of existing sensitive receptors to project-generated traffic noise levels:

- ▶ The Applicant shall offer the owners of the two affected residences on the east side of Tower Road between SR 140 and Gerard Avenue and the single residence located on the south side of Gerard Avenue between Campus Parkway and the project site entrances the installation of a sound barrier along the property line of their affected residential properties. The sound barriers must be constructed of solid material (e.g., wood, brick, adobe, an earthen berm, or combination thereof). All barriers shall blend into the overall landscape and have an aesthetically pleasing appearance that agrees with the color and rural character of the houses and the general area, and not become the dominant visual element of the community. Relocation of the driveway at each residence may be necessary in order to preclude having gaps in the sound barrier. Relocation of landscaping may also be necessary to achieve an aesthetically pleasing appearance. The owners of the affected properties may choose to refuse this offer; however, the offer shall not be made available to subsequent owners of the property. If an existing owner refuses these measures a deed notice must be included with any future sale of the property to comply with California state real estate law, which requires

that sellers of real property disclose “any fact materially affecting the value and desirability of the property” (California Civil Code, Section 1102.1[a]). The Applicant shall be responsible for all costs incurred by the implementation of this mitigation measure.

- ▶ To ensure compliance with applicable noise standards, a site-specific noise study shall be conducted by the City or its approved consultant to determine specific noise barrier design. The study shall contain noise levels prior to and after noise barrier installation at all affected sensitive receptors and shall require the full disclosure of the effectiveness of the sound barrier. The Applicant shall be responsible for all costs incurred by the implementation of this mitigation measure.
- ▶ The cost to fully implement this mitigation measure, including related studies, and design and installation shall be completely funded by the Applicant.
- ▶ The Applicant shall maintain its truck fleet in proper working condition, including truck mufflers and exhaust systems, according to manufacturers’ specifications.

Implementation of Mitigation Measure 4.8-3 would reduce the loudness of SENLs associated with trucks passing sensitive receptors on nearby roads. Because Mitigation Measure 4.8-5 requires that interior SENLs be evaluated for affected residential receptors and reduced through building retrofitting, the impact at these receptors would also be reduced to a **less than significant** level.

## **PUBLIC HEALTH AND HAZARDS**

**IMPACT 4.10-1** **Create a Safety Hazard to Construction Workers and the General Public from Potential Release of Unknown or Previously Undiscovered Hazardous Materials during Construction.** *No “recognized environmental concerns” (RECs) have been identified to date on the project site. However, excavation and construction activities in the area could result in the exposure of construction workers and the general public to hazardous materials, including petroleum hydrocarbons, pesticides, herbicides, and fertilizers; contaminated debris; elevated levels of chemicals that could be hazardous; or hazardous substances that could be inadvertently spilled or otherwise spread. In addition, if contaminated sites in the area are not remediated before use of the site, then residents and others could be exposed to hazardous materials. This impact would be significant.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

**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 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 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 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 Division.

Implementation of this 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, incorporated by reference as though fully set forth and a condition of project approval, would reduce exposure to contaminants through airborne emissions by ensuring compliance with Regulation VIII and include additional SJVAPCD-recommended control measures. As a result, generation of construction-related dust emissions would be reduced to a **less than significant** level.

**IMPACT 4.10-4** **Create a Significant Hazard through the Transport of Hazardous Materials Adjacent to Schools in the Vicinity of the Project.** *The proposed project would require transportation of materials, some of which are considered hazardous, during construction of the proposed project and through the course of its daily operations. Based on the designated truck routes to and from the project site (see Section 4.11, Traffic and Transportation), no tractor trailer traffic is expected to travel past any of these schools; however, there is a potential for trucks to stray from their expected routes occasionally and pass by these schools. Therefore, impacts related to creation of significant hazards to students would be **significant**.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

#### **Mitigation Measure**

Implementation of Mitigation Measure 4.11-2b, incorporated by reference as though fully set forth and a condition of project approval, would reduce significant impacts associated with the exposure of students to hazardous materials resulting from transportation accidents to a **less-than-significant** level by requiring a traffic safety plan during construction of the project and by designating specific truck routes during operation of the project.

## **TRANSPORTATION AND TRAFFIC**

**IMPACT 4.11-2** **Design Feature Hazards, Vehicle Stacking, and Parking Capacity.** *Implementation of the project would include truck traffic using roadways in the project vicinity, tractor trailer trucks that could potentially park in the project vicinity, and truck operations on streets where school buses operate. The impact is potentially **significant**.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.11-2a: Accommodate All Delivery Truck Parking On-Site.** Prior to issuance of building permits, the Chief Building Official shall verify that the final site plan clearly identifies a designated on-site waiting area within the site between Gerard Road and the truck gate that is located further within the site. This area shall be large enough to accommodate at least 20 inbound delivery trucks. It is recommended that the access roadway be designed to have a temporary parking area located between Gerard Avenue and the truck entrance gate. The parking area shall be paved and marked as a designated waiting area for delivery trucks, and shall not impede access to the site. The holding area(s) shall be located in the interior of the project site and be more than 1,000 feet from all off-site residences, which is a distance threshold identified in the Noise Analysis of this EIR. If the waiting area(s) are located closer than 1,000 feet to off-site residences then sound barrier(s) shall be implemented into the design to ensure that on-site truck idling would not result in an exceedence of the nighttime standard of 45 A-weighted decibels energy-equivalent noise level established by the Merced General Plan (Table N-5).

Wal-Mart shall instruct all delivery truck drivers not to park, stand, wait, or stay overnight along local roadways. In order to minimize noise and vehicle emissions, idling in the waiting area shall be limited by Wal-Mart to 5 minutes, as required by 13 CCR Chapter 10, Section 2485.

**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 site.

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.* 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.

In addition to the above mitigation measures, Merced Municipal Code Section 10.28.290 prohibits commercial trucks from parking on any street within a residential district of the City. Merced Municipal Code Section 10.28.294 prohibits parking between 3:30 a.m. and 5:30 a.m. at the particular listed locations; this ordinance may be amended to include additional locations near the Project site if this becomes an issue. Implementing these measures would reduce the potential impact related to truck traffic hazards to a **less than significant** level. Implementing these measures would reduce the potential impact related to truck traffic hazards to a **less than significant** level.

**IMPACT 4.11-3** *Emergency Access Impacts. The project shows two access points to the site, both along Gerard Avenue. Emergency service providers may require additional access to a site this large with the operations as proposed. The impact is potentially significant.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.11-3: Provide Emergency Access Gate and Driveway.** Prior to approval of the final site plan, the project Applicant shall modify the site plan to show a third point of ingress and egress on Childs Avenue that is gated and available only for emergency purposes. The emergency access driveway on-site shall be indicated on the final site plan at a width and design acceptable to the City Engineer and shall provide unimpeded access to all structures on the site.

Implementation of this mitigation measure would ensure that emergency responders have adequate access to serve the project site in the event of a fire, medical emergency, an issue involving law enforcement, or other occurrence. Implementation of this mitigation measure reduces impacts to a **less-than-significant** level.

**IMPACT 4.11-4** *Construction Traffic and Parking. Implementation of the project would involve use of roadways in the vicinity of the project by construction employees and for moving construction equipment on- and off-site. While roadways in the vicinity are capable of accommodating construction traffic and streets abutting the site are capable of accommodating construction worker vehicles, construction vehicles entering and leaving the site could create impacts on local roadways. The impact is a potentially significant.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measure as identified in the EIR and incorporated into the project:

Implement Mitigation Measure 4.11-2b, incorporated by reference as though fully set forth and a condition of project approval, which would ensure that impacts are reduced to a **less-than-significant** level.

**IMPACT 4.11-5 Transit, Pedestrian, and Bicycle Impacts.** *The project could increase demand for public transit in the project site vicinity and affect existing and future pedestrian and bicycle access in the project vicinity. The impact is potentially significant.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measure as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.11-4: Update Safe Routes to School Plan.** Prior to issuance of certificates of occupancy, the City Engineer shall ensure that the Safe Routes to School Plans are appropriately updated such that school bus and pedestrian routes in the vicinity of the Wal-Mart are revised as appropriate to avoid potential conflicts taking into account the project's potential increase in truck traffic and potential truck routes.

This measure, as well as compliance with existing policy, regulations, and street standards, enforced through routine project entitlement by City staff, and implementation of Mitigation Measure 4.11-2b, would ensure a **less than significant** impact.

**CUMULATIVE IMPACT** *Cumulative Traffic Impact— SR 140 and Parsons Avenue Intersection Operation. Cumulative traffic growth without the project would cause the SR 140 and Parsons Avenue intersection to operate at an unacceptable LOS (LOS E or F) during the a.m. and p.m. peak hour. This is a cumulatively considerable impact that would occur without the proposed project.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant environmental effect that would occur with or without the project has been eliminated or substantially lessened to a level that is less than significant by implementation of the following mitigation/improvement measure as identified in the EIR and incorporated into the project. Although the project will not cause the impact at this intersection to occur, it would contribute to impaired operations that are expected to exist even without the project. Applicant will be required to contribute its fair share to the improvement that is designed to improve the intersection to an acceptable level of operation.



**Mitigation Measure 6-1: Intersection of SR 140 and Parsons Avenue.** Under the 2030 Cumulative No Project Conditions, traffic on SR 140 would operate at deficient LOS F due to high traffic volumes along SR 140. In order to achieve acceptable levels of service, the intersection would have to have a revised traffic signal timing plan as part of a regular signal maintenance routine. This would improve the intersection to operate at an acceptable LOS of D during the a.m. peak hour for the 2030 Cumulative No Project Condition.

**CUMULATIVE IMPACT** *Cumulative Traffic Impact— SR 140 and Baker Drive Intersection Operation. Cumulative traffic growth without the project would cause the SR 140 and Baker Drive intersection to operate at an unacceptable LOS (LOS E or F) during both a.m. and p.m. peak hours. This is a cumulatively considerable impact that would occur without the proposed project.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant environmental effect that would occur with or without the project has been eliminated or substantially lessened to a level that is less than significant by implementation of the following mitigation/improvement measure as identified in the EIR and incorporated into the project. Although the project will not cause the impact at this intersection to occur, it would contribute to impaired operations that are expected to exist even without the project. Applicant will be required to contribute its fair share to the improvement that is designed to improve the intersection to an acceptable level of operation.

**Mitigation Measure 6-2: Intersection of SR 140 and Baker Drive.** Under the 2010 Background and 2030 Cumulative No Project Conditions, traffic on Baker Drive would operate at deficient LOS (LOS E or F) due to high traffic volumes on SR 140. The intersection would also meet the traffic signal warrant under both 2010 Background and 2030 Cumulative No Project Conditions. In order to achieve acceptable levels of service, the intersection would have to be signalized to accommodate the southbound left-turn traffic. This would improve the intersection to LOS C during both a.m. and p.m. peak hours under the 2010 Background Conditions and the 2030 Cumulative No Project Conditions.

**CUMULATIVE IMPACT** *Cumulative Traffic Impact— SR 140 and Kibby Road Intersection Operation. Cumulative traffic growth without the project would cause the SR 140 and Kibby Road Intersection to operate at an unacceptable LOS (LOS E or F) during both a.m. and p.m. peak hours. This is a cumulatively considerable impact that would occur without the proposed project.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant environmental effect that would occur with or without the project has been eliminated or substantially lessened to a level that is less than significant by implementation of the following mitigation/improvement measure as identified in the EIR and incorporated into the project. Although the project will not cause the impact at this intersection to occur, it would contribute to impaired operations that are expected to exist even without the project. Applicant will be required to contribute its fair share to the improvement that is designed to improve the intersection to an acceptable level of operation.

**Mitigation Measure 6-3: Intersection of SR 140 and Kibby Road.** Under the 2030 Cumulative No Project Conditions, the northbound and southbound traffic on Kibby Road would deteriorate to deficient LOS. Even though the peak hour traffic volumes on SR 140 would be relatively light, the operating condition would not be improved by lane re-striping or adding a lane in any direction. The intersection would also meet the traffic signal warrant under the 2030 Cumulative No Project Conditions. In order to achieve acceptable levels of service, the intersection would

have to be signalized and the signal would need to be synchronized with the railroad signal just south of the intersection. This would improve the operating condition on Kibby Road approaches to acceptable LOS (LOS D or better) and maintain the intersection operating conditions at LOS B during both a.m. and p.m. peak hours.

**CUMULATIVE IMPACT** *Cumulative Traffic Impact— Childs Avenue and SR 99 Northbound Off-Ramp Operations. Cumulative traffic growth without the project would cause the Childs Avenue and SR 99 Northbound Off-ramp to operate at an unacceptable LOS (LOS E or F) during both a.m. and p.m. peak hours. This is a cumulatively considerable impact that would occur without the proposed project.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant environmental effect that would occur with or without the project has been eliminated or substantially lessened to a level that is less than significant by implementation of the following mitigation/improvement measure as identified in the EIR and incorporated into the project. Although the project will not cause the impact at this intersection to occur, it would contribute to impaired operations that are expected to exist even without the project. Applicant will be required to contribute its fair share to the improvement that is designed to improve the intersection to an acceptable level of operation.

**Mitigation Measure 6-4: Intersection of Childs Avenue and SR 99 Northbound Off-Ramp.** This intersection would operate at LOS F under the 2010 Background and 2030 Cumulative No Project Conditions during both a.m. and p.m. peak hours. The intersection would also meet the peak hour traffic signal warrant under both 2010 Background and 2030 Cumulative No Project Conditions. In order to achieve acceptable levels of service under 2010 Background Conditions, the intersection would have to be signalized and the eastbound approach would have to be widened to two lanes. The intersection would operate at acceptable levels of service under 2030 Cumulative No Project Conditions by adding the second westbound left-turn lane in addition to widening the eastbound approach. The improvement, however, may not be feasible within the existing right-of-way due to the overcross structure. The measures would improve the intersection to LOS C during the a.m. and p.m. peak hours under both the 2010 Background Conditions and the 2030 Cumulative No Project Conditions.

**CUMULATIVE IMPACT** *Cumulative Traffic Impact— Childs Avenue at SR 99 Southbound Off-Ramp Operations. Cumulative traffic growth without the project would cause the Childs Avenue at SR 99 Southbound Off-ramp to operate at an unacceptable LOS (LOS E or F) during both a.m. and p.m. peak hours. This is a cumulatively considerable impact that would occur without the proposed project.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant environmental effect that would occur with or without the project has been eliminated or substantially lessened to a level that is less than significant by implementation of the following mitigation/improvement measure as identified in the EIR and incorporated into the project. Although the project will not cause the impact at this intersection to occur, it would contribute to impaired operations that are expected to exist even without the project. Applicant will be required to contribute its fair share to the improvement that is designed to improve the intersection to an acceptable level of operation.

**Mitigation Measure 6-5: Intersection of Childs Avenue and SR 99 Southbound Off-Ramp.** This intersection would operate at LOS F during the p.m. peak hour and would meet a peak hour signal warrant under the 2010 Background Conditions. This intersection would operate at LOS F for the 2030 Cumulative No Project Conditions during the both a.m. and p.m. peak hours. The improvement would include adding a second left-turn

lane to the southbound approach, adding a westbound left-turn lane, and that the intersection be signalized and coordinated with the intersection of Childs Avenue at SR 99 northbound off-ramp. This would improve the intersection to LOS C during the p.m. peak hour under the 2010 Background Conditions and for both peak hours for the 2030 Cumulative No Project Condition.

**CUMULATIVE IMPACT** *Cumulative Traffic Impact—Childs Avenue at Parsons Avenue Intersection Operation. Cumulative traffic growth without the project would cause the Childs Avenue at Parsons Avenue intersection to operate at an unacceptable LOS (LOS E or F) during both a.m. and p.m. peak hours. This is a cumulatively considerable impact that would occur without the proposed project.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant environmental effect that would occur with or without the project has been eliminated or substantially lessened to a level that is less than significant by implementation of the following mitigation/improvement measure as identified in the EIR and incorporated into the project. Although the project will not cause the impact at this intersection to occur, it would contribute to impaired operations that are expected to exist even without the project. Applicant will be required to contribute its fair share to the improvement that is designed to improve the intersection to an acceptable level of operation.

**Mitigation Measure 6-6: Intersection of Childs Avenue and Parsons Avenue.** Under 2030 Cumulative No Project Conditions, traffic at the intersection would deteriorate to LOS E for both the a.m. and p.m. peak hours. In order to achieve acceptable levels of service, the signalized intersection would need a revised signal timing plan as part of a regular signal maintenance routine. This would improve the intersection to operate at an acceptable LOS D during the a.m. and p.m. peak hours for the 2030 Cumulative No Project Condition.

**CUMULATIVE IMPACT** *Cumulative Traffic Impact—Roadway Segment Operations. SR 140 between Santa Fe Avenue and Kibby Road.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant environmental effect that would occur with or without the project has been eliminated or substantially lessened to a level that is less than significant by implementation of the following mitigation/improvement measure as identified in the EIR and incorporated into the project. Although the project will not cause the impact at this intersection to occur, it would contribute to impaired operations that are expected to exist even without the project. Applicant will be required to contribute its fair share to the improvement that is designed to improve the intersection to an acceptable level of operation.

**Mitigation Measure 6-7: SR 140 between Santa Fe Avenue and Kibby Road.** It was determined that the roadway segment of SR 140 between Santa Fe Avenue and Kibby Road would deteriorate to LOS E under the 2030 Cumulative No Project Condition. Currently, the roadway is classified as a two-lane highway. By adding one lane in each direction in this segment, the roadway would be improved to operate at an acceptable LOS A. The widening of the roadway, however, may require right-of-way acquisition, the need for utility relocation, and approval by Caltrans.

**CUMULATIVE IMPACT** Cumulative Traffic Impact—Roadway Segment Operations. *Tower Road between SR 140 and Gerard Avenue.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant environmental effect that would occur with or without the project has been eliminated or substantially lessened to a level that is less than significant by implementation of the following mitigation/improvement measure as identified in the EIR and incorporated into the project. Although the project will not cause the impact at this intersection to occur, it would contribute to impaired operations that are expected to exist even without the project. Applicant will be required to contribute its fair share to the improvement that is designed to improve the intersection to an acceptable level of operation.

**Mitigation Measure 6-8: Tower Road between SR 140 and Gerard Avenue.** Tower Road would be one of the truck access routes to the proposed Wal-Mart Distribution Center. Based on field observations, this roadway segment has poor pavement conditions, and the pavement markings along the middle of the road are faded. It is recommended that the roadway segment between SR 140 and Gerard Avenue be improved to address these issues.

In addition, the Tower Road approaches to the intersection at Gerard Avenue (and the approaches along Gerard Avenue to Tower Road) should be improved to provide proper turning radii for standard trucks as classified under the Surface Transportation Assistance Act (STAA). It is also recommended that the intersection of Tower Road and SR 140 be widened to accommodate truck turning activities (such as providing turn bays and acceleration lane). The improvement would help maintain traffic flow on SR 140. As a Caltrans facility, the roadway widening on SR 140 would be required to follow Caltrans design standards and would need to be approved by Caltrans.

**CUMULATIVE IMPACT** Cumulative Traffic Impact—Traffic Signal Operations. *Based on the signal warrant analysis results, five study area intersections would meet the signal warrant during the a.m. and while four would meet the signal warrant during the p.m. peak hour. This is a cumulatively considerable impact that would occur without the proposed project.*

Table 6-5 of the DEIR (p. 6-26) summarizes the traffic signal warrant analysis performed at the five unsignalized intersections that would operate at unacceptable levels of service under the 2030 Cumulative No Project Condition. Detailed traffic signal warrant analysis sheets are included in Appendix E. Based on the signal warrant analysis results; all of the five intersections would meet the signal warrant during the a.m. peak hour while four intersections would meet the signal warrant during the p.m. peak hour.

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant environmental effect that would occur with or without the project has been eliminated or substantially lessened to a level that is less than significant by implementation of the following mitigation/improvement measure as identified in the EIR and incorporated into the project. Although the project will not cause the impact at this intersection to occur, it would contribute to impaired operations that are expected to exist without even the project. Applicant will be required to contribute its fair share to the improvement that is designed to improve the intersection to an acceptable level of operation, as specified in Condition No. 18 in Planning and Permitting Division Staff Report No. 09-18, incorporated by reference as though fully set forth as a condition of project approval.

**CUMULATIVE IMPACT** **Cumulative Traffic Impact—Intersection Operations (2030 with Project).** *The study intersections that would operate at acceptable LOS (LOS D or better) under the 2030 Cumulative No Project Condition would continue to operate at acceptable LOS under the 2030 Cumulative with Project Condition with the exception of one intersection. At the intersection of Mission Avenue at SR 99 northbound off-ramp, the LOS would deteriorate from D to E.*

*For the intersections that would operate at LOS E or F under the 2030 Cumulative No Project Condition, the proposed project would not contribute more than 5% of the intersection total volume. Therefore, the proposed project would result one significant impact at the study intersections. The impact to the intersection of Mission Avenue at SR 99 northbound off-ramp is a cumulatively considerable incremental contribution, and the project's cumulative impact would be significant.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific cumulative environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measure as identified in the EIR and incorporated into the project:

**Mitigation Measure 6-9: Mission Avenue at SR 99 northbound off-ramp.** Restriping the northbound and westbound approaches would mitigate the impact at this intersection. It is proposed to restripe the northbound approach from a left-through turning movement and a right-only turning movement to a left-through-right turning movement and a right-only turning movement. The westbound approach would be restriped from two through lanes and one right-turn only lane to one through lane, one through-right lane, and one right-turn only lane. Restriping could be accomplished within the existing right-of-way. Prior to issuance of occupancy permits, the Applicant shall pay the project's fair share (9.0%) contribution for the restriping.

With these measures, the intersection of Mission Avenue at SR 99 northbound off-ramps would operate under LOS C conditions, fully mitigating the impact occurring in the p.m. peak hour under 2030 Cumulative with Project Conditions.

**CUMULATIVE IMPACT** **Cumulative Traffic Impact—SR 140 Between Santa Fe Avenue and Kibby Road Roadway Segment Operations (2030 with Project).** *The addition of project traffic would cause the segment of SR 140 between Santa Fe Avenue and Kibby Road to deteriorate from LOS D under the 2030 Cumulative No Project Condition to LOS E during the p.m. peak hour. All other study roadway segments would operate at an acceptable LOS (LOS D or better). The impact to SR 140 is a cumulatively considerable incremental contribution, and the project's cumulative impact would be significant.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific cumulative environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measure as identified in the EIR and incorporated into the project:

**Mitigation Measure 6-10: SR 140 between Santa Fe Avenue and Kibby Road.** The addition of project traffic would cause the segment of SR 140 between Santa Fe Avenue and Kibby Road to deteriorate from LOS D under the 2030 Cumulative No Project Condition to LOS E during the p.m. peak hour. All other study roadway segments would operate at an acceptable LOS (LOS D or better). The level of service on SR 140 between Santa Fe Avenue

and Kibby Road is a significant cumulative impact. The project's contribution to this significant impact is cumulatively considerable; therefore, the project's cumulative impact would be significant.

By adding one lane in each direction in this segment, the roadway would be improved to operate at an acceptable LOS A. The widening of the roadway, however, may require right-of-way acquisition, the need for utility relocation and, approval by Caltrans. Prior to issuance of occupancy permits, the Applicant shall pay the project's fair share contribution for the additional lanes. The project's fair share contribution for a.m. peak hour would be 1.5% and the contribution for p.m. peak hour would be 2.1%. With implementation of this mitigation measure, the cumulative impact would be reduced to *a less-than-significant* level.

**CUMULATIVE IMPACT** **Cumulative Traffic Impact—Traffic Signal Operations (2030 with Project).** *Based on the signal warrant analysis results, all of five study area intersections would meet the signal warrant during the a.m. peak hour while four intersections 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.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific cumulative environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

Table 6-9 (FEIR p. 4-20) summarizes the traffic signal warrant analysis performed at the four unsignalized intersections that would operate at an unacceptable level of service under the 2030 Cumulative With Project Condition. The intersections studied were SR 140/Baker Drive, SR 140/Kibby Road, Childs Avenue/SR 99 Southbound Off-Ramp, and Childs Avenue/SR 99 Northbound Off-Ramp.

Impacts to these intersections will be reduced to a less-than-significant level by Mitigation Measures 6-9, 6-10, and 6-11 (FEIR, pp. 4-19 – 4-20), incorporated by reference as though fully set forth and a condition of project approval.

**CUMULATIVE IMPACT** **Cumulative Traffic Impact -Tower Road between SR 140 and Gerard Avenue.** *Tower Road would be one of the truck access routes to the proposed Wal-Mart Distribution Center. Based on field observations, this roadway segment currently has poor pavement conditions, and the pavement markings along the middle of the road are faded. The project's contribution to these intersections is a cumulatively considerable incremental contribution, and the project's cumulative impact would be significant.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific cumulative environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measure as identified in the EIR and incorporated into the project:

**Mitigation Measure 6-11:** It is recommended that the roadway segment between SR 140 and Gerard Avenue be improved to address these issues of poor pavement conditions and faded pavement markings. In addition, the Tower Road approaches to the intersection at Gerard Avenue (and the approaches along Gerard Avenue to Tower Road) should be improved to provide proper turning radii for standard trucks as classified under the Surface Transportation Assistance Act (STAA). Prior to issuance of occupancy permits, the Applicant shall pay the

project's fair share contribution for the roadway improvements. The project's fair share contribution would be 74% (average of 76% and 71%) for peak hour impacts. With implementation of the mitigation measure, the impact would be reduced to a **less-than-significant** level.

## UTILITIES AND PUBLIC SERVICES

**IMPACT 4.12-4** **Increased Demand for Electricity and Required Extension of Electrical Infrastructure.** *Implementation of the proposed project would increase demand for electricity and electrical infrastructure. PG&E or MID would be able to provide electricity to the project site, and the increase in demand for electricity would not be substantial in relation to the existing electricity consumption in PG&E's or MID's service area. The City of Merced has identified the need to reduce energy demands in new development, and the proposed project would be required to include energy efficiency measures in project designs; therefore, this impact would be **potentially significant**.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

### Mitigation Measure 4.12-4: Incorporated Energy Efficiency Features into Project Designs

Prior to the issuance of building permits, the project Applicant shall prepare and submit a sustainability plan for review and approval of the City's Planning Director, which shall incorporate the following energy efficiency features in project designs:

- ▶ providing electric maintenance equipment;
- ▶ using solar, low-emissions, or central water heaters;
- ▶ increasing building insulation beyond Title 24 requirements;
- ▶ orienting buildings to take advantage of solar heating and natural cooling;
- ▶ limiting the amount of glass on the south and west facades and providing solar protection for south-facing walls through landscaping or earth sheltering;
- ▶ installing thermal insulation, double-paned windows, high-tech window glazing, vapor barriers, and controlled air filtration to reduce energy consumption;
- ▶ installing skylights, light pipes, light shelves, exterior shade panels, and reflectors to transfer light to the interior of the building; and
- ▶ using clean alternative energy features, such as photovoltaic cells, solar panels, small wind turbines, and/or fuel cells, to generate power and reduce power consumption.

Implementation of this measure would reduce potentially significant impacts associated with increased demands for energy to a **less than significant** level by ensuring the proposed project includes energy efficiency measures in the design.

**IMPACT 4.12-5** **Increased Demand for Natural Gas and Required Extension of Natural Gas Infrastructure.** *Implementation of the proposed project would increase demand for natural gas. PG&E would provide natural gas to the project site, and the increase in demand for natural gas would not be substantial in relation to the existing natural gas consumption in PG&E's service area. The City of Merced has identified the need to reduce energy demands in new development, and the proposed project would be required to include energy efficiency measures in project designs; therefore, this impact would be **potentially significant**.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.12-5: Implement Mitigation Measures 4.12-4.** The Applicant shall implement Mitigation Measure 4.12-4, which is set forth in full above to reduce potentially significant impacts associated with increased demands for energy to a **less-than-significant** level by ensuring the proposed project includes energy efficiency measures in project designs.

## **VISUAL RESOURCES**

**IMPACT 4.13-2** **Substantial Degradation of the Visual Character or Quality of the Site and Surroundings.** *The project would alter the visual character of the proposed site itself and significantly impact the visual character of the surrounding area, resulting in a **potentially significant** impact.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.13-2: Prepare and Submit a Landscaping Plan.** Prior to the issuance of building permits, the Applicant shall prepare and submit a landscaping plan to the satisfaction of the Planning Manager in consultation with the Public Works Director that includes the following features and accomplishes the following objectives on the site:

- ▶ The developer shall plant trees (minimum 15 gallon) no further than 30 feet apart, on site along the perimeter roads surrounding the project site, including Childs Avenue, Gerard Avenue, and Tower Road. These trees are in addition to the street trees required every 40 feet per City Standards. Shrubs and turf shall be combined with the trees in a minimum 15-foot wide landscape strip along the entire project perimeter which abut public streets. Irrigation shall be provided to all landscape areas. A detailed landscape and irrigation plan per MMC 17.60 shall be approved by City staff at the building permit stage.
- ▶ Parking lot trees at a minimum of one for each six spaces (per MMC 20.58.385) shall be required in all employee and visitor parking areas on site. Parking lot trees, however, shall not be required in truck or trailer parking areas.



- ▶ Existing almond trees shall be preserved in any areas of the site that are to be left undeveloped by buildings, parking areas, driveways, drainage basins, etc. The developer shall submit a plan showing the location of existing trees and the proposed development and the City shall approve a plan at the building permit stage for preserving as many trees as feasible.
- ▶ All vegetation shall be maintained by an automatic irrigation system. The landscaping and irrigation plans and details shall be subject to review and approval by the City. The City shall create and adopt a mechanism that will ensure that Wal-Mart Stores East, LP maintains the landscaping in accordance with the adopted plan.

With implementation of this measure, the potentially significant impact would be **less than significant**.

**IMPACT 4.13-3** **Create Substantial Light or Glare That Would Affect Nighttime Views.** *The illumination level upon and from the site would change noticeably as a result of the proposed project, resulting in a potentially significant impact on light or glare.*

**Finding:** The City Council hereby finds that pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Explanation:** The potentially significant project-specific environmental effect has been eliminated or substantially lessened to a level that is less than significant by virtue of the following mitigation measures as identified in the EIR and incorporated into the project:

**Mitigation Measure 4.13-3. Prepare and Submit a Lighting Plan.** Prior to the issuance of building permits, the Applicant shall prepare a lighting plan for review and approval by the Planning Director. The lighting plan shall identify the design and placement, orientation, and illumination level (in watts) of all light fixtures. The lighting plan shall be designed so that illumination is focused downward upon targeted horizontal surfaces. Illumination of vertical surfaces shall be minimized. The lighting plan shall specify that no illumination source (including light bulb and reflector) shall be visible at a point 100 feet or greater from the outside of the property line. The exception to this performance standard is at driveway intersections with public streets.

With implementation of this measure, the potentially significant impact would be **less than significant**.

### 4.3 IMPACTS NOT FOUND TO BE SIGNIFICANT

The EIR identified the following impacts, which are considered to have either no impact or less-than-significant impact on the environment.

**Finding:** The City Council hereby finds that the following environmental impacts of the project are less than significant. Pursuant to CEQA Guidelines Section 15126.4(a)(3), no mitigation measures are required.

### AGRICULTURAL RESOURCES

**IMPACT 4.1-2** **Conflict with Existing Zoning for Agricultural Use, or a Williamson Act Contract.** *The project site is neither zoned for agriculture nor is it in a Williamson Act contract; therefore, the proposed project would have no impact.*

The site is currently and has historically been used for agricultural purposes, and is located in an area in southern Merced where large amounts of agricultural properties exist. However, the project site is neither zoned for agriculture nor is it in a Williamson Act contract. The project site is located on incorporated land adjacent along

the western boundary of unincorporated land currently under Williamson Act contract. However, the site is currently designated in the City General Plan as Industrial, is zoned Heavy Industrial District, and has adjacent industrial use to the north of the site. Therefore, the proposed project would not conflict with existing zoning for agricultural use or a Williamson Act contract and would have **no impact**.

No mitigation is required.

**IMPACT 4.1-3 Other Changes in the Environment that Could Result in Conversion of Farmland to Nonagricultural Use.** *The proposed project could foster future farmland conversions; however, the project conforms to the City's plans and designations. This impact would be considered less than significant.*

No mitigation is required.

**IMPACT 4.1-4 Potential for Inconsistency with Merced General Plan Goals and Policies Relevant to Protection of Agriculture.** *The proposed project conforms to the City's planning documents and designations, making this impact less than significant.*

No mitigation is required.

## **AIR QUALITY**

**IMPACT 4.2-3 Generation of Long-Term, Operation-Related (Local) Mobile-Source Emissions of CO.** *Based on SJVAPCD's screening criteria, project-generated long-term operational local mobile-source emissions of CO would not result in or substantially contribute to emissions concentrations that exceed the 1-hour ambient air quality standard of 20 ppm or the 8-hour standard of 9 ppm, respectively. As a result, this impact would be less than significant.*

No mitigation is required.

**IMPACT 4.2-4 Exposure of Sensitive Receptors to Emissions of Toxic Air Contaminants.** *Construction and operation of the proposed project would result in increased health risk levels associated with short-and long-term emissions of diesel PM and other TACs. However, the incremental increase in health risk levels, including cancer risk and noncancer chronic risk, would not exceed applicable thresholds at nearby sensitive receptors. As a result, this impact would be less than significant.*

No mitigation is required.

**IMPACT 4.2-5 Exposure of Sensitive Receptors to Emissions of Odors.** *Construction and operation of the proposed project would not result in the frequent exposure of receptors to substantial objectionable odor emissions. As a result, this impact would be less than significant.*

No mitigation is required.

**CUMULATIVE IMPACT Cumulative Air Quality Impact (Construction and Operations).** *The project would not contribute to cumulative degradation of air quality in the region as a result of construction (short term) and operational (long term) air emissions. This would not be a cumulatively considerable incremental contribution, and the project's cumulative impact would be less than significant.*

No mitigation is required.

**CUMULATIVE IMPACT** **Cumulative Air Quality Impact (Carbon Monoxide).** *Traffic associated with project operations would not exceed standards for carbon monoxide concentrations at nearby intersections. This would not be a cumulatively considerable incremental contribution, and the project's cumulative impact would be less than significant.*

No mitigation is required.

**CUMULATIVE IMPACT** **Cumulative Air Quality Impact (Toxic Air Emissions).** *Project operations would not result in the release of toxic air emissions that constitute a public health risk at existing or potential future sensitive receptors, based on SJVAPCD's thresholds. This would not be a cumulatively considerable incremental contribution, and the project's cumulative impact would be less than significant.*

No mitigation is required.

## **BIOLOGICAL RESOURCES**

**IMPACT 4.3-1** **Effects on Special-Status Plants.** *Implementation of the proposed project would result in loss of agricultural and ruderal habitats, which are unsuitable for special-status plants known to occur in the region. This impact would be less than significant.*

No mitigation is required.

**IMPACT 4.3-3** **Effects on Sensitive Habitats.** *Implementation of the proposed project would result in loss of agricultural and ruderal habitats that are not considered sensitive by any biological resource agencies or conservation organizations. This impact would be less than significant.*

No mitigation is required.

**IMPACT 4.3-4** **Effects of Wildlife Movement.** *Implementation of the project would not substantially interfere with wildlife movement or impede the use of wildlife nursery site. This impact would be less than significant.*

No mitigation is required.

**IMPACT 4.3-6** **Consistency with Adopted Habitat Conservation Plan, Natural Community Conservation Plan, or Other Approved Conservation Plan.** *Implementation of the project would not conflict with or be inconsistent with any conservation plans because no such plans apply to the project site. This impact would be considered less than significant.*

No mitigation is required.

## **CULTURAL RESOURCES**

**CUMULATIVE IMPACT** **Cumulative Cultural Resources Impact.** *As a result of research conducted and mitigation measures proposed, project construction would not contribute to the cumulative loss of cultural resources in the region. This is not a cumulatively considerable incremental contribution, and the project's cumulative impact is less than significant.*

No mitigation is required.

## GEOLOGY, MINERALS, SOILS, AND PALEONTOLOGICAL RESOURCES

**IMPACT 4.5-2** **Risks to People and Structures from Surface Fault Rupture and Strong Seismic Ground Shaking.** *The project site is located in an area of low seismic activity and structures at the site would be designed in accordance with CBC standards. Therefore, this impact is considered **less than significant**.*

No mitigation is required.

**CUMULATIVE IMPACT** **Cumulative Geology and Soils Impact.** *Project construction would be subject to adopted construction standards, thus ensuring that impacts associated with soils and geology would not occur. This is a **less-than-significant** cumulative impact.*

No mitigation is required.

**CUMULATIVE IMPACT** **Cumulative Paleontological Resources Impact.** *As a result of research conducted and the anticipated low occurrence, project construction would not contribute to the cumulative loss of paleontological resources in the region. This is not a cumulatively considerable incremental contribution, and the project's cumulative impact is **less than significant**.*

No mitigation is required.

## HYDROLOGY AND WATER QUALITY

**IMPACT 4.6-4** **Depletion of Groundwater Supplies or Substantial Interference with Groundwater Recharge.** *The impervious surface area resulting from the proposed project has the potential to interfere with groundwater recharge compared to existing conditions. However, the existing groundwater recharge potential of the site is low due to low permeability soil characteristics, and the existing agricultural uses utilize groundwater at a rate greater than that which would be lost to recharge via impermeable surfaces. Therefore this impact is **less than significant**.*

No mitigation is required.

**IMPACT 4.6-5** **Proposed Project Structures within the 100-year Flood Zone Could Impede or Redirect Flood Flows.** *Portions of the proposed project are within the 100-year flood zone. However, the project stormwater management system, and compliance with City requirements regarding placement of structures in the flood zone, makes this impact **less than significant**.*

No mitigation is required.

**IMPACT 4.6-6** **Wells Not Properly Decommissioned Could Directly Transport Effluent Irrigation Water to the Groundwater Aquifer.** *The irrigation well on the northeastern portion of the proposed project site has a potential for negative impacts to the site if not removed or filled in a proper manner. The well would be decommissioned pursuant to applicable State and City requirements. Therefore, this impact is **less than significant**.*

No mitigation is required.

**CUMULATIVE IMPACT** **Cumulative Hydrology and Water Quality Impact.** Existing laws address water resources at the project site, and construction and operation of the proposed project would be subject to existing regulations. This is not a cumulatively considerable incremental contribution, and the project's cumulative impact is **less than significant**.

No mitigation is required.

## LAND USE

**IMPACT 4.7-1** **Effects on Adjacent Land Uses/Division of an Established Community.** The project site would be located in a planned buildout area and would not divide an established community. This would be a **less than significant impact**.

No mitigation is required.

**IMPACT 4.7-2** **Effects on State and Local Plans and Policies.** The proposed project is in compliance with all state and local plans and policies and would result in a **less-than-significant impact**.

No mitigation is required.

**IMPACT 4.7-3** **Effects on Habitat Conservation Plans.** The proposed project site is not located in any habitat conservation plan area and would therefore have a **no impact**.

No mitigation is required.

**CUMULATIVE IMPACT** **Cumulative Land Use Impact.** The proposed project is consistent with local land use regulations and would not result in an incremental contribution to potential division of an established community or adverse affects on adjacent land uses. The project's cumulative impact is **less than significant**.

No mitigation is required.

## NOISE

**IMPACT 4.8-2** **Stationary- and Area-Source Noise.** Noise levels generated by stationary- and area-noise sources on the project site would not exceed local land use compatibility noise level standards at existing nearby noise-sensitive land uses. This would be a **less than significant impact** of the proposed project.

No mitigation is required.

**IMPACT 4.8-5** **Exposure of Sensitive Receptors or Generation of Excessive Vibration Levels.** Short-term construction-generated vibration levels and truck vibration levels during long-term operations would not exceed Caltrans's recommended standard of 0.2 in/sec PPV with respect to the prevention of structural damage for normal buildings or FTA's maximum acceptable vibration standard of 80 VdB regarding human response for residential uses (i.e., annoyance) at nearby existing residential dwellings. This impact would be **less than significant**.

No mitigation is required.

**IMPACT 4.8-6** **Land Use Compatibility of Proposed Project with On-Site Noise Levels.** *As a light industrial land use, the proposed project would not be considered a noise sensitive receptor and existing and future projected noise levels are not expected to exceed the City's "normally acceptable" noise standard of 70 L<sub>dn</sub> for industrial land uses. Therefore, exposure of proposed facility to noise generated at surrounding land uses would be a less than significant impact.*

No mitigation is required.

## POPULATION AND HOUSING

**IMPACT 4.9-1** **Potential for Directly or Indirectly Inducing Substantial Unplanned Population Growth in an Area.** *Development of the proposed project would not directly or indirectly induce population growth, but is expected to induce retail service development near the site. The potential impact is less than significant.*

No mitigation is required.

**IMPACT 4.9-2** **Potential to Displace People or Housing, Necessitating Construction Elsewhere.** *The project site is undeveloped. There is no housing or population that would be displaced by the proposed construction. There is no impact.*

No mitigation is required.

**CUMULATIVE IMPACT** **Cumulative Population and Housing Impact.** *The project is consistent with existing local land use policies and regulations and would not result in a cumulatively considerable incremental contribution. The cumulative impact is therefore less than significant.*

No mitigation is required.

## PUBLIC HEALTH AND HAZARDS

**IMPACT 4.10-2** **Create a Significant Hazard to Construction Workers and the General Public through the Use of Hazardous Materials during Construction of the Project.** *The proposed project would involve the storage, use, and transport of hazardous materials at the project site during construction activities. Compliance with federal, state, and local hazardous materials regulations, which would be monitored by the state and/or local jurisdictions, would reduce impacts associated with the use, transport, and storage of hazardous materials during construction. Therefore, impacts related to creation of significant hazards to the public or the environment would be less than significant.*

No mitigation is required.

**IMPACT 4.10-3** **Create a Significant Hazard to the General Public through the Routine Use of Hazardous Materials during Operation of the Project.** *The proposed project would use many materials, some of which are considered hazardous, during the course of its daily operations. Compliance with federal, state, and local hazardous materials regulations, which would be monitored by the state and/or local jurisdictions, would reduce impacts associated with the use, transport, and storage of hazardous materials during operation of the project. Therefore, impacts related to creation of significant hazards to the public or the environment would be less than significant.*

No mitigation is required.

**IMPACT 4.10-5** **Exposure to Electromagnetic Fields.** *The proposed project would be in close proximity to electrical transmission lines on the project site and would potentially result in health hazards associated with exposure to EMFs emitted from these lines. Because the proposed warehouse building and associated uses would be constructed approximately 400 feet from these transmission lines, the exposure to EMFs would be minimal and the proposed location of on-site facilities would be adequate to reduce potential hazards associated with electromagnetic fields. This impact would be **less than significant**.*

No mitigation is required.

**IMPACT 4.10-6** **Exposure of People or Structures to Wildfire Fires.** *The project site is not located in a designated wildland fire area, a High Fire Hazard Severity Zone, or a SRA area. Therefore, the project would not expose people or structures to significant risk of loss of injury involving wildland fires. This impact would be **less than significant**.*

No mitigation is required.

**CUMULATIVE IMPACT** **Cumulative Hazards and Hazardous Materials Impact.** *Existing laws addressing storage, transport, and disposal of hazardous materials that may be stored and used at the project site are subject to existing regulations. This is not a cumulatively considerable incremental contribution, and the project's cumulative impact is **less than significant**.*

No mitigation is required.

## **TRAFFIC AND TRANSPORTATION**

**IMPACT 4.11-1** **Effects on Level of Service.** *Implementation of the project would not cause study intersections and roadway segments to exceed level of service standards. For intersections and roadway segments that already exceed level of service standards, the project would not contribute more than 5% of the total volume. This impact is considered **less than significant**.*

No mitigation is required.

## **UTILITIES AND PUBLIC SERVICES**

**IMPACT 4.12-1** **Increased Demand for Water Supply and Distribution.** *Implementation of the proposed project would increase demand on the existing water supply and water distribution systems. Existing water supply and distribution facilities would be adequate to serve the project. Therefore, this impact is considered **less than significant**.*

No mitigation is required.

**Finding:** The City Council hereby finds that based on the estimated water demand for the project, available water supply, and the Water Supply Assessment (WSA), the water supply is adequate to serve the project. No mitigation is required.

**IMPACT 4.12-2 Demand for Wastewater Treatment and Conveyance Facilities.** *Implementation of the proposed project would increase demand for wastewater treatment and conveyance facilities. Existing wastewater treatment facilities and the City's wastewater conveyance facilities would be adequate to serve the project. This impact would be less than significant.*

No mitigation is required.

**IMPACT 4.12-3 Increased Generation of Solid Waste.** *The proposed project would incrementally increase the amount of solid waste generated in the City. Because the Highway 59 Landfill has sufficient permitted capacity to accommodate the project's solid waste disposal needs and because the project would also comply with all federal, state, and local statutes and regulations and the Merced Municipal Code related to solid waste reduction and recycling, this impact would be a less than significant.*

No mitigation is required.

**IMPACT 4.12-6 Required Extension of Telecommunications Services.** *Implementation of the proposed project would require extension of existing telecommunication services. AT&T would provide service to the project site and upgrade existing facilities, as necessary, to serve the project. This impact would be less than significant.*

No mitigation is required.

**IMPACT 4.12-7 Increased Demand for Fire Protection Facilities, Systems, Equipment, and Services.** *Development of the proposed project would result in increased demand for fire protection facilities and services. The City of Merced Fire Department has indicated it would be capable of serving the proposed project, project designs would incorporate all California Fire Code requirements, and project Applicant would be required to pay its fair share of costs through payment of the Public Facilities Impact Fees and Permit Inspection Fees; therefore, this impact would be less than significant.*

No mitigation is required.

**IMPACT 4.12-8 Increased Demand for Police Protection Facilities, Systems, Equipment, and Services.** *Development of the proposed project would result in increased demand for police protection facilities and services. Project designs would incorporate on-site security measures, and the project Applicant would be required to pay its fair share of costs through payment of the Public Facilities Impact Fees; therefore, this impact would be less than significant.*

No mitigation is required.

**CUMULATIVE IMPACT Cumulative Water Supply Impact.** *Based on a water supply assessment prepared for the proposed project, there are sufficient water resources to support the proposed project. This is not a cumulatively considerable incremental contribution, and the project's cumulative impact is less than significant.*

No mitigation is required.

**CUMULATIVE IMPACT Cumulative Wastewater Impact.** *The approved WWTP expansion would accommodate wastewater demand of the project and related projects. Therefore the project's increase in demand is not a cumulatively considerable incremental contribution, and the project's cumulative impact is less than significant.*



No mitigation is required.

**CUMULATIVE IMPACT** **Cumulative Electrical Impact.** *Because sufficient electricity supplies are available to support cumulative development and cumulative electricity impacts from the proposed project and related projects, the cumulative impact of the project would not result in a cumulatively considerable incremental contribution, and the project's cumulative impact would be less than significant.*

No mitigation is required.

**CUMULATIVE IMPACT** **Cumulative Natural Gas Impact.** *Sufficient natural gas supplies are available to support cumulative development and cumulative natural gas demands from the proposed project and related projects. This is not a cumulatively considerable incremental contribution, and the project's cumulative impact is less than significant.*

No mitigation is required.

**CUMULATIVE IMPACT** **Cumulative Solid Waste Impact.** *Existing storage and conveyance capacity would be adequate to serve the project and other development in its service area. This is not a cumulatively considerable incremental contribution, and the project's cumulative impact is less than significant.*

No mitigation is required.

**CUMULATIVE IMPACT** *Existing fire and police protection services would be adequate to serve the proposed project. This is not a cumulatively considerable incremental contribution, and the project's cumulative impact is less than significant.*

No mitigation is required.

## **VISUAL RESOURCES**

**IMPACT 4.13-1** **Effects on a Scenic Vista, or Damage to a Scenic Resource.** *The project site would be located in an area planned for industrial development and with existing industrial uses in the vicinity. The site is not a scenic vista or in a notable viewshed, and does not contain scenic resources. Therefore, implementation of the project would result in a less than significant impact.*

No mitigation is required.

**IMPACT 4.13-4** **Substantially Conflict with Goals and Policies in the Merced Vision 2015 General Plan.** *The project would be located in an area planned for industrial development. The project is consistent with the City's General Plan goals, policies, and land use designation and would result in a less than significant impact.*

No mitigation is required.

## 5 MITIGATION MONITORING PROGRAM

A Mitigation Monitoring Program (MMP) has been prepared for the Project, and is being approved by the City Council by the Resolution adopting these findings. (See Public Resources Code, Section 21081.6, subdivision (a)(1); CEQA Guidelines, Section 15097.) The MMP is contained in Appendix A of the Final Environmental Impact Report. The City will use the MMP to track compliance with Project mitigation measures. The MMP will remain available for public review at the City Planning Division during the compliance period.

## 6 PROJECT ALTERNATIVES

CEQA Guidelines Section 15126.6 requires a discussion of a reasonable range of alternatives to the project or to the location of the Project. The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making. An EIR need not consider an alternative whose implementation is remote or speculative.

As discussed in the EIR, all significant impacts could be reduced to a less-than-significant level with implementation of mitigation measures outlined in the draft EIR, except for previously referenced impacts to agricultural land conversion, air quality (greenhouse gas emissions), cumulative biological resources (special-status species foraging habitat), cumulative noise, and cumulative visual resources, which would remain significant and unavoidable impacts, with or without mitigation. Accordingly, six alternatives, including the required No Project alternative, were considered and evaluated in the EIR. A summary of their potential advantages and disadvantages is provided on the following pages.

In making these findings, the City Council certifies that it has independently reviewed and considered the information on alternatives provided in the EIR. (DEIR, Section 5, and minor revisions thereto in the FEIR at pp. 4-14 – 4-18).

The City Council finds that the range of alternatives studied in the EIR reflects a reasonable attempt to identify and evaluate various types of alternatives that would potentially be capable of reducing the project's environmental effects, while accomplishing most but not all of the project objectives. Upon full evaluation, some of the alternatives were found to be capable of reducing some of the environmental impacts of the project; some were found to increase some of the environmental impacts of the project. None of the alternatives is found to be capable of fully achieving the project objectives. The City Council finds that the alternatives analysis is sufficient to inform the City Council and the public regarding the tradeoffs between the degree to which alternatives to the proposed project could reduce environmental impacts and the degree to which the alternatives would hinder the ability to achieve the project objectives.

The EIR discussed the following alternatives in detail:

- ▶ No Project;
- ▶ Redesigned Site Plan;
- ▶ Reduced Site Plan and Operations;
- ▶ Alternative Site #1 – Between Gerard and Mission Avenues (immediately south of the proposed project site);
- ▶ Alternative Site #2 – West of SR 99, between Gerard and Mission Avenues; and
- ▶ Alternative Site #3 – South of the airport, at the Thornton Road/West Dickenson Ferry Road intersection.

Several of these alternatives offer one or more environmental advantages in comparison to the proposed project. However, none of these alternatives would substantially lessen the significant environmental effects. Further, as set forth above, the City Council has adopted mitigation measures that substantially mitigate the significant environmental effects of the proposed project. As explained in the City Council's Statement of Overriding Considerations, while these mitigation measures will not mitigate all project impacts to a less than significant level, they will mitigate those impacts to a level that the City Council finds is acceptable. Furthermore, the City Council finds that on balance, each of the alternatives is unable to satisfy the project objectives to the same degree as the proposed project. The City Council further finds that, on balance, none of these alternatives to the proposed project has environmental advantages over the proposed project that are sufficiently great to justify approval of

the alternative instead of the proposed project, in light of each alternative's inability to satisfy the project objectives to the same degree as the proposed project. Accordingly, the City has determined to approve the proposed project instead of approving one of the alternatives to it.

In making this determination, the City Council finds that when compared to the alternatives described and evaluated in the EIR, the proposed project, as mitigated, provides a reasonable balance between implementation of the project objectives and reduction of potential environmental impacts to an acceptable level. The City Council further finds and determines that the proposed project should be approved, rather than one of the alternatives, for the reasons set forth below.

## **PROJECT OBJECTIVES**

The City's objectives for the project include the following:

- ▶ To develop the industrially zoned area in the City with permitted industrial uses;
- ▶ To locate industrial projects in areas with good access to major highway transportation links, and provide opportunities for buffers between industrial and nonindustrial uses;
- ▶ To encourage development of industrial projects that will create jobs, including full-time, nonseasonal employment opportunities for local residents;
- ▶ To encourage development of projects that will contribute toward improving roadways adjacent to the proposed development site; and
- ▶ To ensure that industrial areas are developed in an attractive manner.

The Applicant's objectives for the project are:

- ▶ To develop a project consistent with the City of Merced General Plan and zoning ordinance;
- ▶ To develop a distribution/warehouse facility near other industrial uses;
- ▶ To construct and operate a distribution/warehouse facility in Merced County to take advantage of the strategic location between large urban centers and smaller urban and rural markets throughout the Central Valley in California;
- ▶ To construct a distribution/warehouse facility on a site sufficiently large (a minimum of 230 acres) to allow necessary building space and parking for trucks and employees;
- ▶ To construct a distribution/warehouse facility with sufficient space (approximately 1.1 million square feet) to allow operational efficiency and adequate distribution of goods to stores in a broad geographic area in California;
- ▶ To locate a distribution/warehouse facility with access to a regional roadway network including interstate, state, and regional roads;
- ▶ To locate a distribution/warehouse facility in an area well served by major local thoroughfares to minimize truck traffic traveling through residential neighborhoods;
- ▶ To provide sufficient parking for trucks and employees to minimize impacts to the surrounding area; and

- ▶ To take advantage of an existing labor pool living in the Merced area.

The table below summarizes the environmental analysis provided for each of the six alternatives to the proposed project, including the No Project alternative. In each instance the alternative is compared with potential impacts of the proposed project in terms of whether the potential impact is expected to be greater, less, or similar to the proposed project.

Comparison of Environmental Impacts of Alternatives in Relation to the Proposed Project						
Issue Area	No Project Alternative	Redesigned Site Plan	Reduced Plan/ Operations	Alternative Site #1	Alternative Site #2	Alternative Site #3
Agriculture	Similar	Similar	Less	Similar	Similar	Similar
Air Quality/Greenhouse Gases	Similar/ Greater	Less/ Similar	Less/Less	Similar/ Similar	Similar/ Similar	Similar/ Similar
Biological Resources	Similar	Similar	Less	Greater	Greater	Greater
Cultural Resources	Similar	Similar	Less	Similar	Similar	Greater
Geology/Soils/Paleontology	Similar	Similar	Similar	Similar	Similar	Similar
Hazards and Hazardous Materials	Similar	Similar	Similar	Similar	Similar	Greater
Hydrology and Water Quality	Similar	Similar	Less	Similar	Greater	Greater
Land Use	Similar	Less	Similar	Similar	Similar	Less
Noise	Similar	Less	Less	Similar	Similar	Greater
Population and Housing	Similar	Similar	Similar	Similar	Similar	Similar
Utilities and Public Services	Similar	Similar	Less	Similar	Greater	Greater
Transportation/Traffic	Similar	Similar	Less	Similar	Greater	Greater
Visual Resources	Similar	Similar	Less	Similar	Similar	Similar

Source: Data compiled by EDAW in 2007.

## 6.1 ALTERNATIVES CONSIDERED

### ALTERNATIVE 1 – NO PROJECT

This alternative assumes that the site would not be developed with the proposed project. However, given the following factors, it is assumed that some type of industrial or warehouse development would occur at the project site in the near term:

- ▶ the project site is within Merced’s city limits;
- ▶ the project site is designated for industrial use in the City General Plan and zoning ordinance;
- ▶ the project site is sufficiently large to accommodate industrial or warehouse projects;
- ▶ the project site is relatively close, and has convenient access, to major arterial roadways and State Route (SR) 99; and
- ▶ the project site is relatively close to, and could readily connect to, major public infrastructure, such as water, wastewater, and storm drainage systems.

In other words, if the Wal-Mart Distribution Center application were to be withdrawn or denied, it is unlikely that the project site would remain indefinitely vacant, given the factors listed above. Therefore, it is appropriate for the No Project alternative to assume some level of development, instead of assuming that the site would remain undeveloped. (If the site were to remain vacant, then the existing environmental setting would remain the same. The existing setting is described in Chapter 4 of this EIR, as part of the discussion of each resource area.)

In accordance with the City's existing land use regulations, the No Project alternative assumes that the site would be developed with a project that includes approximately 1.1 million square feet of warehouse or industrial use, similar to the proposed project. It is conceivable that another company would view the site as ideally suited for a regional distribution center similar to what is proposed by Wal-Mart. While the floor area ratio of 0.17 square foot per gross acre that is allowed in this zoning district would allow a 1.7-million-square-foot building, 1.1 million square feet, like that proposed, was the assumed size for the purposes of this alternatives analysis.

**Finding:** The City Council finds that characterizing the No Project Alternative as development of a similar project is appropriate rather than using artificial assumptions to preserve the existing physical environment. Although this alternative would meet the City's project objectives, it would not meet the project objectives of the Applicant, who owns the site. This alternative would also result in similar or potentially greater environmental impacts, and would not avoid the significant and unavoidable impacts of developing the site with an industrial use. Therefore, the No Project Alternative is rejected as infeasible.

**Explanation:** The No Project Alternative was analyzed in terms of a similar size facility being built. This site has been zoned industrial at least since the adoption of the General Plan in 1997 and efforts to develop this site would continue if the proposed project was rejected due its location, industrial zoning, convenient access to major arterials and SR 99, and ability to connect to existing public utility infrastructure. Industrial development of the site by another Applicant would likely meet the City's project objectives, but not those of the current Applicant, who owns the project site. Development of the site with a similar sized facility would likely cause the same environmental impacts and would not avoid the significant and unavoidable impacts to agricultural resources, generation of greenhouse gases, and long term operation traffic noise, and cumulative impacts to agricultural land, generation of greenhouse gases, noise, biological resources and visual resources. Since it is impossible to predict what a future project might be, it is possible that some environmental impacts would be greater. For these reasons, the No Project Alternative is rejected as infeasible.

## REDESIGNED SITE PLAN

This alternative assumes that the site would be developed with a revised version of the proposed project. The size and extent of development, the number of employees, and the number of vehicle trips would be the same as the proposed project. As with the proposed project, a majority of the site would be cleared of vegetation and graded to accommodate approximately 1.1 million square feet of building, parking and driveways, and landscaping. Buildings and other proposed features on-site have been shifted to the east under this alternative to provide an increased buffer to residential development to the west. This alternative has been identified as a means of reducing certain potential environmental impacts that cannot be sufficiently reduced in the proposed project solely through mitigation measures. This alternative is intended to reduce the following potential impacts on the closest residential communities in Merced: air quality, traffic, and noise. Areas west of the project site are designated for residential development.

To reduce potential impacts in the environmental topics listed above, the following revisions have been made to the proposed project, as depicted in Exhibit 5-2 (DEIR, p. 5-11):

- ▶ All buildings have been shifted to the eastern edge of the site.
- ▶ All truck loading and unloading areas have been shifted to the eastern edge of the site.

- ▶ Driveway access to the project site for both tractor trailers and employee vehicles has been shifted to a point near the eastern edge of the project site.

**Finding:** The City Council finds that this alternative would meet the project objectives. This alternative would have less/similar impacts to air quality and GHGs, fewer impacts to land use and noise, and would require relocation/rerouting of the existing electrical transmission lines owned by PG&E. This alternative would not avoid the significant and unavoidable impacts caused by the proposed project. Therefore, the Redesigned Site Plan Alternative is rejected as infeasible.

**Explanation:** Rerouting of electrical transmission facilities would require review and approval of the California Public Utilities Commission. Specific environmental impacts associated with relocating/rerouting the electrical transmission lines have not been analyzed and it is unknown whether relocation is even feasible. An assessment of the potential for relocating/rerouting of the transmission lines is beyond the scope of this EIR. This alternative would not avoid the significant and unavoidable impacts of the project to agriculture, air quality related to construction and long term emissions of greenhouse gases, noise impacts related to traffic and sensitive receptors along roadways, and cumulatively considerable impacts on agriculture, emission of greenhouse gases, biological resources, noise impacts related to traffic and sensitive receptors, traffic and visual resources. For these reasons, the Redesigned Site Plan Alternative is rejected as infeasible.

## REDUCED SITE PLAN AND OPERATIONS

This alternative assumes that the site would be developed with a reduced version of the proposed project. This alternative has been identified as a means of reducing several of the potential impacts of the proposed project to a greater level than could be achieved solely through mitigation measures. Twenty-five percent is an arbitrary reduction level, selected solely for the purpose of this analysis; a range of percentage reductions – applicable to the size of the facility and/or the operations (i.e., employees and truck trips) – could have been selected. This alternative is intended to reduce the potential impacts on the closest residential communities in Merced.

To reduce potential environmental impacts, the following revisions have been made to the proposed project, as partially depicted in Exhibit 5-3 (DEIR, p. 5-19):

- ▶ Project site disturbance area has been reduced by 25% to approximately 173 acres.
- ▶ Building size has been reduced by 25% to 825,000 square feet.
- ▶ Total impervious surface area has been reduced by 25% to approximately 52.5 acres.
- ▶ Number of employees has been reduced by 25% to approximately 900 employees.
- ▶ Number of tractor trailer daily trips to and from the site has been reduced by 25% to approximately 482 daily trips.

**Finding:** The City Council finds that although this alternative would meet the City's project objectives, it would not meet the project objectives of the Applicant. This alternative may reduce the level of some environmental impacts but would not avoid certain significant and unavoidable impacts caused by the project. Employment opportunities would also not be maximized. Therefore, the Reduced Plan Alternative is rejected as infeasible.

**Explanation:** The Applicant has applied to build a 1.1 million square foot distribution facility in order to service 49 existing retail stores and future growth, which is the size the Applicant has determined is necessary to effectively service such stores. A smaller facility may require the Applicant to continue servicing some of these stores through its existing distribution centers or supplying particular goods from those other facilities. The Reduced Site Plan Alternative will not meet the project objectives of the Applicant. This alternative also will not

avoid significant and unavoidable impacts to agriculture (although 25% smaller, there will still be a loss of Prime Farmland), impacts to air quality related to construction and long term emission of greenhouse gases, noise impact related to traffic and sensitive receptors along roadways, and cumulative impacts to agricultural lands, biological resources, noise and visual resources. The Reduced Site Plan Alternative would also require fewer employees, approximately 900 as opposed to 1200 under the proposed project, and therefore would not maximize employment opportunities. For these reasons, the Reduced Site Plan Alternative is rejected as infeasible.

## **ALTERNATIVE SITES**

The following alternatives address locating the project on other vacant sites within the City or unincorporated County. These sites were identified by City staff as having sufficient land area and zoning designations to accommodate a warehouse distribution center with approximately 1.1 million square feet of floor area and similar site development requirements to that of the proposed project. Each of the sites is in the southern portion of the City, or unincorporated County, in areas designated for, or near, industrial development and relatively close to major transportation routes. Alternative sites were identified and also analyzed in terms of environmental impacts, in addition to alternative versions of the proposed project on the site selected by Wal-Mart.

### **ALTERNATIVE SITE #1 – BETWEEN GERARD AND MISSION AVENUES (IMMEDIATELY SOUTH OF THE PROPOSED PROJECT SITE)**

Alternative Site #1 is approximately 200-250 acres in size and is located immediately south of the proposed project site. It is roughly bordered by the following streets: Gerard Avenue, Mission Avenue, the future extension of Campus Parkway, and Tower Road. This site is within the Merced city limits and is directly south of the proposed project site. For alternative sites, refer to Exhibit 5-4. (DEIR p. 5-25)

**Finding:** The City Council finds that this alternative would fulfill all of the project objectives of the City. However, this alternative would have similar environmental impacts as the proposed project, and also have likely have greater impacts to biological resources. Further, the Applicant does not own this site. Therefore, Alternative Site #1 is rejected as infeasible.

**Explanation:** This alternative would fulfill all of the City's project objectives. However, the Applicant does not own this site. This alternative would likely have greater impacts to biological resources, as a larger amount of suitable habitat for Swainson's hawk and nesting burrowing owls is likely located on this site and would be lost. This alternative would have similar environmental impacts as the proposed project as to all the other categories analyzed in the EIR, and would not avoid the significant and unavoidable impacts of the project to agricultural resources, generation of greenhouse gases, and long term operation traffic noise, and cumulative impacts to agricultural land, generation of greenhouse gases, noise, biological resources and visual resources. For these reasons, Alternative Site #1 is rejected as infeasible.

### **ALTERNATIVE SITE #2 – WEST OF SR 99, BETWEEN GERARD AND MISSION AVENUES**

Alternative Site #2 is located on the west side of SR 99, approximately 1 mile west/southwest of the project site. This site is northeast of the intersection of South Henry Street and East Mission Avenue, and just southwest of State SR 99. The site is roughly 250 acres in land area. This site is in unincorporated Merced County.

**Finding:** The City Council finds that this alternative would not fulfill all of the project objectives of the City, the Applicant does not own this site, and this site will have similar or greater environmental impacts than the proposed project. Therefore, Alternative Site #2 is rejected as infeasible.

**Explanation:** Selection of this alternative would not fulfill all of the project objectives, including developing the industrially zoned area in the City with permitted industrial uses, developing a project consistent with the City's



General Plan and zoning ordinance, and developing a distribution/warehouse facility near other industrial uses. The Applicant does not own this site. This alternative would also have greater impacts to biological resources, as a larger amount of suitable habitat for Swainson's hawk and nesting burrowing owls is likely located on this site and would be lost. Impacts to hydrology and water quality would likely be greater under this alternative because the site is located outside of the City Storm Drain Master Plan Area, and a new stormwater management system design would be required. It is unknown if stormwater facilities would be available to meet the demand. Since this alternative site is located in Merced County, the site would need to be served by the Merced Irrigation District. However, a water supply assessment would be required to determine whether Merced Irrigation District's projected water supplies would be adequate for the project, in addition to existing and planned future uses. Since whether adequate water supply exists is unknown, this alternative could result in greater impacts on utilities. An increase in traffic volumes would be expected along a different set of travel routes, and a quantitative analysis would need to be performed. However, given the distance of this site to major transportation routes, it is likely that a traffic impact greater than the proposed project would occur. This site would not avoid the significant and unavoidable impacts of the project to agricultural resources, generation of greenhouse gases, and long term operation traffic noise, and cumulative impacts to agricultural land, generation of greenhouse gases, noise, biological resources and visual resources. For these reasons, Alternative Site #2 is rejected as infeasible.

### **ALTERNATIVE SITE #3 – SOUTH OF THE AIRPORT, AT THE THORNTON ROAD/WEST DICKENSON FERRY ROAD INTERSECTION**

Alternative Site #3 is located between Dickenson Ferry Road, Thornton Road, and immediately south of Merced Municipal Airport. The site is roughly 250 acres in land area. This site is in unincorporated Merced County.

**Finding:** The City Council finds that this alternative would not fulfill the project objectives of the City, and that the impacts to biological resources, cultural resources, hazards and hazardous materials, hydrology and water quality, noise, utilities and public services, and transportation and traffic would likely be greater. Therefore, Alternative Site #3 is rejected as infeasible.

**Explanation:** This site is located outside of the City limits, in unincorporated Merced County. Building at this site would not meet the City's project objectives of developing the industrially zoned area in the City with permitted industrial uses, developing a project consistent with the City General Plan and zoning ordinance, and locating a distribution/warehouse facility in an area well served by major local thoroughfares to minimize truck traffic traveling through residential neighborhoods. The cumulative impact to biological resources at this site would likely be greater. Initial site reconnaissance indicates it may support wetlands and provide suitable habitat for special-status plants. The agricultural fields located on this site likely provide suitable foraging habitat for Swainson's hawk and nesting burrowing owls and a larger amount of suitable habitat for these would be lost. Although impacts to wetlands, special-status plants and the special-status species may be reduced to less than significant with mitigation, the impacts to these resources would be cumulatively considerable and the impact would likely be greater than at the proposed project site.

Alternative Site #3 contains two residential complexes that would need to be assessed as to potential significance; intensive survey, documentation and evaluation of the residences and the site would need to be completed to reduce impacts to less than significant; therefore, the impact to cultural resources would likely be greater. This site is located immediately south of the Merced Municipal Airport and could create safety hazards related to airport operations, likely resulting in greater public health and hazards impacts compared to the project. Impacts to hydrology and water quality would likely be greater under this alternative because the site is located outside of the City Storm Drain Master Plan Area, and a new stormwater management system design would be required. It is unknown if stormwater facilities would be available to meet the demand. The alternative site is located farther from SR 99 than the proposed project location; traffic noise increases could potentially impact more noise sensitive receptors along local roadways between the project site and the highway, resulting in greater impacts. Since this alternative site is located in Merced County, the site would need to be served by the Merced Irrigation

District. However, a water supply assessment would be required to determine whether Merced Irrigation District's available projected water supplies would be adequate for the project, in addition to existing and planned future uses. Since whether adequate water supply exists is unknown, this alternative could result in greater impacts on utilities. This site would not avoid the significant and unavoidable impacts of the project to agricultural resources, generation of greenhouse gases, and long term operation traffic noise, and cumulative impacts to agricultural land, generation of greenhouse gases, noise, biological resources and visual resources. For these reasons, Alternative Site #3 is rejected as infeasible.

## 6.2 SELECTED ALTERNATIVE

In addition to the discussion and comparison of impacts of the alternatives to the proposed project, CEQA requires that an "environmentally superior" alternative among the alternatives considered be selected and the reasons for such selection disclosed. In general, the environmentally superior alternative is the alternative that would generate the fewest or least severe adverse impacts.

Based on the preceding comparative analysis, and as summarized in Table 5-8, the Reduced Site Plan and Operations alternative has been identified as having fewer potential environmental effects than the proposed project and the other alternatives that were analyzed in the EIR. The Reduced Site Plan and Operations alternative would be expected to have fewer impacts on the following resources:

- ▶ agricultural resources,
- ▶ air quality,
- ▶ biological resources (special-status species),
- ▶ cultural resources,
- ▶ hydrology and water quality,
- ▶ noise,
- ▶ utilities and public services,
- ▶ transportation and traffic, and
- ▶ visual resources.

In addition to being the environmentally superior alternative, the Reduced Site Plan and Operations alternative would meet all of the project objectives identified by the City and project proponent, except the following:

To construct a distribution/warehouse facility with sufficient space (approximately 1.1 million square feet) to allow operational efficiency and adequate distribution of goods to stores in a broad geographic area in California.

While the Reduced Site Plan and Operations alternative would meet the objectives related to siting the project (i.e., locating the facility in an industrially zoned area with access to major local and regional roadways), with 825,000 square feet of floor area it would not meet the size component of the objective which has been identified by the project proponent.

The Redesigned Site Plan Alternative shares many of the same environmental impacts with the proposed project, with reductions to a few of the project impacts, and the alternative meets all of the City's objectives for the project. As with the proposed project, this alternative would have certain significant and unavoidable impacts both at the project level and cumulative level.

## **7 STATEMENT OF OVERRIDING CONSIDERATIONS**

### **7.1 GENERAL INTRODUCTION**

CEQA requires a public agency balance the benefits of a proposed project against its unavoidable, adverse environmental impacts in determining whether to approve the project. Consistent with CEQA, the State CEQA Guidelines and the City's CEQA Implementing Procedures, the City Council of the City of Merced hereby adopts this Statement of Overriding Considerations concerning the significant and unavoidable impacts of the Wal-Mart Regional Distribution Center ("the project") to support its conclusion that the project's economic, legal, social, technological and other considerations and benefits override and outweigh the project's significant and unavoidable impacts that cannot be substantially lessened or avoided even with the adoption of feasible mitigation measures or feasible project alternatives.

### **7.2 SIGNIFICANT AND UNAVOIDABLE IMPACTS**

The significant and unavoidable impacts relating to this project are generally described as 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 (generation of greenhouse gas emissions), biological resources (special-status species foraging habitat), noise, and cumulative visual resources.

### **7.3 SPECIFIC FINDINGS**

#### **FINAL DISPOSITION OF MITIGATION MEASURES**

The Final EIR for this project has proposed mitigation measures that will address these significant and unavoidable impacts, and the City Council has expressly adopted these mitigation measures for this project. See the Final EIR and the Mitigation Measures and Mitigation Monitoring Program for the Wal-Mart Regional Distribution Center attached hereto as Exhibit "A" which is incorporated by reference herein.

#### **PROJECT BENEFITS OUTWEIGH UNAVOIDABLE IMPACTS**

The City Council has independently reviewed and carefully balanced the benefits of the proposed Wal-Mart Regional Distribution Center against the unavoidable adverse impacts identified in the EIR. The City Council has also examined alternatives to the proposed project, none of which meet both the project objectives and would substantially lessen one or more of the significant impacts of the proposed project. The City Council specifically finds that the proposed project offers a number of benefits that outweigh the unavoidable adverse environmental effects of the project. Pursuant to CEQA Guidelines Section 15091(a)(3), the City Council finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the alternatives identified in the environmental impact report. The City Council recognizes that significant and unavoidable impacts will result from implementation of the project, as discussed above. Having (1) adopted all feasible mitigation measures, (2) recognized all significant, unavoidable impacts, and (3) balanced the benefits of the project against the project's significant and unavoidable impacts, the City Council finds that there are specific overriding economic, legal, social, technological, or other benefits of the proposed project that outweigh those impacts and provide sufficient reasons for approving the proposed project. Each benefit set forth below constitutes an overriding consideration warranting approval of the project, independent of the other benefits, despite significant and unavoidable impacts.

## 7.4 OVERRIDING CONSIDERATIONS

For the reasons stated below, the City Council and the City of Merced hereby finds that the following benefits of the project outweigh and render acceptable the unavoidable significant impacts to agricultural resources, air quality (greenhouse gas emissions), noise, biological resources, and visual resources, as identified in the findings and the Final EIR:

### CONSISTENCY WITH THE 2015 MERCED GENERAL PLAN

The Project is located in the industrial area of eastern Merced. This area has been designated for industrial purposes through various General Plan amendments and annexations for many years. The last industrial designation occurred in 1997, when the current General Plan was adopted, designating the eastern portion of the Project site as industrial. That portion of the Project site was annexed to the City in 1999. No changes to the zoning designation are necessary for the project.

Implementation of the policies of the General Plan is necessary to the long term economic health of the region. The General Plan promotes compact urban development, minimizing the need for urban expansion, and promoting annexation for the efficient delivery of public services and utilities.

The Project satisfies all of the City's objectives, which are consistent with the General Plan goals and policies. For example:

- Land Use Policy 2.1.f is to target industries that will provide year-round employment opportunities rather than seasonal employment. The proposed Project will operate 24 hours per day, 365 days per year.
- Land Use Goal L-2 promotes preservation of the City's economic base. The Project will contribute to the economic base in a variety of ways, including through increased property tax assessments and increased consumer spending of employees.
- Land Use Policy 2.2.a provides that 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 Campus Parkway and Highway 99, thereby maximizing access to and use of major regional transportation infrastructure.
- Public Facilities and Services Policy P-1.3 requires new development to provide or pay for its fair share of public facility and infrastructure improvement. The Project will be required to pay public facilities impact fees, CFD special taxes, school impact fees, Regional Transportation Impact Fees and its fair share towards other needed improvements, including traffic-related improvements.

In addition, the Project is consistent with the City's economic development strategy, "Prosper Merced," adopted by the City in 2006. For example, strategy 4.4 provides for aggressively pursuing new employment in targeted industrial clusters, such as warehousing and distribution, light manufacturing and non-water intensive food processing. The Project is located in an industrial cluster near these types of existing industrial uses, including Wellmade, Central Valley Almond Growers and McLane Pacific.

### Local and Regional Economic Considerations

Continued implementation of the strategies adopted by the City Council in the General Plan is critical for the improvement of the overall social, economic and environmental character of the City and the region as a whole. The City of Merced and the local region are currently going through an economic crisis.

- **Unemployment:** The unemployment rate for Merced County has historically been considerably higher than the state unemployment rate, sometimes nearly double. The unemployment rate is currently 17.6% (versus a state unemployment rate of 11.6%).
- **Home Foreclosures:** In the top ten home foreclosure ranking by major U.S. cities, the City of Merced ranked no. 7.<sup>1</sup> The County of Merced was tied for no. 3 for foreclosure filings as of July 30, 2009.<sup>2</sup> Merced ranked no. 1 (81%) for borrowers who owe more on their mortgages than their homes are worth<sup>3</sup> and 71% of all sales in 2008 were for less than what the seller paid.<sup>4</sup> Merced County ranked no. 5 (47 per 1,000 homes) for home foreclosures.<sup>5</sup>
- **Education:** The City of Merced ranked no. 3 out of the top ten worst educated cities in the country.<sup>6</sup>
- **Income:** Central Valley incomes have traditionally been lower than the rest of the country, but the U.S. Bureau of Economic Statistics show that of 366 metropolitan regions measured in 2008, Merced was near the bottom, ranked no. 355 for personal income, at \$25,221 per capita personal income.<sup>7</sup>
- The City of Merced has suffered the closures of and/or layoffs from eleven (11) major businesses, resulting in approximately 970 employees losing their jobs. The majority of those positions were unskilled or management services.

#### **A. POSITIVE FISCAL IMPACTS OF THE PROJECT**

- The Project will increase property tax assessments. Since the Project is located in the Gateways Redevelopment Project Area, which will be in effect until 2027 (and debt serviced until 2037), the Redevelopment Agency of the City of Merced is entitled to a substantially larger tax increment than the City. This money will be used for the creation of additional economic opportunities, removal of blight, neighborhood revitalization and other business development.
- Construction of the Project will bring short term economic benefits to the City and the region by providing short term construction related employment and increased local sales of wholesale and retail goods and services.
- Creation of permanent employment opportunities will increase personal income, and related consumer spending.
- Merced has an abundance of affordable housing due to the severe economic downturn. The provision of more employment opportunities will allow individuals and families to purchase a home.
- Other businesses will develop to service the Project, which will in turn create more employment opportunities and ultimately lead to greater sales tax revenue and increased property tax revenues.

<sup>1</sup> Forbes Magazine Online, October, 2008.

<sup>2</sup> Bloomberg Magazine Online, July 30, 2009.

<sup>3</sup> Los Angeles Times, July 24, 2009 and Deutsche Bank Report, August 2009.

<sup>4</sup> CNN Money.com Online, February 3, 2009.

<sup>5</sup> Los Angeles Times, July 24, 2009 and Data Quick.

<sup>6</sup> Forbes Magazine Online, November 24, 2008.

<sup>7</sup> Modesto Bee, August 6, 2009.

## **B. THE PROJECT WILL PROVIDE NEEDED EMPLOYMENT OPPORTUNITIES**

One of the basic goals of the General Plan is to promote job creation and economic diversification. The Project will provide approximately 1200 permanent jobs at build out—approximately 1050 employees, including management and unskilled, at the Distribution Center and approximately 150 truck drivers. In addition, construction of the facility and all associated appurtenances will create other employment opportunities in the construction field during development of the Project site. Merced is suffering from a lack of appropriate job opportunities for the ample and available work force. The Project will provide opportunities that the local force is capable of filling.

### **Related Traffic Improvements**

Detailed analysis of traffic circulation issues was conducted and the EIR contains substantial information concerning the future impacts, regardless of whether the Project is built. It is anticipated that even without the Project, cumulative traffic growth at the following intersections will be operating at an unacceptable level of service by the year 2030:

- SR 140 at Baker Drive
- SR 140 at Kibby Road
- Childs Avenue at SR 99 southbound off-ramp
- Childs Avenue at SR 99 northbound off-ramp
- Childs Avenue at Parsons Avenue

Although the Project is expected to contribute to this impaired level of service and therefore will be required to contribute its fair share toward improvements, the improvements that will ultimately result are expected to bring these intersections to within acceptable levels of service. The Project will also be contributing its fair share to a number of other roadways and intersections, as explained in detail in the EIR, which will improve these roadways and intersections and maintain acceptable levels of service.

## **7.5 CONCLUSION**

The EIR for the Wal-Mart Regional Distribution Center was prepared pursuant to the CEQA Guidelines. The City Council has independently determined that the EIR fully and adequately addresses the impacts and mitigations of the proposed project. The number of project alternatives identified and considered in the EIR meets the test of "reasonable" analysis and provide the City Council with important information from which to make an informed decision.

In light of the foregoing discussion and when balancing these interests, the City Council finds and concludes that these considerations and benefits are deemed to be substantial, that the project will cause significant and unavoidable environmental effects, and that the project should be approved notwithstanding these environmental effects that are significant and unavoidable.

The City Council has independently reviewed and balanced these project benefits and considerations against the unavoidable and irreversible environmental risks identified in the EIR and has concluded that those impacts are outweighed by the project benefits. Upon balancing the environmental risks and countervailing benefits, the City Council has concluded that the benefits that the City will derive from the implementation of the Wal-Mart Regional Distribution Center project, as compared to the existing and planned future conditions, outweigh those environmental risks.

In conclusion, the City Council finds and concludes that each benefit discussed herein constitutes a separate overriding consideration warranting approval of the project, independent of the other benefits, despite each and every significant and unavoidable impact affecting the environment.