

CITY OF MERCED
INTEROFFICE MEMORANDUM

TO: The Honorable Mayor and Members of the City Council

FROM: Jeanne Schechter, Chief Deputy City Attorney and Kim Espinosa, Planning Manager

DATE: September 28, 2009

SUBJECT: Staff Response to Public Comment Subsequent to the Planning Commission Hearing

The attorney for the organized opposition, Thomas Lippe, has submitted a voluminous amount of information, roughly 1500 pages, which includes comments and supporting documentation, since Friday, September 18, 2009. City staff and the City's consultant, EDAW have been diligently working since that time to review these comments and supporting documentation, along with other comments submitted by members of the general public at the public hearing before the City Council and via email, to ensure that all of the issues were addressed in the EIR and to respond as appropriate.

After reviewing all the comments, staff and EDAW have determined that no new substantive issues were raised by any of the comments, all of the issues raised have been previously and adequately addressed in the DEIR and FEIR and no changes to the DEIR and FEIR are required. Staff is providing these written responses, along with a number of supporting documents for the record, simply for purposes of clarification. Staff is offering all of these documents into the Administrative Record. Information contained in these responses does not constitute substantial new information, as defined pursuant the CEQA Guidelines Section 15088.5, as there is no new significant environmental impact identified, no substantial increase in the severity of an environmental impact would result unless mitigation measures are imposed that would reduce the impact to a level of significance, and no other feasible project alternatives or mitigation measures are being proposed that would clearly lessen the project's environmental impacts.

This information being added merely clarifies and amplifies or makes insignificant modifications to the adequately prepared EIR and recirculation is not required.

The following responsive memos are attached:

- 1) Master Response Memo from EDAW, September 28, 2009;
- 2) Response from DKS Associates, Traffic Consultant, September 27, 2009;
- 3) Response from Austin Kerr, Air Quality Consultant, EDAW, September 28, 2009, responding to September 18, 2009 comments submitted by Thomas Lippe on behalf of MARG;
- 4) Response from Austin Kerr, Air Quality Consultant, EDAW, September 28, 2009, responding to September 23, 2009 comments submitted by Thomas Lippe on behalf of MARG;
- 5) Memorandum from Frank Quintero, Development Manager, City of Merced, addressing comments regarding urban decay; and
- 6) Memorandum from Jeanne Schechter, Chief Deputy City Attorney and Kim Espinosa, Planning Manager, addressing comments concerning the Lyons Annexation.

Supporting documentation mainly includes various air quality attainment plans, proposed amendments to the CEQA Guidelines addressing analysis of greenhouse gas emissions, traffic impact study guidelines from various agencies in California, urban decay studies and curriculum vitae/resumes for the consultants that have worked on this project.

Also presented for the City Council's consideration this evening is an Errata Sheet dated September 28, 2009, which adds a specific finding to the Statement of Facts and Overriding Considerations regarding the City's determination that an analysis of urban decay issues was not required under CEQA. A copy of that Errata Sheet has been provided to you for your consideration, and staff recommends that the City Council adopt this supplemental finding. Also provided is a revised Resolution for EIR Certification which includes this Errata Sheet, should the City Council choose to certify the EIR and approve the project.

Staff and the EDAW consultants will be available to answer any questions you may have.

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September 28, 2009

Kim Espinosa, Planning Manager
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Subject: Responses to Three Letters Received by Lippe Gaffney Wagner, LLC after the Planning Commission Hearing for Merced Wal-Mart Distribution Center

Dear Ms. Espinosa:

After the Planning Commission meeting on August 24, 2009, three comment letters were received from the law office of Lippe Gaffney Wagner LLP (Lippe), representing the Merced Alliance for Responsible Growth (MARG). These letters raised issues with the Final Environmental Impact Report (FEIR), which provided responses to comments on the Draft Environmental Impact Report (DEIR).

EDAW and its traffic subconsultant, DKS Associates, reviewed these comment letters, as well as their attached supporting documents, and, although most of the comments reiterate previous comments made on the DEIR, EDAW and DKS have provided thorough responses to each letter submitted by Lippe after the Planning Commission meeting. The responses take the form of three letters: 1) a letter from DKS dated September 27, 2009 responding to the memo prepared by Smith Engineering supporting the statements made by Lippe in the September 21, 2009 letter; 2) a letter dated September 28, 2009, prepared by Austin Kerr, air quality specialist at EDAW, responding to air quality and global climate change issues raised in Lippe's September 18, 2009 letter, his September 23, 2009 letter, as well as the memo prepared by Mr. Greg Gilbert supporting Lippe's statements; and 3) this letter compiled by Mike Parker, environmental planner at EDAW, which responds to comments related to hydrology and water quality, urban decay, and land use. Note that although Mr. Parker compiled the memo, the responses to hydrology and water quality were prepared by EDAW's Hydrology and Water Quality Specialist, Ted Daum, and the urban decay responses were prepared by EDAW's Senior Economic Sustainability Specialist, Alexander Quinn. Both are considered experts in their respective fields; their resumes are attached. This letter, compiled by Mr. Parker, also acts as a "master letter," in that it walks through each of the three Lippe letters and either addresses Lippe's comments or refers the reader to the appropriate letter where the response is located.

It is EDAW's understanding that city staff will provide a response to the comments related to the Lyons Annexation.

After reviewing all of the letters received after the Planning Commission meeting on August 24, 2009, including those from Lippe, as well as other comment letters received from the general public, no changes to the DEIR or FEIR are required. Information contained in the EDAW and DKS letters do not constitute substantial new information, as defined under State *CEQA Guidelines* Section 15088.5. Recirculation of the DEIR is therefore not required.

LIPPE GAFFNEY WAGNER LLP LETTER DATED SEPTEMBER 18, 2009

Response to Comment "1. Air Quality Impacts"

Comments related to air quality are addressed under a separate memorandum prepared by Austin Kerr, Air Quality Specialist at EDAW. Please refer to the EDAW Memorandum, prepared by Austin Kerr, dated September 28, 2009.

LIPPE GAFFNEY WAGNER LLP LETTER DATED SEPTEMBER 21, 2009

Response to Comment "1-a. Drinking Water Quality Impacts"

Condition 19 requires fuel storage and dispensing facilities to be a minimum of 660 feet from the City Well. The fuel storage and dispensing facilities, including the motor oil facilities, are in excess of 1200 feet from the well site property boundary.

According to the United States Environmental Protection Agency, the minimum distance between domestic water wells and fuel storage tanks is 100 feet. See Drinking Water From Household Wells, EPA 816-K-02-003, January 2002, p. 14, copy attached. Similarly, the California Department of Water Resources have published California Well Standards. In Part II, Section 8, the Standards provide guidance for the separation between known or potential sources of pollutants, such as fuel, and a well. (Copy Attached). The recommended distances range from 50 to 150 feet. Here, the separation is 8 to 12 times the minimum.

Under California's Code of Regulations, the design and construction of storage tanks is highly regulated. For example, in Title 23, Division 3, Chapter 16, Section 2631, extensive regulations are established for the types of fuel tanks that would be used here. (Copy of regulation attached.) Under these regulations, for example, the storage tanks will be double-walled fiberglass tanks which will include leak detection, fuel level monitoring and test well sensors. In addition to the required items they will also have a sealed turbine enclosure, dry interstitial monitoring, containment collar sensor, digital sensing probes and overfill spill container. The piping will be double-walled flexible pipe.

Regarding the claim that the DEIR lacks description of the well, the DEIR describes the City of Merced Water Well 10-R2 on pages 3-1 (project description), 4.6-6, and 4.12-18, and the well is further described on page 3-12 of the FEIR. In addition, the FEIR addresses issues raised with the well and drinking water quality on page 3-11 under Master Response 9: Groundwater Quality. The FEIR describes in detail the Federal, State, and local regulations, including specific installation requirements, maintenance requirements, monitoring requirements, and spill response requirements that minimize risk associated with storage tank leaks and spills. As indicated in the FEIR (p. 3-12), a final geotechnical report would be prepared for the project that would provide recommendations for specific design and engineering of the storage tanks based on the soil conditions at the specific tank locations on the site, which would further minimize risk associated with effects of soil conditions.

The City Engineer has reviewed the requirements for the fuel storage tanks and the geotechnical information currently available regarding the area. His opinion is that the measures imposed are more than sufficient to protect the City's water supply (City Well R-2).

Response to Comment "1-b. Downstream Water Quality Impacts"

With regard to the claims of deferred mitigation, the comment overlooks the fact that the BMP and Water Quality Maintenance and Monitoring Plan is required to "meet or exceed" the performance standards already adopted by the City. As outlined in detail in the full text of Mitigation Measure 4.6-2

(see, e.g., DEIR, page 2-32 to 2-37, the detail is spelled out spelled out in the five pages of text. The minimum performance standards already exist.

As stated in the DEIR, 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).

The proposed project would be subject to the monitoring requirements of General Industrial Storm Water Permit, Order No. 97-03-DWQ (General Permit) as described in Section 4.6.2 "Regulatory Setting" of the DEIR. The General Permit requires analysis of storm water samples for at least four parameters – pH, total suspended solids (TSS), specific conductance (SC), and total organic carbon (TOC). Oil and Grease (O&G) may be substituted for TOC. In addition, monitoring must be undertaken for any other pollutants which are believed to be present in the storm water discharge as a result of the proposed project industrial activity and analytical parameters listed in Table D of the General Permit. The United States Environmental Protection Agency (USEPA) has published stormwater discharge benchmarks for a number of parameters to evaluating whether additional BMPs are appropriate. These are contained in the Sampling and Analysis Reduction Certification, which constitutes notification that a facility satisfies the sampling and analysis reduction requirements in Section B.12.b. of the General Permit.

Moreover, the storm water ponds that surround the site are flat bottom and long. The movement of storm water through the ponds will be at slow velocities, allowing the sediments to settle out at rates faster than the rate identified in Mr. Jackson's letter dated September 15, 2009. In addition, the discharge from the ponds will be through a pump station and the connection from the ponds to the pump station will have a skimmer plate that will prevent any floatables, such as petroleum products, from being discharged from the site, and there will be a gravel filter to help in the removal of any sediments.

Also, as Mr. Jackson states in his letter "Sweeping the paved area with high quality vacuum sweepers will reduce the accumulation of contaminates in the detention ponds. Removing contaminates before they enter water is always more efficient than trying to remove them from the water. Removing contaminates before they enter the detention ponds *will* guarantee that the water discharged from the detention ponds always meets the required water quality standards,..."

As part of the operation and maintenance of the site, Wal-Mart will be using vacuum assisted sweepers to help maintain the parking lots.

The City Engineer has reviewed the measures designed to protect the downstream water quality in this area. His opinion is that the measures imposed are more than sufficient to protect the downstream properties from water pollutants emanating from the proposed Distribution Center.

Response to Comment "1-c. Flooding Impacts – Detention Pond Berm Failure"

Detention basin capacity is for 100-year storm. The ponds conforms with Exhibit 4.6-2 and Carter-Burgess 2007 Preliminary Site Drainage Analysis, Wal-Mart Distribution Center No. 7073, and consist of a series of six detention basins. The ponds are interconnected. How one designates the number of ponds is a matter of interpretation. Because there are only two different elevations of the pond bottoms, some persons might view the system as including only two ponds. However, because there are intermediate earthen barriers interspaced in the ponds, they have been described as six detention

ponds in the DEIR. There is only one discharge point and there are connector pipes through each barrier to allow water to move throughout the system, so it is possible to view the system as one pond.

Mr. Lippe indicates that more detailed design specifications should be provided for the drainage facility to allow assessment of risk associated with failure of pond berms resulting in flooding. He also indicates that detailed runoff calculations should be provided in the DEIR and that the EIR should address the old stream channel and expansive soils. These issues are addressed in the FEIR. As indicated under Master Response 7: Detention Basins and Drainage (p. 3-9), because plans for the proposed project are not yet designed to construction-level detail, construction calculations have not been finalized for the stormwater detention and conveyance facilities. However, the preliminary designs described in Mitigation Measure 4.6-2 are conservative for CEQA purposes. This is because the basins and conveyance facilities are sized larger than necessary to handle the 100-year storm event and that would be refined at the final design phase. The FEIR further indicates (p. 3-9) that the berms would be designed and compacted pursuant to the final geotechnical report for the project. . . . The final geotechnical report will include evaluation of the filled-in stream channel areas, which are less dense and more permeable to water than surrounding land and soil and have high shrink-swell potential.

As the MID has stated, it wanted the ability to control the discharge from the site, and the ponds have been designed to hold a storm event without any discharge that is equivalent to 1 ½ times the 100-year, 24-hour storm.

The detention ponds for the site are all excavated ponds. There is not an earthen berm around any of the ponds to increase the capacity. Therefore, the ponds do not give rise to the possibility of a berm to collapse.

The City Engineer has reviewed the preliminary design of the retention basins. His opinion is that the basins are more than sufficient to meet the City's design criteria.

Response to Comment "1-d. Flooding Impacts – Detention Pond Berm Effects on Floodwaters

Mr. Lippe raises issues with the potential of the proposed project to redirect flood flows in the event that the area is inundated by the 100-year storm. These issues are further addressed below in response to Mr. Jackson's September 15, 2009 letter under "Response to Master Comment 7: Detention Basins and Drainage."

The required agreement between MID and the City would address discharge rate concerns and the basins, and storage and conveyance facilities are sized larger than necessary to handle the 100-year storm event and would be refined at the final design phase.

In addition, based upon the elevations of the area, Mr. Lippe's concern regarding accelerated flow is not warranted. The current FEMA Flood Maps show a portion of the site to be in Flood Zone AO and a portion of the site to be in Flood Zone AH. Flood Zone AO does not have a flood elevation identified but it states that the flood depth is 1 foot. Flood Zone AH has an elevation of 188 identified for the 100-year storm. The designated area for Flood Zone AH is in the extreme southwest corner of the site and the topographic map shows the ground elevation to be at or above Elevation 187.

With Flood Zone AO covering the remainder of the site and a large percentage of the surrounding land, the floodwaters around the site would be almost stagnant or moving at a very slow rate. In either case, the development of the site as proposed will not increase the erosion of the surrounding lands or roads. The City Engineer has reviewed the relative elevations of retention basins. His opinion is that the configuration and elevation of the basins will not cause the 100-year storm flows to accelerate in speed or cause increased erosions on adjoining property.

Response to Comment “1-e. Downstream Geomorphology Impacts”

The site will discharge into a canal operated by the Merced Irrigation District (“MID”). It will identify any constraints that are to be met before the request to discharge is approved. MID has the authority to restrict flows into their canals. MID identified a maximum discharge it will accept from the development. MID will have the ability to reduce the flow it accepts from the site.

Mr. Lippe indicates that the project description is not clear regarding which drainage canal would be used for drainage, and what criteria would be used to govern that decision. The DEIR (p. 4.6-11) describes two options for drainage: 1) the preferred canal would be the MID Fairfield Canal; 2) the alternative canal would be the Farmdale Lateral. The DEIR (p. 4.6-11) further describes the drainage facilities that would be necessary to drain to each canal, as well as the MID and City requirements and how drainage rates into the canals would be controlled to prevent downstream flooding. Which of the two channels is actually used is ultimately a determination that MID will make.

Mr. Lippe indicates that the EIR does not describe the setting downstream of the proposed project and does not provide any assessment of the potential impact for the increased peak flows on either channel or surrounding land downstream. The DEIR appropriately addresses this issue. The DEIR indicates (p. 4.6-21) that project design standards would, when implemented, provide flood protection to meet FEMA 100-year flood protection criteria, would safely convey on-site and off-site flows through the proposed project site, and would prevent increased flood hazard on downstream areas by limiting peak discharges to below pre-project levels. Because the proposed project would limit peak discharges to below pre-project levels the proposed project would not result in increased flood hazard downstream either individually or cumulatively.

Responses to Dennis Jackson’s September 15, 2009 Letter to Mr. Lippe

EDAW’s hydrology and water quality specialist have also reviewed the letter prepared by Mr. Jackson dated September 15, 2009 and have prepared the following responses, which have been reviewed and approved by the City Engineer. These responses do not repeat the information which was provided in response to Mr. Lippe’s letter.

Response to Master Comment 7: Detention Basins and Drainage.

The commenter raises issues with the potential of the proposed project to contain and redirect flood flows from the 100-year storm event. Regarding the accuracy of the 100-year storm event, the calculations for preliminary sizing of detention basins and drainage were based on the City of Merced Storm Drainage Master Plan (City of Merced 2002) hydrologic analysis. That analysis assumed upstream buildout conditions to estimated 10, 50, and 100-year peak discharges. As described in Chapter 4.6 of the DEIR, these estimates were calculated for all local watersheds in the City, including Watershed H, where the proposed project would be located, and subwatersheds within these local watersheds, including the proposed project site. The Storm Drain Master Plan was approved by the City. The preliminary designs outlined in Mitigation Measure 4.6-2 are at the conceptual phase. They are conservative because the basins and conveyance facilities are sized larger than necessary to handle the 100-year storm event and that would be refined at the final design phase.

Regarding the MID requirements to limit the rate of stormwater discharge, this was addressed in the Master Comment 7 in the FEIR. An agreement between MID and the City and approved by both would be required before any stormwater from the proposed project is discharged into the MID system. The detailed performance standards of the agreement are presented in Master Comment 7.

The potential for expansive soils is addressed in the Final Geotechnical Exploration Report (ENGEO 2006b). All soil test procedures would comply with ASTM D-1557 (latest edition); required moisture content – a minimum of 3 percentage points above the optimum moisture content; relative compaction – a minimum of 90 percent relative compaction. All site preparation, including demolition and stripping,

would be done under the observation of the Geotechnical Engineer or qualified field representative and would be carried out according to the requirements contained in the Final Geotechnical Exploration Report, and final grading plans would be reviewed by the Geotechnical Engineer for compliance with City and State standards.

Technical studies addressing the level of detail requested in Master Comment 7 would be completed during the detailed design and construction phase of the proposed project completed in support of the EIR. As a result of information in the EIR, the Lead Agency (i.e. the City) would establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment (CEQA Statutes Section 15149[b]).

Response to Master Comment 8: Runoff Water Quality

As stated in the DEIR, 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). Street sweeping is a well known preventive "good housekeeping" BMP utilized by the City and will be required to reduce contaminants in runoff pursuant to the SWPPP.

The proposed project would be subject to the monitoring requirements of General Industrial Storm Water Permit, Order No. 97-03-DWQ (General Permit) as described in Section 4.6.2 "Regulatory Setting" of the DEIR. The General Permit requires analysis of storm water samples for at least four parameters – pH, total suspended solids (TSS), specific conductance (SC), and total organic carbon (TOC). Oil and Grease (O&G) may be substituted for TOC. In addition, monitoring must be undertaken for any other pollutants which are believed to be present in the storm water discharge as a result of the proposed project industrial activity and analytical parameters listed in Table D of the General Permit. The United States Environmental Protection Agency (USEPA) has published stormwater discharge benchmarks for a number of parameters to evaluate whether additional BMPs are appropriate. These are contained in the Sampling and Analysis Reduction Certification, which constitutes notification that a facility satisfies the sampling and analysis reduction requirements in Section B.12.b. of the General Permit.

Response to Master Comment 9: Groundwater Quality

Regarding concerns of protection of the City well from potential storage tank leaks, the FEIR addresses issues raised with the well and drinking water quality on page 3-11 under Master Response 9: Groundwater Quality. The FEIR describes in detail the Federal, State, and local regulations, including specific installation requirements, maintenance requirements, monitoring requirements, and spill response requirements that minimize risk associated with storage tank leaks and spills. As indicated in the FEIR (p. 3-12), the final geotechnical report would provide recommendations for specific design and engineering of the storage tanks based on the soil conditions at the specific tank locations on the site, which would further minimize risk associated with effects of soil conditions (note that a final geotechnical report has been submitted; however, recommendations must be reviewed and approved by the City of Merced). This issue has been adequately addressed in the DEIR and FEIR; no further response is warranted.

Response to Specific Comment 5-2

The level of detail is sufficient to assess the impacts under CEQA, as explained in Response to Master Comment 7: Detention Basins and Drainage. Further, "The EIR serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects" Section 15149(b). Technical studies

addressing the level of detail requested would be completed during the detailed design and construction phase of the proposed project "completed in support of the EIR" Section 15149(b).

Response to Purportedly Unaddressed Comments

1. The Hydrology and Water Quality section of the DEIR is deficient since it does not give sufficient detail assess the impacts.

Response: This issue has been adequately addressed in the DEIR and FEIR; no further response is warranted.

2. The input values and the output from the TR-55 model run to estimated stormwater volume are not presented so the accuracy of the calculations cannot be checked.

Response: According to the applicant's engineer, the TR-55 model was run and yielded preliminary results. This is a standard and City-approved hydrologic model using standard unambiguous input parameters. The output values are conservative and will change in final design phase. (telephone conversation between Ted Daum at EDAW and Jim Emerson on June 22, 2009). However, the hydrologic model outputs were not necessary to analyze the impacts under CEQA and were consequently not included in the DEIR.

3. The site's geologic and geomorphic characteristics include two risk factors that the DEIR does not include in its evaluation of potential Project impacts. These risk factors are (1) two old stream channels that are now filled with soil that is less dense and more permeable to water than the surrounding land. (2) The soil on the site has a high "shrink-swell potential", meaning that it expands and contracts when exposed to wet and dry conditions. These characteristics of the site exacerbate several risks that the DEIR does not assess.

Response: These issues are addressed in "Response to Master Comment 7: Detention Basins and Drainage" above.

4. Drinking Water Quality Impacts.
5. Runoff Water Quality Impacts

Responses to 4 and 5: These issues are addressed in the responses to Mr. Lippe's letter, paragraphs a and b, and in the "Response to Master Comment 9: Groundwater Quality" above.

6. Detention Pond and Berm Failure - Flooding Impacts.

Response: These issues are addressed in the responses to Mr. Lippe's letter, paragraph c, and in the "Response to Master Comment 7: Detention Basins and Drainage" above.

7. Fine sediment tends to accumulate on pavement over time. Fine sediment can be from windblown sources or arrive on truck tires. Is there a monitoring program to determine if and when the accumulated fine sediment needs to be removed from the detention pond bottoms? If accumulated fine sediment is removed from the pond bottoms where will the potentially hazardous material be disposed of?

Response: This concern would be addressed by 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 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. As explained in Master Response 8 of the FEIR, the stormwater detention basins would be maintenance dredged when deemed necessary by the City Environmental control Officer.

8. The Project will alter the natural drainage pattern on the site by collecting, concentrating and discharging all runoff into one of two possible outlets: Fairfield Canal to the northeast or the Farmdale Lateral to the Southwest. The DEIR does not describe the environmental setting downstream of the project, nor does it provide any assessment of the potential impact of the increased peak flows on either channel or surrounding land downstream. The MID limits stormwater discharge from project to less than 25% of pre-project 2-year discharge, indicating that there are existing off-site cumulative impacts from routing stormwater into MID's Fairfield Canal that the DEIR has not disclosed.

Response: The primary local watersheds downstream of the project are described in Section 4.6.1 "Environmental Setting" of the DEIR. The potential impact of the increased peak flows on either channel or surrounding land downstream is analyzed in the City of Merced Storm Drainage Master Plan (City of Merced 2002) hydrologic analysis as described in "Response to Master Comment 7: Detention Basins and Drainage" above. The required agreement between MID and the City also described in Master Comment 7 would address off-site cumulative impacts from routing stormwater into MID's Fairfield Canal.

9. The MID will only accept stormwater discharge from the project at a rate of 2,200 gpm. This low discharge rate increases the time to drain the ponds to 108 hours for a 100-year storm. The City of Merced would prefer to see the ponds drain in 48 hours. Extending the time it takes to drain the ponds increases the possibility that a subsequent large storm will occur before the ponds are drained.

(See "Responses to 9 and 10" below)

10. The Project's surrounding detention pond berms will form an "island" in times of surface water flooding that will apparently form a complete barrier to 100-year flood water. The effect of a 110 acre "island" on the movement of 100-year flood water has not been discussed. The DEIR fails to ask or answer the question whether the presence of this "island" will cause 100-year flood water to accelerate near the project and if so will erosion of the surrounding land or roads result.

Responses to 9 and 10: These issues are addressed in response to Mr. Lippe's letter, and in "Response to Master Comment 7: Detention Basins and Drainage" above. The required agreement between MID and the City would address discharge rate concerns and the basins, and storage and conveyance facilities are sized larger than necessary to handle the 100-year storm event and would be refined at the final design phase.

Response to Comment "2. Traffic Impacts"

Traffic-related issues are addressed under a separate memorandum prepared by DKS Associates, the traffic and transportation experts that prepared the traffic study for the DEIR and developed several responses in the FEIR. Please refer to the DKS Memorandum dated September 27, 2009. The DKS memo responds to the report prepared by Dan Smith dated September 15, 2009, which is the basis for Lippe's comments. In addition, city staff responded to the issues concerning the Health and Safety Code at the August 24, 2009 Planning Commission. The City does not agree with Lippe's interpretation of this statute.

Response to Comment "3-a. Urban Decay Impacts"

The following responses to comments related to urban decay are prepared by Alexander Quinn, Senior Economic Sustainability Specialist, with EDAW who developed responses in the FEIR to comments related to urban decay. It should be noted that Mr. Quinn has experience in preparing economic impact studies for large retail facilities and several urban decay studies.

Mr. Lippe suggests that the proposed Wal-Mart distribution center will result in an increase in Wal-Mart stores in California which will lead to urban decay. Moreover, the distribution center will catalyze additional Wal-Mart stores that will overrun small retailers and commercial centers in California. However, the causal connection between a new distribution center and additional Wal-Mart stores is speculative.

A number of factors incentivize general merchandise retailers to locate in any given area. Of primary importance is locating stores in sizeable population centers with available discretionary income. Within these markets, retailers generally pursue sites with high auto traffic and visibility. Limited consideration is given to logistical support as logistic centers generally follow location decisions, rather than lead. In other words, logistic centers have not traditionally been the driving force behind expansion but have followed expansion of retail locations which are made by perceived market opportunities within a given geography. Moreover, distribution centers alone do not generate revenue for retailers but depend on store sales to justify their operation.

Further, and not over-riding the previous statement, the extent to which a distribution center may induce additional stores is speculative. As mentioned, many market factors drive location decisions of retailers. The potential gain in logistic efficiencies neither decides nor precludes the establishment of future Wal-Mart retail stores in California. If sufficient market demand for additional Wal-Mart stores exists in California, then Wal-Mart and most other national retailers will attempt to build additional stores to fulfill that demand. There are approximately seven Wal-Mart distribution centers in California. The addition of one new distribution center is not necessarily the tipping point for future Wal-Mart expansion, nor would the rejection of the distribution center's application necessarily stall future Wal-Mart expansion in California.

Finally, if a given distribution center would facilitate the development of additional Wal-Mart stores, it is highly speculative to anticipate where, how many, and how large new stores would be built. Each possible retail location would result in different impacts to surrounding commercial areas. These may or may not result in urban decay and would need to be analyzed individually based on the specific project characteristics and area market conditions. There are innumerable variations of Wal-Mart expansion alternatives that may or may not occur as a result of the new distribution center, making any urban decay analysis premature and inconclusive.

Mr. King then raises the issue of urban decay near the proposed Distribution Center site, suggesting that the distribution center jobs would not go to Merced residents and therefore vacant housing near the project site would not be filled because of the proximity to the proposed distribution center and the alleged existing blight in the area. Please see the discussion above, regarding employment and land use compatibility, including the fact that the project site and the immediately surrounding area is designated by the general plan and zoned for industrial and agricultural uses. The commenter cites the state-wide average 27.7-minute commute time as evidence that most of the distribution center jobs would go to residents outside of Merced. This commute-time is state-wide and would be influenced heavily by the high numbers of Bay Area and Southern California commuters. This average commute time is not specific to the area. Also, there is no nexus between a state-wide commute-time average and an employee distribution pattern.

The commenter also suggests that the development of the Wal-Mart Distribution Center would somehow reduce jobs at other local distribution centers. The reasoning provided by the commenter is that consumers would switch "shift their purchasing," which is speculation. The commenter provides no causal connection between the job loss and the supposed purchase shifting and no evidence. This claim of job loss at other local distribution center has no basis and no evidence and, therefore, no further response can be provided.

The commenter also indicates that residential developers would no build homes in the vicinity of the proposed distribution center. No evidence is provided to support this, and this is not an environmental impact. No further discussion is needed.

The commenter lastly indicates that the current economic situation is conducive to further urban decay. However, the CEQA document for the proposed project is not required to analyze the impacts of outside economic forces on local urban decay, but rather the proposed project's likelihood to result in physical environmental impacts, including urban decay. The commenter does not raise issues with the EIR.

Response to Comment "3-b. Land Use Conflicts"

The commenter suggests that the proposed project would "devastate" the existing residential neighborhoods in the vicinity of the project and would "threaten the viability" of plans for residential development near the project site, thereby "frustrating" the goals of the City's General Plan. The commenter indicates that the FEIR's responses to this point were "evasive," because the FEIR indicates that the City of Merced's housing demand will remain strong—a point conceded by the commenter. The following response has been prepared by Alexander Quinn, Senior Sustainable Economics Specialist at EDAW.

As mentioned previously under "3-a," the critical CEQA question is not whether future housing can be constructed in the vicinity of the distribution center, nor whether housing values may decrease. The critical CEQA issue is whether the project would result in lasting residential vacancy and abandonment, leading to physical deterioration, otherwise defined as urban decay. Under this specific definition, there is significant evidence there will remain sufficient demand for housing in all areas of Merced. See FEIR Master Response 11: Economics and Urban Decay.

The Merced Wal-Mart Distribution will result in increased employment that can generate additional demand for housing in Merced. Currently, 40% of Merced employees also live in Merced (as described above). If this condition were to manifest itself at the distribution center, approximately 40% of employees would demand housing. The result is increased local demand for housing which would result in rising home prices. The potential externalities of the truck traffic and noise are overridden by additional employment demand in Merced.

Responses to September 16, 2009 letter from Dr. Phillip King supporting the Lippe statements

Dr. King indicates that Wal-Mart Distribution Centers (DC) and the construction of Wal-Mart stores are linked. The comment states this may result in substantial urban decay. This is a summary statement of information contained later in the comment letter, and responses will be provided to the more detailed comments.

Dr. King then indicates that there is urban decay and blight in communities along the Highway 99 corridor from Fresno to Modesto, that overbuilding or retail has made this situation worse, and that expansion of Supercenters will make the situation far worse. This is a summary statement; it does not reference where the urban decay/blight is specifically located, nor does it described which Supercenters

are proposed and would make the situation worse. No responses can be provided to this summary information; any responses will be provided to more detailed comments.

Dr. King further suggests there is existing blight at housing adjacent to the site and suggests that building the project would make the adjacent housing less attractive, and asks why people would want to purchase housing adjacent to a distribution center. The project site is located on land long designated for industrial use in the Merced City and County General Plans (See DEIR Exhibit 3-5) and zoned for heavy industrial use (DEIR Exhibit 3-6). Immediately surrounding land is designated for industrial and agricultural uses. It was so designated when any nearby housing was constructed.

The project would not conflict with these land use designations. Many factors influence urban decay and blight. The comment has not stated why a development that is consistent with general plan and zoning designations would result in blight to nearby land uses. Because no comments on the contents of the environmental analysis are presented and no evidence of physical changes to the environment is provided to suggest the project as proposed would result in blight, no other responses can be provided. The comment is simply based on conjecture ("Why would people want to buy a home next to a distribution center...") not supported by any evidence in the record. Further, the comment ignores that the housing was built and people bought this housing with access to the full knowledge that the site was zoned for industrial uses.

Next, Dr. King indicates, first, because the average Californian commutes 27.7 minutes, that most jobs at the DC will be filled by people who are not residents of Merced. First, this is not an environmental impact; it is a socioeconomic issue. Second, the comment does not relate this "average" to local conditions. The residential location of employees is determined by a complexity of factors; perhaps the most important being proximity to available and affordable housing. It is difficult to argue that housing is neither available, nor affordable in Merced, and the commenter makes this point himself (comment 3: "the supply of potential (already planned) housing in Merced for a outstrips demand for the foreseeable future.") There is a very large pool of unemployed people in Merced (County unemployment was 8.9% in 2006, DEIR page 4.9-6, and has grown to over 17% as of July 2009, per the Merced Sun-Star, August 22, 2009). There is no reason why, given these factors, that the available local workforce could not fill employment opportunities at the DC.

If employees at the DC had similar commute behavior to existing Merced full-time workers, then approximately 40 percent of workers would also live in Merced and approximately 72 percent would live in the County.¹ This is likely a conservative estimate considering the limited skill set required for most logistic positions and the availability of labor in Merced.

Second, the comment states, without evidence, that creation of the DC will reduce jobs at the Save-Mart and other unnamed distribution centers which compete with Wal-Mart in Merced. The comment presents an opinion that the Wal-Mart DC will result in a business shift from Save Mart to Wal-Mart, and this will result in a shift of employees, not creation of new employment opportunities. Opinion is not substantial evidence, and no evidence is presented to respond to.

Dr. King then infers that DC's lead to Wal-Mart Supercenters, and Supercenters will lead to urban decay in the area between Fresno and Stockton. As a first statement, the comment interprets a study that concludes "a substantial number of new Supercenters are serviced (emphasis added) after a DC is built as stating that the DC results in Supercenters being constructed. It would, of course, be expected

¹ US Census Bureau, LED Origin-Destination Data Base (2nd Quarter 2002, 2003, 2004, 2005, and 2006).

According to the U.S. Census, approximately 39.8 percent of Merced full-time workers also lived in Merced and 71.7 percent lived in Merced County overall.

that Supercenters served by more distant DCs would be served by a new, more proximate DC. That is a main point behind building it: it reduces transportation costs, and this results in increased profitability.

The central premise, however, is the question of whether the DC *causes* new stores to be built, or whether the DC is simply strategically placed to lower the transportation costs so existing stores and potential new stores could operate more profitably. A number of factors incentivize general merchandise retailers to locate in any given area. Of primary importance is locating stores in sizeable population centers with the appropriate demographics for the types of consumers targeted.² As a point of reference, Urban Decay studies perform an analysis of market demand within a defined market area. Urban Decay studies evaluate the amount of retail demand within the estimated Wal-Mart market area. The analysis then determines how much retail demand the proposed Wal-Mart will capture. An urban decay study does not describe Wal-Mart's proximity to its distribution center, but rather, what is the retail health of the market to support a new Wal-Mart.³

This does not suggest that Wal-Mart does not plan to build other Supercenters in the region, and that these Supercenters would not be supplied by the DC. If sufficient market demand for additional Wal-Mart stores exists in California, then Wal-Mart and most other national retailers (including, presumably Save Mart, WinCo, Home Depot, and others) will attempt to build additional stores to fulfill that demand. However, there are approximately seven Wal-Mart distribution centers in California, and some of these DCs already serve the Merced region. Approximately 80 Wal-Mart Stores are located in Northern California, including stores in Porterville, Tulare, Visalia, Dinuba, Selma, Clovis, Fresno, Madera, Merced, etc.⁴ The region is already served by Wal-Mart DCs, and the addition of one more DC is not necessarily the tipping point for future Wal-Mart expansion, nor would the rejection of the DC's application necessarily stall future Wal-Mart expansion in the region.

However, no evidence has been presented by the commenter citing to any plans for other Supercenters. Further, and not over-riding the previous statement, the extent to which a distribution center may induce additional stores is speculative. As mentioned, many market factors drive location decisions of retailers. The potential gain in logistic efficiencies neither decides nor precludes the establishment of future Wal-Mart retail stores in California.

Finally, if a given distribution center would facilitate the development of additional Wal-Mart stores, it is highly speculative to anticipate where, how many, and how large new stores would be built. Each possible retail location would result in different impacts to surrounding commercial areas. These may or may not result in urban decay and would need to be analyzed individually based on the specific project characteristics and area market conditions. There are innumerable variations of Wal-Mart expansion alternatives that may or may not occur as a result of the new distribution center, making any urban decay analysis premature and inconclusive.

² Ellickson et al. (2008). "Estimating Network Economies in Retail Chains: A Revealed Preference Approach." http://econweb.tamu.edu/houghton/EHT_April2008.pdf (accessed 28 September 2009).

³ See Urban Decay studies for the Fairfield Wal-Mart Center dated October 2005, performed by Economic Planning Systems and the Del Norte County Wal-Mart Expansion dated April, 2007, performed by Bay Area Economics. The links <http://www.ci.fairfield.ca.us/files/App-E.pdf> and <http://www.dnco.org/downloads/walmart/DEIR/Sec04-12%20Urban%20Decay.pdf>. Accessed September 28, 2009.

⁴ For purposes of this analysis, Northern California is defined as Monterey, King, Tulare, and Inyo County as the southernmost counties of Northern California. There are an estimated 79 stores located in Northern California and another 94 stores located in Southern California.

Dr. King's next comment describes how Wal-Mart stores and Supercenters generate new sales, and indicates that they could compete with other stores in locations where they would be built. The comment provides examples of how a DC could serve a number of stores, and provides theoretical examples of how these Wal-Mart stores would displace numerous other stores. The comment then provides a community-by-community discussion of where blight is located, based on locations of redevelopment zones, sporadic photographs of unsightly businesses, etc. This comment does not address the supposed issue at hand: there is no substantial evidence that this proposed DC will lead to urban decay or blight.

EDAW does not question the point that a Wal-Mart Supercenter could result in business displacement, and such business displacement could, if the economic conditions of a particular community were not favorable, and if there are no mitigating circumstances, result or contribute to urban decay. In fact, this could occur if any area is overbuilt for a particular use, whether it is a Wal-Mart, a Save Mart, Costco, a mall, a WinCo, or a number of other potential retail competitors. There are many examples throughout California, especially in our current economy, of boarded up, half-built residential tracts, vacant stores, empty automobile lots, etc. But, the connection between a physical environmental change, in this case a distribution center, and economic or social changes that lead to adverse environmental changes has to be clearly made for CEQA. In this case, the construction of a distribution center that would make Wal-Mart facilities more economical and profitable and thus could lead to the construction of other Wal-Mart facilities, somewhere, and wherein these unknown—the comment has not provided any evidence of where any new Wal-Mart stores are planned to be built as a direct result of the DC—could potentially lead to displacement of existing business, and such displacement might not be filled by other uses, thus leading to urban decay, is, simply, speculation. The commenter has not provided any evidence that this project, a DC, will lead to physical blight.

Dr. King next raises the issue of urban decay near the proposed Distribution Center site, suggesting that the distribution center jobs would not go to Merced residents and therefore vacant housing near the project site would not be filled because of the proximity to the proposed distribution center and the alleged existing blight in the area. Please see the discussion above regarding employment and land use compatibility, including the fact that the project site and the immediately surrounding area is designated by the general plan and zoned for industrial and agricultural uses. The commenter cites the state-wide average 27.7-minute commute time as evidence that most of the distribution center jobs would go to residents outside of Merced. This commute-time is state-wide and would be influenced heavily by the high numbers of Bay Area and Southern California commuters. This average commute time is not specific to the area. Also, there is no nexus between a state-wide commute-time average and an employee distribution pattern.

Dr. King also suggests that the development of the Wal-Mart Distribution Center would somehow reduce jobs at other local distribution centers. The reasoning provided by the commenter is that consumers would switch "shift their purchasing," which is speculation. The commenter provides no causal connection between the job loss and the supposed purchase shifting and no evidence. This claim of job loss at other local distribution center has no basis and no evidence and, therefore, no further response can be provided.

Dr. King further indicates that residential developers would not build homes in the vicinity of the proposed distribution center. No evidence is provided to support this, and this is not an environmental impact. No further discussion is needed.

Dr. King lastly indicates that the current economic situation is conducive to further urban decay. However, the CEQA document for the proposed project is not required to analyze the impacts of outside economic forces on local urban decay, but rather the proposed project's likelihood to result in physical environmental impacts, including urban decay. The commenter does not raise issues with the EIR.

Response to Comment "4. Visual Impacts"

The first part of the comment incorporates by reference a letter dated September 16, 2009 by Harry Benke, included as an exhibit to the comment letter, as well as a previous letter submitted by Mr. Benke on the Draft EIR. The previous letter submitted by Mr. Benke was fully addressed in the FEIR (please see Response to Comment 5-5 beginning on page 3.5-75).

Mr. Benke's September 16th letter does not raise any new issues, but rather suggests, in a fairly general sense, that the FEIR responses to the previous letter were not adequate. Mr. Benke's claims of inadequacy are based upon his misunderstanding of the responses in the FEIR as well as the analysis in the DEIR. Specifically, Mr. Benke mistakenly characterizes the FEIR's discussion of the nature and definition of aesthetics as an environmental issue, suggesting that the discussion is an attempt to debate the subjective nature of beauty. To the contrary, the FEIR's discussion regarding the nature and definition of aesthetics is relevant to introduce and provide context for the rest of the discussion by establishing that the subjective nature of aesthetics makes it an area in which quantification and excessive detail do not often assist decision makers in understanding the impact a project could have on visual resources. Instead, quantification and excessive detail tend to muddy the issue. Mr. Benke also incorrectly represents the FEIR's discussion of General Plan Policy consistency, suggesting that the EIR's entire premise for analyzing and mitigating visual impacts is whether a project is consistent with applicable policies. This is not the case. The threshold of significance used in the DEIR (p. 4.13-6) to assess the visual impact is as follows:

If a project would:

- ▶ have a substantial adverse effect on a scenic vista;
- ▶ substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway;
- ▶ substantially degrade the existing visual character or quality of the site and its surroundings;
- ▶ create a new source of substantial light or glare that would adversely affect day or nighttime views in the area; or
- ▶ substantially conflict with goals or policies in the City General Plan related to visual resources and/or aesthetics.

The first four of these tests are the ones recommended by the *CEQA Guidelines*, Appendix G. The last test was added to ensure consistency with the City's General Plan policies and goals.

The DEIR provides a thorough analysis of visual impacts resulting from a proposed project that is described at an appropriate level of detail to identify visual impacts. The discussion is based upon the above thresholds of significance. These thresholds are the generally accepted thresholds throughout California. They are not quantitative mathematical formulas. They are qualitative. The EIR includes mitigation measures to reduce these impacts to the to the less than significant level. Mr. Benke's assertion that the DEIR lacks appropriate detail is thoroughly addressed in the FEIR Response to Comment 5-5.

Mr. Lippe claims that the alleged defects described in the Benke letter suggest that the "magnitude" of the impacts to visual resources is unknown. This is incorrect. The scope of the impacts has been fully addressed in the DEIR and FEIR. Neither the statutory and regulatory CEQA framework, nor the case law, indicates that if an impact is not specifically quantified and compared to a numeric threshold that

the magnitude of an impact is uncertain. As stated above, the accepted thresholds of significance are not quantitative. Although the DEIR relies on visual simulations and descriptions and does not rely on quantification for analysis of impacts to visual resources, this does not detract from the accuracy of the DEIR's analysis or its ability to clearly convey to the decision makers the magnitude of the impact.

In the second part of this comment, Mr. Lippe purports to summarize Planning Commissioner Zuercher's statements at the August 24th Planning Commission meeting regarding adding berms to landscape screening for the project and attempts to show that a full discussion and consideration of his suggestion of a berm was not permitted. Mr. Lippe also tries to suggest that Commissioner's Zuercher's comments somehow totally undercut the impact analysis in the FEIR. Mr. Lippe is wrong on both counts.

At the August 24th Planning Commission meeting, the Commissioners had a hearty debate regarding the merits of Commissioner's Zuercher's suggestion. He provided an extensive description of what he wanted and why he was suggesting it. (Aug. 24th Transcript, pp. 41-47, 58-60.) At one point he asked the Chairperson if he was out of order to be raising the issue, and the Chairperson advised: "Just keep right on going." (Aug. 24th Transcript, p. 46, lines 20-22.)

The other Planning Commissioners openly shared their views on the suggestion. Commissioner Cervantes expressed concern about the cost that berming might add to the project. He thought it was unfair to spring a new condition on Wal-Mart and expect Wal-Mart to agree to it that evening. He suggested that it was something that could be looked at by staff prior to the City Council's consideration of the project. Nonetheless, Ms. Espinosa clarified that the Planning Commission was free to add the berming requirement as a condition of approval to the project. (Aug. 24th Transcript, p. 47-48, 62-63.) When Commissioner Cervantes suggested asking the Wal-Mart representative about the berming, he was reminded by the Chairperson that the decision was the Commission's, not Wal-Mart's. (Aug. 24th Transcript, p. 48, lines 8-13.) After a second Commissioner expressed a desire to hear from Wal-Mart's representative, the Chairperson invited a response from Wal-Mart. (Aug. 24th Transcript, p. 61.) Mr. Rios, Wal-Mart's representative, stated that he was not able to commit to the berming that evening, but that if it was imposed as a requirement, "we will have to move forward and see if it is something we can afford." (Aug. 24th Transcript, p. 61, lines 10-24.) Commissioner Williams expressed the view that given the timing that the issue had been raised, it was something that the City Council should consider. However, Commissioner Williams subsequently expressed the view that the building did not need screening, and gave examples of other large buildings that were not screened and were not an eyesore. (Aug. 24th Transcript, pp. 62, 65.) Commissioner Ward was also of the opinion that the view of the building did not need to be totally blocked. (Aug. 24th Transcript, p. 62.)

It is important to note that all of the Commissioners, including Commissioner Zuercher, agreed that this issue was not a CEQA issue but was rather a site-design issue. (Aug. 24th Transcript, p. 50.) All of the Commissioners, including Commissioner Zuercher, cast their vote in favor of recommending that the City Council certify the FEIR. (Aug. 24th Transcript, p. 55). The Planning Commission's unanimous recommendation of the FEIR included the determination that with regard to the aesthetic impacts of the Distribution Center, the Landscape Plan without berming was sufficient to reduce the impact to less than significant.

Upon close reading of the August 24th transcript, Commissioner Zuercher's suggestion of berming was in the context of what he would like to see as a landscape architect. He disclosed that as "a bias that I have." (Aug. 24th Transcript, p. 42.) He then described a concept that used by Texas Instruments to totally screen their buildings from public view and suggested that the same approach be taken here. (Aug. 24th Transcript, p. 43, 46.) Commissioner Zuercher's opinion of what constitutes a "visual impact" is obviously based upon his years of experience as a landscape architect, rather than upon the thresholds of significance as established pursuant to CEQA. The Commissioner discussed the "visual

impact" in terms of visibility of the proposed project, rather than whether the proposed project would exceed any of the thresholds identified in the DEIR. His opinion would suggest that any new warehouse building proposed for development on vacant land would need to be completely blocked from view. The City of Merced has clearly not set a precedent. In fact, Commissioner Williams provided examples of other warehouse facilities that have not been required to incorporate such landscaping, such as Save Mart, McLane Pacific and Well Made. (Aug. 24th Transcript, p. 65, lines 7-12.)

Contrary to Mr. Lippe's suggestion, a full reading of the transcript demonstrates that the Planning Commissioners had a full understanding of the issue and of their roles when they deciding against Commissioner Zuercher's suggestion. As stated above, they were clearly advised that they had the authority to add the requirement of the berm. They chose not to for a variety of reasons. For example, Commissioner Ward noted that the suggestion for berming seemed "superfluous" given the direction of traffic flow and the location of the orchards (Aug. 24th, Transcript, p. 50, lines 1-4). Commissioner Ward also stated "I'm not concerned with whether or not the almond orchards and the parking lot trees and the employee parking trees and all of that this already required is going to be sufficient to totally block the view of a big white building. That is not a concern of mine, that it is not enough." (Aug. 24th Transcript, p. 63, lines 17-22.) Commissioner Williams pointed out that similar facilities in the City (Save Mart, McLane, and Well Made) do not have this level of landscaping and stated "I don't see it as an ugly building. McLane is a white building." (Aug. 24th Transcript, p. 65, lines 7-12) The Planning Commissioners understood their role and dealt specifically with whether the berming would be necessary to reduce visual impacts, and the majority of the Commissioners determined it was not necessary. Their respective comments and their votes reflect the notion that simply because a building is large does not mean it constitutes a significant visual impact.

Mr. Lippe also places emphasis on the several comments made by the Commissioners concerning being surprised by the condition, burdening the Applicant and not wanting to place further conditions on the project at that time. It should be pointed out that the berming proposal was first presented to staff and the Commission, as well as the Applicant, on that same date, August 24, 2009. It was well within the discretion of the Planning Commission to decide not to continue the hearing, reject the condition, and to choose to not place further conditions on the project at that time. In addition, Mr. Lippe incorrectly states that the Applicant stated "it would not agree to this revised mitigation measure" (Lippe letter, September 21, 2009, p. 6, ¶ 3). To the contrary, the Applicant indicated that it also was surprised and needed more time to consider whether it would or would not agree. Specifically, Mr. Rios, Wal-Mart's representative, stated that he was not able to commit to the berming that evening, but that if it was imposed as a requirement, "we will have to move forward and see if it is something we can afford." (Aug. 24th Transcript, p. 61, lines 10-24.) Finally, during the City Council hearing on September 21, 2009, co-counsel with Mr. Lippe, Keith Wagner, argued that CEQA required that all feasible mitigation measures must be imposed, and that failure to impose the berming as proposed by Commissioner Zuercher was in violation of CEQA. Mr. Wagner fails to take into account that the potentially significant impact contained within Impact 4.13-2, Substantial Degradation of the Visual Character or Quality of the Site and Surroundings (DEIR pp. 4.13-7 – 4.13-13, FEIR pp. 4-12 – 4-14.) already would be mitigated to less than significant by proposed Mitigation Measure 4.13-2, which required the submittal of a landscaping plan. Since the impact would be mitigated to a less than significant level through imposition of this measure, no further mitigation is required. That is why all of the Commissions, including Commissioner Zuercher, agreed that the appropriate context of the discussion was in connection with the site development permit rather than in connection with their discussion of the EIR, which they unanimously recommended for certification.

LIPPE GAFFNEY WAGNER LLP LETTER DATED SEPTEMBER 23, 2009

Response to Comment "1. Air Quality Impacts: Greenhouse Gases (GHG's) and Climate Change Impacts"

Responses to comments related to air quality and climate change are addressed under a separate memorandum prepared by Austin Kerr, Air Quality Specialist, with EDAW who prepared the air quality and global climate change analyses and in the DEIR and developed responses in the FEIR to comments related to air quality and climate change. Please refer to the Mr. Kerr's Memorandum dated September 28, 2009.

Response to Comment "2. 'New' Mitigation Measures from the Lyons Annexation EIR"

EDAW understands that city staff will be preparing a response to this issue.

Please do not hesitate to contact me if you have any questions or concerns related to the responses in this letter. Again, EDAW has reviewed all of the information received after the August 24, 2009 Planning Commission meeting and as described in the above responses, no changes are required to the DEIR or FEIR and recirculation of the DEIR is not required.

Sincerely,



Mike Parker
Associate/Environmental Planner

cc: 06110101.01 / Chron
Lippe Response Letter

September 27, 2009

Ms. Kim Espinosa
City of Merced
678 West 18th Street
Merced, CA 95340

Subject: Response to the September 15, 2009 letter from Smith Engineering to Lippe Gaffney Wagner LLP regarding the Wal-Mart Regional Distribution Center EIR P 06120-999

Dear Ms. Espinosa:

This letter responds to the September 15, 2009 letter submitted to Mr. Tom Lippe from Smith Engineering & Management (“Smith Letter”) providing comments on the methodologies underlying the traffic impact analysis (“TIA”) contained in the environmental impact report prepared for the Wal-Mart Distribution Center (SCH#2006071029) (“DC EIR”).

Each of the issues raised in the Smith Letter are responded to in kind below:

CEQA Guideline Section 15125(a)

The Smith Letter asserts that the TIA failed perform to what it calls an “existing plus project” scenario as allegedly required by CEQA Guideline section 15125(a) and instead prepared what the Smith Letter calls a “near term cumulative” analysis.

The methodology of determining significant traffic impacts used in the TIA prepared for the DC EIR (i.e., comparing a future year with and without the project trips) comports with the traffic impact analysis guidelines of the vast majority local transportation planning agency in the State, including by way of quick example, the California Department of Transportation (Caltrans), the Cities of American Canyon, Berkeley, Corona, Los Angeles, Murrieta, San Bernardino, Stockton, and Vallejo, and the Counties of Amador, Contra Costa and San Bernardino. Copies of these traffic impact analysis guidelines are attached to this letter for review (Attachment A). In my experience as a traffic engineer, this is the preferred methodology requested by lead agencies throughout the State.

Typical of these examples, is a succinct summary set forth in the Amador County Traffic Impact Study Guidelines, which set forth the methodology and analytical scenarios a traffic impact analysis should contain:

- Existing: Current year traffic volumes (this is the existing *without project condition*)
- Existing + Approved: Approved development traffic added to the Existing traffic volumes
- Existing + Approved + Project: Project traffic added to the Existing + Approved traffic volumes (this is an existing *with-project condition*)

The guidelines clearly state the Existing + Approved + Project is to be considered an existing with-project condition.

(Amador County Traffic Impact Study Guidelines, July 5, 2006, pp. 3 and 4.)

Another example is found in the City of Corona Traffic Study Guidelines, which requires the following scenarios to be analyzed:

- Existing Conditions
- Project Opening Year with Background Traffic
- Project Opening Year with Background Traffic and Proposed Project

(City of Corona Traffic Impact Study Guidelines, July 2006, Section 3.2, page3)

The City of Murrieta also requires a similar set of scenarios to be analyzed:

- Existing Conditions
- Existing + Near Term Cumulative Projects
- Existing + Near Term Cumulative Projects + Project

(Traffic Study Requirements for the City of Murrieta, page2)

As set forth in the EIR and in the previous response to the earlier comment provided by Mr. Smith, the traffic impact analysis prepared for the DC EIR complies with the City of Merced and County of Merced traffic impact analysis guidelines, both of which require precisely the analysis that was conducted in connection with the TIA. Indeed, the County of Merced Department of Public Works stated in its April 24, 2009 comment letter “[t]he County is in agreement with the assumptions and the methodology of the traffic study that was used to identify the proposed Project’s impacts to the local transportation system.”

These various analytical guidelines are prepared -- often after years of study -- by expert traffic engineers and transportation planning agencies who are charged with the responsibility of designing impact models that appropriately identify real world impacts so that various state, regional and local funding mechanisms actually coincide and work in

concert with the actual growth that requires improvements or modifications to the transportation networks.

The first and most fundamental reason these transportation experts have created traffic impact analytical models that require an analysis of what is often described as a “project build-out year plus project” scenario and not what the Smith Letter characterizes as a “baseline plus project traffic only” scenario is that the alleged “baseline plus project traffic only” scenario never materializes as an actual scenario in the real world.

The time period between the date a Notice of Preparation is issued and the date actual project build-out occurs can often be a period of years. Obviously, during this time period other projects are being constructed and built and traffic patterns are evolving. Thus, the “real world” impact conditions are properly ascertained by comparing a “project build-out year, no-project” scenario to a “project build-out year, plus project” scenario. The alleged “baseline plus project traffic only” scenario never materializes in real world conditions and thus does not accurately describe the environment that exists when the particular project actually comes on line and is operational. Conducting such an analysis would distort the actual true, real world conditions and impacts of a project’s traffic impacts and this is why the vast majority of expert transportation planning agencies have required precisely the type of analysis that was performed in this case.

Second, unlike perhaps other areas of CEQA inquiry (e.g., the construction of a building footprint where none currently exist in the context of a habitat corridor – where there is true utility to performing a “baseline plus project only” and cumulative analysis), in the context of traffic impacts that are derivative of a development project, traffic is virtually always a cumulative issue. By its very nature, traffic impacts are very fluid and are influenced by other growth and projects that are occurring within the network. Thus, again, conducting what the Smith Letter requests (a baseline plus project traffic only scenario) does not provide an accurate accounting of how the environment is actually affected at the time the project is operational.

Simply stated, because normal increases in traffic occur over time, background traffic levels that occur at the time the project is actually constructed are a more accurate representation of the existing baseline against which to measure the true impacts of the project.

In summary, the modeling requested by the Smith Letter is contrary to the requirements set forth in the multiple traffic impact analysis guidelines set forth above, contrary to common sense transportation planning, and serves no purpose because the analytical scenario requested by the Smith Letter simply does not occur in the real world.

Nevertheless, DKS conducted an analysis of study intersections under a hypothetical Existing plus Project scenario. The results are provided on the following pages (Table ES-1a), and indicate that there would be no new findings compared to the DEIR traffic analysis. When comparing the potential traffic conditions under an Existing plus Project Condition, none of the study intersections would be significantly impacted by the proposed project in

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either the AM or PM peak hour. All study intersections would continue to operate at an acceptable level of service in the near-term, which is consistent with the findings of the DEIR analysis. The Existing plus Project intersection level of service analysis is provided as Attachment B to this letter.

The response to the original comment that was provided in the FEIR Response to Comments document stated, in part:

The commenter's statement regarding a higher threshold of significance is speculative and cannot be affirmed without conducting an analysis to test the hypothesis; however, it should be noted that many of the study intersections and roadway segments are operating at LOS A, B or C under the Existing and Background Conditions, which may require a greater amount of traffic rather than less as implied by the commenter, to trigger an impact.

With the analysis provided in this letter of the Existing plus Project Condition, the response provided in the FEIR Response to Comment document regarding the commenter's hypothesis is thus reaffirmed as correct.

Table ES-1-A
AM Peak Hour Intersection Level of Service Summary

#	Intersection Name	Control ^a	Existing Delay ^b LOS ^c	2010 Background Condition Delay ^b LOS ^c	2010 Background plus Project Delay ^b LOS ^c	2010 Background Condition Delay ^b LOS ^c	Existing plus Project Delay ^b LOS ^c	Impact
1	SR 140 / Parsons Ave	Signalized	24.1 C	27.5 C	27.8 C	24.1 C	No	
2	SR 140 / Baker Drive	Unsignalized	1.8 C	9.4 E	10.0 E	1.9 C	No	
	SB Approach		18.8 C	40.2 E	43.2 E	19.3 C		
	EB Left		8.9 A	9.2 A	9.2 A	8.9 A		
3	SR 140 / Kibby Rd	Unsignalized	3.7 B	5.2 A	5.2 A	3.8 B	No	
	NB Approach		13.7 B	12.2 B	12.5 B	14.2 B		
	SB Approach		12.7 B	14.3 B	15.2 C	13.2 B		
	EB Left		7.8 A	7.8 A	7.9 A	7.8 A		
	WB Left		7.5 A	7.6 A	7.6 A	7.5 A		
4	Childs Ave / SR 99 SB Off-Ramp	AWSC	12.3 B	22.0 C	22.3 C	12.4 B	No	
5	Childs Ave / SR 99 NB Off-Ramp	AWSC	18.5 C	>50.0 ^e	>50.0 F	18.9 C	No	
6	Childs Ave / Parsons Ave	Signalized	33.8 C	46.4 D	46.6 D	33.7 C	No	
7	Childs Ave / Coffee St	AWSC	30.4 C	36.9 D	37.1 D	30.5 C	No	
8	Childs Ave / Kibby Rd	Unsignalized	3.2 A	4.2 A	4.2 A	3.2 A	No	
	SB Approach		9.4 A	9.9 A	9.9 A	9.4 A		
	EB Left		7.5 A	7.8 A	7.8 A	7.5 A		
9	Childs Ave / Tower Rd	Unsignalized	1.2 A	1.1 B	2.5 B	1.8 B	No	
	NB Approach		9.8 B	10.3 B	10.7 B	10.3 B		
	SB Approach		9.4 A	9.7 A	10.5 B	9.5 A		
	EB Left		7.4 A	7.5 A	7.5 A	7.4 A		
	WB Left		0.0 A	0.0 A	7.4 A	7.4 A		
10	Gerard Ave / Coffee St	AWSC	8.3 A	9.7 A	9.8 A	8.3 A	No	
11	Gerard Ave / Tower Rd	Unsignalized	6.9 A	6.9 A	6.9 A	6.9 A	No	
	SB Approach		6.5 A	6.5 A	6.5 A	6.5 A		
	EB Left		7.1 A	7.1 A	7.3 A	7.3 A		
12	Childs Ave / Campus Pkwy ^d	Unsignalized	-	3.4 A	3.4 A	6.1 A	No	
	NB Approach		-	9.3 A	9.3 A	8.7 A		
	WB Left		-	7.5 A	7.5 A	7.2 A		
13	Gerard Ave / Campus Pkwy	Signalized	-	23.4 C	30.6 C	31.0 C	No	
14	Mission Ave / SR 99 SB	Signalized	17.8 B	18.3 B	19.2 B	21.8 C	No	
15	Mission Ave / SR 99 NB	Signalized	24.1 C	29.8 C	27.9 C	23.9 C	No	
16	Mission Ave / Coffee St ^e	AWSC	8.1 A	28.5 C	28.8 C	23.5 C	No	

Source: DKS Associates, Inc. September 25, 2009.

^a Control: AWSC - All-Way Stop Controlled;
^b Delay: Intersection Average Delay (in seconds per vehicle). For unsignalized intersections, delays >50 are beyond the upper limits of LOS delay estimation equations under the HCM 2000 Methodologies. For two-way stop controlled intersections, the Level of Service (LOS) is based on the delay at the worst approach.
^c LOS: Level of Service
^d Intersection was not analyzed under the existing condition (intersection does not exist).
^e Intersection assumed to be signalized under the background and project scenarios.

Table ES-1-A PM Peak Hour Intersection Level of Service Summary												
#	Intersection Name	Control ^a	Existing Delay ^b	Existing LOS ^c	2010 Background Condition Delay ^b	2010 Background LOS ^c	2010 Background plus Project Delay ^b	2010 Background plus Project LOS ^c	Impact	Existing plus Project Condition Delay ^b	Existing plus Project LOS ^c	Impact
1	SR 140 / Parsons Ave	Signalized	24.4	C	47.9	D	49.9	D	No	24.6	C	No
2	SR 140 / Baker Drive	Unsignalized	2.3	C	13.9	F	15.3	F	No	2.5	C	No
	SB Approach		20.7	C	>50.0	F	>50.0	F		21.0	C	
	EB Left		8.2	A	9.2	A	9.2	A		8.3	A	
3	SR 140 / Kibby Rd	Unsignalized	2.3	B	4.7	B	4.5	C	No	2.2	A	No
	NB Approach		13.1	B	13.4	B	13.9	B		13.7	B	
	SB Approach		12.0	B	16.3	C	17.4	C		12.4	B	
	EB Left		7.6	A	7.7	A	7.8	A		7.7	A	
	WB Left		0.0	A	7.9	A	7.9	A				
4	Childs Ave / SR 99 SB Off-Ramp	AWSC	13.0	B	>50.0	F	>50.0	F	No	13.1	B	No
5	Childs Ave / SR 99 NB Off-Ramp	AWSC	18.1	C	>50.0	F	>50.0	F	No	18.6	C	No
6	Childs Ave / Parsons Ave	Signalized	32.0	C	43.1	D	43.3	D	No	32.2	C	No
7	Childs Ave / Coffee St	AWSC	22.8	C	33.1	C	34.2	C	No	25.8	C	No
	SB Approach	Unsignalized	2.0	A	4.2	B	4.2	B	No	2.0	A	No
	EB Left		9.2	A	10.1	B	10.1	B		9.2	A	
	WB Left		7.4	A	7.6	A	7.6	A		7.4	A	
9	Childs Ave / Tower Rd	Unsignalized	0.6	A	0.6	B	3.1	B	No	3.8	B	No
	NB Approach		9.6	A	10.4	B	11.7	B		10.6	B	
	SB Approach		9.6	A	9.5	A	10.6	B		10.1	B	
	EB Left		7.3	A	7.5	A	7.5	A		7.3	A	
	WB Left		0.0	A	0.0	A	7.5	A				
10	Gerard Ave / Coffee St	AWSC	7.1	A	8.4	A	8.5	A	No	7.3	A	No
11	Gerard Ave / Tower Rd	Unsignalized	6.9	A	6.9	A	7.4	A	No	7.6	A	No
	SB Approach		6.9	A	6.9	A	6.7	A		6.7	A	
	EB Left		7.0	A	7.0	A	7.6	A		7.1	A	
12	Childs Ave / Campus Pkwy ^d	Unsignalized	-	-	3.5	A	3.7	A	No	7.7	A	No
	NB Approach		-	-	9.8	A	10.0	A		8.6	A	
	WB Left		-	-	7.5	A	7.5	A		7.2	A	
13	Gerard Ave / Campus Pkwy	Signalized	-	-	23.3	C	34.9	C	No	37.3	D	No
14	Mission Ave / SR 99 SB	Signalized	17.6	B	13.6	B	15.3	B	No	23.0	C	No
15	Mission Ave / SR 99 NB	Signalized	18.6	B	28.5	C	34.6	C	No	21.9	C	No
16	Mission Ave / Coffee St ^e	AWSC	7.8	A	33.3	C	33.4	C	No	25.2	C	No

Source: DKS Associates, Inc., September 25, 2009.

^a Control: AWSC - All-Way Stop Controlled;

^b Delay: Intersection Average Delay (in seconds per vehicle). For unsignalized intersections, delays >50 are beyond the upper limits of LOS delay estimation equations under the HCM 2000 Methodologies. For two-way stop controlled intersections, the Level of Service (LOS) is based on the delay at the worst approach.

^c LOS: Level of Service

^d Intersection was not analyzed under the existing condition (intersection does not exist).

^e Intersection assumed to be signalized under the background and project scenarios.

Traffic Generation

The Smith letter misinterpreted the FEIR response regarding an average vehicle occupancy of 1.1 persons per vehicle. The traffic analysis is based on a trip generation survey of a similar facility, and thus by incorporation similar travel characteristics such as average vehicle occupancy were assumed. The Smith letter of September 15 attempts to introduce data regarding journey to work trips in Merced County that incorporates all types of employment under one category. The trip generation survey conducted at another Wal-Mart Regional Distribution Center of a similar size provides a much more realistic estimate of the potential trip behavior of the proposed project in Merced.

The trip generation forecast that was used in the traffic analysis was based on a survey of a similar facility in Apple Valley, CA, and was conducted in a manner and during a timeframe that was considered representative of typical conditions and appropriate for analysis. The number of trips from the trip generation survey at the Apple Valley site included all trip purposes (e.g., trucks, automobiles, deliveries, staff, and other trips associated with the facility). The surveys reflect the shift patterns of workers, the arrivals and departures during the morning and afternoon peak hours, and the average vehicle occupancy. The statements about using a "realistic 1.10 persons per vehicle" vehicle occupancy is noted as assumed by the commenter and speculative, for the reasons cited above. Also, the survey data was peer reviewed by an independent consultant and considered appropriate for use in the DEIR.

The Smith letter also misstated the FEIR response regarding trip generation being based on average typical conditions, by adding the words "over the course of the day" to the comment (page 5 of Smith letter, 9 lines from top of page). The DEIR analyzed the traffic peak hours of the day and not average typical conditions over the course of the day, and the FEIR response was speaking to typical conditions during the year as opposed to the "peak holiday shopping season peak" that the Smith letter refers to (page 5 of Smith letter, 11 lines from bottom of page). This was evident in the FEIR response by the referencing *that shopping malls are not surveyed at Christmas for their trip generation and parking characteristics as this represents the peak and not typical condition. Using peak conditions would overstate the potential impacts and their frequency of occurrence*

The Smith letter notes irrelevant information regarding wineries and stadiums and their peaking characteristics. Every land use has peaking characteristics. The letter also offers information regarding shopping center peaks. However, while the proposed distribution center would serve Wal-Mart stores all year round, it is not a retail store itself. Further, the number of trucks serving the Wal-Mart stores may or may not increase in proportion to sales. For example, a half full truck in the fall may be a full truck during a holiday season, but it is still one truck on the roadway. Regardless, it is industry standard practice that traffic analyses and trip generation surveys be based on weekday peak hour conditions that are reflective of typical conditions during the year, and not seasonal peak conditions. This is

to avoid overestimation of trips and design features such as parking stalls that would not be applicable over the course of a typical day during the year (in the case of a retail store, the typical condition would be the non-holiday period that exists 11 of 12 months each year). Again, the traffic analysis prepared for the EIR complies with methodologies that are used throughout the State to prepare traffic impact analyses and, in my professional judgment, the traffic analysis uses an appropriate methodology to determine potential traffic impacts.

Trip Distribution

The trip distribution patterns for autos and trucks would be different from one another, as noted in DEIR tables 4.11-13. The Smith letter takes the DEIR statement regarding trip distribution assumptions and the regional distribution of residences in Merced County and incorrectly applied it to truck trips as well as auto trips. The DEIR, however, also noted on page 4.11-21 that consultation with the City of Merced and Wal-Mart Stores, Inc. was also used in developing the projected trip distribution patterns. The Smith letter also assumes a speculative service area for the proposed distribution center that may not be accurate, as it would just as logical to assume that the other distribution centers may at some point alter their service areas. While this is not known at this time, the assumptions regarding the routing of trucks on local and regional roadways, and their hours of activity, were carefully reviewed prior to incorporation into the traffic analysis. In addition to City staff review, a comprehensive peer review of the traffic analysis was commissioned by the City of Merced and conducted by an independent consultant. The analysis assumptions and methodology was also confirmed by Merced County staff (see Comment letter 11, second paragraph).

The designated truck routes for Wal-Mart Distribution Center trucks, whether STAA routes or other routes approved by the City of Merced, would be defined as per Mitigation Measure 4-11-2b (a, b and c). The truck routing is based on the most logical routes to access SR 99, SR 140 and the regional roadway network. Truck routes are typically the shortest routes between a site and the regional roadway network, and that is the case here as well. The routes noted in Mitigation Measure 4.11-2b(c) are the routes that were assumed in the traffic analysis, are the logical truck route choices, and make the most sense to include in the truck route plan mitigation measure plan.

Goods that are brought to the Distribution Center would come from various sources. Traffic dissipates as it moves further from the source, and there is an increase in the number of available route choices. As such, the intersections and roadway segments that were analyzed were appropriately chosen as the ones most likely to be potentially impacted.

Based on the appropriate analysis scenarios and methodology, appropriate trip generation forecast, and the appropriate trip distribution patterns of the project auto and truck trips, all of which was peer reviewed and affirmed, the traffic analysis is a technically sound and reasonable forecast of potential project impacts.

Connection Between Traffic Study and Air Quality Study

As set forth in the responses prepared by EDAW and presented to the City Council on September 28, 2009, the air analysis contained in the EIR utilized the traffic study prepared for this EIR.

Sincerely,

DKS Associates
A California Corporation

Mark E. Spencer, P.E.
Principal
CA Registered Traffic Engineer #1737



Attachments:

- A. Traffic Impact Study Guidelines from Agencies throughout California
 1. Guide for the Preparation of Traffic Impact Studies, California Department of Transportation (Caltrans)
 2. Traffic Impact Study Guidelines, City of American Canyon
 3. Guidelines for Development of Traffic Impact Reports, City of Berkeley
 4. Traffic Impact Study Guidelines, City of Corona
 5. Traffic Study Policies and Procedures, City of Los Angeles
 6. Traffic Study Requirements, City of Murrieta
 7. Traffic Impact Study Guidelines, City of San Bernardino
 8. Traffic Impact Analysis Guidelines, City of Stockton
 9. Traffic Impact Analysis/Study Guidelines, City of Vallejo
 10. Traffic Impact Study Guidelines, County of Amador
 11. Technical Procedures Update, Traffic Impact Analysis Guidelines, County of Contra County (CCTA)
 12. Guidelines for CMP Traffic Impact Analysis Reports, County of San Bernardino
- B. Existing Plus Project Intersection Level of Service Analysis

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September 28, 2009

Kim Espinosa, Planning Manager
City of Merced Planning and Permitting
678 West 18th Street
Merced, CA 95340

Subject: Response to comments presented by Thomas N. Lippe in a letter dated September 18, 2009 on behalf of the Merced Alliance for Responsible Growth Regarding the Air Quality Impact Analysis and Mitigation for the Proposed Wal-Mart Regional Distribution Center, Final Environmental Impact Report, State Clearinghouse Number 2006071029

Dear Ms. Espinosa:

This letter is submitted in response to the Comments Regarding Air Quality Impact Analysis and Mitigation submitted by Mr. Thomas N. Lippe of Lippe Gaffney Wagner LLP and dated September 18, 2009. However, this letter first responds to those comments submitted in a letter by Greg Gilbert of AutumnWind Associates (AWA) dated September 14, 2009, which is included as Exhibit 1 to Mr. Lippe's letter and serves as the primary basis for Mr. Lippe's assertions. As set forth below, objections to the EIR stated by both Mr. Gilbert and Mr. Lippe are without merit.

RESPONSES TO COMMENTS BY FROM GREG GILBERT OF AUTUMN WIND ASSOCIATES

The following responses outline how Mr. Gilbert's objections to the air quality analysis in the EIR are without merit.

I. Introduction: History of the San Joaquin Valley Air Pollution Control District and Improvement of Air Quality in the San Joaquin Valley Air Basin

The Project area is within the jurisdiction of the San Joaquin Valley APCD (District or SJVAPCD). The SJVAPCD was unified by Senate Bill (SB) 124 (McCorquodale) in 1991. Prior to the creation of the SJVAPCD, air pollution in the San Joaquin Valley Air Basin (air basin) was regulated by eight separate county-based air pollution control districts within the air basin. The Legislature found that these separate county-controlled air pollution control districts were ineffectual in regulating air pollution within the air basin due to the fact that the multiple counties failed to coordinate air quality management planning efforts, and the cumulative impacts of agricultural practices and urbanization on air quality were not being studied by a single regulatory body. To this end, in SB 124, the Legislature declared an urgent statewide need "for a basinwide approach to the air pollution problems of the San Joaquin Valley" (Stats. of 1991, Ch. 1200, P. 5049). By enacting SB 124 and creating the unified air district known as the SJVAPCD, the Legislature created a regulatory body with the capability of being able to fully analyze, understand, and regulate air quality on a basin-wide level. The SJVAPCD is charged with regulating and planning for air quality emission reductions for the entire air basin, which consists of the counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare. The SJVAPCD drafts basin-wide air quality management plans, adopts basin-wide regulatory policies and rules, plans for the accommodation of future economic and population growth and related cumulative attainment of basin-wide air quality goals, including the California Ambient Air Quality Standards (CAAQS) and the

National Ambient Air Quality Standards (NAAQS), and provides guidance for assessing air quality-related impacts in environmental impact reports and other environmental assessments prepared under CEQA for projects proposed in the air basin .

Contrary to AWA's assertion that the thresholds of significance set by the District "have been largely ineffective" in reducing air pollution, the facts show that since its creation 18 years ago, the SJVAPCD has demonstrated a strong regulatory track record of assisting in the reduction of air pollution in the air basin. In fact, as a result of the District's successful efforts to reduce particulate matter emissions, on September 25, 2008, the U.S. EPA redesignated the San Joaquin Valley to attainment for the PM10 National Ambient Air Quality Standard (NAAQS) and approved the PM10 Maintenance Plan. Moreover, while the Valley has yet to attain compliance with certain other standards, the District has been successful in reducing emissions of other pollutants of concern, demonstrating that its plans for achieving attainment are sound. According to the California Air Resources Board 2009 Almanac ("2009 Almanac"), annual average PM2.5 emissions in the Valley decreased by more than 14% between 1990 and 2005 (2009 Almanac, Table 4-27.) Decreases in ozone precursor emissions during the same period of time were even more dramatic, with NOx emissions decreasing by more than 28% and ROG emissions decreasing by more than 37% (2009 Almanac, Table 4-27.) As the District itself has noted, "[t]hese reductions represent an impressive accomplishment, especially in light of the 37% increase in population in the San Joaquin Valley over the same time period." (2007 Ozone Plan, p. 1-3.)

Since it was formed in 1992, the District has adopted approximately 500 rules and rule amendments. (2007 Ozone Plan, p. 1-1.) As stated Section 4.2.4, "Regulatory Setting" of the EIR, the clean air strategy of the SJVAPCD includes the preparation of plans and programs for the attainment of ambient air quality standards, adoption and enforcement of rules and regulations, and issuance of permits for stationary sources. Thus, the City understands that the SJVAPCD is not relying solely on its recommended CEQA thresholds of significance to bring the air basin into attainment of the CAAQS and NAAQS. Moreover, the City understands that SJVAPCD's recommended thresholds of significance were not developed for the purpose of reducing emissions in the air basin to the extent that the air basin would attain the CAAQS and NAAQS. The air quality problems in the air basin would persist even if no new emissions-generating developed occurred in the air basin, and no other strategies or programs were implemented to address existing emission sources in the air basin.

As discussed in further detail below, the District's efforts include an innovative indirect source rule, known as Rule 9510, which the District adopted in 2005, and which is specifically designed to "[p]rovide a mechanism for reducing emissions from the construction of and use of development projects" like the one at hand and to "[f]ulfill the District's emission reduction commitments in the PM10 and Ozone Attainment Plans." (Rule 9510.)

Pursuant to the SJVAPCD's PM10 Plan, and pursuant to SB 709 (Florez), in December 2005, the SJVAPCD adopted Rule 9510 - Indirect Source Review (ISR) and the accompanying administrative fee rule (Rule 3180). ISR requires certain development projects within the air basin to reduce emissions by specified amounts either through on-site measures or through the payment of air quality impact fees to the SJVAPCD to obtain emission reductions off-site. The emission reduction requirements are designed to reduce PM10 and NOx by amounts needed to meet the commitments of the 2003 PM10 Plan necessary to achieve attainment on schedule. Emission reduction projects envisioned by ISR include retrofitting heavy-duty engines, replacing agricultural machinery and pumps, paving unpaved roads and road shoulders, replacing internal combustion-based lawn and agricultural equipment for electrical and other equipment (e.g., irrigation and well pumps), as well as a host of other projects that result in quantifiable emission reductions of PM10 and NOx.

In addition to helping reduce PM10 emissions, “[e]mission reductions from Rule 9510 are also important for attaining state and federal ozone standards.” (Final Draft Staff Report for Rule 9510 and Rule 3180 (“9510 Staff Report”), p. 2.) As explained by the District before the rule was adopted:

Proposed Rule 9510 would require applicants to reduce NOx and PM10 emissions. The rule is designed to reduce the impact of the development projects to the extent needed for the District to reach attainment of ozone and PM10 standards. The District calculated the level of reduction needed on a per-project basis that would achieve the emission reduction committed to in the PM10 and ozone attainment plans. (9510 Staff Report, p. 12.)

It should also be noted that, in accordance with the Mitigation Measures set forth in the FEIR, the project will be entering into an Emissions Reduction Agreement (ERA) with the SJVAPCD. The ERA is one of the most state-of-the-art design features/mitigation measures that is utilized by the SJVAPCD to mitigate the air quality impacts of a particular project. The SJVAPCD has repeatedly stated that the use of Rule 9510 and the ERAs are the mechanisms by which PM, ROG and NOX will continue to be reduced in the air basin. The SJVAPCD has had a successful track record of implementing ERAs in the past, and has used such ERAs to reduce ROG and NOX emissions for the Tejon Ranch Industrial Project in Kern County, and various Castle & Cooke development projects also in Kern County. In fact, in *Center for Biological Diversity v. County of Kern* (Case No. F050685) the Fifth District Court of Appeal upheld the use of ERA and an adequate mitigation/design feature to mitigate a project’s air quality impacts. Here, compliance with Rule 9510 and the entering into an ERA with the SJVAPCD will mitigate the project’s emissions of ROG, and NOX, and PM10 to a less-than-significant level.

Furthermore, as noted above, the District has adopted attainment plans designed to achieve attainment with all criteria pollutants with which is currently not in attainment. These plans include an Extreme 1-hour Ozone Attainment Plan, which EPA proposed to adopt on October 16, 2008, an 8-hour Ozone Plan approved by the District in 2007 (and referenced in AWA’s comments), and a PM2.5 Plan adopted by the District in 2008, which indicates that all areas of the air basin will attain PM2.5 standards by 2014 (with many areas attaining such standards sooner). (2008 PM2.5 Plan, p. 3-5.) The effectiveness of such plans is demonstrated by the District’s PM10 Plan, which achieved compliance with the NAAQS more than three years ahead of schedule. (2007 PM10 Maintenance Plan and Request for Redesignation, pp. 3, 22.)

II. AWA’s Claim That the District’s Air Quality Significance Thresholds Are Flawed and Outdated Is Specious

As discussed above, the District is the expert agency charged with regulating and planning for air quality emission reductions for the entire air basin. In order to give guidance to persons responsible for preparing environmental review documents, the District has created a Guide for Assessing and Mitigating Air Quality Impacts (GAMAQI), which provides Lead Agencies, consultants, and project applicants with uniform procedures for addressing air quality in environmental documents. While AWA disparages the document by referring to it as “outdated” and claiming it is “twenty-year old,” the GAMAQI itself indicates it was updated in 2002. (See GAMAQI, title page.)¹

AWA wrongly claims that the fact that the District has not yet attained compliance with some air quality criteria is “substantial evidence” that the thresholds “have been largely ineffective” (AWA, p. 5). However, this argument ignores the fact, discussed above, that the District has been successful in

¹ According to the District’s website, the District is in the process of updating several areas of the GAMAQI, with such update scheduled to be completed in Fall 2009.
(http://www.valleyair.org/transportation/ceqa_guidance_documents.htm.)

significantly reducing emissions over the past twenty years, despite the appreciable population increase during the same period of time. Moreover, it ignores the current attainment plans adopted by the District, which set a clear path to achieving attainment status for ozone and particulates.

AWA is also wrong in attempting to characterize the thresholds as "stationary source emission thresholds" which cannot properly be applied to projects involving "mobile source emissions" (AWA, pp. 5-7). Contrary to AWA's claim that the Thresholds of Significance contained in the GAMAQI were merely "carried across" from federal New Source Review regulations applicable to stationary sources (AWA, p. 6), the GAMAQI explains that the Thresholds of Significance contained in the GAMAQI are based on the CEQA Guidelines' definitions of "significant effect on the environment," as well as the Air Quality Section of Appendix G of the CEQA Guidelines, which contains a list of effects that may be deemed potentially significant (GAMAQI, p. 21). The thresholds have been determined by the District to be "based on scientific and factual data," and are recommended by the District "to be used by Lead Agencies in making a determination of significance" (GAMAQI, p. 22). Furthermore, the GAMAQI explicitly contemplates that such thresholds are to be used for projects which include mobile-source emissions, noting that for many projects "indirect sources" including "motor vehicles traveling to and from the projects represent the primary source of air pollution emissions," and requiring that "[b]oth direct and indirect emissions should be included when determining whether [a] project exceeds [the] thresholds" (GAMAQI, p. 25). Consequently, the Thresholds of Significance relied upon in the FEIR were specifically designed by the District to be used in CEQA analysis, were intended to be used for projects, like the Project, involving emissions from mobile sources. AWA insinuations to the contrary are baseless.

In summary, in its September 14, 2009 letter, AWA claims that the thresholds of significance set forth in the GAMAQI were improperly relied upon by the City here because: (i) the SJVAPCD has been utilizing these thresholds for a long period of time and (ii) the air quality has not improved. Therefore, AWA asserts, the thresholds of significance set forth in the GAMAQI are improperly assessing cumulative impacts.

The above-referenced material (all of which is attached to this letter) demonstrates that, contrary to AWA's assertions (i) air quality in the air basin has improved in the years following the unification of the air basin, and (ii) the use of the thresholds of significance have obviously not impeded but have been part of the continual improvement of the air quality within the air basin. Thus, the City was correct to choose to utilize the thresholds of significance recommended by a trustee agency such as the District. Air quality has improved during the past 20 years in the air basin and this is a result of the District's management of the air basin, including the recommended use of the thresholds of significance set forth in the GAMAQI.

Moreover, no individual city in the air basin should be responsible for planning the air basin-wide issue of regional ozone levels. It is reasonable that the thresholds of significance applied to emissions of ozone precursors and PM10 be provided by the agency that is responsible for air quality planning in the air basin, which is the District. In deciding to use the District's recommended thresholds, the City also considered the fact that these thresholds of significance have been applied in the CEQA documentation for other projects located in the air basin. In fact, the City is not aware of any CEQA documents in which the District's recommended thresholds of significance were not applied for the assessment of proposed projects in the air basin for which a local county or city the lead agency.

III. There are No Conflicts in Applying the District-Recommended CEQA Thresholds in the FEIR

AWA essentially repeats the same arguments refuted above under the heading "Conflicts Between Air Quality CEQA Thresholds Used In EIR" (AWA, pp. 7-9). AWA again argues that the GAMAQI cannot properly be relied upon because it is supposedly "outdated" and "poorly designed" (AWA, p. 8). But as

noted above, the GAMAQI was updated in 2002, and was specifically designed, "based on scientific and factual data," by an expert agency to apply to projects like the proposed distribution center (GAMAQI, p. 22). The fact that the District is currently updating the GAMAQI again does not mean its current version is "outdated" and cannot properly be relied upon. Indeed, the District's website does not indicate which portions of the GAMAQI will be revised, and AWA has not presented any evidence suggesting that the Thresholds of Significance contained in the GAMAQI are likely to change once the update is complete. (See http://www.valleyair.org/transportation/ceqa_guidance_documents.htm.) For instance, the Sacramento Metropolitan Air Quality Management District just released a draft version of its revised CEQA guidance which does not include any changes to its recommended thresholds of significance. (See <http://www.airquality.org/ceqa/ceqaguideupdate.shtml>.)

AWA quotes a portion of the District's 2007 Ozone Plan which states that achieving the NO_x emission reductions necessary to bring the air basin into attainment for ozone "will be a daunting task," and goes on to argue that the District should have adopted lower air quality thresholds to help achieve that task (AWA, p. 8). However, AWA's comment ignores the fact that the 2007 Ozone Plan sets forth a detailed plan for achieving attainment status and for reducing NO_x emissions by 75% by 2023 (2007 Ozone Plan, pp. ES-2, 4-2). AWA also ignores the fact that the District has been successful in substantially reducing emission of ozone precursors since its formation, and continues to adopt new rules, like Rule 9510, designed to further reduce ozone. The District has had a plan for reducing ozone which is effective, and which is consistent with the guidance set forth in the GAMAQI.

It shall also be noted that the proposed project is consistent with the land use zoning established in the Merced Vision 2015 General Plan, which was adopted in 1997, and therefore the development and operation of an industrial land use at the proposed project site was accounted for by the District when it formulated in SJVAPCD's air quality plans, including the District's 2007 Ozone Plan and 2008 PM_{2.5} Plan. Thus, again, the City properly determined to rely on the SJVAPCD's thresholds of significance.

IV. The Thresholds Used in the EIR Are Not Required to Include NSR Offset Requirement

AWA further argues that the Thresholds of Significance set in the GAMAQI are improper because "offsets were not included with the tons-per-year ROG and NO_x CEQA thresholds." Offsets are required under state and federal law as a part of the District's New Source Review program, which is applicable to new and modified stationary sources (See Rule 2201). However, there is no requirement that CEQA thresholds include offsets. The District recommends using the thresholds of significance to determine whether the ozone precursor emissions generated by a proposed project would have the potential to obstruct with air quality planning efforts for the air basin.

The sole basis for AWA's claim that the CEQA thresholds utilized in the EIR should include offsets is its assertion that such thresholds are merely "carried across" from New Source Review regulations (AWA, pp. 6, 9). However, as discussed above, the GAMAQI explains that the Thresholds of Significance contained in the GAMAQI were developed in accordance with the CEQA Guidelines and are "based on scientific and factual data" (GAMAQI, pp. 21, 22). The GAMAQI further indicates that such thresholds were designed to be used for projects which would generate motor vehicle trips and associated mobile-source emissions (GAMAQI, p. 25). Thus, there is no basis for AWA's claim that the Thresholds of Significance are really New Source Review regulations, and thus, no basis for its assertion that such thresholds include offset requirements.

While offsets are not required, the Project would comply with Rule 9510, which as discussed above, was "designed to reduce the impact of the development projects to the extent needed for the District to reach attainment of ozone and PM₁₀ standards" (9510 Staff Report, p. 12; EIR; Mitigation Measure 4.2-1a; Mitigation Measure 4.2-2a.) "The District calculated the level of reduction needed on a per-project basis that would achieve the emission reduction committed to in the PM₁₀ and ozone attainment plans," and Rule 9510 ensures that these reductions are realized on a project by project basis (9510 Staff

Report, p. 12). In addition, by implementation of Mitigation Measure 4.2-1c and Mitigation Measure 4.2-2e (the ERA), the project would agree to reduce net ROG and NOx emissions to less than 10 TPY and net PM10 emissions to less than 15 TPY.

Again, compliance with Rule 9510 and the entering into an ERA with the SJVAPCD will mitigate the project's emissions of ROG, NOx, and PM10 to a less-than-significant level.

V. The Thresholds Used in the EIR Are Not Required to Include BACT Requirement

AWA's argument that "BACT should have been included as a component of the CEQA ROG and NOx operational thresholds" is likewise flawed, because, like AWA's argument that the thresholds should include offsets, it is based on the incorrect assumption that the Thresholds of Significance are really New Source Review regulations. As explained above, they are not; thus, there is no basis for this position. BACT applies only to stationary sources, i.e. point sources of criteria pollutants such as power plants, factories, and refineries.

CARB has also adopted increasing strict regulations which apply to diesel trucks and which require more efficient diesel engines and cleaner burning fuels (See, e.g., <http://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm>). The trucks serving the new facility will of course be required to comply with these regulations requiring the use of advanced technology to reduce emissions. These standards will apply to both Wal-Mart-owned trucks and non-Wal-Mart trucks driven to and from the proposed project.

VI. The Thresholds Are Not Tied to Stationary Sources

AWA argues that reliance on the Thresholds of Significance set in the GAMAQI does not satisfy the CEQA requirement that a project's impacts be analyzed "in full environmental context." Once again, this argument is based on the flawed assumption that the Thresholds of Significance are designed to apply to stationary sources, rather than mobile sources.

As discussed above, the Thresholds of Significance contained in the GAMAQI were specifically designed for assessing projects that would generate mobile vehicle emissions, and are "based on scientific and factual data" (GAMAQI, pp. 21, 22, 25). Moreover, AWA's assertion that the GAMAQI fails to consider the "environmental context" in which the thresholds are to be used is incorrect. The GAMAQI includes a separate "Technical Document," also updated in 2002, which discusses the environmental characteristics of the air basin, including its topography and climate, in detail (GAMAQI, Technical Document, Section 1). The document likewise contains a thorough discussion of the particular air quality challenges faced by the air basin (GAMAQI, Technical Document, Section 3). Thus, the assertion that the GAMAQI does not take "environmental context" into consideration is unfounded.

Ironically, after repeatedly criticizing the GAMAQI ozone precursor (i.e. ROG and NOx) thresholds for failing to attain basin-wide air quality goals, AWA next inconsistently argues that the thresholds are flawed expressly because they are designed to achieve "basin-wide attainment under federal and state mandates not connected with CEQA," i.e. because they are supposedly not designed to address "local environmental impacts." But as discussed above, effective air quality regulation requires a basin-wide approach; this is precisely why the District was formed in 1992 (Stats. of 1991, Ch. 1200, P. 5049). Moreover, this is particularly true for ozone. As explained in the GAMAQI Technical Document, "Ozone is a regional air pollutant. It is generated over a large area and is transported and spread by wind" (GAMAQI Technical Document, p. 21). Ozone is also a secondary pollutant because it is formed by photochemical reactions between reactive organic gases (ROGs) and oxides of nitrogen (NOx). Thus, AWA's claim that different areas of the Valley should have different thresholds of significance for ozone precursors is unsound.

VII. The EIR's Cumulative Impact Analysis of Ozone Precursors Is Correct

AWA argues that the EIR's cumulative impact analysis is flawed, claiming that the fact that emission from the Project will be reduced below the Thresholds of Significance for ROG and NO_x identified in the GAMAQI does not mean that the Project will not have significant cumulative impacts. But as noted in the EIR and confirmed in the GAMAQI, "[a]ll but the largest individual sources emit ROG and NO_x in amounts too small to have a measurable effect on ambient ozone concentrations by themselves" (GAMAQI, p. 53, as cited in the EIR, p. 6-4). It is only "when sources throughout the region are combined" that ozone problems result (EIR, p. 6-4; GAMAQI, p. 53). For this reason, the Thresholds of Significance for ozone precursors in the GAMAQI were designed with the cumulative context in mind. The GAMAQI specifically instructs that the Lead Agencies should "determine if ROG or NO_x emissions exceed SJVAPCD thresholds" in order to determine whether a project's contribution to the cumulative ozone impact in the air basin would be cumulatively considerable (GAMAQI, p. 53). Thus, the EIR properly relied upon the thresholds set forth in the GAMAQI in analyzing the Project's cumulative ozone impacts.

VIII. The EIR Properly Considered Emissions Throughout the Air Basin in the Cumulative Air Quality Impact Analysis

AWA argues that the list of cumulative projects "considered by City staff to be potentially significant cumulatively to the environmental review" of the Project is incomplete, as it only lists developments "in relatively close proximity to the Wal-Mart site," and specifically, because it fails to list an intermodal inland port project at Crow's Landing, approximately "fifty miles" away from the Project (AWA, p. 15). However, this criticism is based upon a misunderstanding of the cumulative impacts methodology utilized in the EIR. As explained in the Response to Comments on the DEIR, "the scope of the cumulative impact analysis is not limited by the list of projects in Table 6-1 of the DEIR, and is different for each of the various environmental topic areas" (Comments and Responses to Comments on the DEIR, p. 3-5). "The scope of analysis for cumulative air quality impacts reasonably includes emissions from numerous sources in the region because air quality impacts are regional in nature (page 6-4 of the DEIR), and is not limited to the emissions from the projects listed in Table 6-1 presented on page 6-2" (Comments and Responses to Comments on the DEIR, p. 3-6). Moreover, as discussed above, the thresholds identified in the GAMAQI are specifically intended to identify projects which would result in a considerable contribution to significant cumulative impacts (GAMAQI, p. 53). Thus, the EIR properly considered the cumulative impacts of other projects in the region and properly determined whether emissions related to the project would be cumulatively considerable.

IX. The Construction Emissions Model Used For the EIR Was Not Outdated

AWA argues that the Urbemis2007, version 9.2.4 should have been used to calculate construction emissions, rather than version 9.2.2, because "Version 9.2.2 is known to contain bugs affecting the accuracy of construction emission calculations" (AWA, p. 16). However, AWA provided no specific details concerning why the calculations of construction-generated emissions by version 9.2.4 would be different than those generated by 9.2.2. This claim is not supported by the list of "Issues Resolved and Enhancements Added to URBEMIS2007 Version 9.2.4," which can be found at www.urbemis.com. The only difference between version 9.2.2 and 9.2.4 of the model that pertains to construction emission calculations is that version 9.2.4 contains a utility for creating Named Equipment Lists. A Named Equipment List is a file that lists individual pieces of construction equipment that can be assigned to a project's construction phase. A Named Equipment List is used when detailed information about the types and numbers of construction equipment that would be used in a particular project construction are known at the time the analysis is performed. However, as stated in section 4.2.3, "Environmental Impacts" of the FEIR (page 4-50), modeling was based on SJVAPCD-recommended parameters for composition of the construction equipment fleet (SJVAPCD 2007a, 2007b) that are contained in the default parameters of URBEMIS. In addition, all other changes captured in version 9.2.4 of URBEMIS would not influence the model's calculations of construction-generated emissions. Thus, no substantial

difference would result from the use of the URBEMIS model requested by the commentator. The constructions emissions contained in the FEIR were properly calculated.

X. The EIR Properly Considered Emission Impacts Relevant to State Clean Air Act Requirements

AWA argues that the EIR fails to evaluate the Project's impacts to attainment of California Ambient Air Quality Standards ("CAAQS"). (AWA, p. 16.) In fact, however, the EIR does address CAAQSs, and specifically notes that emissions would be considered to result in significant air quality impacts if they "substantially contribute to a violation of the NAAQS and/or CAAQS." (See EIR §§ 4.2.14, 4.2.27, Table 4.2.3.) Moreover, the GAMAQI indicates that the same criteria, i.e. the level of mass emissions which would "[v]iolate any air quality standard or contribute substantially to an existing or projected air quality violation," was utilized in developing the Thresholds of Significance contained therein. Thus, it was appropriate for the EIR to use the Thresholds of Significance contained in the GAMAQI in analyzing the Project's impact on the attainment of CAAQS and NAAQS.

Furthermore, while the air basin has yet to achieve attainment with some CAAQS and NAAQS, the District has made significant progress in reducing air pollutant concentrations in the air basin, and continues to make progress. Annual average PM2.5 emissions in the Valley decreased by more than 14% between 1990 and 2005. (2009 Almanac, Table 4-27.) PM10 emissions have also decreased by more than 14%. NOx emissions during the same period of time have decreased by more than 28% and ROG emissions have decreased by more than 37%. (2009 Almanac, Table 4-27.) The bottom line is that the numerous rules and policies adopted by the District, including the Thresholds of Significance contained in the GAMAQI, are working, and will lead to attainment of all applicable CAAQS and NAAQS.

RESPONSES TO COMMENTS BY FROM THOMAS N. LIPPE OF LIPPE GAFFNEY WAGNER LLP

The following responses outline how Mr. Lippe's objections to the air quality analysis in the EIR are without merit.

1a. Application of SJVAPCD's Thresholds of Significance Ozone Precursors is Acceptable

Mr. Lippe states that the Merced Alliance for Responsible Growth (Alliance) previously commented that the EIR's reliance on the San Joaquin Valley Air Pollution Control District's (SJVAPCD) thresholds of significance for determining the significance of both project-level and cumulative ozone pollution impacts was illegal, and that this comment was not addressed by Master Response 13 in the FEIR. It shall be noted that the following explanation is included in Master Response 13 in the FEIR:

SJVAPCD's CEQA thresholds of significance (i.e., 10 tons per year [TPY] of reactive organic gases (ROG) and oxides of nitrogen (NOx) (which are precursors to secondary pollutant formation of ozone [a CAP for which the air basin is in nonattainment]) and 15 TPY of PM10) are designed to limit emissions from new development to a level that would be consistent with attainment planning efforts (i.e., accounted for in emissions inventory projections for the air basin.

In other words, SJVAPCD undergoes multiple efforts to reduce emissions in the air basin to attain the CAAQS and NAAQS. Among the myriad efforts is establishing mass emission threshold for evaluating emissions of ROG, NOX, and PM10 associated with land use development projects subject to CEQA. SJVAPCD has not determined that no additional development shall occur in the air basin or that emissions of ozone precursors associated with new development in the air basin should be prevented in order to attain the CAAQS and NAAQS for ozone.

As stated in the response to comment III above, it shall also be noted that the proposes project is consistent with the land use zoning established in the Merced Vision 2015 General Plan, which was

adopted in 1997, and therefore the development and operation of an industrial land use at the proposed project site was accounted for by the District when it formulated in SJVAPCD's air quality plans, including the District's 2007 Ozone Plan and 2008 PM2.5 Plan.

Please also refer to response to comment II above for additional detail.

1b. The Significance Determination for Project-Level ROG and NOX Impacts is Legal and Well-Substantiated

First, Mr. Lippe states that the DEIR uses SJVAPCD's mass emission thresholds uncritically, without any factual analysis of its own, and second, that the City's use of SJVAPCD's recommended thresholds represents a failure of the City to exercise its independent judgment in preparing the EIR. Please refer to response to comments I and II above.

In addition, Mr. Lippe states that compliance with other regulatory standards cannot be used under CEQA as a basis for finding that a project's effects are less than significant, nor can it substitute for a fact-based analysis of those effects. Mr. Lippe does not provide any details about how the City might allegedly be doing so in the EIR. This City applied the thresholds of significance recommended by SJVAPCD to conduct its analysis of air quality impacts in the EIR. In no way, does the City suggest that SJVAPCD's recommended thresholds of significance are regulatory standards.

Mr. Lippe states that the DEIR's reliance on Appendix G of the CEQA Guidelines for permission to use the District's threshold of significance is misplaced because the CEQA Guidelines cannot authorize a violation of CEQA itself. Please refer to response to comment 5-7 in the FEIR. In addition, Mr. Lippe's argument is based on the notion that SJVAPCD's recommended thresholds of significance for evaluating ozone precursor emissions is inappropriate. However, the City's legitimate application of these thresholds of significance is discussed above.

Mr. Lippe states that SJVAPCD's recommended thresholds of significance for ozone precursors and PM10 reflect the regulatory framework of the Clean Air Act, which is different in fundamental respects than the regulatory framework of CEQA. However, while this may be true, this does not preclude the City from applying SJVAPCD's recommended thresholds of significance in the air quality impact analysis of the EIR. More discussion about this topic is presented in response to comment 1c below.

Mr. Lippe states that SJVAPCD's 10 TPY standard is wholly arbitrary because different regulatory standards apply to similar projects in other Clean Air Act regulatory programs. As stated above the City determined that it was appropriate to apply SJVAPCD's recommended thresholds of significance for evaluating ozone precursor emissions associated with the proposed project. The City recognizes that the 10 TPY standard is also used by SJVAPCD in Clean Air Act regulatory programs that apply to stationary sources.

1c. Difference among Methods and Consequences of Regulation under the Clean Air Act and CEQA

Mr. Lippe states that "borrowing [SJVAPCD's] 10 TPY criterion is inappropriate because this criterion was established by the [SJVAPCD] to implement entirely different statutes – the federal and state Clean Air Acts – which have different goals and different regulatory schemes than CEQA" and provides a summary of SJVAPCD's approach to regulating stationary sources of ozone precursors and PM10. Mr. Lippe further states that "while criteria of significance developed by [SJVAPCD] for purposes of moving [SJVAPCD] as a whole to attainment at some distant time in the future may be appropriate to a regulatory scheme... , such criteria of significance cannot simply be uncritically imported into CEQA, because regulation under CEQA is fundamentally different." The City did not apply the 10 TPY criterion to its evaluation of ozone precursors in the EIR because this same criterion is used in SJVAPCD's regulatory programs for stationary sources. Rather, the City used the 10 TPY criteria to evaluate ozone

precursor emissions associated with the proposed project because these are the thresholds of significance recommended in SJVAPCD's GAMAQI and, as stated in response to comment II above, page 22 of the GAMAQI states that "the SJVAPCD resolves that significance thresholds established herein are based on scientific and factual data." The GAMAQI does not state that SJVAPCD's recommended thresholds are based on its regulatory programs that address the federal and state Clean Air Acts. In no way, does the City suggest that SJVAPCD's recommended thresholds of significance are regulatory standards or that they are the only means by which SJVAPCD intends to reduce mass emissions of ozone precursors in the air basin such that the air basin will be brought into attainment. Instead, the City understands that the mass emissions thresholds of significance for ozone precursors (and PM10) are used to determine whether a proposed project would conflict with or obstruct implementation of the applicable air quality plan or violate any air quality standard or contribute substantially to an existing or projected air quality violation.

Please also refer to response to comment III above.

1d. Impacts of Ozone on Human Health are Addressed

Mr. Lippe provides a literature review about ozone-related health hazards and the ozone levels in Merced. The City acknowledges that the literature characterizing ozone-related health effects is extensive. The adverse health effects associated with exposure to ozone are also summarized on page 4-27 of the FEIR.

1e. The Significance Determination for Cumulative Impacts Related to Ozone is Legal and Well-Substantiated

Mr. Lippe then states that "under any reasonable application of the definition of cumulative impacts, adding up to 10 TPY of these ozone precursors to such extremely degraded existing conditions constitutes a significant cumulative impact." This reasoning is misleading, however, because it fails to acknowledge all of SJVAPCD's efforts to reduce ozone levels in the air basin, including various regulations, permitting programs, and emissions reporting requirements. By recommending that 10 TPY be used as the thresholds of significance for ozone precursors in the GAMAQI, SJVAPCD has determined that individual projects that do not generate more than 10 TPY of NOx or ROG do not result in the any of the following:

- conflict with or obstruct implementation of the applicable air quality plan,
- violate any air quality standard or contribute substantially to an existing or projected air quality violation, and
- result in a cumulatively considerable net increase of any criteria pollutant for which the project region is nonattainment under an applicable NAAQS or CAAQS (including releasing emissions which exceed quantitative thresholds for ozone precursors).

With regard to the evaluation of ozone precursors, the GAMAQI states that "what is more important for determining ozone impacts is a project's contribution to existing violations of the ozone standard in the [air basin]. By comparing a project's ozone precursor emissions with emission levels considered important under state law, this impact can be evaluated." It is clear that the combined or cumulative effect of ozone precursor emissions from all past, present, and reasonably foreseeable emissions constitute a significance impact. Thus, the SJVAPCD focuses on the extent to which an individual project contributes to this adverse effect and the 10 TPY threshold of significance is used to determine whether a project's contribution of NOX and ROG emissions is cumulatively considerable by potentially conflicting with air quality planning efforts for the air basin. Therefore, the 10 TPY thresholds of significance for NOX and ROG emissions is used for both the project-level analysis and the cumulative

impact analysis. Air basin-wide air quality planning to improve region-wide ozone levels is inherently a cumulative issue.

Mr. Lippe disputes the claim that project-level thresholds of significance should be used to determine whether a project's emissions are cumulatively considerable, in part, through a specious interpretation of guidance in the GAMAQI concerning "evaluating of cumulative ozone impacts" on page 53 of the GAMAQI. As quoted in Mr. Lippe's letter the GAMAQI states that "Lead Agencies should use the quantification methods described in Section 4 to determine if ROG or NOX emissions exceed SJVAPCD thresholds." Mr. Lippe contends that this is a misprint and the GAMAQI intends to refer the reader to Section 5. However, Mr. Lippe provides no evidence to substantiate that this particular text is a misprint. The City does not share in this interpretation because, given that the sentence is located in Section 5 of the GAMAQI, it is unlikely that a statement in Section 5 would refer the reader to Section 5.

In summary, the DEIR uses the threshold of significance of 10 TPY for ROG and NOx to determine whether emissions of ROG and NOX associated with the project are cumulatively considerable. This is also explained in response to comment 5-7 of the FEIR.

1f. The Significance Determination for Impacts Related to Diesel Particulate Matter and other Toxic Air Contaminants is Legal and Well-Substantiated

Mr. Lippe questions why the increases in cancer risk at nearby receptors is not considered a significant cumulative impact given that background levels of cancer risk associated with existing emissions of diesel particulate matter (diesel PM) are 390 in a million in the air basin. As stated in the DEIR, the threshold of significance regarding cancer risk from emissions of toxic air contaminants (TACs) is whether implementation of the proposed project would result in exposure of sensitive receptors to a substantial incremental increase in emissions of TACs that exceed 10 in 1 million for the carcinogenic risk (i.e., the risk of contracting cancer) for the Maximally Exposed Individual (MEI), as recommended in SJVAPCD's GAMAQI. SJVAPCD has determined that this threshold of significance be based on the incremental increase in cancer risk exposure resulting from project-related TAC emissions because it has determined that any incremental increase greater than 10 in one million could conflict with plans and programs to reduce diesel risk exposure in the air basin. The SJVAPCD, California Air Resources Board (ARB), and U.S. Environmental Protection Agency have implemented a number of programs and regulations to reduce diesel risk exposure, including the following:

- Heavy-Duty Vehicle Inspection and Periodic Smoke Inspection Programs to reduce excessive smoke emissions and tampering with on-road diesel-fueled vehicles;
- Incentives and voluntary agreements with vehicle and engine manufacturers;
- The Portable Equipment Registration Program (PERP) which is a voluntary program for the registration and regulation of portable engines and associated equipment;
- Engine certification standards for new off-road engines; and
- Registration and formulation requirements for diesel fuels, including specifications about the sulfur content of diesel fuels.
- A more complete and detailed list of all of ARB's diesel activities and related plans and programs can be found at <http://www.arb.ca.gov/diesel/rppot.htm>.

Additional reductions in diesel risk exposure are anticipated to result from ARB's Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles (Diesel Risk Reduction Plan), which was published by ARB in October of 2004. The key elements of the Plan are to clean up

existing engines through engine retrofit emission control devices, to adopt stringent standards for new diesel engines, and to lower the sulfur content of diesel fuel to protect new, and very effective, advanced technology emission control devices on diesel engines. When fully implemented, the Diesel Risk Reduction Plan will significantly reduce emissions from both old and new diesel-fueled motor vehicles and from stationary sources that burn diesel fuel. The goal of the Diesel Risk Reduction Plan is to reduce concentrations by 75 percent by 2010 and 85 percent by 2020.

Levels of health risk caused by diesel PM have decreased over the past few decades and are expected to continue to decrease in the future. As stated on page 4.34 of the FEIR, "since 1990, the health risk caused by diesel PM in the air basin has been reduced by 50%." This statement is supported by The 2005 Edition of the California Almanac of Emissions and Air Quality, published by ARB. Figure 5-12 in the 2008 Edition of The California Almanac of Emissions and Air Quality, which is the most recent version of the almanac, indicates that concentrations of diesel PM have declined steadily since 1990 (using a slightly different methodology than was used in the 2005 edition). According to Figure 5-12 in the 2008 edition, the average statewide concentration for 1990 was estimated at 3.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). This is associated with a health risk of 900 excess cancer cases per million people exposed over a 70-year lifetime. The estimates for 2000 show a 40% drop from 1990, with a concentration of 1.8 $\mu\text{g}/\text{m}^3$ and an associated health risk of 540 excess cancer cases per million people. In addition, the ARB estimated population-weighted concentrations for 2010 and 2020 and associated exposure levels are expected to continue to decrease with or without implementation of control measures in the Diesel Risk Reduction Plan.

In summary, existing background levels of health risk exposure from diesel PM and other TACs is unacceptably high and the high background risk levels are the result of the combined or cumulative effect of multiple TAC sources throughout the air basin and state. However, steady progress has been made in reducing health risk exposure associated with diesel PM emissions and continued progress is expected. Therefore, SJVAPCD's recommended threshold of significance, which focuses on the incremental increase in the level of cancer risk that would result from an individual project, is used to determine whether the risk levels resulting from an individual project should be regarded as cumulatively considerable. This is why the EIR applies the "incremental increase threshold of significance" to make its significance conclusion in both the project level analysis and the cumulative impact analysis.

Lastly, it shall be noted that the incremental increase threshold of significance has been used to analyze multiple projects in the air basin and in other air basins throughout the state for many years.

This topic is also addressed in response to comment 5-8 of the FEIR.

1g. PM10 Impacts are Adequately Addressed in the DEIR and FEIR

Mr. Lippe expresses concern that the threshold of significance for construction-generated emissions of respirable particulate matter with an aerodynamic diameter of 10 micrometers or less (PM10) of 15 TPY was not discussed in the DEIR and later introduced in the FEIR. Mr. Lippe argues that this is considered to be significant new information requiring recirculation in a revised Draft EIR. Mr. Lippe also claims that the DEIR incorrectly states that SJVAPCD does not have a threshold of significance for PM10 because the DEIR stated "SJVAPCD has not identified mass emission thresholds for construction-related emissions of PM10 or PM2.5." (DEIR Table 4.2-6, footnote 3.) In order to provide clarity, the full comment by SJVAPCD is included below.

The Draft EIR correctly states that the District [SJVAPCD] has not adopted a threshold of significance for PM10 and concludes that Pm10 emissions would have a significant impact on air quality. Although the District's (SJVAPCD's) Governing Board has not adopted a threshold of significance for Pm10, the District (SJVAPCD) recommends that lead agencies use an applied threshold of 15 TPY. The District (SJVAPCD) recommends that mitigation of PM10 emissions below the 15 TPY applied threshold be

include into the Emissions Reduction Agreement [that is required by Mitigation Measure 4.2-1c of the DEIR].

As shown by SJVAPCD's comment, SJVAPCD acknowledges the criterion of 15 TPY as an applied threshold of significance rather than an adopted threshold of significance. This criterion is not presented in SJVAPCD's GAMAQI, SJVAPCD's Technical Document for Preparing Air Quality Sections in EIRs, or other guidance published by SJVAPCD.

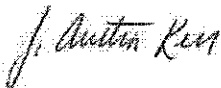
Inclusion of the applied 15 TPY threshold of significance for PM10 in the FEIR did not result in a change to the estimated mass emissions of PM10 that would be associated with project construction or a change to the impact conclusion for Impact 4.2-1. Instead, it provided additional support for the conclusion made in the DEIR that construction-generated emissions of PM10 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, resulting in a significant impact.

In addition, SJVAPCD's comment is also addressed in response to comment 21-4 in the FEIR.

Mr. Lippe also states that "the FEIR's reliance on mitigation measures that will reduce PM10 emissions below the Air District's [SJVAPCD's] threshold of significance as a basis for finding that project-level PM10 impacts are not significant is erroneous for the same reasons discussed above with respect to ozone precursors and diesel toxics." Mr. Lippe makes the same statement regarding the "finding that cumulative PM10 impacts are not significant." Mr. Lippe does not provide any additional detail, however, that is specific to PM10. As with its thresholds of significance for ozone precursors, the SJVAPCD's "applied" threshold of significance for PM10 focuses on the extent to which the PM10 emissions generated by an individual project would be cumulatively considerable. Therefore, given that air basin-wide air quality planning to improve region-wide PM10 levels is inherently a cumulative issue, the 15 TPY threshold of significance for PM10 emissions is used for both the project-level analysis and the cumulative impact analysis as intended by SJVAPCD. Thus, the District's recommended "applied" threshold for PM10 serves as the threshold of significance for both the project-level analysis and the cumulative impact analysis.

It shall also be noted that the proposed project is consistent with the land use zoning in the Merced Vision 2015 General Plan, which was adopted in 1997, and therefore the development and operation of an industrial land use at the proposed project site was accounted for in SJVAPCD's PM10 Plan, which was approved in 2006.

Sincerely,



J. Austin Kerr
Air Quality & Climate Change Specialist

cc: 06110101.01 / Chron

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September 28, 2009

Kim Espinosa, Planning Manager
City of Merced Planning and Permitting
678 West 18th Street
Merced, CA 95340

Subject: Response to comments presented by Thomas N. Lippe in a letter dated September 23, 2009 on behalf of the Merced Alliance for Responsible Growth on the Proposed Wal-Mart Regional Distribution Center, Final Environmental Impact Report, State Clearinghouse Number 2006071029

Dear Ms. Espinosa:

This letter is submitted in response to the Comments Regarding Air Quality Impact Analysis and Mitigation submitted by Mr. Thomas N. Lippe of Lippe Gaffney Wagner LLP on behalf of the Merced Alliance for Responsible Growth, and dated September 23, 2009. As set forth below, Mr. Lippe's objections to the EIR are without merit.

Mr. Lippe asserts that the "DEIR fails to include all sources of GHG's in its calculation of the Project's GHG emissions, thereby underestimating the total climate change impact" and refers to a letter from Dr. Klaas Kramer that suggests ways to estimate the CO₂ emission levels associated with construction materials and the sale of goods that would be distributed from the proposed distribution center. As shown in Table 4.2-10, the DEIR estimated GHG emissions generated by the project including emissions from construction equipment and activities used to build the project, operational GHG emissions from area and mobile sources, and the level of GHG emissions associated with the consumption of electricity during operations of the proposed project. The estimation of emissions from these sources is consistent with guidance in the Governor's Office of Planning and Research's (OPR) proposed CEQA Guidelines Amendments, promulgated as required by Senate Bill (SB) 97 (requirement to revise the CEQA Guidelines to address mitigation for and impacts of GHG), which is summarized in the transmittal letter written by OPR Director, Cynthia Bryant and sent to the Natural Resources Agency for adoption.¹ This letter clearly states that some of the text changes to the CEQA Guidelines proposed by OPR are "necessary to avoid an implication that 'life-cycle' analysis is required." To this end, OPR also explains that, in order to avoid confusion, "the phrase 'associated with' in the preliminary draft [of the Proposed CEQA Guideline Amendments] was replaced by 'resulting from' to conform to existing CEQA law that requires analysis only of impacts caused by the project." In addition, the guidance for conducting an emissions inventory in the California Climate Action Registry's General Reporting Protocol focuses on the emissions associated with the activities performed by or at a facility rather than

¹ Governor's Office of Planning and Research's. 2009 (April 13, 2009). *Transmittal of the Governor's Office of Planning and Research's Proposed S897 CEQA Guidelines Amendments to the Natural Resources Agency*. Sacramento, CA. Available: <http://www.opr.ca.gov/ceqa/pdfs/Transmittal_Letter.pdf>.

the embedded emissions of the materials used or produced at the facility.² This is logical direction; it is presumed that emissions that are associated with lifecycle impacts would be addressed in the direct permitting/analysis of the industry that produces these impacts. Further, this is consistent with the approach in CEQA for addressing every other type of impact. For instance, there has never been an argument that an EIR for a housing project in Los Angeles should consider the impacts to biological resources in northern California or Washington, where the trees for lumber that ultimately is used for the project may have been harvested. It would be speculative because the location of native resources is always speculative, and presumably the impacts from lumber cutting would have been addressed already by the applicable permitting agencies. GHG is no different, and the Natural Resources Agency has recognized this in its direction on the new GHG CEQA Guidelines.

Mr. Lippe also disagrees with the statement in the DEIR that the GHG reductions achieved by "Implementation of the Mitigation Measures 4.2-6a through 4.2-6d cannot be quantified. However, no agencies, including the San Joaquin Valley Air Pollution Control District, have established and approved methodologies for quantifying the GHG reductions associated with these types of mitigation measures. In fact, the California Air Pollution Control Officer's Association plans to study this issue and develop guidance but is in the early stages of selecting a consultant team. While it is known that implementation of Mitigation Measures 4.2-6a through 4.2-6d will result in GHG reductions associated with the construction and operation of the proposed project, these reductions are not quantifiable at this time. In addition, all the necessary level of detail about project construction and operations that would be necessary to estimate GHG reductions is not known at this time. Many such parameters are discussed in greater detail below.

Dr. Kramer's letter attempts to support in detail Mr. Lippe's claim that the GHG reductions that would be associated with implementation of the Mitigation Measures 4.2-6a through 4.2-6d are quantifiable. First, Dr. Kramer suggests that the GHG reduction achieved by reduced motor vehicle activity can be estimated because the associated reduction in fuel consumption and related GHG emissions can be quantified. While it is true that there is established methodology for estimating the GHG reduction associated with reduced fuel consumption, estimating the degree to which vehicle activity would be reduced by the mitigation measures is unknown at this time. This would depend on a mix of factors that could vary considerably, especially those that depend on the individual choices of workers employed by the project.

Second, Mr. Kramer states that the "DEIR argues that additional CO2 mitigation will be achieved through management of the orchard." However, he does not specify where exactly this claim is specifically made about the orchard in the DEIR. Mr. Lippe's statement refers to Mitigation Measure 4.2-6d, which is a performance-based measure in that it requires that "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." Thus, it is inherently understood that the net change in GHG emissions associated with the removal of orchard trees and implementation of this measure would be zero, and Mitigation Measure 4.2-6d provides this as a firm performance standard. Contrary to Mr. Kramer's inference, the EIR does not state that a net reduction in GHG emissions or a net increase in carbon sequestration would occur as a result of implementation of Mitigation Measure 4.2-6d.

² California Climate Action Registry. 2009 (January). California Climate Action Registry General Reporting Protocol, Version 3.1. Los Angeles, CA. Available:
<http://www.climateregistry.org/resources/docs/protocols/grp/GRP_3.1_January2009.pdf>. Last updated:
January 2009. Accessed: September 2009.

Third, Mr. Kramer argues that the amount of solar panels to be installed on the project site should be known given that the facilities architecture is known. As stated on page 4-74 of the FEIR, Mitigation Measure 4.2-6d includes the following requirement:

- ▶ 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.

Solar panels or other types of alternative energy sources would be installed on the building (as well as other areas of project site) consistent with applicable building codes, including Title 24. Title 24 is designed by the California Energy Commission to reduce energy consumption and to this end contains an entire regulatory regime designed to ensure that individual projects are energy efficient. One of the Title 24 requirements that needs to be considered is lighting, frequently accomplished with sky light features. This is a common design feature that is used in retail and industrial buildings in accordance with Title 24. The implementation of on-site alternative energy sources would be integrated into the final design of the project in accordance with Title 24 and the final engineering plans. Because the requirement was added by the City, the measure provides Wal-Mart a relatively small degree of flexibility with respect to timing in order to ensure that the on-site alternative energy sources are integrated into the design of the building, and to select the most appropriate alternative energy sources. In addition, for instance, it is not known at this time when the peak energy demand of the building would be and the portion of that peak demand that could be met by the on-site renewable energy sources.

Fourth, Mr. Kramer suggests that the GHG reduction associated with the orchard related mitigation (in Mitigation Measure 4.2-6d of the DEIR) could be quantified using the Forest Project Protocol or the Urban Forestry Protocol. However, as explained above, this measure is performance-based in that it requires that "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." Thus, it is inherently understood that the net change in GHG emissions associated with the removal of orchard trees and implementation of this measure would be zero, and Mitigation Measure 4.2-6d provides this as a firm performance standard.

Fifth, Mr. Kramer challenges the claim that it is not known at this time from where the City's energy would be supplied. This is clearly explained in the revised text to Page 3-13, as noted in the FEIR:

The distribution center would receive electrical power from either PG&E or Merced Irrigation District facilities. ~~via an overhead line that exists within the Childs Road right-of-way.~~

It should also be noted that the State has taken numerous actions to regulate the greenhouse gas emissions of the State's three investor-owned utilities. For example, as stated in Section 4.2.2, "Regulatory Setting" of the DEIR, Governor Schwarzenegger signed SB 1368 in September 2006. SB 1368 requires the California Public Utilities Commission (PUC) to establish a greenhouse gas emission performance standard for baseload generation from investor-owned utilities. SB 1368 further requires that all electricity provided to California, including imported electricity, must be generated from plants that meet the established GHG emission standards. This law effectively prohibits the three investor-owned utilities from importing power from out-of-State power plants that cannot meet a performance standard for GHG emissions. Thus, SB 1368 effectively prohibits the three investor-owned utilities from

importing power from coal-fired power plants, which are inefficient with respect to GHG emissions. Currently, the Public Utilities Commission is in the process of implementing SB 1368 for investor-owned utilities and the California Energy Commission is currently implementing a similar standard for publically owned utilities.

In addition, the three investor-owned utilities are also subject to a "renewable portfolio standard". Established in 2002 under SB 1078 and accelerated in 2006 under SB 107. These senate bills establish California's Renewables Portfolio Standard (RPS) program, which requires retail sellers of electricity, including investor-owned utilities and community choice aggregators, to increase procurement from eligible renewable energy resources by at least 1% of their retail sales annually, until they reach 20% by 2010. This is one of the most ambitious renewable energy standards in the country. In November 2008, Governor Schwarzenegger signed Executive Order S-14-08, which expands the state's Renewable Energy Standard to 33% renewable power by 2020. Governor Schwarzenegger plans to propose legislative language that will codify the new higher standard.

Both SB 1368 and the Renewable Portfolio Standard program are examples of ambitious, comprehensive regulatory programs being implemented by the Public Utilities Commission and the Air Resources Board to reduce GHG emissions on a statewide level.

Mr. Lippe also suggests that implementation of Mitigation Measure 4.2-1c and Mitigation Measure 4.2-2e, which require the Applicant to implement an emissions reduction agreement with SJVAPCD to reduce construction and operational emissions of ROG and NOX to less than the SJVAPCD-established threshold for ROG and NOX 10 TYP, could potentially result in an increase in GHG emissions, while the DEIR states that these measures would have the added benefit of reducing construction- and operation-related emissions of GHGs. However, Mr. Lippe provides no evidence to support this claim and his assertion is incorrect. Typical projects implemented under the ISR program include replacing agricultural irrigation pump engines with electrified engines and replacing old, inefficient truck engines with newer, more efficient models. These technological advances would reduce emissions of both criteria air pollutants and greenhouse gases. Nonetheless, it shall be noted that the other mitigation measures aimed at reducing criteria air pollutants, including Mitigation Measures 4.2-1b, 4.2-2b, 4.2-2c, and 4.2-2d, would also result in reductions in GHG emissions.

Sincerely,



J. Austin Kerr
Air Quality & Climate Change Specialist

cc: 06110101.01 / Chron

P:\2006\06110101.01 Merced, Wal-Mart EIR\4.0 Documents_Refs\4.7 Draft_Docs\8_Responses for Council Hearing\Resopnse Letters\AQ Response Letter\EDAW_AQ Response to Lippe's Sep 23 comment letter.doc

MEMORANDUM

TO: Honorable Mayor and Members of the City Council
FROM: Frank Quintero, Development Manager
DATE: September 28, 2009
FILE NO.: 011047-0004
RE: Urban Decay Studies from Adjacent Jurisdictions; Further Response to the Comments Received From Dr. Philip King and the Lippe Law Firm

This memorandum further responds to the letters dated April 27, 2009 and September 16, 2009 from Dr. Philip King, as well as the September 21, 2009 letter from the Lippe Gaffney Wagner, LLP law firm ("Lippe Law Firm"), alleging that the FEIR failed to properly assess the proposed Wal-Mart Distribution Center's potential to cause or contribute to regional urban decay.

Mr. Alexander Quinn, the in-house economist at EDAW AECOM has previously prepared responses to the assertions made by Dr. King and the Lippe Law Firm by way of a separate Response to Comments contained in the FEIR and as set forth in a final City staff submission to the City Council presented to the Council this evening:

In addition, as the City's Development Manager charged with implementing the City and Redevelopment Agency's land use and economic development programs, I have also reviewed various urban decay studies prepared as part of the CEQA processes for Wal-Mart Supercenters throughout other parts of the State. Copies of these studies were obtained from the firms that prepared the documents and the cited materials are attached to this memorandum.

In this regard, of particular note is the urban decay study prepared for the Panama Lane and Gosford Village Shopping Centers following the Court of Appeal decision in *Bakersfield Citizens for Local Control v. City of Bakersfield*. *Bakersfield Citizens for Local Control* is the seminal case discussing a lead agency's obligation to analyze urban decay impacts in specific contexts. The urban decay study prepared for the Panama Lane and Gosford Village Shopping Centers in response to the Court of Appeal decision and the Responses to Comments contained in those two FEIRs analyzed the potential for urban decay to occur in the City of Bakersfield and surrounding areas and also looked at the affect of actual Supercenters on specific markets after such Supercenters had been constructed, including the Cities of Gilroy, Hanford and La Quinta. The economist who prepared the Panama Lane and Gosford Village urban decay studies and related EIR text concluded that the development of individual Wal-Mart Supercenters did not lead to urban decay in a variety of California communities that have similar attributes to the City of Merced.

In light of the fact that urban decay has not been found to not be foreseeable in a variety of cities with similar attributes to the City of Merced, I not believe it is possible to predict when and how yet-to-be applied-for proposed Wal-Mart Super center stores to be located in Merced or other parts of the Central Valley will or will not lead to urban decay. Whether or not urban

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decay will occur is dependent upon a variety of specific factors unique to the particular market at issue and it is simply not possible to determine whether (i) the Distribution Center will cause the development of additional Wal-Mart Supercenters within the Central Valley and (ii) even assuming it were possible to come to some generic conclusion with respect to (i) it would still not be possible to conclude whether urban decay would occur as a result of the development of future Supercenters due to the fact that all of the evidence reviewed by the City (and attached to this memorandum) indicates that urban decay does not result from the development of a Supercenter. Again, the possibility of urban decay occurring or not is dependent on a variety of highly specific market forces and local factors, and the attached urban decay studies indicate that urban decay has not been forecast to result from the construction of Wal-Mart Supercenters.

Thus, in summary, it is not foreseeable that the development of the Wal-Mart Distribution Center will lead to additional Wal-Mart Supercenters; and even if future Wal-Mart Supercenters are developed independent of the Wal-Mart Distribution Center, based on the evidence attached to this staff memorandum and contained in the FEIR prepared for the proposed project, it is not foreseeable that urban decay will result from development of the Wal-Mart Distribution Center or future individual Supercenters.

In addition, the Lippe Law Firm and Dr. King have also asserted that the approval of the distribution center will have a negative effect on the residential development located adjacent to the proposed project. Dr. King asserts that the proposed distribution center will create further alleged "urban decay" conditions in these adjacent residential developments. As the City's Development Manager with over 15 years of experience working in the land development field, the creation of employment generating land uses – and in particular employment generating land uses located adjacent to residential uses – has a beneficial impact on communities and helps to prevent or reduce urban decay. Many foreclosures that have occurred in the residential sector have occurred in large part due to layoffs that have occurred in the private sector. Obviously, the creation of jobs and a healthy commercial sector is one of the ways to eliminate alleged urban blight occurring in residential neighborhoods in the City due to foreclosures. Indeed, creating employment opportunities is a significant focus of the federal stimulus legislation. The co-location of jobs adjacent to housing actually improves the quality of the housing stock in those areas located adjacent to employment sectors. Employees looking to reduce expenses are attracted to homes and employment opportunities that are adjacent to each other due to the savings from eliminating longer commutes. In fact, the co-location of employment opportunities adjacent to housing stock (as is the case in the context of the proposed project) is consistent with State planning efforts such as SB 375. Thus, it is my expert opinion that the creation of employment opportunities such as the proposed distribution center will actually protect against the creation of urban decay.

Lastly, as the City's Development Manager, I am intimately familiar with local land use conditions. The City of Merced does not contain wide scale areas that manifest the outward

signs of urban decay caused by long term vacancies. Within the City of Merced and immediately adjacent to the City Limits are two warehouse and distribution centers. McLane Pacific is located on the northwest corner of Childs Avenue and Kibby Road, in the University Industrial Park which is within the Merced City Limits. The second, Yosemite Wholesale, Inc., is located off Vassar Road near California State Highway 99. Below is basic information regarding both facilities:

Facility:	McLane Pacific	Yosemite Wholesale, Inc.
Address	3876 E. Childs Ave	2674 Vassar Ave
Size	±323,000 sq.ft.	±280,000 sq.ft.
Jobs:	±500	±270

The warehouse and distribution centers play an important role for Merced's economic base. According to the RIMMS-II Multipliers Study for the State of California commissioned by the California Economic Strategy Panel (2009), the multiplier effect for warehouse and storage facilities is 1.6439. For each job created at the warehouse and storage facilities (basic industry), 1.6439 jobs are created in non-basic industries such as service and retail. While total employment for both existing warehouse and distribution facilities is approximately 770 jobs, the multiplier benefit is 1,265 non-basic sector jobs created by the warehouse and distribution facilities.

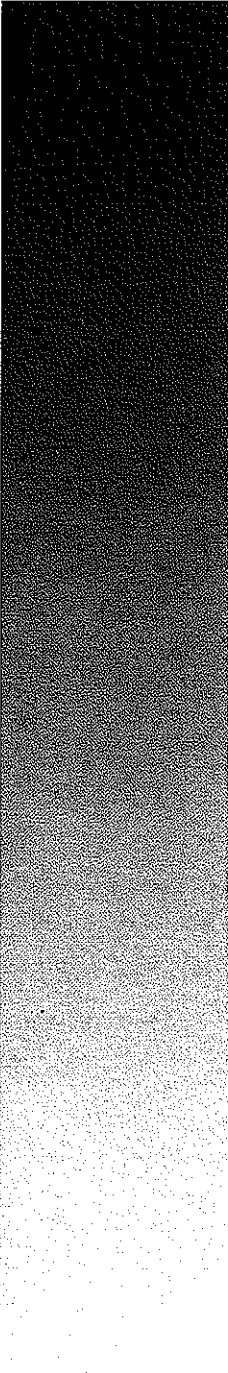
The proposed Wal-Mart distribution center is located within the Gateways Redevelopment Project Area. According to the State of California, blight includes those area which may suffer from either adverse economic conditions or physical conditions. In this case, the distribution center project addresses the issue of adverse economic conditions. Construction of the facility would provide economic opportunities in the form of job creation and increasing property values via the value of the project.

The proposed distribution center will serve Wal-Mart Supercenters throughout Central California. According to a report (An Analysis of Taxable Retail Sales and Retail Business Permit in California Cities with Wal-Mart Supercenters) prepared by Lon Hatamiya, Director for Navigant Consulting, Inc., taxable retail sales have increased where Wal-Mart Supercenter stores have been located. Furthermore, taxable sales for other retail outlets also increased in each community studied following the opening of a Wal-Mart Supercenters. Relative to the Central Valley, communities within the Central Valley and Imperial Valley communities experienced strong city-wide taxable retail sales after the opening of Wal-Mart Supercenters.

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Similar findings were experienced in Merced after Wal-Mart opened its doors in 1993. From 1995 to 2005, taxable retail sales in Merced grew by 149%. From 1995 to 2005, Merced's Per Capita Taxable Retail Sales exceeded the cities of Modesto and Fresno. Wal-Mart helped to capture dollars that were leaking to other communities. Finally, Wal-Mart served as a metric for other retailers to base their decision of whether or not to open a major commercial business in the community especially off Olive Avenue. A 27-acre retail center was developed on W. Olive Avenue (Merced MarketPlace) which used Wal-Mart as an anchor for the project.

When Wal-Mart announced its plan to open a store in the City of Merced, some stores used the announcement as an opportunity to re-brand and/or reinvent themselves to compete with the retailer. Stores such as Minetti's Stationary and Spriggs' Stationary turned to specialized retailing and niche marketing. Both companies remain in business today.



**An Analysis of Taxable
Retail Sales and Retail
Business Permits in
California Cities with
WAL*MART Supercenters**

Prepared for

Wal-Mart Stores, Inc.

Lon Hatamiya, MBA, JD

Director

Navigant Consulting, Inc.

December, 2008

Executive Summary

We were retained by Wal-Mart Stores, Inc. to perform an independent and objective analysis to quantify the city-wide *Taxable Retail Sales* in California communities where Wal-Mart Supercenters have opened during the period of 2003-2007. We also analyzed the number of *Retail Business Permits* in those same communities. We accomplished this through a comparative analysis of *Taxable Retail Sales* and *Retail Business Permits* from the years just prior to and the years just after the opening of the various Wal-Mart Supercenters. We also looked at data from subsequent years for those locations that have been opened for more than one year. Since data is only available through the end of 2007, we were able to perform these comparisons for the cities of 21 of the 32 Wal-Mart Supercenters in California (the remaining 11 Supercenters opened in 2007 or later).

The results of our analysis are as follows:

- In every city where Wal-Mart has opened a Supercenter in California, the city-wide *Taxable Retail Sales* (including apparel stores, general merchandise stores, grocery stores, home furnishing and appliance stores, and other retail stores) have increased in the year following the opening of the Supercenter as compared to the *Taxable Retail Sales* of the year prior to the opening. Moreover, city-wide *Taxable Retail Sales* have continued to increase in each subsequent year in all communities that have had Wal-Mart Supercenters for multiple years.

- Increases of city-wide *Taxable Retail Sales* one year after the opening of the Wal-Mart Supercenter averaged over \$79 million compared to the year prior to the opening for all communities (21 Supercenters). *Taxable Retail Sales* increases averaged 15.0% for all cities.
- Increases of city-wide *Taxable Retail Sales* two years after the opening of the Wal-Mart Supercenter averaged nearly \$123.9 million compared to the year prior to the opening for all locations opened more than one year (10 Supercenters). *Taxable Retail Sales* increases after two years averaged over 25.9% for the ten cities.
- Increases of city-wide *Taxable Retail Sales* three years after the opening of the Wal-Mart Supercenter averaged over \$206.2 million compared to the year prior to the opening for all locations opened for more than two years (3 Supercenters). *Taxable Retail Sales* increases after three years averaged over 39.6% for the three cities.
- Taxable sales for *Other Retail Outlets* (including restaurants and bars, building materials and farm implements, auto dealers and supply, and service stations) also increased in each community following the opening of Wal-Mart Supercenters. These increases averaged over \$72 million compared to the year prior to the opening for all locations with available data (15 Supercenters). This was an average increase of 10.5% for each city.

- Increases of taxable retail sales for *Other Retail Outlets* two years after the opening of the Wal-Mart Supercenter averaged over \$124.1 million compared to the year prior to the opening for all locations (with available data) opened more than one year (7 Supercenters). This was an average increase of 16.8% for each city. Increases of taxable retail sales for *Other Retail Outlets* three years after the opening averaged over \$204 million (3 locations), with an average increase of 30.4% per city.
- When combined, city-wide *Taxable Retail Sales* and *Other Retail Outlets* (“total taxable retail sales”) one year after the opening of the Wal-Mart Supercenter increased by an average of \$157 million when compared to the year prior to the opening (15 Supercenter locations). The total taxable retail sales increased even more dramatically after two years to an average of \$271.6 million per city (7 Supercenter locations). After three years, total taxable retail sales increased even further to an average of \$410.3 million per city (3 locations).
- In 18 of 21 communities, the number of *Retail Business Permits* increased in the year following the opening of the Wal-Mart Supercenter when compared with the year prior to the opening. The average increase in the number of *Retail Business Permits* was 32.7 per community. Slight declines occurred in Gilroy (from 516 to 508), Palm Desert (from 1446 to 1388), and Palm Springs (from 881 to 803). However, these were offset in those communities by sizable gains in *Retail Business Permits* two years following the opening of the Wal-Mart Supercenter—Gilroy (up to 517), and Palm Springs (up to 840).

- In 9 of 10 communities, the number of *Retail Business Permits* increased two years following the opening of the Wal-Mart Supercenter when compared with the year prior to the opening. The average increase was 65.8 Retail Business Permits per city. This is double the increase after only one year and reflects a total increase of 658 new Retail Business Permits across 10 cities and an average increase of 8.2% per city. Additionally, the number of *Retail Business Permits* increased three years following the opening in all three communities, nearly doubling again to an average of 130.3 Retail Business Permits per city or a 15.7% increase.
- Regardless of population, all California communities which opened a Wal-Mart Supercenter also enjoyed sizeable gains in city-wide *Taxable Retail Sales*. Cities with populations over 50,000 had an average increase of nearly \$91 million; cities with populations under 50,000 had an average increase of more than \$64.2 million; and cities with populations under 25,000 had an average increase of more than \$34.4 million.
- Central Valley and Imperial Valley communities, where economic growth is historically the slowest in the state, experienced strong city-wide *Taxable Retail Sales* gains after the opening of Wal-Mart Supercenters. From the north to the south through the Central Valley, Anderson has seen an increase of \$51.2 million or 37%; Marysville—\$8.9 million or 6.6%; Yuba City—\$35.2 million or 7.9%; Dixon—\$27.8 million or 17.4%; Stockton—\$122.3 million or 21.4%; Dinuba—\$49.9 million or 12.8%; and Hanford—\$32.4 million or 10%. In addition, the Imperial Valley cities of

Calexico and El Centro have seen increases of \$38.5 million or 18.4% and \$61.8 million or 16.1% respectively. Just as impressive, all of the aforementioned communities also experienced a gain in the number of *Retail Business Permits* over this same period.

Based upon our analysis of the available data and information, we believe that the presence of Wal-Mart Supercenters across California has provided various positive economic benefits to their local economies. City-wide *Taxable Retail Sales* have increased, often dramatically, in every California community where Wal-Mart has opened a Supercenter. In addition, these increases in *Taxable Retail Sales* were not solely the result of Wal-Mart's presence, but also the result of other new businesses opening in the same communities. Furthermore, the opening of Wal-Mart Supercenters also enhanced the taxable sales of *Other Retail Outlets* such as restaurants, auto dealers, and service stations. Thus, increased retail traffic brought on by the opening of Wal-Mart Supercenters appears to have resulted in sizable sales gains for other related service providers.

In addition, the benefits of the greater *Taxable Retail Sales* were not limited to metropolitan or suburban communities. Economically challenged rural areas such as the Central Valley and Imperial Valley both experienced strong increases in *Taxable Retail Sales* and in the number of *Retail Business Permits* after the opening of Wal-Mart Supercenters in their communities. In sum, the presence of Wal-Mart Supercenters in any California community appears to enhance the local community as it relates to increased *Taxable Retail Sales* and increased numbers of *Retail Business Permits*.

CITY OF MERCED
INTEROFFICE MEMORANDUM

TO: The Honorable Mayor and Members of the Merced City Council

FROM: Jeanne Schechter, Chief Deputy City Attorney and Kim Espinosa, Planning Manager

DATE: September 25, 2009

SUBJECT: Response to Comments Submitted by Thomas M. Lippe on September 23, 2009 Regarding Lyons Annexation Mitigation Measures

Response to Comment No. 2, “ ‘New’ Mitigation Measures from the Lyons Annexation EIR”:

The letter submitted by Thomas M. Lippe, of Lippe Gaffney Wagner LLP, dated September 23, 2009, takes issue with certain language which was added to the FEIR relating to the mitigation measures contained in the Lyons Annexation Expanded Initial Study # 97-22, which was approved by the City Council in 1998. Specifically, the letter focuses on page 4-2 of Volume II of the FEIR, which quotes the single paragraph that has been added to the description of the “Project Background” contained in Section 3.5 of the EIR. The paragraph which was added reads as follows:

“In addition, a portion of the project site was included as part of the Lyon’s Annexation to the City of Merced. which was approved by LAFCO on January 28, 1999, and a Certificate of Completion was recorded on June 11, 1999. The Expanded Initial Study/Mitigated Negative Declaration prepared for the annexation includes several mitigation measures, which apply to any development approved within the annexation area. If approved, the proposed project would be required to comply with these mitigation measures. It should be noted that, because many of the mitigation measures required in the

practical matter, no mitigation measures will be deleted since all the adopted measures for the Lyons Annexation are either identical to or subsumed within the proposed mitigation measures for the current project. Moreover, there are no impacts that will be mitigated only by a mitigation measure adopted for the Lyons Annexation and not by the project-specific measure adopted for this project.

The purpose for adding the statement to the Project Background Section in the FEIR was simply to clarify the hierarchy of the two documents, since the EIR for the proposed Merced Wal-Mart Distribution Center project is much more current, conservative, and effective for reducing the specific impacts of the proposed Wal-Mart Distribution Center, whereas the Lyons Annexation measures were designed to mitigate the impacts of a generic industrial use.

Mr. Lippe only provides one example of a mitigation measure that he claims was not mentioned in the DEIR and is now purportedly being deleted. He refers to Mitigation Measure 1-c under the "Applicable Mitigation Measures of the General Plan EIR" section on p. 23 of the Expanded Initial Study (Letter of Thomas Lippe, September 23, 2009, Exhibit 52), which requires the City implement an Impact Fee program for development that can be use to mitigate cumulative air quality impacts including, but not limited to, transportation/circulation system improvements, public transit subsidies, etc. He claims that the DEIR did not identify or discuss the "Lyons Annexation impact fee program as a mandatory mitigation measure that must be implemented to fully mitigate these impacts" and therefore the public was denied an opportunity to comment on how much the fees should be and the purposes for those fees.

Mr. Lippe's comments regarding Mitigation Measure 1-c are incorrect for several reasons, including:

- 1) The City has already adopted the Impact Fee program referenced in measure 1-c, which was a mitigation measure of the EIR adopted for the *Merced Vision 2015 General Plan* in April 1997, and this project is required to pay that fee. The City implemented this mitigation measure when it adopted the Public Facilities Impact Fee Ordinance on May 18, 1998. As indicated throughout the DEIR and FEIR, the project applicant is already required to participate in this impact fee program. (See DEIR p. 4.12-12 and FEIR response to comment 3.16-49.) The DEIR specifically disclosed, on p. 4.11-7, "*City of Merced Standards and Municipal Code, Mitigation Fees*" that pursuant to the Merced Municipal Code, the Applicant would be

- The DEIR discusses the special fee for the traffic signal at Highway 140 and Kibby Road, as spelled out in the Lyons Investment Development Agreement (p. 4.11-17)
- The Expanded Initial Study for the Lyons Annexation is referenced on p. 8-8 of the DEIR under Section 4.6, Hydrology and Water Quality. This document was available upon request.

The FEIR also provides a thorough discussion of the relationship between the Lyons Annexation IS/MND and the EIR for the proposed Wal-Mart Distribution Center (p. 3.16-53):

“It should be noted that the proposed project would not violate any of the mitigation measures set forth in the Lyon’s Annexation project. When mitigation measures are adopted, they are not necessarily intended to remain forever unchanged. Subsequent projects come along, a community develops, and new projects need to consider what has happened before and how circumstances have changed. Since the Lyons Annexation, the Campus Parkway project was planned and that EIR assumed development in the industrially zoned project area. Campus Parkway has changed the environmental setting dramatically, introducing a new road system (under construction), including the Parkway and Mission Interchange, none of which was in place when the Lyons Annexation project was evaluated; from a transportation planning perspective, Kibby Road no longer makes sense as a collector in this location. Campus Parkway superseded it as a major arterial; that EIR has superseded the previous mitigation measures.”

It is important to note that the DEIR did not tier from the IS/MND for the Lyons Annexation. Upon review by City staff, the analysis of the Lyons Annexation IS/MND was considered outdated and the mitigation measures did not appropriately reduce impacts anticipated to result from the proposed Wal-Mart Distribution Center. Thus, even though the Lyons Annexation IS/MND identified “application[s] for Site Plan Approval and/or Conditional Use Permit(s) for individual industrial project within the Project Area” as one of the proposed actions covered by the IS/MND [*see* p. 6, “Proposed Actions”], the City Staff felt it was more conservative to require the preparation of a full environmental review for this project. For this reason, the DEIR was prepared as a stand-alone analysis for the proposed project (considering of course potential cumulative impacts from other development, including development of the remaining annexed property). Therefore, the mitigation measures required in the EIR for the proposed project do

214 Cal.App.3d 1043)

The CEQA Guidelines (Section 15088.5[b]) further state that recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. As stated above, the statement clarifies the hierarchy of the two documents. Recirculation is not required.

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:

- 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 18th Street on February 25, 2009, and a copy posted on the City's website for public review and download at 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 18th 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; 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 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

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, including an Errata Sheet dated September 28, 2009 (Exhibit "1B," attached hereto and incorporated herein) 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," including the Errata Sheet dated September 28, 2009 (Exhibit "1B"), 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, including the Errata Sheet dated September 28, 2009 (Exhibit "1B"), 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 18th 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:

J. Chechter 9/28/09
City Attorney Date

**EXHIBITS 1 and 1A of this Resolution
Remain the Same**

Errata Sheet Dated September 28, 2009
Findings of Facts and Statement of Overriding Considerations
Merced Wal-Mart Distribution Center
Supplemental Finding Regarding Urban Decay

The City Council has independently reviewed and considered the comment letters submitted indicating that the DEIR should have studied the potential that the Wal-Mart Distribution Center itself could cause urban decay, and that the construction of the Wal-Mart Distribution Center would lead to the construction of additional Wal-Mart stores and supercenters, and that those new stores and supercenters could cause urban decay. The City Council has also reviewed and considered the responses from City staff and its expert consultants, information provided by the applicant, and the testimony and written communications from the public.

After carefully considering this issue and the factual information in the record of proceedings, the City Council finds as follows:

1. It is not reasonably foreseeable that this project will directly or indirectly cause physical changes in the environment that would constitute urban decay.
2. It is not reasonably foreseeable that the construction of a distribution center will result in the construction of additional Wal-Mart Stores or Supercenters. In addition, it is not reasonably foreseeable that if future Wal-Mart Stores or Supercenters are in fact constructed in the future, that such Supercenters or Stores would cause urban decay. It is speculative to try to predict whether and where Wal-Mart may choose to build future stores, and it is also speculative to assume that such construction would lead to urban decay.
3. With regard to the direct impacts of the Merced Wal-Mart Distribution Center, it is reasonably foreseeable that the facility will help protect against the creation of urban decay, by providing employment opportunities and stimulating the local housing and commercial market.

These factual findings are the based on substantial evidence submitted by staff, by the expert consultants, by the applicant, and by the members of the public, which includes, but is not limited to, the FEIR; all responses prepared by EDAW AECOM on or prior to September 28, 2009; any and all City Staff memorandum prepared on or prior to September 28, 2009. The factual findings are based in part on the nature of the project (a distribution center). The project is located in a

redevelopment project area, which has been zoned industrial use for many years. The project is consistent with the General Plan, and will further the purpose and goals of a redevelopment project area by redeveloping and revitalizing this area of the community. The opposition letters provided no factual basis or actual evidence that urban decay would result directly or indirectly from the construction and operation of the Distribution Center. Instead, the letters consist of unfounded opinions and speculation. The City Council has carefully weighed the submission by the project opponents on this issue, including the letters from Dr. King, and reject those letters as being unfounded and lacking in credible evidence.

City of Merced

MEMORANDUM

DATE: September 28, 2009
TO: City Council and City Manager
FROM: Kim Espinosa, Planning Manager *KE*
SUBJECT: Proposed Revision to Project Conditions for the Wal-Mart Project and Suggested Language if Council Wishes to Address An Issue

Recommended Change to Project Conditions

In order to clarify the project conditions and to address a minor concern that had been expressed during the course of the public hearings, staff is recommending that Condition #17 of the proposed project conditions (Exhibit B of the Developer Agreement—Attachment 13, page 264 of the Administrative Report) be amended as follows (the underlined text would be added with the rest of the condition remaining as originally proposed; ~~strikeouts~~ indicate modified text):

- 17) In accordance with Mitigation Measure 4.11-2b(c), for both the construction period and during the operation of the distribution center, the applicant shall regularly and routinely instruct its employees, contract truck drivers, and vendors that tractor trailers approaching and departing from the distribution center shall be limited to the following roadway from Highways 99 and 140: Campus Parkway, Mission Avenue ~~west-east~~ of the Campus Parkway Highway 99, Gerard Avenue east of the Campus Parkway, and Tower Road. The truck route plan required by Mitigation Measure 4.11-2b(c) may include the use of that segment of Mission Avenue between Highway 59 and Highway 99 with the concurrence of Merced County. In addition to the requirements of Mitigation Measure 4.11-2b(c), ~~this mitigation measure~~ truck drivers shall be directed to not park their trucks within any of the residential subdivisions west of the Campus Parkway, and shall utilize the waiting area located on the site. The applicant will demonstrate to the City on a yearly basis that the truck drivers are being advised of these restrictions.

Suggested Language IF Council Wishes to Address the Landscaping Issue

During the course of the public hearings on the project (both before the City Council and the Planning Commission), the issue of possible additional landscaping along the project's western property line (parallel to the Campus Parkway) and the issue of landscape berms have been raised.

Regarding the issue of landscaping along the western boundary, staff believes that the effectiveness of any landscaping along this property line would be minimal given the distance to the Campus Parkway (approximately 1,000 feet) and the vacant land not owned by Wal-Mart in between which currently houses an orchard and will eventually be developed with industrial buildings. In preliminary discussions with City staff, the project applicants have indicated that such landscaping would be difficult to achieve given the location of an MID easement along that

property line and the location of their driveway entrance into the site. City staff does not believe that the landscaping is necessary,' but if the City Council wishes to add that requirement, the addition of Section "d" to Condition #25 (see below) would be suggested.

Regarding the use of earth mounds or berms within the landscape areas around the perimeter of the project, City staff believes that the project conditions as written would NOT preclude the use of berms but would leave staff the flexibility to require them if needed and if they can be made to work with site drainage and other issues. In preliminary discussions with the project applicants on this issue, they have indicated that since they are being required by other project conditions to do upgrades to the building facades, they feel the extra berming would be unnecessary and would hide some of the aesthetic improvements they would be making. However, if the City Council should wish to add some language regarding berming, City staff would suggest the addition of Section "e" to Condition #25 below, which would make clear that berming is an option to be considered.

- 25) Prior to or concurrent with submittal of a building permit, the owner shall submit a detailed landscape and irrigation plan to the Director of Development Services, which includes at a minimum, designated planting areas as required per Mitigation Measure 4.13-2 (which addresses street trees, parking lot trees in employee parking areas, perimeter landscaping, and the preservation of existing orchard trees on site), and the following additional requirements:
- a) *Storm water Detention Basins:* Landscape plans shall be submitted by the applicant and approved by the City for all storm water detention areas. The location of these detention area shall be clearly outlined on the Project site plan and their design approved by the City Engineer prior to issuance of a building permit for the Project.
 - b) *Trailer Parking Areas:* Trees shall be planted along the perimeter of the truck and trailer parking areas but not within the parking areas to the maximum extent feasible. Details shall be worked out with City staff at the building permit review stage.
 - c) *Water Efficient Landscaping:* The Project shall be required to comply with the City's Water Efficient Landscaping and Irrigation Ordinance (MMC 17.60).
 - d) *Western Property Line Landscaping:* The developer shall plant trees (minimum 15 gallon) no further than 30 feet apart along the western project site boundary.
 - e) *Earth Mounds:* Once the design of the project buildings are finalized, City staff will determine whether earth mounds (or "berms") would be practical given the location of the Merced Irrigation District easements and whether they would enhance the appearance of the site. If City staff determines that the mounds or berms are practical and desirable, the applicant will include them within the landscape areas required around the perimeter of the project which abut public streets (Childs, Gerard, and Tower) and along the western property line to provide screening. Details shall be worked out with City staff at the building permit review stage.

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

**ERRATA SHEET
(Updated 9/25/09)**

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

4.2 STAFF-INITIATED REVISIONS AND CORRECTIONS TO THE DRAFT EIR

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. *Develop and implement a construction truck traffic safety plan in coordination with the City of Merced, County of Merced, and Caltrans.* The construction contractor shall develop a plan for traffic safety assurance for the City and County roadways in the project vicinity. The contractor shall submit the plan to the City Development Services Department for approval before the initiation of construction-related activity that could adversely affect traffic on City, County, and State roadways. The plan(s) may call for the following elements, based on the requirements of each agency:
 - ▶ posting warnings about the potential presence of slow-moving construction vehicles;
 - ▶ using traffic control personnel when appropriate;
 - ▶ scheduling truck trips outside of peak morning and evening traffic periods to the extent feasible;

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

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

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

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

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

Under this alternative, the size and extent of development would be the same as the proposed project, and utilities and public service demands would be approximately the same as the proposed project. However, Alternative Site #3 would be located in an unincorporated area of Merced County. Fire and police protection services for this alternative would be provided by the County, and water supplies would be provided by the Merced Irrigation District. Similar to the proposed project, this alternative would be required to pay its fair share of costs associated with the increased demand of fire and police services, and would include the same on-site security measures and incorporate all California Fire Code requirements as the proposed project. A water supply assessment would be required for this alternative to determine as to whether the Merced Irrigation District's projected water supplies available would meet the water demand associated with this alternative, in addition to the existing and planned future uses. Because it is unknown if water supplies would be available to meet demands, this alternative could potentially result in greater impacts on utilities than the project.

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

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

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

CUMULATIVE IMPACTS

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

- ▶ Cumulative Agricultural Land Impact
- ▶ Cumulative Air Quality Impact (Greenhouse Gas Emissions)
- ▶ Cumulative Biological Resources Impact (Special Status Species Foraging Habitat)
- ▶ Cumulative Noise Impact
- ▶ ~~Cumulative Traffic Impact—Intersection Operations (2030 with Project)~~
- ▶ ~~Cumulative Traffic Impact—SR 140 Between Santa Fe Avenue and Kibby Road Roadway Segment Operations (2030 with Project)~~
- ▶ ~~Cumulative Traffic Impact—Traffic Signal Operations (2030 with Project)~~
- ▶ ~~Cumulative Traffic Impact—Tower Road between SR 140 and Gerard Avenue~~
- ▶ Cumulative Visual Impact

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

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

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

2030 Cumulative with Project Condition Traffic Signal Warrant Analysis

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

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

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

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

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

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

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

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

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

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

- The applicant’s participation in EPA’s Smart Way Transport Partnership (EPA 2007) shall include the portion of its haul truck fleet that is based at or serves the Merced distribution center and shall continue participation of this truck fleet in the Partnership for as long as the Partnership or a similar successor program exists. This measure would apply to the 40% of truck trips generated by the project that are operated by Wal-Mart trucks. Once each year the applicant shall provide to the City of Merced a letter from EPA confirming the project’s participation in the SmartWay Transport partnership.
- The Applicant shall ~~fully fund or~~ contribute its fair share of funding for the development of a Class II Bike Lanes along Childs Avenue and Gerard Avenue from Parsons Avenue to the project’s eastern boundary line that would connect the proposed project to nearby land uses, including the residential neighborhoods to the west along Childs Avenue and Gerard Avenue. Building bicycle lanes at these locations is consistent with the City of

Merced Bicycle Plan, which was adopted on October 20, 2008 and meets requirements of the California Bicycle Transportation Act (1994) and qualifies the City of Merced to receive state funding for bicycle projects. The City shall determine the applicant's fair share monetary contribution to the development of these bicycle lanes and the Applicant shall pay its fair share at the same time building permit fees are due to the City.

- ~~Provide on site shops and services for employees including a cafeteria and a bank/ATM within 6 months of opening the facility.~~
- As part of its landscaping plan to be prepared for the project (which is also mentioned in Mitigation Measure 4.13-2) the Applicant shall select plant species and landscaping coverage that require minimal maintenance with mechanically-powered equipment such as gasoline-powered lawn mowers. The Applicant and/or its contactors shall not use gasoline-powered leaf blowers on site. Use only electric powered landscape maintenance equipment for routine maintenance of to care for landscaped areas, where routine maintenance activities include mowing, leaf blowing, and other activities that occur 3 or more times per year. If this work is hired out to a landscaping company, then the contract shall prohibit the use of gasoline- or diesel-powered leaf blowers. landscape maintenance equipment.
- Building and site design shall include electrical outlets around the exterior of the units to enable use of electric landscape maintenance equipment.