

**Espinosa, Kim**

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**From:** Lesch, Jack  
**Sent:** Wednesday, November 22, 2006 12:00 PM  
**To:** Espinosa, Kim  
**Subject:** FW: Wal-Mart Matters  
**Importance:** High

-----Original Message-----

**From:** Marshall, Jim  
**Sent:** Wednesday, November 22, 2006 11:30 AM  
**To:** Lesch, Jack; Proctor, Deneen  
**Subject:** FW: Wal-Mart Matters  
**Importance:** High

for file

James G. Marshall, City Manager  
City of Merced  
marshallj@cityofmerced.org  
209.385.6834

-----Original Message-----

**From:** city, council  
**Sent:** Wednesday, November 22, 2006 11:16 AM  
**To:** Bill Spriggs (E-mail); Carl Pollard (E-mail 2); Cortez, Joseph; Ellie Wooten (E-mail 2); Ellie Wooten (E-mail); Gabriault, Michele; Jim Sanders (E-mail); Joe Cortez (E-mail); Marshall, Jim; Michele Gabriault-Acosta (E-mail); Osorio, Rick; Pollard, Carl; Reynolds, Nobie; Rick Osorio (E-mail); Sanders, Jim; Spriggs, Bill  
**Subject:** FW: Wal-Mart Matters  
**Importance:** High

From the web site.

*Nobie*

*Nobie Reynolds*  
*Executive Secretary*  
*City Manager's Office*  
*Email: reynoldsn@cityofmerced.org*  
*Telephone: (209) 385-6834; Fax (209) 723-1780*

-----Original Message-----

**From:** Michael Conlin [mailto:conlin1@earthlink.net]

11/27/2006

**Sent:** Tuesday, November 21, 2006 4:01 PM  
**To:** city, council  
**Subject:** Wal-Mart Matters  
**Importance:** High

Dear Honored Council Members,

As a member of the community strongly opposed to the Wal-Mart Distribution Center, I was heartened to see in the November 10, 2006 issues of the Sun Star that the State, too, has grave reservations concerning our air quality and the staggering traffic issues that Wal-Mart will impose upon us all. I can appreciate the need for jobs in Merced County - good paying jobs - but when in history did Wal-Mart become a beacon of concern for its employees? This is the company that teaches its employees how to qualify for public assistance so they can continue to work at Wal-Mart's notoriously low paying jobs. We must look to other communities who have extended a welcome to Wal-Mart's Distribution Centers to see how they have fared with this 800 lb. gorilla in their back yards. The record is very grim. Porterville residents have horror stories about Wal-Mart. The San Francisco Chronicle routinely runs articles about the growing nation-wide concern with Wal-Mart's business practices. We all know how "Mom and Pop" stores fare with Wal-Mart in the neighborhood. After the distribution center is established, then comes the Wal-Mart "super store." At this juncture, even Save Mart and Raley's will be at risk in Merced.

Secondly, after the decision for the Mission Interchange on Hwy 99 is set in motion for UC, the College Parkway, and retail shops, Wal-Mart decides to locate its distribution center there. What would be an enhancement for Merced County with a new exit to UC and parts south and east, Wal-Mart will clog with, by its own admission, up to 50 trucks per hour, 24/7's. Being realistic, the trucks will not whip in, unload or load, and whip out, they will park idling in lines in the normal course of business for untold minutes and hours. I doubt if Wal-Mart has individual docking facilities for 50 trucks per hour so time spent waiting a "turn" will further complicate traffic and air quality. Consider the homes and schools in the immediate area! These people bought homes and send their children to school with the expectation of a pleasant live in Merced, much like that of the rest of the community. There was no way they could even imagine that they would be living in a carbon monoxide corridor of unabated noise and noxious fumes.

The "bads" far outweigh the "goods" in this Wal-Mart project. More jobs, but more of the same low paying Wal-Mart jobs; the higher paying jobs will be given to Wal-Mart employees that will move here - as they did in Porterville and other distribution center sites. Wal-Mart does little for the US economy because most, if not all, of its goods come from China. The taxes would be a boon to Merced, but I believe when all the issues are considered, the cost is much too dear for a small agricultural community.

Please reconsider approval for this monolith and keep some semblance of an

agricultural community life here in Merced. This is why many of us choose to live in Merced - for the rural quality of life in tune with nature through the seasons. We, and many of my neighbors on 21st Street look to you to voice our concerns and trepidations with this monster project and protect the quality of life in Merced by denying Wal-Mart a place to squander our resources.

Sincerely,

Mike and Gloria Conlin  
[conlin1@earthlink.net](mailto:conlin1@earthlink.net)

Mike and Gloria Conlin  
[conlin1@earthlink.net](mailto:conlin1@earthlink.net)

## Espinosa, Kim

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**From:** Quintero, Frank  
**Sent:** Monday, November 20, 2006 10:30 AM  
**To:** lynn.mcalexander@wal-mart.com; jim.emerson@c-b.com; mes@dksassociates.com; j davidoff@steefel.com; wmanley@rtmmlaw.com; Espinosa, Kim; mmontesinos@steefel.com; Quintero, Frank; Ainslie, Daniel; Keith.Morris@wal-mart.com; Brian.Gordon@wal-mart.com; 'Chafin, Randy'  
**Subject:** MARG White Paper Concerning Air Quality

Dear Colleagues:

Attached is a white paper released by MARG concerning the Wal-Mart DC project and air quality for your review.



MARG Air Quality  
Paper.pdf



MARG Air Quality  
Press Release...

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# MARG WMAT

Merced Alliance for Responsible Growth Wal-Mart Action Team

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**FOR IMMEDIATE RELEASE: November 16, 2006**  
**CONTACT: Kyle Stockard, (209)722-0620**

## **Distribution Center Would Impact Public Health and Local Economy**

White paper on air quality finds that negative impacts of the proposed Wal-Mart distribution center outweigh local benefits

Asthma will go up and agricultural production will go down if the proposed Wal-Mart distribution center is built, says a new white paper released by the Merced Alliance for Responsible Growth's Wal-Mart Action Team. The white paper compiles scientific research on the impacts of diesel emissions and provides a look into the future of Merced's public and economic health if the distribution center is approved. The proposed center would generate an estimated 900 truck trips per day that would dump about 5.2 extra tons of particulates and 66 extra tons of nitrogen oxides (the major precursor to ozone) into Merced's air every year.

According to the white paper, diesel pollution causes respiratory cancers, decreased lung function, onset and aggravation of asthma and other health problems. Estimates from the California Air Resources Board indicate that diesel pollution causes about 2,900 early deaths, 3,600 hospital admissions, and 240,000 asthma attacks and other acute respiratory problems each year in California alone. "The distribution center will create a serious health risk," said Marilynne Pereira Co-Chair of the MARG Wal-Mart Action Team and a teacher at one of the three schools directly impacted by the Center. "We need to know exactly how many early deaths, hospital admissions and asthma attacks Merced can expect as a result of the distribution center before any decision can be made by the City Council."

Many Merced teachers are concerned about the distribution center due to its close proximity to three schools (Weaver Elementary, Pioneer Elementary and Golden Valley High School). "The distribution center would be too close to schools. The trucks would be dumping diesel exhaust directly into our schoolyards and classrooms," said Goret Griego a teacher at Pioneer Elementary School. "We need to prioritize the health of our children."

A new issue introduced by the white paper is the economic impact of poor air quality. Proponents of the distribution center rely on the argument that the distribution center will create jobs. The white paper finds, however, that the diesel emissions from distribution center operations will actually *hurt* the local economy. Agriculture, an important source of jobs in Merced County and throughout the valley, will be negatively affected. Some crops could lose as much as 23% of their yield as a result of ozone pollution. "The success of our crops determines how many people we can employ and how much we can afford to pay," notes Cindy Lashbrook, a Livingston farmer growing fruit, nuts and hay. "When local farmers do well, the income circulates within the community many times. It's more complex than Wal-Mart providing 'x' number of jobs."

The white paper also reports that other economic sectors will be impacted by a reduction in productivity and lost work days as a result of pollution-related health conditions.

The Merced Alliance for Responsible Growth Wal-Mart Action Team plans to continue their research independent of the City's process. "The more information, the better," said Pereira. "We can't rely solely on the findings of an environmental consultant that is funded by Wal-Mart - it's our community at risk, not theirs."

# THE WEIGHT OF THE AIR:

## Why the Effects of Air Pollution Tip the Scales Against the Proposed Wal-Mart Distribution Center in Merced

WAL-MART ACTION TEAM

November 2006

### INTRODUCTION

The proposal by Wal-Mart Stores, Inc., to build a regional distribution center in the City of Merced has sparked a vigorous debate over the relative costs and benefits of the project. The main benefit cited by residents and City officials is that the distribution center could provide much-needed jobs—although the number of jobs, the proportion which would go to local residents, and the associated wages and benefits are all currently uncertain. The list of costs cited by concerned residents is longer and includes traffic and pedestrian safety problems, taxpayer subsidies, increased flooding, water pollution, noise and light pollution, and the risks associated with regular handling of hazardous materials. The one impact which surely weighs more heavily than any other against the proposed distribution center, however, is the increase in local and regional air pollution which must inevitably accompany the facility's operation. Indeed, as this report and the numerous studies cited herein will demonstrate, the myriad negative effects the increased emissions would have on public health, the economy, and the environment of Merced are enough by themselves to tip the public-interest scales against the distribution center—and should prompt responsible action from City officials to protect the public by denying Wal-Mart permission to build.

### BACKGROUND: MERCED, AIR QUALITY & WAL-MART

As every local resident well knows, air pollution is a serious problem in the Merced area. According to the American Lung Association's *State of the Air: 2006*,<sup>1</sup> the City of Merced ranked among the worst 25 cities in the United States for year-round particulate pollution (#18), short-term particulate pollution (#23), and ozone pollution (#5). Merced County ranked among the worst 25 counties in the country for year-round particulate pollution (#22) and ozone pollution (#8). Put simply, Merced's air quality is among the very worst in the nation.

A preliminary analysis indicates that trucks driving to and from the proposed distribution center would dump significant additional amounts of new pollutants—including particulates and ozone, the very pollutants which are already so problematic—into the air in Merced. While considering this new pollution, it is important to keep in mind that air pollution does not

"Merced's air quality is among the very worst in the nation."

#### City of Merced:

- > **5<sup>th</sup> worst** ozone pollution in the nation
- > **18<sup>th</sup> worst** year-round particulate pollution in the nation
- > **23<sup>rd</sup> worst** short-term particulate pollution in the nation

#### County of Merced:

- > **8<sup>th</sup> worst** ozone pollution in the nation
- > **22<sup>nd</sup> worst** year-round particulate pollution in the nation

Source: American Lung Association<sup>1</sup>

New Pollutants  
Wal-Mart Trucks Would  
Emit in Merced County Each  
Year:

*Particulate Matter—*

**2.4 tons**

*Nitrogen Oxides—*

**83 tons**

recognize political boundaries and that emissions anywhere in the air basin would affect Merced's air quality. However, estimating the extra emissions from Wal-Mart trucks within the boundaries of Merced County alone (keeping in mind that the minimum distance a truck must travel from the county line to the proposed distribution center is approximately 20 miles) can at least provide a rough indicator of the increased load of pollutants the immediate area could expect. Assuming that each of the 900 daily truck trips Wal-Mart projects its distribution center would produce have their origins or destinations outside of Merced County, and using average emissions rates calculated by the EPA,<sup>2</sup> these estimates work out to about 2.4 extra tons of particulates and 83 extra tons of nitrogen oxides (the major precursor to ozone) which would be emitted into Merced's already dirty air every year by Wal-Mart trucks. These totals do not include other sources of air pollution stemming from the Wal-Mart project, most notably the extra car trips generated by employees commuting to and from the facility, nor do they include emissions from trucks idling in and around the facility.

In fact, Wal-Mart's track record suggests that truck idling at the proposed distribution center could become a very significant air pollution problem in and of itself. In 2004, the United States Environmental Protection Agency (EPA) took action against Wal-Mart for illegally allowing its trucks and the trucks of other companies to idle for long periods of time at Wal-Mart facilities in Connecticut and Massachusetts.<sup>3</sup> An idling diesel engine continues to burn fuel and produce the same toxic mix of pollutants that an active diesel engine does (see "Air Quality & Public Health" below)—which is the precise reason many states and municipalities have outlawed the practice. Connecticut and Massachusetts included anti-idling regulations in their official plans to meet federally mandated emissions standards, which is what allowed the federal government to bring its case against Wal-Mart; but most states' anti-idling regulations—including California's recently passed law addressing the issue—are not federally enforceable.

Wal-Mart settled the EPA's case in November 2005 by paying a \$50,000 fine and agreeing to comply with all *federally enforceable* anti-idling regulations. In addition, the company agreed to post signs on its properties and take other measures to discourage idling at its facilities nationwide. The extent of the implementation and effectiveness of these measures remains to be

"Wal-Mart has a long history of violating even the minimum standards set by environmental laws."

*Selected Recent Penalties:*

- 2001: **\$1 million fine** for Clean Water Act violations<sup>4</sup>
- 2004: **\$3.1 million fine** for Clean Water Act violations (**largest ever fine for such violations**)<sup>5</sup>  
**\$765,000 fine** for gasoline storage law violations (Florida)<sup>6</sup>  
**\$106,337 settlement** for small off-road engine violations (California)<sup>7</sup>
- 2005: **\$1.15 million fine** for water quality violations (Connecticut)<sup>8</sup>  
**\$160,000 fine** for water quality violations (Georgia)<sup>9</sup>

*and the problems continue:*

- 2006: **Ongoing criminal investigation** into Wal-Mart's hazardous waste handling in California and Nevada<sup>10</sup>

seen, but Wal-Mart's initial disregard of important air pollution regulations should inspire caution in government officials—particularly in Merced, where such pollution is already a major concern.

Indeed, as this case suggests, Wal-Mart has a long history of violating even the minimum standards set by environmental laws when it suits the company's purposes and results in a net profit. In addition to illegal idling, the long list of recorded cases range from stormwater runoff violations to hazardous material handling problems. Wal-Mart's cavalier attitude toward environmental regulations, together with the proposed distribution center's unavoidable air quality impacts and the Merced area's existing air quality problems, make for a hazardous and even deadly combination. The following sections examine the most problematic potential impacts of the proposed distribution center on Merced and surrounding areas.

### ***AIR QUALITY IMPACTS: PUBLIC HEALTH***

Wal-Mart's Environmental Review Checklist Application to the City projects that its facility would generate 900 additional truck trips and 2,150 additional car trips per day. All of the air pollution produced by these vehicles—and any other source of emissions related to the proposed distribution center—would have serious consequences for the environment and public health and should be weighed carefully by City officials. Arguably, however, the truck trips comprise the most significant source of increased air pollution resulting from the proposed distribution center, due both to the quantity and the composition of those emissions. For that reason, this section focuses on the impacts of truck emissions on the health of Merced's residents as emblematic of the impacts of all the increased air pollution which would result from the proposed Wal-Mart distribution center.

Diesel pollution from trucks contains high levels of particulate matter, ozone, and other toxic chemicals, including more than 40 known carcinogens, according to the California Air Resources Board (CARB),<sup>11</sup> and is thus damaging to human health in a wide variety of ways. For example, diesel particulates alone account for the majority of the airborne cancer risk in the state, according to CARB (*Ibid.*). In other words, diesel pollution is the sole or contributing cause of most cases of lung cancer in California. Furthermore, groundbreaking studies in recent years have demonstrated that air pollution not only aggravates but actually causes asthma<sup>12</sup> and have cast light on the likely mechanisms of causation of asthma by diesel pollution specifically<sup>13</sup>. Estimates of the number of people who develop chronic asthma due fully or in part to exposure to various types of pollution are unavailable. However, CARB estimates that 240,000 asthma attacks and other acute respiratory symptoms are caused by diesel pollution each year in California,<sup>11</sup> and a recent study found that failure to meet federal particulate and ozone standards causes 23,300

“Decisionmakers must keep in mind the very real life-and-death implications of poor air quality.”

*Each year in California, diesel pollution means:*<sup>11</sup>

- > **240,000** asthma attacks
- > **3,600** hospital admissions
- > **2,900** early deaths

*Each year in the San Joaquin Valley, noncompliance with ozone and particulates standards means:*<sup>14</sup>

- > **23,300** asthma attacks
- > **325** new cases of chronic bronchitis
- > **3,230** cases of acute childhood bronchitis
- > **17,000+** days of respiratory symptoms in children
- > **260** hospital admissions
- > **460** early adult deaths



asthma attacks each year just in the San Joaquin Valley (Merced's air basin).<sup>14</sup> Figure 1 demonstrates the striking correlation that can often be drawn between ambient levels of certain pollutants found in diesel emissions—in this case, particulate matter and carbon monoxide—and hospital visits for related respiratory symptoms—in this case, bronchitis, asthma, emphysema, and chronic obstructive pulmonary disease.<sup>19</sup>

Diesel pollution has particularly severe health effects in children. For example, prolonged exposure to particulates and other components of diesel exhaust inhibits the development of healthy lung function in children.<sup>15,16</sup> Furthermore, children living along major roadways are much more susceptible to asthma than other children, and the more traffic there is—and the greater the proportion of truck traffic—the higher the risk of asthma.<sup>17,18</sup>

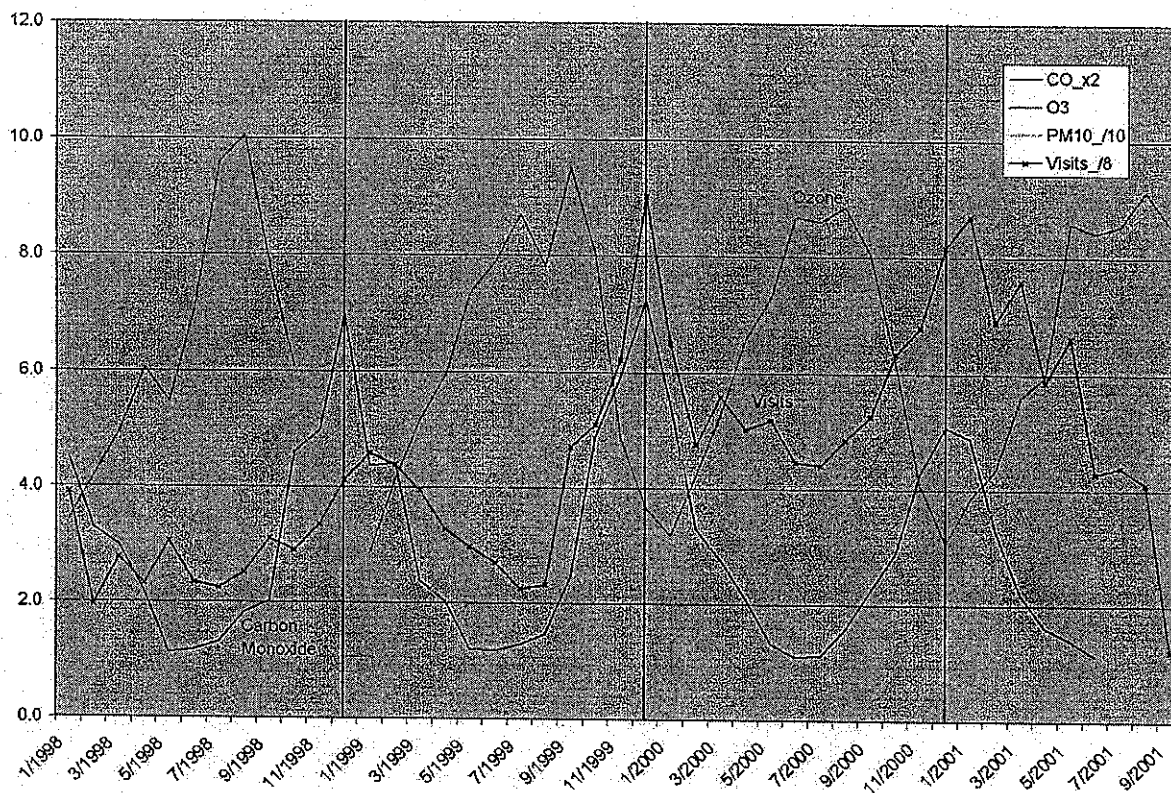


Figure 1. Source: Hamilton<sup>19</sup>

It is easy for the true import of facts such as these to be obscured by statistics and epidemiological jargon, but decisionmakers must keep in mind the very real life-and-death implications. CARB estimates that diesel pollution causes 3,600 hospital admissions and 2,900 early deaths each year in California.<sup>11</sup> Furthermore, in the San Joaquin Valley alone, there are more than 17,000 days of various respiratory problems in children, 325 new cases of chronic bronchitis and 3,230 cases of acute childhood bronchitis, 260 hospital admissions, and 460 premature adult deaths each year as a result of the Valley's failure to meet federal particulate and ozone standards.<sup>14</sup> Accurately estimating the specific cost of the pollution which would result from the proposed Wal-Mart distribution center in terms of human lives would be difficult. However, the proposed facility is immediately adjacent to several large residential neighborhoods, and there are five schools located within two miles of the site, including Pioneer Elementary School, Weaver Elementary School, and Golden Valley High School. Thus, there can be no doubt that the distribution center would cost

many residents—and particularly children—their health. Given that it is the duty of the City of Merced to protect its citizens, the effects of air pollution on public health should be reason enough for City officials to deny Wal-Mart's distribution center application.

### ***AIR QUALITY IMPACTS: AGRICULTURE, ECONOMY & ENVIRONMENT***

Agriculture provides the economic base of the Merced area. About 80% of the land area of Merced County is used for agricultural production, and the industry is perhaps the most important source of jobs and income in the region. In other words, anything that lowers agricultural productivity hurts the local and regional economy. It is an unfortunate fact that air pollution from the extra car and truck trips generated by the proposed Wal-Mart distribution center would do just that.

The best known and best documented impacts of air pollution on agricultural productivity stem from the effects of ozone. Exposure to ozone has long been known to decrease the yields of many crops significantly. Moreover, in addition to the direct effects, elevated levels of ozone may in some cases provide a competitive advantage to weed species, thus further reducing yield indirectly.<sup>20</sup>

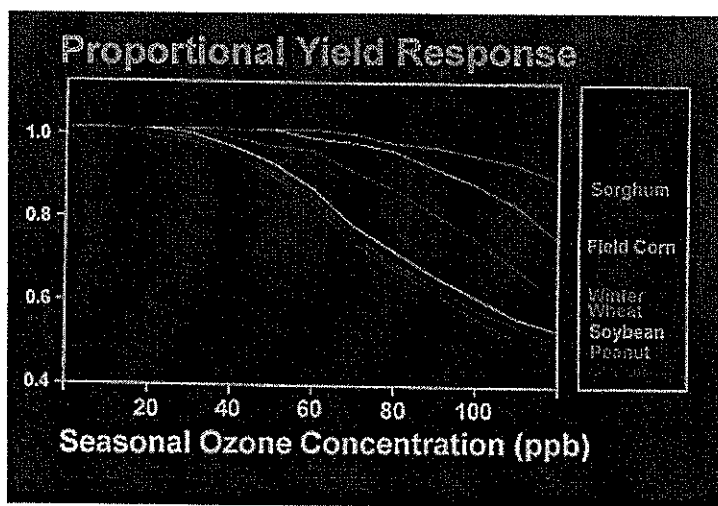


Figure 2. Source: USDA<sup>21</sup>

All of the most economically important crops grown in Merced County—including almonds, tomatoes, cotton, sweet potatoes, and alfalfa<sup>22</sup>—are dicots (Class Magnoliopsida), a group which is particularly sensitive to the effects of ozone pollution. This fact is vividly illustrated by Figure 2, showing the striking decline in yield of various dicots (soybean, peanut, cotton) in response to even slight elevations in ozone levels, compared to the somewhat less marked decline in monocots (Class Liliopsida, here sorghum, field corn, winter wheat). Thus, Merced's agricultural production is at particular risk of loss. In fact, Merced's crops are surely already significantly affected by ozone pollution. Across the state of California, for example, total yield losses due to ambient ozone levels have been estimated at 6.8% for processing tomatoes, 9.5% for alfalfa, and 23.3% for upland cotton,<sup>23</sup> with total financial losses in the hundreds of millions of dollars.<sup>24</sup> While the quantitative effects on the Merced area specifically are unknown, the sensitivity of its crops and the high levels of ozone in the area guarantee that they are significant.

As noted above, trucks trips generated by the proposed Wal-Mart distribution center would dump tons of nitrogen oxides into Merced's air (see "Background: Wal-Mart, Merced & Air Quality" above), leading to increased ambient ozone levels. Thus, the distribution center's operations would have the effect of further decreasing crop yields in the area by an indeterminate but significant amount, meaning less income and fewer jobs in the sector. This impact on the base of the local and regional economy must carry significant weight with officials charged with deciding whether building the proposed Wal-Mart distribution center would be in the public interest.

“Any potential economic benefits of the proposed distribution center are sure to be counter-balanced by the negative economic impacts wrought by increased air pollution.”

*Annual statewide crop yield losses from ozone*<sup>23</sup>

- **6.8%** of processing tomatoes
- **9.5%** of alfalfa
- **23.3%** of upland cotton

*Annual San Joaquin Valley productive time losses from noncompliance with ozone and particulate standards*<sup>14</sup>

- **188,400** days of reduced activity
- **3,000** lost work days
- **188,000** missed school days

*Annual financial losses to San Joaquin Valley from noncompliance*<sup>14</sup>

- **\$3 billion** or
- **\$1,000** per person living in the Valley

Furthermore, the facility's pollution would take its toll on productivity in other economic sectors as well. Respiratory ailments caused by the pollution would contribute to more lost work days in all sectors and corresponding lost wages and productivity. Diesel pollution is currently at least partly responsible for 600,000 lost work days in the state annually,<sup>11</sup> and the San Joaquin Valley's failure to meet federal particulate and ozone standards currently results in 188,400 days of reduced activity in adults and 3,000 lost work days—as well as 188,000 school absences—each year.<sup>14</sup> The financial costs of these lost days of productivity in the San Joaquin Valley, along with the direct costs associated with the health effects themselves, total over \$3 billion annually, or about \$1,000 per year for every person living in the Valley.<sup>7</sup> The economy would also suffer from the loss of potential residents deterred from living and working in the area by poor air quality, and from a potential reduction in tourist activity caused by exacerbating existing air pollution problems in nearby Yosemite National Park.<sup>25,26</sup> Finally, the increased emissions would contribute to wide-

ranging and severe environmental problems, ranging from global warming to acid rain to impacts on non-crop plant populations and non-human animal populations, each inherently troubling and with its own economic ramifications. All of these issues deserve further study and consideration and add weight to the already heavy burden of air pollution impacts that would be generated by the proposed Wal-Mart distribution center.

## CONCLUSION

The proposed Wal-Mart distribution center in Merced would create significant new sources of emissions in and around the City of Merced and increase already high levels of air pollution in the area. The children and adults of Merced are already at risk of respiratory ailments and early death from the poor air quality; if Wal-Mart's proposed distribution center is approved, that risk will increase dramatically, particularly for those living, working, and attending school near the center. Additionally, agricultural productivity in the Merced area is already damaged by high ozone levels, and if Wal-Mart's facility is built, the productivity of Merced's most important economic sector would decrease even further. Various other impacts of increased air pollution from distribution center sources are also potentially significant.

“The threats to public health, economy and environment inherent to the proposed facility make it the inescapable duty of decisionmakers to deny Wal-Mart's applications.”

If the decisionmaking process of public officials considering Wal-Mart's proposed facility can be imagined as weighing the potential public costs of the distribution center against the potential public benefits, it is hard to imagine any benefit which could outweigh the inescapable costs of increased air pollution. Any potential economic benefits are sure to be counter-balanced by the negative economic impacts wrought by increased air pollution, including job losses in other sectors such as agriculture; add public health impacts to the scales, and the result is clear. In the end, the inevitable increase in air pollution and the myriad implications of that increase provide more than just cause not to allow a Wal-Mart distribution center in Merced. Indeed, the threats to public health, economy and environment inherent to the proposed facility make it the inescapable duty of decisionmakers to deny Wal-Mart's applications.

### **Sources**

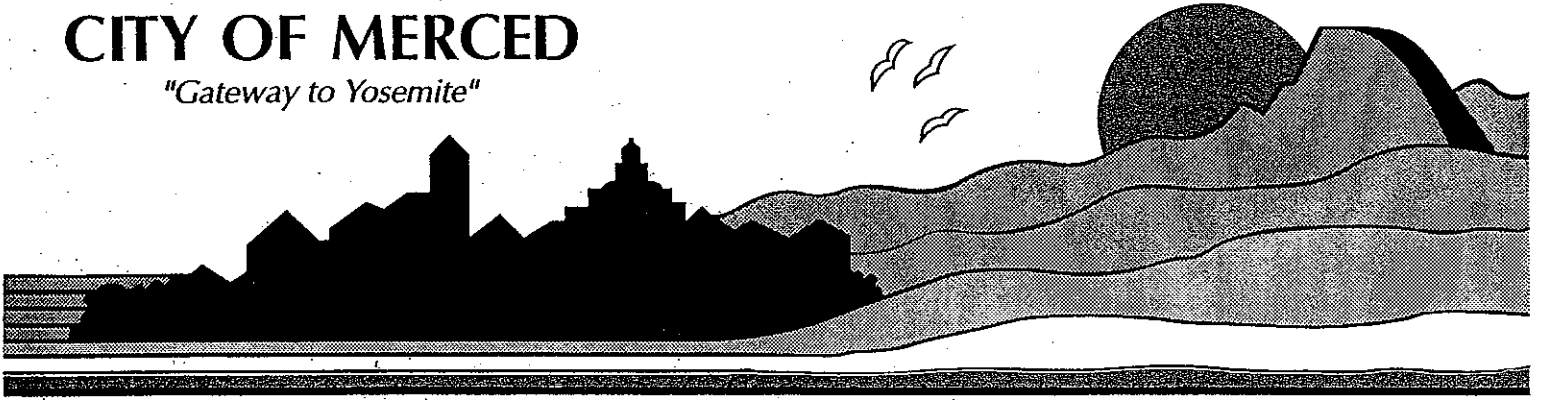
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20. Grantz, D.A., A. Shrestha. April-June 2005. Ozone reduces crop yields and alters competition with weeds such as yellow nutsedge. *California Agriculture* (<http://CaliforniaAgriculture.ucop.edu/>). Available online at <http://calag.ucop.edu/0502AMJ/pdfs/Ozone.pdf>.
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# CITY OF MERCED

"Gateway to Yosemite"



November 6, 2006

Schuler Ellis  
1344 West Cass Street  
Tampa, FL 33606

Dear Mr. Ellis:

The City Clerk's Office received your money order #840052448 totaling \$188.20 for your public records request on the proposed Wal-Mart Distribution Center project. The City processed your request and the documents are enclosed.

If you have any questions or I can be of further assistance, please call me at (209) 385-6231.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dana J. Davidson".

Dana J. Davidson, CMC  
Records Coordinator/Deputy City Clerk

Enclosures

CITY OF MERCED

NOV3'06PM5:01

26 October 2006

City of Merced  
Attention City Clerk  
678 W. 18<sup>th</sup> Street  
Merced, CA 95340

To Whom It May Concern:

This letter is intended to serve as a record of payment for a Public Records Request which was filed back on August 21st of 2006.

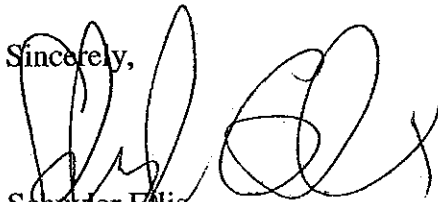
In conversations with Dana Davidson of the Office of the City Clerk, it was reported that the request totaled 1,882 pages. At \$0.10 per page that brings the total cost of the request to \$188.20. Please find enclosed a money order in the amount of \$188.20 made out to the City of Merced.

Please send all of the documents associated with this request to:

Schuyler Ellis  
1344 W. Cass Street  
Tampa, Florida 33606

I appreciate your assistance with this matter. If you have any additional questions or concerns please contact myself using the information in the signature line.

Sincerely,



Schuyler Ellis  
1344 W Cass Street  
Tampa, Florida 33606  
ph. 813 258 4030  
e-mail SchuylerLS@yahoo.com



THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

**AMSCOT**

**INTERNATIONAL MONEY ORDER**

631542  
684

840052448

10/26/2006

PAY TO THE  
ORDER OF

CITY OF MERIDA

PURCHASER

\* ONE HUNDRED EIGHTY-EIGHT AND 20/100 DOLLARS

5188.20

840052448

NOT VALID FOR MORE THAN ONE THOUSAND DOLLARS (\$1000)

AMSCOT CORPORATION

PURCHASER SIGNATURE

PURCHASER AND PAYEE ARE SUBJECT TO FEE, SERVICE CHARGE AND OTHER TERMS ON THE REVERSE SIDE

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

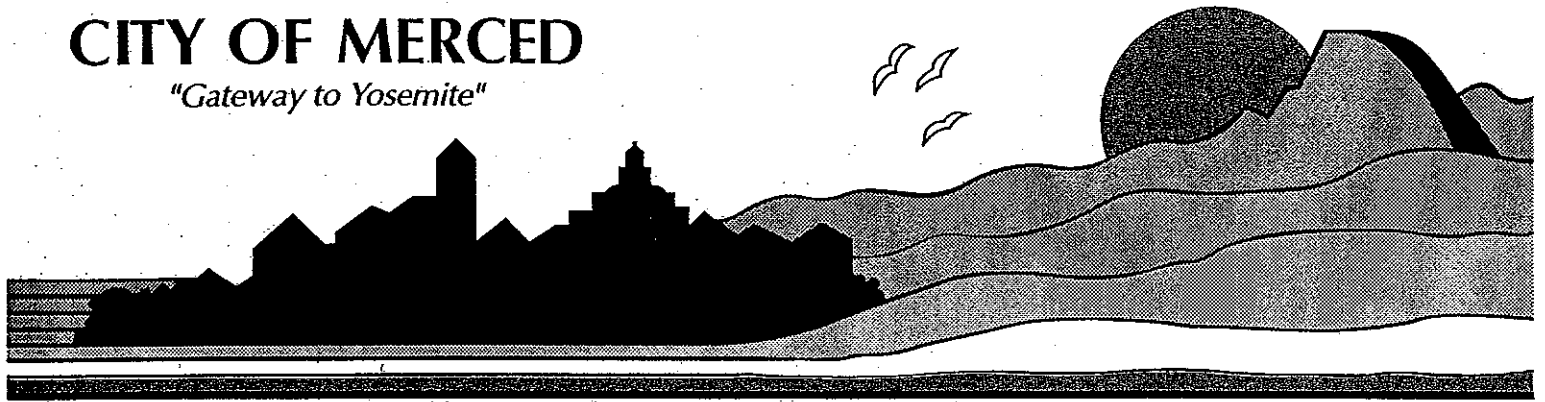
⑈840052448⑈ ⑆063115424⑆ ⑆5000000017⑈

AMSCOT  
CORPORATION  
P.O. BOX 25137  
TAMPA, FL  
33622-5137

BANCO POPULAR  
NORTH AMERICA

# CITY OF MERCED

"Gateway to Yosemite"



October 4, 2006

Schuyler Ellis  
1344 West Cass Street  
Tampa, FL 33606

Dear Mr. Ellis:

Pursuant to our telephone conversation today, the City Clerk's Office received your public records request for the proposed Wal-Mart Distribution Center project.

Your request was processed by the city. According to your request, 1,882 pages were generated at a cost of \$.10 per page. Please submit a check or money order for \$188.20 payable to the City of Merced.

If you have any questions or I can be of further assistance, please call me at (209) 385-6231.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana J. Davidson".

Dana J. Davidson, CMC  
Records Coordinator/Deputy City Clerk

cc: City Attorney's Office

**Espinosa, Kim**

---

**From:** Espinosa, Kim  
**Sent:** Monday, October 02, 2006 3:50 PM  
**To:** 'rcruz@ucmerced.edu'  
**Subject:** Site Plan Approval Committee

Ms. Cruz,

We attempted to mail you the attached letter on 9/20/06, but it was returned to us for lack of sufficient address. If you would like to receive future mailings, please send me a corrected address. Thanks!

--Kim

Kim Espinosa, Planning Manager  
City of Merced Planning & Permitting  
678 West 18th Street  
Merced, CA 95340  
Phone: (209) 385-6858  
Fax: (209) 725-8775  
Email: [espinosak@cityofmerced.org](mailto:espinosak@cityofmerced.org)

# CITY OF MERCED

"Gateway to Yosemite"



September 20, 2006

Rosanna Cruz  
1735 Canal St.  
Merced, CA 95340

&

Kyle Stockard  
2499 E Gerard Ave, #12  
Merced, CA 95340

&

Marilyn Pereira  
505 Mustang Ct  
Merced, CA 95340

RE: Site Plan Committee Meetings and the Brown Act

Dear Ms. Cruz, Mr. Stockard, and Ms. Pereira,

Thank you for your memo of August 23, 2006 regarding the City's Site Plan Approval Committee. After consultation with the City Attorney's office, the City concurs that the Site Plan Approval Committee meetings are subject to requirements of the Brown Act.

In your memo, you requested to be placed on the mailing list for future agendas. Since these agendas are distributed to the Committee members by email and you have provided your email addresses, the agendas will be forwarded to you by email at no charge in "pdf" format. However, please note that the agendas have drawings attached which can make for very large files so please make sure that your email system can handle such large files. If your email system rejects the large files, a copy of the meeting agenda only will be forwarded to you by email. Therefore, if you wish to have paper copies mailed to you, you would need to provide 20 self-addressed stamped envelopes along with a check for \$10.00 made out to "City of Merced" to cover the cost of one year (to be renewed on an annual basis).

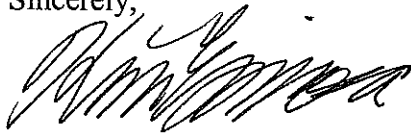
You have also requested copies of all Site Plan Approval Committee minutes and agendas for the past six months. In the past, Site Plan Committee meetings and Development Review meetings were combined together (see below). No minutes were prepared for these meetings, but Development Review agendas and Site Plan Committee Resolutions outlining the Committee's actions on various projects are available. Supporting material attached to the Development Review Agendas for the Site Plan Approval applications only are also available (supporting materials for other applications are also available but are not included in the number of copies noted below). City staff has gathered all such documents and 145 pages of documents are relevant to the activities of the Site Plan Approval Committee. You may come in and review those materials if you like—please call me at 209-385-6858 to set-up an appointment. If you wish to have copies of these documents, at a cost of 10 cents per page, you will need to submit \$14.50 to the City of Merced and the copies will be forwarded to you.

Please note that Development Review meetings are meetings of staff from various City Departments. These meetings are internal staff meetings and are not prescribed in the Merced Municipal Code and are, therefore, not subject to the Brown Act. For the sake of clarification, in the future, the meetings will not be combined. When applications for Site Plan Approval are received, the Site Plan Approval Committee will meet separately on Thursdays at 1:30 p.m. in the Planning Conference Room on the 2<sup>nd</sup> Floor of the Merced Civic Center at 678 West 18<sup>th</sup> Street. Meetings will likely be held no more than once a month but no meeting will be held unless there are applications to consider. Although Development Review members are welcome to attend the Site Plan Committee meetings and provide input, they are not voting members of the Committee.

Your memo raises some questions regarding the Site Plan Committee's role in considering the proposed Wal-Mart Distribution Center. For the record, the Committee has not taken any official action on the Wal-Mart application as of this date. The Committee is likely to meet sometime in the future to refer the matter to the Planning Commission and City Council per Merced Municipal Code Section 20.68.040 after the Environmental Impact Report is prepared and available for public review.

If you have any questions about any of the information above, please feel free to give me a call at (209) 385-6858. Thank you.

Sincerely,



Kim Espinosa  
Planning Manager

cc: Jack Lesch, Development Services Director  
Dave Tucker, City Engineer  
Don Spiva, Chief Building Official  
Greg Diaz, City Attorney

# CITY OF MERCED

"Gateway to Yosemite"



September 20, 2006

Rosanna Cruz  
1735 Canal St.  
Merced, CA 95340

&

Kyle Stockard  
2499 E Gerard Ave, #12  
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Letter regarding Site Plan Approval Committee

September 20, 2006

Page 2

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If you have any questions about any of the information above, please feel free to give me a call at (209) 385-6858. Thank you.

Sincerely,

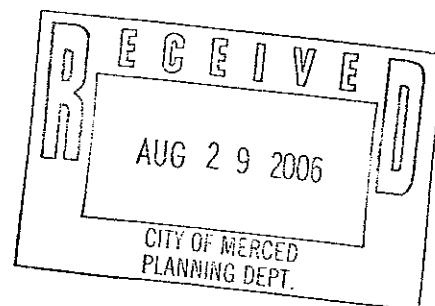


Kim Espinosa  
Planning Manager

cc: Jack Lesch, Development Services Director  
Dave Tucker, City Engineer  
Don Spiva, Chief Building Official  
Greg Diaz, City Attorney

MEMO

**TO:** Kim Espinoza, City of Merced Planning Department  
**FROM:** Rosanna Cruz  
rcruz@ucmerced.edu  
1735 Canal St.  
Merced, CA 95340  
**DATE:** August 23, 2006  
**RE:** Site Plan Committee Meetings and the Brown Act



I am writing today to remind you that, pursuant to the Brown Act, Government Code, § 549501 et seq., **all meetings of the Site Plan Committee** (or equivalently, the Site Approval Committee or Site Plan Approval Committee) **are open meetings**. More specifically, I ask that you take note of the following:

**THE BROWN ACT SPECIFICALLY APPLIES  
TO THE SITE PLAN COMMITTEE**

As you know, **the Brown Act applies to all legislative bodies of local agencies**. The City of Merced is obviously a local agency (Section 54951), and the Site Plan Committee, whose membership and responsibilities are specifically defined in Section 20.68.015 of the Merced City Code, is a legislative body in the sense of the Brown Act (Section 54952b). The latter claim is valid because even bodies making executive and quasi-judicial decisions are subject to the provisions of the Act.

**The meetings of the Site Plan Committee are therefore fully subject to open meeting requirements.** In particular, the law requires that:

- Agendas or any other writings distributed to the Committee for discussion or consideration at a meeting must be disclosed upon my request (Section 54957.5).
- Materials provided to the Committee prior to a meeting must, upon request, be made available to me without delay (Section 54957.5a).
- I may request in writing that the Committee agenda or all of the documents comprising the Committee meeting packet be mailed to me for a cost not to exceed the actual cost of providing the service. (Section 54954.1). Upon receipt of my request, the City must mail the requested documents to me at the time the agenda is posted or when the documents are provided to the Committee, whichever occurs first.
- I must be afforded an opportunity to comment prior to or during consideration of each item on the Committee agenda (Section 54954.3a).

**Therefore, effective immediately, I wish to be placed on a list of persons receiving notices of and agendas and meeting materials for all of these meetings.** I prefer to receive information in electronic format at the e-mail address provided above. Otherwise, hard copies may be mailed to the mailing address provided above. If advance payment of a fee is required to offset copying and mailing costs, please provide instructions for doing so, and I will remit promptly.



**I also request copies of all Site Plan Committee minutes and/or agendas for meetings held within the past six months.**

**THE SITE PLAN COMMITTEE CANNOT EVADE  
THE REQUIREMENTS OF THE BROWN ACT  
BY SIMPLY AVOIDING FORMAL MEETINGS**

I understand your assertion that the Planning Commission, not the Site Plan Committee, will eventually hear and decide on the approval of the site plan for the proposed Wal-Mart Distribution Center, as authorized by Section 20.68.040(b) of Merced City Code.

However, that is not the whole story. Prior to the referral of the proposed site plan to the Planning Commission for hearing and decision, the Site Plan Committee will need to review and discuss early versions of Wal-Mart's plans and make preliminary recommendations accordingly. In other words, the Site Plan Committee will make preliminary decisions and recommendations enabling Wal-Mart to put its site plan in the position to be heard and decided upon by the Planning Commission. At a bare minimum, the Committee will need to meet in order to officially refer the site plan to the Planning Commission.

That said, I am aware of your additional claim that the Site Plan Committee will not actually meet in order to do some of this initial groundwork. Under the Brown Act, however, a meeting includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate upon any matter which is under the subject matter jurisdiction of the agency (Section 54952.2).

Even in an informal convening is considered to be a "meeting" if matters under the jurisdiction of the agency are discussed. The Brown Act is also clear that it is not only the decision of a legislative body that is subject to these requirements, but also the deliberations of the body that factor into that decision. **Therefore, if the Site Plan Committee intends to meet informally, please note that any such informal meetings are also subject to open meeting requirements.**

**THE SITE PLAN COMMITTEE CANNOT EVADE  
THE REQUIREMENTS OF THE BROWN ACT  
BY SIMPLY TALKING OR E-MAILING INDIVIDUALLY**

The Brown Act also specifically prohibits "serial meetings", which include any use of direct communication, personal intermediaries or technological devices to allow the legislative body (or a majority of its members) to develop a shared agreement as to the action to be taken. This prohibition also applies to conducting Site Plan Committee business back and forth via e-mail.

The Committee therefore must actually convene in order "to hear and consider the comments of interested city departments on" the proposed site plan for the Wal-Mart Distribution Center.

**THERE SEEMS TO BE CONSIDERABLE CONFUSION AMONG CITY STAFF  
REGARDING HOW THE SITE PLAN COMMITTEE ACTUALLY WORKS**

Finally, I was advised by a colleague who recently spoke directly with several members of the Site Plan Committee that there is considerable confusion about current Committee procedures and processes.

Different staff members gave differing accounts regarding the frequency of meetings, how the meetings are run, and how and when meetings are called, to name a few.

Of particular interest were the contrasting accounts regarding the Committee's role in reviewing the proposed site plan for the Wal-Mart Distribution Center. One staff member indicated that the Committee had already elected to forward the proposed Distribution Center site plan to the Planning Commission for approval, while another stated that the Committee had not yet made any such decision.

An obvious prerequisite to compliance with the Brown Act in this case is a clear and consistent understanding within City government about how the Site Plan Committee functions. **I therefore request a copy of any internal policies or procedures that clarify how the Site Plan Committee conducts business** (or will conduct business in the future).

\*\*\*\*\*

**Please confirm that you have received this e-mail, will take the actions requested, and otherwise intend to comply with the relevant provisions of the Brown Act. In particular, I look forward to promptly receiving:**

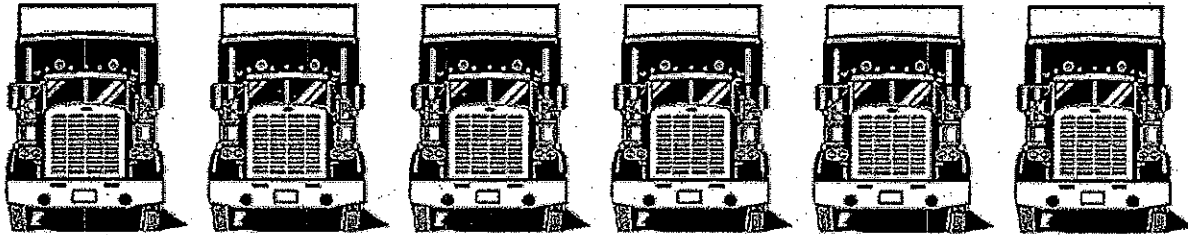
- notices of and agendas and meeting materials for all future Site Plan Committee meetings;
- copies of all Site Plan Committee minutes and agendas for Site Plan Committee meetings held within the past six months; and
- a copy of any internal policies or procedures that clarify how the Site Plan Committee conducts business.

If you have questions or need additional information in order to respond to my questions and requests, please feel free to contact me.

Thank you for your time and assistance.

A handwritten signature in black ink, appearing to read "K. Edwards", written in a cursive style.

# **Merced has the 5<sup>th</sup> worst ozone pollution in the *nation*.\***



..... about 1 every minute and half ..... **900+** every day .....

## **How will 27,000 additional trucks a month affect our community's health?**

Come hear from the Valley's health and air quality experts.  
They're here to answer *your* questions.

**GUEST SPEAKER: David Lighthall, Ph.D. Director of the Relational Culture Institute**

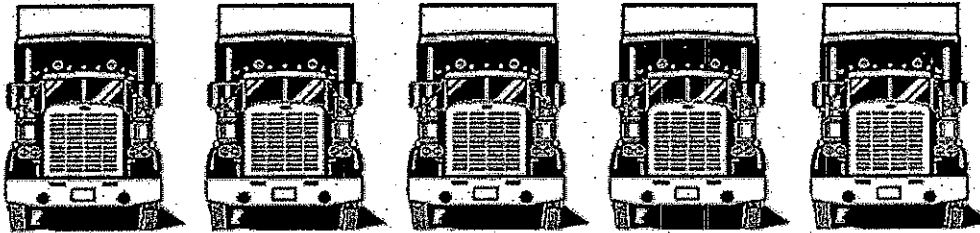
**When: Thursday, September 14<sup>th</sup>, 2006  
6:30 – 8:00 pm**

**Where: Golden Valley High School  
2121 E Childs Ave  
Merced, CA 95340**

For more information or transportation, call 723-9458 or email us at: [wmat@mercedalliance.org](mailto:wmat@mercedalliance.org)  
[www.mercedalliance.org](http://www.mercedalliance.org)

\*American Lung Association (State of the Air: 2006)

# **Merced tiene la quinta más peor contaminación del ozono en la nación.\***



aproximadamente 1 cada minuto y medio...900+ cada día.....

## **...¿Qué va a pasar con la salud de la comunidad con 27,000 camiones adicionales cada mes?**

Venga a escuchar oradores expertos acerca de la calidad de salud y  
aire aquí en el valle.

Estarán aquí para responder a sus preguntas.

**El orador principal: David Lighthall, Ph.D.  
Director del Instituto de Cultura Relacional**

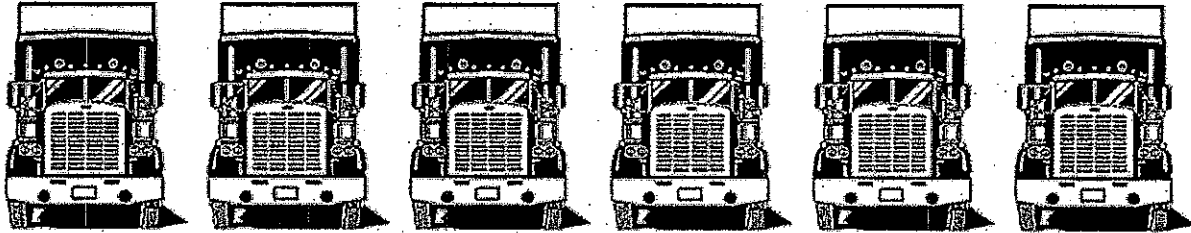
**Cuándo: Jueves, 14 de setiembre, 2006  
6:30-8:00 de la noche**

**Dónde: Golden Valley High School  
2121 E. Childs Ave  
Merced, California 95340**

**Para más información, llame 723-9458 or escribe un  
Email a: [wmat@mercedalliance.org](mailto:wmat@mercedalliance.org)**

\*información cortesía American Lung Association (Estado del Aire.2006)

# Merced yog lub zog fuab cuab phem thib 5 nyob Meskas.\*



... ze le 1 lub tsheb thauj khoom ib feeb ntau ..... 900+ lub txhua nub ...

## Tej paa tsw phem ntawm 27,000 lub tsheb thauj khoom txhua lub hli yuav hloov peb zej zog txuj sa le caag?

*Tuaj noog cov tuab neeg txawj ntse thaam txug kev noj qaab haus huv hab fuab cua. Puab yuav teb koj cov lug nug.*

TUG TUAJ: David Lighthall, Ph.D.

Thawj tswv ntawm lub koom hum: Relational Culture Institute

**Nub:** Thursday, 9 hlis, nub 14, 2006  
6:30 – 8:00 pm

**Chaw:** Golden Valley High School Theater  
2121 E Childs Ave  
Merced, CA 95340

For more information or transportation, call 723-9458 or email us at: [wmat@mercedalliance.org](mailto:wmat@mercedalliance.org)  
[www.mercedalliance.org](http://www.mercedalliance.org)

\*American Lung Association (State of the Air: 2006)

## CITY CLERK'S CERTIFICATE

I, JAMES G. MARSHALL, City Clerk of the City of Merced, California, do hereby certify that the attached document, entitled:

RESOLUTION NO. 2006-108

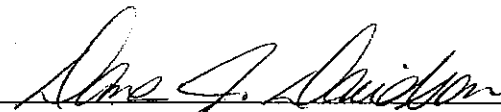
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, ADOPTING FINDINGS OF FACTS, MITIGATION MONITORING PROGRAM, STATEMENT OF OVERRIDING CONSIDERATIONS, AS WELL AS CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE MERCY MEDICAL CENTER

is a true and correct copy of the original on file in the Office of the Merced City Clerk, Merced, California.

JAMES G. MARSHALL, CITY CLERK

DATED: September 8, 2006

BY:



Dana J. Davidson, CMC  
Deputy City Clerk



**RESOLUTION NO. 2006- 108**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, ADOPTING FINDINGS OF FACTS, MITIGATION MONITORING PROGRAM, STATEMENT OF OVERRIDING CONSIDERATIONS, AS WELL AS CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE MERCY MEDICAL CENTER**

WHEREAS, the Draft EIR for the Mercy Medical Center was available for public review and comment beginning March 29, 2006 and ending on May 15, 2006 for the forty-five (45) day review period required by law; and,

WHEREAS, the Final EIR, which responds to all comments received during the review period was distributed to appropriate bodies for consideration on July 28, 2006; and,

WHEREAS, Section 21082.1 of the Public Resources Code, known as the California Environmental Quality Act ("CEQA"), and CEQA Guideline 15090 require the City Council to certify that the Final EIR has been completed in compliance with CEQA, and that it has independently reviewed and considered the information contained in the Final EIR before making a decision on the project; and,

WHEREAS, the City Council at a duly noticed public hearing held for the purpose of receiving comments on the Mercy Medical Center Final EIR did hear and consider all comments.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council has reviewed and independently analyzed the information contained in the Final EIR and hereby certifies that the Mercy Medical Center Project (a/k/a "General Plan Amendment #04-06/Zone Change #384") Final EIR (the Draft EIR and responses to comments, which together comprise the Final EIR, on file in the City Clerk's Office) is complete and adequate and has been completed in compliance with CEQA.

SECTION 2. The City Council, in compliance with CEQA Guideline 15091, adopts the Findings of Fact set forth in the Findings of Fact and Statement of Overriding Considerations, labeled Exhibit A, attached hereto and incorporated herein by this reference.

SECTION 3. The City Council, in compliance with CEQA Guideline 15093, adopts the Statement of Overriding Considerations set forth in the Findings of Fact and Statement of Overriding Considerations, labeled Exhibit A, attached hereto and incorporated herein by this reference.

SECTION 4. The City Council, as required by Section 21081.6 of the Public Resources Code, adopts the Mitigation Monitoring Program for the monitoring of the implementation of the mitigation measures set forth in the Mitigation Monitoring Program, labeled Exhibit B, attached hereto and incorporated herein by this reference.

SECTION 5. The City Council directs the City Manager, upon approval of the project, to file or cause to be filed with the Merced County Clerk a Notice of Determination in regard to the environmental impact of the project.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the 5th day of September 2006, by the following vote:


AYES: Council Members: OSORIO, SPRIGGS, CORTEZ, GABRIALT-ACOSTA, POLLARD, WOOTEN

NOES: Council Members: NONE

ABSENT: Council Members: SANDERS

ABSTAIN: Council Members: NONE

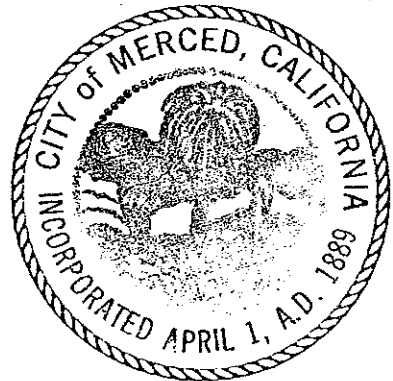
APPROVED:

  
\_\_\_\_\_  
Mayor



ATTEST:  
JAMES G. MARSHALL, CITY CLERK

BY: *[Signature]*  
Deputy City Clerk



(SEAL)

APPROVED AS TO FORM:

*[Signature]*                      8/11/06  
City Attorney                      Date

---

FINDINGS OF FACT  
AND  
STATEMENT OF OVERRIDING CONSIDERATIONS

FOR

MERCY MEDICAL CENTER

---

STATE CLEARINGHOUSE NUMBER 2004121055

CITY OF MERCED  
PLANNING DIVISION  
678 WEST 18<sup>TH</sup> STREET  
MERCED, CALIFORNIA 95340

AUGUST 2006

Findings of Fact & Statement of Overriding Considerations

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## FINDINGS OF FACT

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The Mercy Medical Center Project Environmental Impact Report (EIR) identified potentially significant and significant impacts associated with the proposed development. Approval of a Project with significant impacts requires that findings be made by the City pursuant to the California Environmental Quality Act (CEQA, California Public Resources Code sections 21000 et seq.), and State CEQA Guidelines (California Administrative Code, Title 14, Chapter 3) Section 15043, 15091, and 15093. Significant impacts of the Project would either: 1) be mitigated to a less than significant level pursuant to the mitigation measures identified in this EIR; or 2) mitigation measures notwithstanding, have a residual significant impact that requires a Statement of Overriding Consideration.

## FINDINGS FOR EIR CERTIFICATION

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### A. Findings Associated with Certification of the Environmental Impact Report

The City of Merced Planning Commission ("Planning Commission") and the City of Merced City Council ("City Council") declare and find as follows:

1. The Mercy Medical Center Project (also referred to herein as "the Project") FEIR has been completed in compliance with the California Environmental Quality Act (CEQA) and the State CEQA Guidelines. The FEIR consists of the following:
  - a) The Draft Environmental Impact Report (DEIR);
  - b) Comments and recommendations received on the DEIR;
  - c) A list of persons, organizations and public agencies commenting on the DEIR;
  - d) The response of the lead agency to significant environmental points raised in the review and circulation process;
  - e) Any other information added by the lead agency.
2. The FEIR for the Project fulfills all of the necessary requirements of CEQA and the Guidelines issued thereunder. Pursuant to CEQA, the FEIR includes mitigation measures for each potentially significant environmental impact.
3. The FEIR has been presented to the Planning Commission and the City Council. The Planning Commission and City Council have reviewed and considered the information in the FEIR prior to taking action on the Project.
4. The Planning Commission and the City Council also find:
  - a) The FEIR has been independently reviewed and analyzed by the Planning Commission and the City Council;
  - b) The DEIR has been circulated in accordance with CEQA Guidelines (Section 15105) and the FEIR has been presented to the Planning Commission and the City Council, which have independently reviewed and analyzed the information contained therein prior to approving the Project;
  - c) The FEIR reflects the independent judgment of the lead agency, the City of Merced;
  - d) The Planning Commission and City Council further find that where more than one reason for approving the Project and rejecting specific mitigation measures or alternatives is given in its findings, the City would have granted the approval(s) on the basis of any one of those reasons.

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

### B. Findings Associated with Specific Impacts and Mitigation Measures (14 CCR Section 15091)

The Planning Commission and the City Council hereby adopt and make the following findings relating to its adoption of the Project and the Final Environmental Impact Report. Having received, reviewed, and considered the entire record, both written and oral, relating to the Project and associated Environmental Impact Report, the Planning Commission and the City Council find as follows:

#### Aesthetics/Light and Glare

1. **Impact 3.1-1** Create adverse impacts on surrounding viewsheds. This is a **significant and unavoidable** impact of project implementation.

[X] Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the FEIR.

There are no feasible mitigation measures available to offset or reduce this impact. Disruption of existing viewsheds is a result of the height and scale of the proposed structures, and the viewsheds of and through the property will be permanently altered as a result of the project. This impact is **significant and unavoidable**, thus requiring a Statement of Overriding Considerations.

2. **Impact 3.1-2:** Produce substantial light pollution or glare. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

[X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measures:

- MM 3.1-2a* All lighting in the project area shall be shielded, directed downward and away from adjoining properties and rights-of-way. Light shields shall be installed and maintained consistent with manufacturer's specifications, and shall reduce the spillage of light on to adjacent properties to less than two foot-candles, as measured at the adjacent property line.

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

- MM 3.1-2b* Lighting fixtures shall be designed to produce the minimum amount of light necessary for safety purposes.
- MM 3.1-2c* The project design shall include the use of glass coatings to reduce the amount of light pollution and spillage from the interior lighting. Exterior glazing shall utilize performance coatings with an interior light reflectance in the range of 5-8%. Exterior glazing shall have a light reflectance out of less than 10%.
- MM 3.1-2d* The project site landscaping shall include vegetation designed to shield adjacent properties from project-generated light and glare. Exterior glazing shall have a light reflectance out of less than 10%.

This analysis identifies a potentially significant aesthetic impact resulting from project implementation. The mitigation measures identified will reduce impacts relative to aesthetics/light and glare to a **less-than-significant** level.

3. **Impact 3.1-4:** Visibility of aesthetically undesirable materials, equipment and facilities during normal facility operations. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

- MM 3.1-4* The power plant and all outdoor storage areas shall be screened off by fencing and landscaping to reduce their visibility from surrounding areas. Landscaping and fencing shall be designed to reduce visibility from surrounding properties, including the selection of plant materials which provide screening year-round.

Implementation of the mitigation measure identified will reduce impacts relative to aesthetics/light and glare to a **less-than-significant** level.

4. **Impact 3.1-5:** Create new shading patterns on adjacent land uses. This impact is considered **less than significant**. Although it is not necessary to mitigate a less than significant impact, the following mitigation measure will further reduce any project impact.

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

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The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

*MM 3.1-5* Catholic Healthcare West will fund in the amount of thirty-thousand dollars (\$30,000) for the purpose of mitigating aesthetic impacts associated with the project a landscape plan which could include the planting of trees, shrubbery, and other vegetation with irrigation that will run along Mercy Drive on the school's property. Within one-hundred and twenty (120) days from receipt of all necessary permits CHW will deliver the landscape fund to the District. The funds are to be used at the discretion of the Merced City School District.

### Agricultural Resources

5. *Impact 3.2-1* Conversion and loss of Prime Farmland to non-agricultural use. This is a **significant and unavoidable** impact of project implementation.

[X] Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the FEIR.

There are no mitigation measures available to offset the conversion of agricultural lands to non-agricultural uses. However, with the adoption of the General Plan, the City of Merced recognized that this Project is an appropriate use for the site, and that any loss of agricultural land is offset by the benefits that will be realized through the development of urban uses on-site. Implementation of the proposed project will have a **significant and unavoidable** impact and will require a Statement of Overriding Considerations.

6. *Impact 3.2-2* Indirect conversion and loss of surrounding Important Farmland to non-agricultural use. This is a **significant and unavoidable** impact of project implementation.

[X] Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the FEIR.



## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

With the adoption of the General Plan, the City of Merced recognized that the designated uses are appropriate for the land surrounding the project site, and that any loss of agricultural land is offset by the benefits that will be realized through the development of urban uses on these sites. With no mitigation measures available to offset this impact, the potential for the project to indirectly convert additional lands from agricultural to non-agricultural uses is **significant and unavoidable**. This impact will require a Statement of Overriding Considerations.

### Air Quality

7. **Impact 3.3-1:** Increased Particulate Matter levels in the immediate vicinity during construction and operation. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

*MM 3.3-1* Construction contracts shall require the primary construction contractor to prepare and submit a dust control plan to the SJVAPCD that incorporates all provisions of Regulation VIII and the following additional measures:

- Limit traffic speeds on unpaved roads to 15 mph
- Install wheel washers or other forms of wheel cleaners at truck exits, and wash loose dirt from trucks and equipment leaving the site
- Suspend excavation and grading activities when winds exceed 20 mph
- Limit size of area subject to excavation, grading or other construction activity at any one time to avoid excessive dust
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent.
- Make maximum use of diesel equipment equipped with catalytic converters and particulate traps

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

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- Curtail construction during "Spare the Air Days" declared by the SJVAPCD
- Equipment not in use for more than ten minutes should be turned off
- Limit the hours of operation of heavy duty equipment and/or the amount of equipment in use
- Whenever feasible and cost effective, use electrically driven equipment (provided they are not run via a portable generator set) or alternatively-fueled equipment/vehicles.
- A chain link fence shall be installed around the entire property during construction with screening on the east side and southeast corner of the project to control dust.
- A monthly site inspection during construction activity shall be conducted to monitor the effectiveness of the dust control measure contained in this mitigation measure to ensure their effectiveness in preventing dust impacts to adjacent land uses.

Implementation of the above mitigation measure will reduce any potential air impacts due to construction to a **less-than-significant** level.

8. **Impact 3.3-3:** Operation of the project would result in increases in emission of both ozone precursors and PM<sub>10</sub>. This is a **significant**, impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would lessen the environmental effect; however, there is no feasible way to avoid the significant impact as identified in the EIR. Specific benefits from the Project outweigh its unavoidable environmental effects as identified in the Statement of Overriding Considerations.
- [X] Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the FEIR.

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

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The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

*MM 3.3-3* The following design features/programs shall be implemented:

- Use energy efficient design including automated control system for heating/air conditioning and energy efficiency; utilize lighting controls and energy-efficient lighting in buildings and use light colored roof materials to reflect heat.
- Plant deciduous trees on the south and west elevations of the MOB.
- Provide low nitrogen oxide (NOx) emitting and/or high efficiency water heaters.
- Appropriate easements should be reserved to provide for future improvements such as bus turnouts, loading areas, and shelters.
- Purchase low-emission; alternatively-fueled or electrical-driven maintenance vehicles and equipment.
- Designate an on-site TSM coordinator.
- Implement carpool/vanpool program, e.g., carpool ride-matching for employees, assistance with vanpool formation, provision of vanpool vehicles, etc.
- Provide lockers for employees bicycling or walking to work.

The above mitigation measure would be expected to reduce project emissions by one to five percent. Available measures would not provide the more than 60 percent reduction in emissions that would be necessary to reduce project emissions to a less-than-significant level; therefore, this impact will require a Statement of Overriding Considerations.

### Biological Resources

9. *Impact 3.4-1:* Substantial Adverse Impacts on Candidate, Special-Status, or Sensitive Species. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

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- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

*MM 3.4-1* To avoid and/or minimize any potential impacts, project implementation shall be carried out consistent with USFWS (1999) pre-construction and construction guidelines, including, but not limited to, a preconstruction survey conducted by a qualified biologist no less than 14 days and no more than 30 days prior to the beginning of ground disturbance and/or construction activities, and an employee education program covering endangered species that is conducted by a qualified biologist.

Implementation of the above mitigation measure will reduce any potential biological impacts to a less-than-significant level.

10. **Impact 3.4-3:** Loss of Swainson's hawk foraging habitat. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

*MM 3.4-3* In order to assure that nesting Swainson's hawks will not be disturbed by construction activities, a qualified ornithologist shall conduct pre-construction surveys of the project site and adjacent areas within one mile of the project site. Survey Period I occurs from January 1 to March 20; Period II from March 20 to April 5; Period III from April 5 to April 20; Period IV from April 21 to June 10 (surveys not recommend during this period because identification is difficult as the adults tend to remain within the nest for longer periods of time), and Period V from June 10 to July 30. No fewer than three surveys shall be completed, in at least each of the two survey periods immediately prior to project initiation. If a nest site is found, consultation with CDFG shall be required to ensure project initiation will not result in nest disturbance.

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

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If Swainson's hawk nest trees are found on the project site, they should not be removed unless avoidance measures are determined to be infeasible. If a nest tree must be removed, a Management Authorization (including conditions to off-set the loss of the nest tree) must be obtained. The Management Authorization will specify the tree removal period, generally between October 1 – February 1. If construction or other project related activities which may cause nest abandonment or forced fledging are necessary within the buffer zone, monitoring of the nest site (funded by the developer) by a qualified biologist should be required to determine if the nest is abandoned. If it is abandoned, and if the nestlings are still alive, the developer shall fund the recovery and hacking (controlled release of captive reared young) of nestling(s).

Based on CDFG's staff report (CDFG 1994), the project shall provide off-site HM lands as follows:

- One acre of HM land (at least 10% of the HM land requirements shall be met by fee title acquisition or a conservation easement allowing for the active management of the habitat, with the remaining 90% of the HM lands protected by a conservation easement [acceptable to the Department] on agricultural lands or other suitable habitats that provide foraging habitat for Swainson's Hawk) for each acre of development authorized (1:1 ratio); or
- One-half acre of HM land (all of the HM land requirements shall be met by fee title acquisition or a conservation easement [acceptable to the Department] which allows for the active management of the habitat for prey production on the HM lands) for each acre of development authorized (0.5:1 ratio).
- Management Authorization holders/project sponsors shall provide for the long-term management of the HM lands by funding a management endowment (the interest on which shall be used for managing the HM lands) at the rate of \$400 per HM acre (adjusted annually for inflation and varying interest rates).

Implementation of the above mitigation measure will reduce any potential biological impacts to a **less-than-significant** level.

11. **Impact 3.4-5:** Loss of Habitat for Special-Status Species. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

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- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

*MM 3.4-5* Raptors may begin nest-building as early as January, and might have young in the nest through August. Other avian species may establish nests from March 1 through July 1. During these periods, preconstruction surveys for nesting raptors and other avian species shall be conducted by a qualified ornithologist to ensure that no nests would be disturbed during project implementation. The preconstruction surveys shall be conducted no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (January through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist shall inspect all trees and electrical towers in and immediately adjacent to the impact areas for nests. If an active nest is found close enough to the demolition/construction area to be disturbed by these activities, the ornithologist, in consultation with CDFG, shall determine the extent of a construction-free buffer zone to be established around the nest. This mitigation measure will reduce potential project-related impacts to a less than significant level, avoid "take" of birds, and conform to federal and state regulations protecting birds.

In conformance with federal and state regulations regarding the protection of raptors, a habitat assessment in accordance with CDFG protocol for Burrowing Owls should be completed prior to the start of construction. Burrowing owl habitat on the project site and within a 500-foot (150 m) buffer zone shall be assessed ("Assessment Area"). If the habitat assessment concludes that the Assessment Area lacks suitable Burrowing owl habitat, no additional action would be warranted. However, if suitable habitat is located on the Assessment Area, all ground squirrel colonies shall be mapped at an appropriate scale, and the following mitigation measures should be implemented:

1. In conformance with federal and state regulations regarding the protection of raptors, a pre-construction survey for burrowing owls, in conformance with CDFG protocol, should be completed no more than 30 days prior to the start of construction within suitable habitat at the project site(s) and buffer zone(s). Three additional protocol-level

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

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surveys should also be completed per CDFG protocol prior to construction.

2. Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by CDFG verifies through non-invasive methods that wither: 1) the birds have not begun egg-laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. Eviction outside the nesting season may be permitted pending evaluation of eviction plans and receipt of formal written approval from the CDFG authorizing the eviction.
3. A 250-foot (76 m) buffer, within which no new activity will be permissible, will be maintained between project activities and nesting burrowing owls during the nesting season. This protected area will remain in effect until August 31, or at the CDFG's discretion and based upon monitoring evidence, until the young owls are foraging independently.
4. If accidental take (disturbance, injury, or death of owls) occurs, the CDFG will be notified immediately.

If preconstruction surveys determine that burrowing owls occupy the site and avoiding development of occupied areas is not feasible, then habitat compensation on off-site mitigation lands should be implemented. Habitat Management (HM) lands comprising existing burrowing owl foraging and breeding habitat should be acquired and preserved. An area of 6.5 acres (2.6 ha) (the amount of land found to be necessary to sustain a pair or individual owl) should be secured for each pair of owls, or individual in the case of an odd number of birds. As part of an agreement with the CDFG, the project applicant should secure the performance of its mitigation duties by providing the CDFG with security in the form of funds that would:

- Allow for the acquisition and/or preservation of 6.5 acres (2.6 ha) of HM lands;
- Provide initial protection and enhancement activities on the HM lands, potentially including, but not limited to, such measures as fencing, trash clean-up, artificial burrow creation, grazing or mowing, and any habitat restoration deemed necessary by CDFG;
- Establish an endowment for the long-term management of the HM lands, and;

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

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- Reimburse the CDFG for reasonable expenses incurred as a result of the approval and implementation of this agreement.

Pending CDFG approval, HM lands providing foraging habitat for Swainson's hawks (see "Loss of Swainson's Hawk Foraging Habitat" below) may also be used to mitigate impacts to burrowing owls provided the HM lands provide existing burrowing owl foraging and breeding habitat.

Implementation of the above mitigation measure will reduce any potential biological impacts to a **less-than-significant** level.

12. **Impact 3.4-6a** Construction impacts to federally protected wetlands or jurisdictional waterways – Rerouting of Sells Lateral. This is a **significant and unavoidable** impact of project implementation.

[X] Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the FEIR.

There are no feasible mitigation measures available to offset or reduce this impact. Implementation of this portion of the proposed project would be a violation of the federal Clean Water Act and the Fish and Game Code unless a Section 404 permit, a Section 401 water quality certification, and a Stream Bed Alteration Agreement are obtained from regulatory agencies. Obtaining these permits is required by law, yet they do not mitigate the impact. The existing Sells Lateral would be completely buried. The residual impact is **significant and unavoidable**, thus requiring a Statement of Overriding Considerations.

13. **Impact 3.4-6b:** Construction impacts to federally protected wetlands or jurisdictional waterways – Connecting Sells Lateral to Cottonwood Creek. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

[X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

*MM 3.4-6b* The project proponent shall prepare a restoration plan that provides



## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

measures to restore the area where the new Sells Lateral would connect to Cottonwood Creek and in the area where tree removal or any other disturbance would occur in Cottonwood Creek. The restoration plan shall provide for the re-contouring and replanting of convergence area and the tree removal area. The restoration plan shall provide a plan for grading, soil preparation, planting, and maintenance and monitoring for the restoration area. The restoration plan shall provide recommendations on the use of vegetation, rock material, or a combination of both, in the convergence area to minimize erosion as appropriate based on the expected water flows. The restoration plan is subject to approval by the Army Corps of Engineers.

Implementation of the above mitigation measure will reduce any potential biological impacts to a **less-than-significant** level.

14. **Impact 3.4-6c:** Construction impacts to federally protected wetlands or jurisdictional waterways – Removal of trees in Cottonwood Creek. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

Implementation of the previously cited Mitigation Measure #3.4-6b would reduce the impact to a **less-than-significant** level.

15. **Impact 3.4-6d:** Construction impacts to federally protected wetlands or jurisdictional waterways – Inadvertent construction impacts on Cottonwood Creek. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

*MM 3.4-6d* The project proponent shall avoid disturbance to Cottonwood Creek

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

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during construction by establishing a minimum 20-foot buffer. The 20-foot buffer shall be clearly marked with orange construction fencing so that it is visible to equipment operators.

Implementation of the above mitigation measure will reduce any potential biological impacts to a **less-than-significant** level.

16. **Impact 3.4-8** Contribution to cumulative impacts affecting biotic resources that would likely result from the development of the proposed Mercy Medical Center. This is a **significant and unavoidable** impact of project implementation.

[X] Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the FEIR.

There are no feasible mitigation measures available to offset or reduce this impact. Development of the project site would cumulatively remove foraging habitat for Swainson's hawk and burrowing owl. The total carrying capacity for these and other wildlife species that occur within the region would be cumulatively reduced. Mitigation measures have been presented that would require conservation easements to be established on other lands that function as foraging habitat for these species. However, the establishment of the conservation easements does not fully mitigate the cumulative loss of this habitat. This is a **significant and unavoidable** impact, thus requiring a Statement of Overriding Considerations.

### Cultural Resources

17. **Impact 3.5-1:** Development of the Mercy Medical project site could disturb or destroy buried cultural resources (archaeological, paleontological, or human remains) within the project site. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

[X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

### *MM 3.5-1*

- To ensure that buried cultural resources or human remains, if encountered, are recognized by construction crews, a worker education plan shall be initiated prior to project implementation. Information describing potentially significant resource characteristics and the procedures to be followed in the event of such a discovery shall be provided.
- Should any artifacts, exotic rock types, or unusual amounts of bone, or shell be uncovered during construction activities, a qualified archaeologist shall be consulted for an on-the-spot-evaluation.

This analysis identifies potentially significant impacts associated with cultural and historic resources. With implementation of the mitigation measure identified above, impacts will be mitigated to a **less-than-significant** level.

### Geology and Soils

18. **Impact 3.6-2:** Erosion and soil instability from excavation, grading, or fill. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

*MM 3.6-2* All recommendations set forth on pages 27-46 in the Treadwell & Rollo Geologic Hazard Evaluation and Geotechnical Investigation (see Appendix F of the EIR) shall be incorporated into construction and grading plans. The Office of Statewide Health Planning and Development (OSHPD) shall ensure that the recommendations are followed.

Implementation of the above mitigation measure will reduce any potential geologic impacts to a **less-than-significant** level.

19. **Impact 3.6-3:** Potential for expansive soils to cause structural failure of the proposed buildings and parking structure. This was a **potentially significant** impact of project implementation.

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

Mitigation required under Mitigation Measure #3.6-2 as stated above is sufficient to ensure that impacts are reduced to a level that is **less than significant**.

### Hazards and Hazardous Materials

20. **Impact 3.7-4:** Location of site on a known hazardous materials site. This impact is considered **less than significant**. Although it is not necessary to mitigate a less than significant impact, the following mitigation measure further reduces any project impact.

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

*MM 3.7-4* Although not a "hazardous materials site," the Hazardous Materials Investigation for the Merced Replacement Hospital Report indicated that persistent pesticides and metals exist at the project site. The City will require, prior to construction of Phase II, the hospital to remove the top six inches of soils in those areas of the site where pesticides and metals exist.

21. **Impact 3.7-5:** Safety hazards resulting from helicopter operations. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

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- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

- MM 3.7-5* The helipad shall be a restricted and secured area with warning signs, fence, and or gate, to prevent unanticipated injury to non-authorized persons in the vicinity resulting from moving equipment or flying debris.

Implementation of the mitigation measure identified will reduce impacts relative to the presence of hazards to a **less-than-significant** level.

### Land Use/Population and Housing

22. *Impact 3.9-1* Potential conflicts with land-use policies or regulations intended to avoid or mitigate environmental effects. This is a **significant and unavoidable** impact of project implementation.

- [X] Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the FEIR.

There are no mitigation measures available to offset or reduce this impact. The development of a hospital complex in an area that is has been partly developed or planned for residential uses will create permanent land-use conflicts. Therefore, this impact will remain **significant and unavoidable**, thus requiring a Statement of Overriding Considerations.

### Noise

23. *Impact 3.10-5:* Sleep disturbance due to nighttime helicopter noise. This is a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect; however, there is no feasible way to avoid the significant impact as identified in the FEIR. Specific benefits from the Project outweigh its unavoidable environmental effects as identified in the Statement of Overriding Considerations.

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

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- [X] Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

*MM 3.10-5* The pilots shall avoid flights over noise sensitive areas at all times when weather permits. The predominant wind in that area is from the north, northwest. The helicopter operates by landing and taking off into the wind. A departure in the northwesterly direction is preferred. A modified approach procedure from the northwest may be possible during minimal and "no" wind conditions. However, if the wind velocity exceeds a specified criteria depending upon the model of aircraft, then the helicopter will need to approach from the northeast or southeast.

The above mitigation measure would be expected reduce impacts relative to sleep disturbance and nighttime helicopter noise, but not to a less-than-significant level. This impact will remain **significant and unavoidable** and will require a Statement of Overriding Considerations.

24. *Impact 3.10-6:* New boilers within the Central Plan could result in a significant increase in noise levels. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measures:

*MM 3.10-6a* Noise measured at the property line shall be based upon the Merced Vision 2015 General Plan. This document states that an outdoor noise level of 60 Ldn or less is acceptable for residential areas and for schools. The measurement of these units shall be in terms of dB(A) Leq at all residential property lines.

Include appropriate acoustical louvers, silencers or other noise control measures at all ventilation openings facing north and west, and on the roof

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tops as required so as not to exceed 45 dB(A) Leq at all residential property lines.

*M 3.10-6b* A total of ten (10) of Cruickshank's windows on the west side of the building facing Mercy Avenue in relation to the project site will be replaced with double-pane windows. The ten (10) windows to be replaced are as follows: six (6) narrow slotted windows facing east, one (1) window facing north and one (1) window facing south on the westerly most building, and one (1) window facing north and one (1) window facing south on the adjacent building just north and east of the westerly building. Catholic Health Care West will provide funding to the School District for the replacement of these windows prior to construction of Phase 1. The applicant will provide an estimate for the replacement of the windows. A check in the amount of the estimate shall be given to the Merced City School District for this purpose.

Implementation of the mitigation measures identified will reduce impacts relative to noise to a **less-than-significant** level.

25. **Impact 3.10-7:** Noise generated by the Central Plant due to the use of emergency generators. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

[X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measures:

*MM 3.10-7a* Generators shall be specified with individual acoustical enclosures supplied by the manufacturer, which will limit the noise from the generator to 75 dB(A) at 10 feet.

*MM 3.10-7b* Exterior generators shall be acoustically attenuated in weatherized enclosures by the manufacturer.

*MM 3.10-7c* The emergency generators should be exercised only on weekdays between the hours of 8 a.m., and 5 p.m.

*MM 3.10-7d* Only one emergency generator should be exercised at any given time.

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

*MM 3.10-7e* Generators shall be specified with individual acoustical enclosures supplied by the manufacturer, which will limit the noise from the generator to 75 dB(A) at 10 feet.

Implementation of the mitigation measures identified will reduce impacts relative to noise to a **less-than-significant** level.

26. **Impact 3.10-8:** Generation of construction noise exceeding City regulations. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

[X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measures:

*MM 3.10-8a* All heavy construction equipment and all stationary noise sources (such as diesel generators) shall be in good working order and have manufacturer installed mufflers.

*MM 3.10-8b* Equipment warm up areas, water tanks, and equipment storage areas shall be located in an area as far away from existing residences and Cruickshank Middle School as is feasible. During Phases Two and Three, the Mercy Medical Center will be in use, therefore equipment warm up areas, etc. should be located as far away from the hospital, existing residences, and Middle School, as is feasible.

*MM 3.10-8c* All construction shall be between the hours of 7:00 a.m. and 9:00 p.m. daily except Sundays and holidays.  
Construction activities between the hours of 10:00 a.m. and 6:00 p.m. on Sundays and holidays shall meet at least one of the following noise limitations:

1. No individual piece of equipment shall produce a noise level exceeding 83 dBA at a distance of twenty-five feet from the source. If the device is housed within a structure on the property, the measurement shall be made outside the structure at a distance as close to twenty-five feet from the equipment as possible.



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2. The noise level at any point outside of the property plane of the project shall not exceed 86 dBA.

Implementation of the mitigation measures identified will reduce impacts relative to noise to a **less-than-significant** level.

27. **Impact 3.10-9:** Construction of the proposed Mercy Medical Hospital would involve activities that could generate groundborne vibration or ground-borne noise levels. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

- MM 3.10-9* Limit groundborne vibration due to construction activities in the direction of sensitive receptors. For construction adjacent to highly sensitive uses, apply additional measures as feasible, including advance notice to occupants of sensitive facilities to ensure precautions are taken in those facilities to protect ongoing activities from the effects of vibration.

Implementation of the mitigation measure identified will reduce impacts relative to noise to a **less-than-significant** level.

### Public Services and Facilities

28. **Impact 3.11-1:** Expanded need for staff, vehicles, and equipment to adequately provide law enforcement services to the project. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measures:

*MM 3-11-1a* Pursuant to the recommendation of the City of Merced Police Chief, the project applicant shall provide a minimum of three onsite private security guards at all times during the operation of the proposed project. These security guards shall be trained to meet Department of Consumer Affairs standards.

*MM 3-11-1b* Pursuant to the City of Merced General Plan Policy P-1.3.c, and Merced Municipal Code Sections 17.62 and 17.64, the project applicant shall pay Public Facilities Impact Fees along with Merced County Regional Transportation Fees to address impacts of growth on city and regional infrastructure. In addition, Community Facilities District (CFD) formation is required for annual operating costs for city services. CFD procedures shall be initiated before final improvement plans are approved by the City. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest their inclusion in the District, and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received. In consultation with the Developer/Owner, the City's CFD consultant shall conduct a study to determine the proper rate and method of apportionment based on Phase 1 of the hospital project. The Owner/Developer reserves the right to appeal the consultant's findings to City Council for a final decision.

*MM 3-11-1c* Pursuant to the City of Merced General Plan Policy P-2.1.h, the design of the proposed project shall utilize modern public protection concepts such as "defensible space," security lighting, access, visibility, etc. to reduce policing problems and improve police effectiveness.

Implementation of the mitigation measures identified will reduce impacts relative to public services and facilities to a **less-than-significant** level.

29. *Impact 3.11-2:* Expanded need for staff, vehicles, and equipment to adequately provide fire protection services to the project. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

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The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

*MM 3.11-2* Pursuant to the City of Merced General Plan Policy P-1.3.c, and Merced Municipal Code Sections 17.62 and 17.64, the project applicant shall pay Public Facilities Impact Fees along with Merced County Regional Transportation Fees to address impacts of growth on city and regional infrastructure. In addition, Community Facilities District (CFD) formation is required for annual operating costs for city services. CFD procedures shall be initiated before final improvement plans are approved by the City. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest their inclusion in the District, and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received. In consultation with the Developer/Owner, the City's CFD consultant shall conduct a study to determine the proper rate and method of apportionment based on Phase 1 of the hospital project. The Owner/Developer reserves the right to appeal the consultant's findings to City Council for a final decision.

Implementation of the mitigation measure identified will reduce impacts relative to public services and facilities to a **less-than-significant** level.

### Transportation/Circulation

30. *Impact 3.12-1:* Exceedance of a level of service standards established by the City of Merced with regard to the intersection at Sandpiper Drive and Cormorant Drive. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

*MM 3.12-1* Upon completion of Phase III (development of the south 10-acre parcel), outbound left-turn movements at the intersection of Sandpiper Drive and Cormorant Drive from the north leg and south leg of the intersection shall

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

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be prohibited. If Sandpiper Drive south of the south parking lot is not constructed at the time Mercy Medical Center land uses are constructed south of Cormorant Drive, the project applicant (subject to reimbursement) shall be required to construct this portion of Sandpiper Drive.

Implementation of the mitigation measure identified will reduce impacts relative to transportation and circulation to a **less-than-significant** level.

31. **Impact 3.12-3:** Increase in demand for public transit. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

- MM 3.12-3* The proposed project includes MMCM-paid transportation from the existing facility to the new hospital. This should be considered when evaluating the impact on demand for public transit. Provide public transit facilities (e.g., bus shelters, public transit information kiosks, and park-and-ride lots) in those areas of the proposed project that would be accessible to potential patrons and transit vehicles. The selection and location of the facilities should be determined in consultation with Merced County Transit.

Implementation of the mitigation measure identified will reduce impacts relative to public transit to a **less-than-significant** level.

32. **Impact 3.12-4:** Increase in demand for bicycle and pedestrian facilities. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

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*MM 3.12-4a* The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measures:

Provide sidewalks, bicycle lanes, and bicycle paths along roadways adjacent to the project site. Figure 4.10 in Chapter 4, Transportation and Circulation, of the Merced Vision 2015 General Plan (City of Merced 1997) shows:

- a Class II (on-street) bicycle facility along G Street, and
- a Class I (off-street) bicycle facilities along Cottonwood Creek north of the project site.

*MM 3.12-4b* In the event that increases in traffic, as a result of the proposed hospital, creates a safety hazard for children of the adjacent school, the project proponent with the consent and approval of the City will provide one or more of the following safety measures; slow for school zone signs, or crosswalks near the intersections of Paulson Road - Cormorant Drive and Mansionette Drive - Cormorant Drive. Together with the other mitigation measures any one or a combination of these mitigation measures will reduce the impact to less than significant. If crosswalks are installed, they shall include imbedded flushing lights in the pavement, activated by a switch.

Implementation of the mitigation measures identified will reduce potential impacts relative to pedestrian and bicyclist safety to a **less-than-significant** level.

33. *Impact 3.12-5:* Violation of Merced Vision 2015 General Plan Standards related to driveway spacing on major arterials. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FBIR.

*MM 3.12-5* The applicant shall install on-site circulation barriers; thereby ensuring this driveway access point will be used as an emergency entrance only, and does not directly connect to employee and visitor parking areas. The project applicant shall also install a median to ensure that this driveway is a "right turn in and out" intersection only.

## FINDINGS FOR IMPACTS AND MITIGATION MEASURES

Implementation of the mitigation measure identified will reduce impacts relative to transportation and circulation to a **less-than-significant** level.

34. **Impact 3.12-6:** Cumulative impacts on intersection levels of service. This was a **potentially significant** impact of project implementation.

The Planning Commission and the City Council find that as to such significant effect identified above:

- Changes or alterations have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect, as identified in the FEIR.

The finding is based on the fact that City of Merced shall monitor the implementation of the following Project-specific mitigation measure:

Implementation of the previously cited Mitigation Measure #3.12-1 would reduce the impact to a **less-than-significant** level.

## FINDINGS FOR CUMULATIVE IMPACTS

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### C. Findings Associated With Significant Cumulative Environmental Effects (14 CCR Section 15130)

1. *Cumulative Air Quality Impacts* – As indicated by the EIR in Section 3.3, the Project will result in increases in emission of both ozone precursors and PM<sub>10</sub>. The additional auto and area source emissions of regional pollutants that would result from the project would be occurring in an air basin that has severe air quality problems and that currently exceeds the state/federal ambient air quality standards. The state/federal ambient standards are health-based thresholds, so the project would cumulatively contribute to the known adverse health effects associated with exceedances of the ambient air quality standards, and contribute to the health effects associated with mobile-source Toxic Air Contaminants.

The Planning Commission and the City Council find that as to such significant effect identified above:

- [X] This impact has previously been acknowledged in the FEIR as a significant, unavoidable, and cumulative impact and a Statement of Overriding Considerations has been adopted.

## FINDINGS FOR REJECTION OF PROJECT ALTERNATIVES

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### D. Findings Supporting Rejection of Alternatives

CEQA and the CEQA Guidelines require that an EIR “[d]escribe a range of reasonable alternatives to the Project, or to the location of the Project, which could feasibly obtain the basic objectives of the Project...” (CEQA Guidelines 15126(d)). The objectives of the Project are as follows:

#### *Statement of Applicant's Objectives for Mercy Medical Center*

1. To create more efficient operations and enhance proper delivery of patient care.
2. To expand the services available in the community.
3. To provide a significant improvement in the quality of care delivered through an efficient, “state of the art” new facility providing for new technology, and increasing the scale and scope of the services offered to the community.
4. To provide new hospital facilities that have the inpatient capacity to meet growing community need.
5. To enhance new employment opportunities in the Merced area.
6. To provide on-site helicopter transport services to improve Mercy Medical’s ability to transfer critical patients to area trauma centers.
7. To comply with all appropriate development and construction requirements of the City of Merced and the California Office of Statewide Health Planning and Development (OSHPD).

#### *Objectives of the City of Merced*

1. To approve the construction of a new Medical Center in Merced to serve projected needs of the Merced community through the year 2015.
2. To approve the construction of a medical facility within the urban area of Merced, with public facilities and services generally available.
3. To approve the construction of a medical facility strategically located to serve future populations in the fast growing northern and eastern areas of the Merced Specific Urban Development Plan (SUDP).
4. To ensure adequate access is provided for patients and emergency vehicles, including emergency access by medical helicopter service.



## FINDINGS FOR REJECTION OF PROJECT ALTERNATIVES

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5. To ensure buildings and a site layout which are aesthetically pleasing to surrounding residential areas.

The City Council recognizes that while several of the alternatives described below will yield environmental benefits within the City and the Project area, the procurement of these benefits may have corresponding negative environmental impacts on the remainder of City. The City Council is cognizant of the possibility that alternatives may be illusory when viewed on a city-wide basis. As such, alternatives will not be approved by the City Council where they achieve local environmental benefits at the expense of city-wide environmental health or important Project objectives such as the construction of a medical facility strategically located to serve future populations in the fast growing northern and eastern areas of the Merced Specific Urban Development Plan.

Alternatives were selected on the basis of their ability to achieve the objectives of the Project while reducing its significant environmental impacts. The alternatives analyzed are as follows: Alternative 1, the "No Project" alternative which compares the existing state with the likely development of the site under current General Plan and Zoning Ordinance land use designations as the project site could still be developed in accordance with the existing *Merced Vision 2015 General Plan* and *Northeast Yosemite Specific Plan* land use designations, existing zoning and available infrastructure; Alternative 2, which reflects the proposed project description but involves reducing the building height of the hospital towers to four stories, spreading the buildings across the site north of Cormorant Drive; Alternative 3, an "alternative site" option, which examines relocating the Project to two adjacent sites in the mostly undeveloped Bellevue Ranch area northwest of the current project site. Site One is approximately 25 acres and is located northeast of the planned intersection of Bellevue Road and M Street. Site Two is approximately 5 acres in size and is located northwest of the intersection.

Based on all the information in the record, the City Council makes the following findings regarding the alternatives to the General Plan discussed in the EIR.

### Alternative 1 – No Project Alternative

1. Brief Description. This alternative compares the environmental effects of the property remaining in its existing state and continued use of the existing hospital against environmental effects which would occur if the project is approved. This No Project alternative compares the existing state with the likely development of the site under current General Plan and Zoning Ordinance land use designations as the project site could still be developed in accordance with the existing *Merced Vision 2015 General Plan* and *Northeast Yosemite Specific Plan* land use designations, existing zoning and available infrastructure.

In the case of the proposed project, because of the existing *Northeast Yosemite Specific Plan* land use designations and zoning, failure to proceed with the project would not necessarily mean that the project site would remain in its existing condition. Currently,

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the portion of the project site on which the existing Cancer Center is located is designated by the Merced General Plan Professional/Commercial Office (CO) and is zoned Professional/Commercial Office (C-O). The rest of the 30-acre project site includes two vacant parcels, including 17.2 acres with a General Plan designation of High Medium Density Residential (HMD) and zoning of High Medium Density Residential (R-3-2), and 18 acres with a General Plan designation of Low Density Residential (LD) and zoning of Single-Family Residential (R-1-6). Under the No Project Alternative, the project site could support 202 high-medium density residential units (apartments) and 75 low-density residential units (single-family homes) for a total of 277 units.

Such a scenario would potentially result in reduced impacts regarding aesthetics/light and glare, air quality, agricultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use, noise, transportation and circulation, and utilities and service systems. Impacts to biological resources, cultural resources, and public services would be similar to the proposed project.

2. Findings. The City Council finds that the No Project Alternative is less desirable than the Project and rejects the No Project Alternative for the following reasons:
  - a) Mitigation Measures incorporated into the Project, together with the Statement of Overriding Considerations, or otherwise being adopted by the City Council through the EIR, will substantially lessen or avoid most of the environmental effects of the Project, thereby diminishing or obviating the perceived mitigating or impact avoiding benefits of adopting the No Project Alternative.
  - b) Some environmental effects of the No Project Alternative are greater than those associated with the Project because more intensive development of the site could occur.
  - c) The No Project Alternative would not achieve the stated objectives of the Project.

### Alternative 2 – Reduced Height Alternative

1. Brief Description. This alternative would reduce the building height of the hospital towers to four stories, spreading the buildings across the site north of Cormorant Drive. The change will result in a loss of available parking areas north of Cormorant, resulting in the need to add garage parking south of Cormorant. The alternative will have the same overall square footage and parking, and phasing will remain identical to the proposed project.

The alternative would create similar impacts to agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, noise, public services, transportation and circulation, and utilities and service systems. Aesthetic impacts would be reduced

## FINDINGS FOR REJECTION OF PROJECT ALTERNATIVES

because the project design has greater potential to be aesthetically pleasing, and there would be less conflict with land uses since the scale of the buildings would be more compatible with the surrounding area.

2. Findings. The City Council finds that the Reduced Height Alternative is less desirable than the Project and rejects the Reduced Height Alternative for the following reasons:
  - a) Mitigation Measures incorporated into the Project, together with the Statement of Overriding Considerations, or otherwise being adopted by the City Council through the EIR, will substantially lessen or avoid most of the environmental effects of the Project, thereby diminishing or obviating the perceived mitigating or impact avoiding benefits of adopting the Reduced Height Alternative.
  - b) This alternative is not identical with regard to the number of potential social and economic benefits and would create the need to construct a new parking garage.

### Alternative 3 – Bellevue Ranch Location Alternative

1. Brief Description. This alternative would relocate the project to two adjacent sites in the mostly undeveloped Bellevue Ranch area northwest of the current project site. The sites are both designated in the Bellevue Ranch Master Development Plan as Professional/Commercial Office (CO). Site One is approximately 25 acres and is located northeast of the planned intersection of Bellevue Road and M Street. Site Two is approximately 5 acres in size and is located northwest of the intersection. Site One would contain the main hospital structure, two medical office buildings, power plant, and surface parking. Site Two would contain a third medical office building and the remainder of the surface parking. This alternative will have the same overall square footage and parking, and phasing will remain identical to the proposed project.

Such a scenario would create similar impacts related to agricultural resources, biological resources, cultural resources, hazards and hazardous materials, hydrology and water quality, noise, public services, transportation and circulation, and utilities and service systems. Such a scenario would potentially result in reduced impacts regarding air quality. Impacts regarding aesthetics/lights and glare, geology and soils, land use and population and housing are anticipated to be more severe as compared to the proposed Project, depending on the placement of the hospital towers, and issues such as requiring an amendment to the Bellevue Ranch Master Plan to allow the hospital use.

2. Findings. The City Council finds that the Bellevue Ranch Location Alternative is less desirable than the Project and rejects the Bellevue Ranch Location Alternative for the following reasons:
  - a) Mitigation Measures incorporated into the Project, together with the Statement of Overriding Considerations, or otherwise being adopted by the City Council through

## FINDINGS FOR REJECTION OF PROJECT ALTERNATIVES

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the EIR, will substantially lessen or avoid most of the environmental effects of the Project, thereby diminishing or obviating the perceived mitigating or impact avoiding benefits of adopting the Bellevue Ranch Location Alternative.

- b) This alternative may not be feasible due to potential land use conflicts, since the hospital would be inconsistent with the adopted Master Development Plan for Bellevue Ranch and the entitlements granted to the developers. Additionally, the site is currently occupied with a house and accessory structures that would need to be removed.

### Conclusion Regarding Alternatives Not Chosen

After careful consideration and evaluation of each of the Alternatives, it was clear that there were no environmentally superior alternatives to the Project which feasibly attained the basic objectives identified by the applicant and by the City of Merced. The EIR is required to identify an environmentally superior alternative (CEQA Guidelines 15126(d)). Based upon the analysis contained and documented in Chapter Three of the Mercy Medical Center EIR and the analysis presented above, the No Project Alternative has been determined to be the environmentally superior alternative because it would have the fewest impacts on the existing environment. However, under the CEQA guidelines [15126.6(e)(2)], if the No Project Alternative is identified as the environmentally superior alternative, the EIR shall also identify an environmentally superior alternative among the alternatives involving site development. This analysis has identified the Reduced Height Alternative has the environmentally superior alternative among the other alternatives. The Reduced Height Alternative (Alternative 2) is the second least impacting alternative. This alternative does not increase any potential impacts and would reduce land use conflicts since it would be more compatible with the scale of the surrounding neighborhood and would have less of an impact on aesthetics although it would create the need to construct a new parking garage.

A review of the foregoing alternatives reveals that the Project is the superior alternative for achieving the goals established for the Project and the City of Merced while minimizing impacts to the environment. For all of the reasons discussed above, each of the alternatives are not superior to the Project because they compromise one or more of the Project objectives. Accordingly, pursuant to CEQA Guidelines Section 16126(d), the City Council finds that the EIR has considered a reasonable range of alternatives to the Project and that such alternatives considered are not preferable to the Project as proposed.

## STATEMENT OF OVERRIDING CONSIDERATIONS

### E. Statement of Overriding Considerations

In approving the Project which is evaluated in the Final Environmental Impact Report (FEIR), the City makes the following Statement of Overriding Considerations in support of its findings on the FEIR. The City Council has considered the information contained in the FEIR and has fully reviewed and considered the public testimony and record in this proceeding.

The City Council has carefully balanced the economic and social benefits of the Project against any adverse impacts identified in the EIR that could not be feasibly mitigated to a level of insignificance. Notwithstanding the identification and analysis of the impacts which are identified in the EIR as being significant and potentially significant which have not been eliminated, lessened, or mitigated to a level of insignificance, the City Council acting pursuant to Section 15093 of the State CEQA Guidelines, hereby determines that the economic and social benefits of the Project outweigh the unmitigated adverse impacts and should be approved. The EIR describes certain environmental impacts which cannot be avoided if the Project is implemented. In addition, the EIR describes certain potential impacts, which, although substantially mitigated or lessened, are not mitigated to a point of environmental insignificance. This Statement of Overriding Considerations applies specifically to those impacts found to be significant and unavoidable as set forth in the FEIR and the public hearing records.

All of the significant impacts associated with the Project have been mitigated to a level of insignificance except for the following: 1) the creation of adverse impacts on surrounding view sheds (3.1-1); 2) the conversion and loss of Prime Farmland to non-agricultural use (3.2-1); 3) indirect conversion and loss of surrounding Important Farmland to non-agricultural use (3.2-2); 4) the cumulative increases in emission of both ozone precursors and PM<sub>10</sub> (3.3-3); 5) construction impacts to federally protected wetlands or jurisdictional waterways – Rerouting of Sells Lateral (3.4-6a); 6) the contribution to cumulative impacts affecting biotic resources (3.4-8); 7) potential conflicts with land-use policies or regulations intended to avoid or mitigate environmental effects (3.9-1); and 8) sleep disturbance due to nighttime helicopter noise (3.10-5).

### Specific Findings

1. Project Benefits Outweigh Unavoidable Impacts. The remaining short-term, unavoidable impacts of the Project are acceptable in light of the long-term economic, fiscal, social, environmental, land-use and other considerations set forth herein.

The Project will result in unavoidable environmental changes, some of which may be detrimental to the area's residents, businesses and the environment. These detrimental changes, however, are outweighed by the following Project benefits:

- a) The Project is strategically located to promote healthcare services to future populations in the fast growing northern and eastern areas of the Merced Specific Urban Development Plan (SUDP).

## FINDINGS FOR REJECTION OF PROJECT ALTERNATIVES

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- b) The Project provides adequate access for patients and emergency vehicles, including emergency access by medical helicopter service.
  - c) Public facilities and services are generally available and all systems will have capacity and resources to serve the Project.
  - d) The Project provides a significant improvement in the quality of care delivered through an efficient, "state of the art" new facility providing for new technology, and increasing the scale and scope of the services offered to the community.
  - e) The Project will enhance new employment opportunities in the Merced area.
  - f) The Project will serve projected needs of the Merced community through the year 2015.
  - g) The Project will comply with all appropriate development and construction requirements of the City of Merced and the California Office of Statewide Health Planning and Development (OSHPD).
  - h) The Project will create a site layout which is aesthetically pleasing to surrounding residential areas.
2. Balance of Competing Goals. The City Council finds it is imperative to balance competing goals in approving the Project and the environmental documentation of the Project. Not every environmental concern has been fully satisfied because of the need to satisfy competing concerns to a certain extent. The City Council has chosen to accept certain environmental impacts to air quality and noise because complete eradication of impacts would unduly compromise some other important economic, social, or other goals. The City Council finds and determines that the Project proposal and the supporting environmental documentation provide for a positive balance of the competing goals that the economic, fiscal, social, environmental, land-use and other benefits to be obtained by the Project outweigh any remaining environmental and related potential detriment of the Project.

### Overriding Considerations

Based upon the objectives identified in the Project and FEIR and through the extensive public participation, the City Council has determined that the Project should be approved and that any remaining unmitigated environmental impacts attributable to the Project are outweighed by the following specific economic, fiscal, social, environmental, land-use and other overriding considerations.

## FINDINGS FOR REJECTION OF PROJECT ALTERNATIVES

### 1. Local and Regional Economic Considerations.

- a) Merced County has consistently had high unemployment as compared to the rest of the State. The region has been enormously dependent on agriculture, making it in many respects a single industry county. As recognized in the General Plan, agriculture is a traditional use in the Merced area. The Project will provide a diversifying employment base, thereby strengthening the local economy.
- c) Employment opportunities would be increased by the implementation of the Project. The implementation of the Project will lead to economic diversification and job generation. Current needs assessment indicates that the market is still in need of several specialists, including cardiologists, pediatricians, vascular surgeons, and endocrinologists.
- d) The employment trend in Merced County is shifting from a more rural to urban economy. Although agriculture remains a major sector of local employment, employment growth in the region involves the services and commercial retail trade, to which this Project contributes, by attracting new healthcare professionals, such as physicians, nurses, and clinical staff.

### 2. Positive Fiscal Impacts.

- a) The project will create positive fiscal effects. Construction will produce short-term economic benefits to the City and the region. The project provides short-term construction related employment, long-term service employment, and related consumer spending.
- b) The seasonal nature of employment in the agriculture sector requires the creation of new employment opportunities in other sectors of the economy. It is one of the basic objectives of the General Plan to promote greater job generation and economic diversification. The Project assists the implementation of these goals.

### 3. Environmental and Land Use Considerations.

- a) Substantial evidence is included in the record that the implementation of the Project will have beneficial as well as potential adverse impacts relating to environmental and land use consideration.
- b) The proximity of the Project site to major transportation corridor (SR 59 to the west) makes it a highly desirable location in the City, and is central for the growing population in Merced. It is located in the fastest growing area of the City and is near to the new UC Merced campus.

## **FINDINGS FOR REJECTION OF PROJECT ALTERNATIVES**

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- c) The City Council further believes that the land is currently underutilized and development under the current residential designation would be incompatible with the existing cancer center.
- d) Based upon these land use and environmental considerations, the City Council has determined that any environmental detriment caused by the General Plan has been minimized to the extent feasible, and where not feasible, has been outweighed and counterbalanced by the significant economic, fiscal, social, environmental and land-use benefits to be generated to the City.



**MERCY MEDICAL CENTER  
ENVIRONMENTAL IMPACT REPORT  
CITY OF MERCED**

***Appendix D  
Mitigation Monitoring Program***

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**MITIGATION MONITORING CONTENTS**

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

**LEGAL BASIS AND PURPOSE OF THE MITIGATION MONITORING PROGRAM**

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

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

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

- 1) The requirements of the adopted mitigation monitoring program for the Mercy Medical Center shall run with the real property that is the subject of a General Plan Amendment, rezone and site plan. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
- 2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

**MITIGATION MONITORING PROCEDURES**

In most cases, mitigation measures can be monitored through the City's construction plan approval/plan check process. When the approved project plans and specifications, with mitigation measures, are submitted to the City Development Services Department, a copy of the monitoring checklist will be attached to the submittal. The Mercy Medical Center EIR

Mitigation Monitoring Checklist will be filled out upon project approval with mitigation measures required. As project plans and specifications are checked, compliance with each mitigation measure can be reviewed.

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

### **NONCOMPLIANCE COMPLAINTS**

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

### **MONITORING MATRIX**

The following pages provide a series of tables identifying the mitigation measures proposed specifically for the Mercy Medical Center. The columns within the tables are defined as follows:

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|--|--|
| <b>Mitigation Measure:</b>             | Summarizes the Mitigation Measure (referenced by number) identified in the <i>Draft Mercy Medical Center Environmental Impact Report</i> . |
| <b>Timing:</b>                         | Identifies at what point in time or phase of the project that the mitigation measure will be completed.                                    |
| <b>Agency/Department Consultation:</b> | This column references any public agency or City department with which coordination is required to satisfy the identified mitigation.      |
| <b>Verification:</b>                   | These columns will be initialed and dated by the individual designated to verify adherence to the project specific mitigation.             |

**MERCY MEDICAL CENTER EIR  
MITIGATION MONITORING CHECKLIST**

Project Name: \_\_\_\_\_ File Number: \_\_\_\_\_  
 Approval Date: \_\_\_\_\_ Project Location: \_\_\_\_\_  
 Brief Project Description: \_\_\_\_\_

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

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<b>3.1 AESTHETICS/LIGHT AND GLARE</b>			
<b>Mitigation Measure #3.1-2a:</b>  <i>All lighting in the project area shall be shielded, directed downward and away from adjoining properties and rights-of-way. Light shields shall be installed and maintained consistent with manufacturer's specifications, and shall reduce the spillage of light on to adjacent properties to less than two foot-candles, as measured at the adjacent property line.</i>	<i>Building Permits</i>	<i>City Planning &amp; Inspection Services</i>	
<b>Mitigation Measure #3.1-2b:</b>  <i>Lighting fixtures shall be designed to produce the minimum amount of light necessary for safety purposes.</i>	<i>Building Permits</i>	<i>City Planning Division &amp; Inspection Services</i>	
<b>Mitigation Measure #3.1-2c:</b>  <i>The project design shall include the use of glass coatings to reduce the amount of light pollution and spillage from the</i>	<i>Building Permits</i>	<i>City Planning Division &amp; Inspection Services</i>	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p><i>interior lighting. Exterior glazing shall utilize performance coatings with an interior light reflectance in the range of 5-8%. Exterior glazing shall have a light reflectance out of less than 10%.</i></p>			
<p><b>Mitigation Measure #3.1-2d:</b></p> <p><i>The project site landscaping shall include vegetation designed to shield adjacent properties from project-generated light and glare. Exterior glazing shall have a light reflectance out of less than 10%.</i></p>	<p><i>Building Permits</i></p>	<p><i>City Planning Division &amp; Inspection Services</i></p>	
<p><b>Mitigation Measure #3.1-4:</b></p> <p><i>The power plant and all outdoor storage areas shall be screened off by fencing and landscaping to reduce their visibility from surrounding areas. Landscaping and fencing shall be designed to reduce visibility from surrounding properties, including the selection of plant materials which provide screening year-round.</i></p>	<p><i>Building Permits</i></p>	<p><i>City Planning Division &amp; Inspection Services</i></p>	
<p><b>Mitigation Measure #3.1-5:</b></p> <p><i>Catholic Healthcare West will fund in the amount of thirty-thousand dollars (\$30,000) for the purpose of mitigating aesthetic impacts associated with the project a landscape plan which could include the planting of trees, shrubbery, and other vegetation with irrigation that will run along Mercy Drive on the school's property. Within one-hundred and twenty (120) days from receipt of all necessary permits CHW will deliver the landscape fund to the District. The funds are to be used at the discretion of the Merced City School District.</i></p>	<p><i>Building Permits</i></p>	<p><i>City Planning Division &amp; Inspection Services</i></p>	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p><b>3.3 AIR QUALITY</b></p> <p><b>Mitigation Measure #3.3-1:</b></p> <p><i>Construction contracts shall require the primary construction contractor to prepare and submit a dust control plan to the SJVAPCD that incorporates all provisions of Regulation VIII and the following additional measures:</i></p> <ul style="list-style-type: none"> <li>• <i>Limit traffic speeds on unpaved roads to 15 mph.</i></li> <li>• <i>Install wheel washers or other forms of wheel cleaners at truck exits, and wash loose dirt from trucks and equipment leaving the site.</i></li> <li>• <i>Suspend excavation and grading activities when winds exceed 20 mph.</i></li> <li>• <i>Limit size of area subject to excavation, grading or other construction activity at any one time to avoid excessive dust.</i></li> <li>• <i>Install sandbags or other erosion control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent.</i></li> <li>• <i>Make maximum use of diesel equipment equipped with catalytic converters and particulate traps.</i></li> <li>• <i>Curtail construction during "Spare the Air Days" declared by the SJVAPCD.</i></li> </ul>	<p><i>Building Permits, on-going during construction</i></p>	<p><i>SJVAPCD, City Planning Division &amp; Inspection Services</i></p>	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<ul style="list-style-type: none"> <li>• <i>Equipment not in use for more than ten minutes should be turned off.</i></li> <li>• <i>Limit the hours of operation of heavy duty equipment and/or the amount of equipment in use.</i></li> <li>• <i>Whenever feasible and cost effective, use electrically driven equipment (provided they are not run via a portable generator set) or alternatively-fueled equipment/vehicles.</i></li> <li>• <i>A chain link fence shall be installed around the entire property during construction with screening on the east side and southeast corner of the project to control dust.</i></li> <li>• <i>A monthly site inspection during construction activity shall be conducted to monitor the effectiveness of the dust control measures contained in this mitigation measure to ensure their effectiveness in preventing dust impacts to adjacent land uses.</i></li> </ul>			
<p><b>Mitigation Measure #3.3-3:</b></p> <p><i>The following design features/programs shall be implemented:</i></p> <ul style="list-style-type: none"> <li>• <i>Use energy efficient design including automated control system for heating/air conditioning and energy efficiency; utilize lighting controls and energy-efficient lighting in buildings and use light colored roof materials to reflect heat.</i></li> <li>• <i>Plant deciduous trees on the south and west elevations of the MOB.</i></li> </ul>	<p><i>Building Permits</i></p>	<p><i>City Planning Division, Building Division &amp; Inspection Services</i></p>	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p><b>Mitigation Measure</b></p> <ul style="list-style-type: none"> <li>• Provide low nitrogen oxide (NOx) emitting and/or high efficiency water heaters.</li> <li>• Appropriate easements should be reserved to provide for future improvements such as bus turnouts, loading areas, and shelters.</li> <li>• Purchase low-emission, alternatively-fueled or electrical-driven maintenance vehicles and equipment.</li> <li>• Designate an on-site TSM coordinator.</li> <li>• Implement carpool/vanpool program, e.g., carpool ride-matching for employees, assistance with vanpool formation, provision of vanpool vehicles, etc.</li> <li>• Provide lockers for employees bicycling or walking to work.</li> </ul>			
<p><b>3.4 BIOLOGICAL RESOURCES</b></p>			
<p><b>Mitigation Measure #3.4-1</b></p> <p>To avoid and/or minimize any potential impacts, project implementation shall be carried out consistent with USFWS (1999) pre-construction and construction guidelines, including, but not limited to, a pre-construction survey conducted by a qualified biologist no less than 14 days and no more than 30 days prior to the beginning of ground disturbance and/or construction activities, and an employee education program covering endangered species that is conducted by a qualified biologist.</p>	<p>Prior to construction activity</p>	<p>City Planning Division</p>	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p><b>Mitigation Measure #3.4-3:</b></p> <p><i>In order to assure that nesting Swainson's hawks will not be disturbed by construction activities, a qualified ornithologist shall conduct pre-construction surveys of the project site and adjacent areas within one mile of the project site. Survey Period I occurs from January 1 to March 20, Period II from March 20 to April 5, Period III from April 5 to April 20, Period IV from April 21 to June 10 (surveys not recommend during this period because identification is difficult as the adults tend to remain within the nest for longer periods of time), and Period V from June 10 to July 30. No fewer than three surveys shall be completed, in at least each of the two survey periods immediately prior to project initiation. If a nest site is found, consultation with CDFG shall be required to ensure project initiation will not result in nest disturbance.</i></p> <p><i>If Swainson's hawk nest trees are found on the project site, they should not be removed unless avoidance measures are determined to be infeasible. If a nest tree must be removed, a Management Authorization (including conditions to off-set the loss of the nest tree) must be obtained. The Management Authorization will specify the tree removal period, generally between October 1 -- February 1. If construction or other project related activities which may cause nest abandonment or forced fledging are necessary within the buffer zone, monitoring of the nest site (funded by the developer) by a qualified biologist should be required to determine if the nest is abandoned. If it is abandoned, and if the nestlings are still alive, the developer shall fund the recovery and hacking (controlled release of captive reared young) of nestling(s).</i></p>	<p>Prior to construction activity</p>	<p>City Planning Division</p>	



Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p>Based on CDFG's staff report (CDFG 1994), the project shall provide off-site HM lands as follows:</p> <ul style="list-style-type: none"> <li>▪ One acre of HM land (at least 10% of the HM land requirements shall be met by fee title acquisition or a conservation easement allowing for the active management of the habitat, with the remaining 90% of the HM lands protected by a conservation easement [acceptable to the Department] on agricultural lands or other suitable habitats that provide foraging habitat for Swainson's Hawk) for each acre of development authorized (1:1 ratio); or</li> <li>▪ One-half acre of HM land (all of the HM land requirements shall be met by fee title acquisition or a conservation easement [acceptable to the Department] which allows for the active management of the habitat for prey production on the HM lands) for each acre of development authorized (0.5:1 ratio).</li> <li>▪ Management Authorization holders/project sponsors shall provide for the long-term management of the HM lands by funding a management endowment (the interest on which shall be used for managing the HM lands) at the rate of \$400 per HM acre (adjusted annually for inflation and varying interest rates).</li> </ul>			
<p><b>Mitigation Measure #3.4-5:</b> Raptors may begin nest-building as early as January, and might</p>	<p>Prior to construction activity</p>	<p>City Planning Division</p>	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p>have young in the nest through August. Other avian species may establish nests from March 1 through July 1. During these periods, preconstruction surveys for nesting raptors and other avian species shall be conducted by a qualified ornithologist to ensure that no nests would be disturbed during project implementation. The preconstruction surveys shall be conducted no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (January through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist shall inspect all trees and electrical towers in and immediately adjacent to the impact areas for nests. If an active nest is found close enough to the demolition/construction area to be disturbed by these activities, the ornithologist, in consultation with CDFG, shall determine the extent of a construction-free buffer zone to be established around the nest. This mitigation measure will reduce potential project-related impacts to a less than significant level, avoid "take" of birds, and conform to federal and state regulations protecting birds.</p> <p>In conformance with federal and state regulations regarding the protection of raptors, a habitat assessment in accordance with CDFG protocol for Burrowing Owls should be completed prior to the start of construction. Burrowing owl habitat on the project site and within a 500-foot (150 m) buffer zone shall be assessed ("Assessment Area"). If the habitat assessment concludes that the Assessment Area lacks suitable Burrowing owl habitat, no additional action would be warranted. However, if suitable habitat is located on the Assessment Area.</p>			

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p><i>all ground squirrel colonies shall be mapped at an appropriate scale, and the following mitigation measures should be implemented:</i></p> <ol style="list-style-type: none"> <li><i>1. In conformance with federal and state regulations regarding the protection of raptors, a pre-construction survey for burrowing owls, in conformance with CDFG protocol, should be completed no more than 30 days prior to the start of construction within suitable habitat at the project site(s) and buffer zone(s). Three additional protocol-level surveys should also be completed per CDFG protocol prior to construction.</i></li> <li><i>2. Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by CDFG verifies through non-invasive methods that wither: 1) the birds have not begun egg-laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. Eviction outside the nesting season may be permitted pending evaluation of eviction plans and receipt of formal written approval from the CDFG authorizing the eviction.</i></li> <li><i>3. A 250-foot (76 m) buffer, within which no new activity will be permissible, will be maintained between project activities and nesting burrowing owls during the nesting season. This protected area will remain in effect until August 31, or at the CDFG's discretion and based upon monitoring evidence, until the young owls are foraging independently.</i></li> </ol>			

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p>4. If accidental take (disturbance, injury, or death of owls) occurs, the CDFG will be notified immediately.</p> <p>If preconstruction surveys determine that burrowing owls occupy the site and avoiding development of occupied areas is not feasible, then habitat compensation on off-site mitigation lands should be implemented. Habitat Management (HM) lands comprising existing burrowing owl foraging and breeding habitat should be acquired and preserved. An area of 6.5 acres (2.6 ha) (the amount of land found to be necessary to sustain a pair or individual owl) should be secured for each pair of owls, or individual in the case of an odd number of birds. As part of an agreement with the CDFG, the project applicant should secure the performance of its mitigation duties by providing the CDFG with security in the form of funds that would:</p> <ul style="list-style-type: none"> <li>▪ Allow for the acquisition and/or preservation of 6.5 acres (2.6 ha) of HM lands;</li> <li>▪ Provide initial protection and enhancement activities on the HM lands, potentially including, but not limited to, such measures as fencing, trash clean-up, artificial burrow creation, grazing or mowing, and any habitat restoration deemed necessary by CDFG;</li> <li>▪ Establish an endowment for the long-term management of the HM lands, and;</li> <li>▪ Reimburse the CDFG for reasonable expenses incurred as a result of the approval and implementation of this agreement.</li> </ul>			

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p>Pending CDFG approval, HM lands providing foraging habitat for Swainson's hawks (see "Loss of Swainson's Hawk Foraging Habitat" below) may also be used to mitigate impacts to burrowing owls provided the HM lands provide existing burrowing owl foraging and breeding habitat.</p>			
<p><b>Mitigation Measure #3.4-6b:</b></p> <p>The project proponent shall prepare a restoration plan that provides measures to restore the area where the new Sells Lateral would connect to Cottonwood Creek and in the area where tree removal or any other disturbance would occur in Cottonwood Creek. The restoration plan shall provide for the re-contouring and replanting of convergence area and the tree removal area. The restoration plan shall provide a plan for grading, soil preparation, planting, and maintenance and monitoring for the restoration area. The restoration plan shall provide recommendations on the use of vegetation, rock material, or a combination of both, in the convergence area to minimize erosion as appropriate based on the expected water flows. The restoration plan is subject to approval by the Army Corps of Engineers.</p>	<p>Building Permits</p>	<p>City Planning Division &amp; Inspection Services</p>	
<p><b>Mitigation Measure #3.4-6d:</b></p> <p>The project proponent shall avoid disturbance to Cottonwood Creek during construction by establishing a minimum 20-foot buffer. The 20-foot buffer shall be clearly marked with orange</p>	<p>Building Permits</p>	<p>City Planning Division &amp; Inspection Services</p>	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p>construction fencing so that it is visible to equipment operators.</p>			
<b>3.5 CULTURAL RESOURCES</b>			
<b>Mitigation Measure #3.5-1:</b>			
<ul style="list-style-type: none"> <li>To ensure that buried cultural resources or human remains, if encountered, are recognized by construction crews, a worker education plan shall be initiated prior to project implementation. Information describing potentially significant resource characteristics and the procedures to be followed in the event of such a discovery shall be provided.</li> <li>Should any artifacts, exotic rock types, or unusual amounts of bone, or shell be uncovered during construction activities, a qualified archaeologist shall be consulted for an on-the-spot-evaluation.</li> </ul>	On-going during construction	City Planning Division & Inspection Services	
<b>3.6 GEOLOGY AND SOILS</b>			
<b>Mitigation Measure #3.6-2:</b>			
<p>All recommendations set forth on pages 27-46 in the Treadwell &amp; Rollo Geologic Hazard Evaluation and Geotechnical Investigation (see Appendix F) shall be incorporated into construction and grading plans. The Office of Statewide Health Planning and Development (OSHDP) shall ensure that the recommendations are followed.</p>	Building Permits	City Planning Division & Inspection Services	
<b>3.7 HAZARDS AND HAZARDOUS MATERIALS</b>			
<b>Mitigation Measure #3.7-4:</b>			
<p>Although not a "hazardous materials site," the Hazardous</p>	Prior to construction of Phase II	City Inspection Services	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p><i>Materials Investigation for the Merced Replacement Hospital Report indicated that persistent pesticides and metals exist at the project site. The City will require, prior to construction of Phase II, the hospital to remove the top six inches of soils in those areas of the site where pesticides and metals exist.</i></p>			
<p><b>Mitigation Measure #3.7-5:</b></p> <p><i>The helipad shall be a restricted and secured area with warning signs, fence, and or gate, to prevent unanticipated injury to non-authorized persons in the vicinity resulting from moving equipment or flying debris.</i></p>	<p><i>Building Permits</i></p>	<p><i>City Planning Division, Building Division &amp; Inspection Services</i></p>	
<p><b>3.10 NOISE</b></p>			
<p><b>Mitigation Measure #3.10-5:</b></p> <p><i>The pilots shall avoid flights over noise sensitive areas at all times when weather permits. The predominant wind in that area is from the north, northwest. The helicopter operates by landing and taking off into the wind. A departure in the northwesterly direction is preferred. A modified approach procedure from the northwest may be possible during minimal and "no" wind conditions. However, if the wind velocity exceeds a specified criteria depending upon the model of aircraft, then the helicopter will need to approach from the northeast or southeast.</i></p>	<p><i>On-going</i></p>	<p><i>City Inspection Services</i></p>	
<p><b>Mitigation Measure #3.10-6a:</b></p> <p><i>Noise measured at the property line shall be based upon the Merced Vision 2015 General Plan. This document states that an outdoor noise level of 60 Ldn or less is acceptable for residential</i></p>	<p><i>Building Permits</i></p>	<p><i>City Inspection Services</i></p>	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p>areas and for schools. The measurement of these units shall be in terms of dB(A) Leq at all residential property lines.</p> <p>Include appropriate acoustical louvers, silencers or other noise control measures at all ventilation openings facing north and west, and on the roof tops as required so as not to exceed 45 dB(A) Leq at all residential property lines.</p>			
<p><b>Mitigation Measure #3.10-6b:</b></p> <p>A total of ten (10) of Cruickshank's windows on the west side of the building facing Mercy Avenue in relation to the project site will be replaced with double-pane windows. The ten (10) windows to be replaced are as follows: six (6) narrow slotted windows facing east, one (1) window facing north and one (1) window facing south on the westerly most building, and one (1) window facing north and one (1) window facing south on the adjacent building just north and east of the westerly building. Catholic Health Care West will provide funding to the School District for the replacement of these windows prior to construction of Phase 1. The applicant will provide an estimate for the replacement of the windows. A check in the amount of the estimate shall be given to the Merced City School District for this purpose.</p>	<p>Building Permits</p>	<p>City Inspection Services</p>	
<p><b>Mitigation Measure #3.10-7a:</b></p> <p>Generators shall be specified with individual acoustical enclosures supplied by the manufacturer, which will limit the noise from the generator to 75 dB(A) at 10 feet.</p>	<p>Building Permits</p>	<p>City Inspection Services</p>	



Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p><b>Mitigation Measure #3.10-7b:</b></p> <p>Exterior generators shall be acoustically attenuated in weatherized enclosures by the manufacturer.</p>	Building Permits	City Inspection Services	
<p><b>Mitigation Measure #3.10-7c:</b></p> <p>The emergency generators should be exercised only on weekdays between the hours of 8 a.m., and 5 p.m.</p>	On-going	City Inspection Services	
<p><b>Mitigation Measure #3.10-7d:</b></p> <p>Only one emergency generator should be exercised at any given time.</p>	On-going	City Inspection Services	
<p><b>Mitigation Measure #3.10-7e:</b></p> <p>Generators shall be specified with individual acoustical enclosures supplied by the manufacturer, which will limit the noise from the generator to 75 dB(A) at 10 feet.</p>	Building Permits	City Inspection Services	
<p><b>Mitigation Measure #3.10-8a:</b></p> <p>All heavy construction equipment and all stationary noise sources (such as diesel generators) shall be in good working order and have manufacturer installed mufflers.</p>	Building Permits	City Inspection Services	
<p><b>Mitigation Measure #3.10-8b:</b></p> <p>Equipment warm up areas, water tanks, and equipment storage areas shall be located in an area as far away from existing residences and Cruickshank Middle School as is feasible.</p>	On-going during construction	City Planning Division & Inspection Services	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p><i>During Phases Two and Three, the Mercy Medical Center will be in use, therefore equipment warm up areas, etc. should be located as far away from the hospital, existing residences, and Middle School, as is feasible.</i></p>			
<p><b>Mitigation Measure #3.10-8c:</b></p> <p><i>All construction shall be between the hours of 7:00 a.m. and 9:00 p.m. daily except Sundays and holidays.</i></p> <p><i>Construction activities between the hours of 10:00 a.m. and 6:00 p.m. on Sundays and holidays shall meet at least one of the following noise limitations:</i></p> <ol style="list-style-type: none"> <li><i>1. No individual piece of equipment shall produce a noise level exceeding 83 dBA at a distance of twenty-five feet from the source. If the device is housed within a structure on the property, the measurement shall be made outside the structure at a distance as close to twenty-five feet from the equipment as possible.</i></li> <li><i>2. The noise level at any point outside of the property plane of the project shall not exceed 86 dBA.</i></li> </ol>	<p><i>On-going during construction</i></p>	<p><i>City Planning Division &amp; Inspection Services</i></p>	
<p><b>Mitigation Measure #3.10-9:</b></p> <p><i>Limit groundborne vibration due to construction activities in the direction of sensitive receptors. For construction adjacent to highly sensitive uses, apply additional measures as feasible, including advance notice to occupants of sensitive facilities to</i></p>	<p><i>On-going during construction</i></p>	<p><i>City Planning Division &amp; Inspection Services</i></p>	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and Initials)
<p>ensure precautions are taken in those facilities to protect ongoing activities from the effects of vibration.</p>			
<p><b>3.11 PUBLIC SERVICES AND FACILITIES</b></p>			
<p><b>Mitigation Measure #3.11-1a:</b></p> <p>Pursuant to the recommendation of the City of Merced Police Chief, the project applicant shall provide a minimum of three onsite private security guards at all times during the operation of the proposed project. These security guards shall be trained to meet Department of Consumer Affairs standards.</p>	<p>Building Permits</p>	<p>City Planning, Merced City Police &amp; Inspection Services</p>	
<p><b>Mitigation Measure #3.11-1b:</b></p> <p>Pursuant to the City of Merced General Plan Policy P-1.3.c, and Merced Municipal Code Sections 17.62 and 17.64, the project applicant shall pay Public Facilities Impact Fees along with Merced County Regional Transportation Fees to address impacts of growth on city and regional infrastructure. In addition, Community Facilities District (CFD) formation is required for annual operating costs for city services. CFD procedures shall be initiated before final improvement plans are approved by the City. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest their inclusion in the District, and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received. In consultation with the Developer/Owner, the City's CFD consultant shall conduct a study to determine the proper rate and method of apportionment based on Phase 1 of the hospital project. The Owner/Developer reserves the right to</p>	<p>Building Permits</p>	<p>City Planning, Inspection Services, &amp; Building Division</p>	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p>appeal the consultant's findings to City Council for a final decision.</p>			
<p><b>Mitigation Measure #3.11-1c:</b> Pursuant to the City of Merced General Plan Policy P-2.1.1.h, the design of the proposed project shall utilize modern public protection concepts such as "defensible space," security lighting, access, visibility, etc. to reduce policing problems and improve police effectiveness.</p>	On-going	City Planning, Inspection Services & City Police	
<p><b>Mitigation Measure #3.11-2:</b> Pursuant to the City of Merced General Plan Policy P-1.3.c, and Merced Municipal Code Sections 17.62 and 17.64, the project applicant shall pay Public Facilities Impact Fees along with Merced County Regional Transportation Fees to address impacts of growth on city and regional infrastructure. In addition, Community Facilities District (CFD) formation is required for annual operating costs for city services. CFD procedures shall be initiated before final improvement plans are approved by the City. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest their inclusion in the District, and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received. In consultation with the Developer/Owner, the City's CFD consultant shall conduct a study to determine the proper rate and method of apportionment based on Phase 1 of the hospital project. The Owner/Developer reserves the right to appeal the consultant's findings to City Council for a final decision.</p>	Building Permits	City Planning, Inspection Services, & Building Division	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<b>3.12 TRANSPORTATION/CIRCULATION</b>			
<b>Mitigation Measure #3.12-1:</b>	Completion of Phase III	City Planning Division & Inspection Services	
<p>Upon completion of Phase III (development of the south 10-acre parcel), outbound left-turn movements at the intersection of Sandpiper Drive and Cormorant Drive from the north leg and south leg of the intersection shall be prohibited. If Sandpiper Drive south of the south parking lot is not constructed at the time Mercy Medical Center land uses are constructed south of Cormorant Drive, the project applicant (subject to reimbursement) shall be required to construct this portion of Sandpiper Drive.</p>			
<b>Mitigation Measure #3.12-3:</b>	Building Permits	City Planning Division, Inspection Services & Merced County Transit	
<p>The proposed project includes MMCM-paid transportation from the existing facility to the new hospital. This should be considered when evaluating the impact on demand for public transit. Provide public transit facilities (e.g., bus shelters, public transit information kiosks, and park-and-ride lots) in those areas of the proposed project that would be accessible to potential patrons and transit vehicles. The selection and location of the facilities should be determined in consultation with Merced County Transit.</p>			
<b>Mitigation Measure #3.12-4a:</b>	Building Permits	City Planning Division & Inspection Services	
<p>Provide sidewalks, bicycle lanes, and bicycle paths along roadways adjacent to the project site. Figure 4.10 in Chapter 4,</p>			

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p><i>Transportation and Circulation, of the Merced Vision 2015 General Plan (City of Merced 1997) shows:</i></p> <ul style="list-style-type: none"> <li>• <i>a Class II (on-street) bicycle facility along G Street, and</i></li> <li>• <i>a Class I (off-street) bicycle facilities along Cottonwood Creek north of the project site.</i></li> </ul>			
<p><b>Mitigation Measure #3.12-4b:</b></p> <p><i>In the event that increases in traffic, as a result of the proposed hospital, creates a safety hazard for children of the adjacent school, the project proponent with the consent and approval of the City will provide one or more of the following safety measures; slow for school zone signs, or crosswalks near the intersections of Paulson Road - Cormorant Drive and Mansionette Drive - Cormorant Drive. Together with the other mitigation measures any one or a combination of these mitigation measures will reduce the impact to less than significant. If crosswalks are installed, they shall include imbedded flushing lights in the pavement, activated by a switch.</i></p>	<p><i>Building Permits</i></p>	<p><i>City Planning Division &amp; Inspection Services</i></p>	
<p><b>Mitigation Measure #3.12-5:</b></p> <p><i>The applicant shall install on-site circulation barriers; thereby ensuring this driveway access point will be used as an emergency entrance only, and does not directly connect to employee and visitor parking areas. The project applicant shall also install a median to ensure that this driveway is a "right turn in and out" intersection only.</i></p>	<p><i>Building Permits</i></p>	<p><i>City Inspection Services</i></p>	

**Copies of This Form Distributed To:**

_____	City Council	_____	City Manager	_____	Dev Serv Director	_____	Public Works Director	_____	City Engineer	_____	Fire Chief
_____	Police Chief	_____	Leisure Serv. Dir.	_____	County of Merced (Dept. _____)	_____	Other (List _____)	_____		_____	
_____	Responsible Agency: (List _____)										

I hereby certify that I have inspected the project site and that the above information is true to the best of my knowledge.

Name: (Print) \_\_\_\_\_ Representing: (Agency/Firm) \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**APPLICABLE MITIGATION MEASURES OF THE GENERAL PLAN EIR — MERCY MEDICAL CENTER**

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
XX			
XX			
XX			



## MERCED VISION 2015 GENERAL PLAN ENVIRONMENTAL MITIGATION CHECKLIST FORM A

Project Name: \_\_\_\_\_ File Number: \_\_\_\_\_ Conditional Neg. Dec. \_\_\_\_\_  
 Approval Date: \_\_\_\_\_ EIR: \_\_\_\_\_

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

Mitigation Measure	Type	Dept	Monitoring Plans	Shown on Implementation	Verified Remarks

(Add additional Measures as Necessary)

**Explanation of Headings:**  
 Type: Project, ongoing, cumulative.  
 Monitoring Dept.: Department or Agency responsible for monitoring a particular mitigation measure.  
 Shown on Plans: When mitigation measure is shown on plans, this column will be initialed and dated.  
 Verified Implementation: When a mitigation measure has been implemented, this column will be initialed and dated.  
 Remarks: Area for describing status of ongoing mitigation measure, or for other information.

**MERCED VISION 2015 GENERAL PLAN  
MITIGATION MEASURE MONITORING CHECKLIST – FORM B**

Monitoring Phase: \_\_\_\_\_ Pre-Construction \_\_\_\_\_ Construction \_\_\_\_\_

Project File Number: \_\_\_\_\_

Project Name: \_\_\_\_\_

Brief Project Description: \_\_\_\_\_

Project Location: \_\_\_\_\_

**Requirement Met:**

Date	Yes	No	Description of Mitigation Measures
_____	_____	_____	1. _____
_____	_____	_____	2. _____
_____	_____	_____	3. _____
_____	_____	_____	4. _____
_____	_____	_____	5. _____

**Requirement On-Going:**

Date	Yes	No	Description of Mitigation Measures
_____	_____	_____	1. _____
_____	_____	_____	2. _____
_____	_____	_____	3. _____
_____	_____	_____	4. _____
_____	_____	_____	5. _____

Trustee Agency	Date	Yes	No
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____

**Copies of This Form Distributed To:**

_____ City Council	_____ City Manager	_____ Dev Serv Dir..	_____ Public Works Dir.
_____ City Engineer	_____ Fire Chief	_____ Police Chief	_____ Leisure Services Dir.
_____ County of Merced (Dept _____)		_____ Other (List _____)	
_____ Responsible Agency: (List _____)			

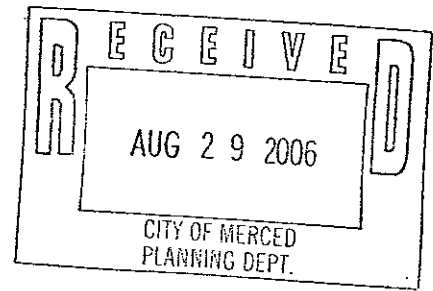
**I hereby certify that I have inspected the project site and that the above information is true to the best of my knowledge.**

Name: (Print) \_\_\_\_\_ Representing: (Agency/Firm) \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

MEMO

TO: Kim Espinoza, City of Merced Planning Department  
FROM: Kyle Stockard  
kyle@mercednet.com  
2499 E. Gerard Av. Sp. 12  
Merced, CA 95340



DATE: August 23, 2006

RE: Site Plan Committee Meetings and the Brown Act

I am writing today to remind you that, pursuant to the Brown Act, Government Code, § 549501 et seq., **all meetings of the Site Plan Committee** (or equivalently, the Site Approval Committee or Site Plan Approval Committee) **are open meetings**. More specifically, I ask that you take note of the following:

**THE BROWN ACT SPECIFICALLY APPLIES  
TO THE SITE PLAN COMMITTEE**

As you know, **the Brown Act applies to all legislative bodies of local agencies**. The City of Merced is obviously a local agency (Section 54951), and the Site Plan Committee, whose membership and responsibilities are specifically defined in Section 20.68.015 of the Merced City Code, is a legislative body in the sense of the Brown Act (Section 54952b). The latter claim is valid because even bodies making executive and quasi-judicial decisions are subject to the provisions of the Act.

**The meetings of the Site Plan Committee are therefore fully subject to open meeting requirements.** In particular, the law requires that:

- Agendas or any other writings distributed to the Committee for discussion or consideration at a meeting must be disclosed upon my request (Section 54957.5).
- Materials provided to the Committee prior to a meeting must, upon request, be made available to me without delay (Section 54957.5a).
- I may request in writing that the Committee agenda or all of the documents comprising the Committee meeting packet be mailed to me for a cost not to exceed the actual cost of providing the service. (Section 54954.1). Upon receipt of my request, the City must mail the requested documents to me at the time the agenda is posted or when the documents are provided to the Committee, whichever occurs first.
- I must be afforded an opportunity to comment prior to or during consideration of each item on the Committee agenda (Section 54954.3a).

**Therefore, effective immediately, I wish to be placed on a list of persons receiving notices of and agendas and meeting materials for all of these meetings.** I prefer to receive information in electronic format at the e-mail address provided above. Otherwise, hard copies may be mailed to the mailing address provided above. If advance payment of a fee is required to offset copying and mailing costs, please provide instructions for doing so, and I will remit promptly.

**I also request copies of all Site Plan Committee minutes and/or agendas for meetings held within the past six months.**

**THE SITE PLAN COMMITTEE CANNOT EVADE  
THE REQUIREMENTS OF THE BROWN ACT  
BY SIMPLY AVOIDING FORMAL MEETINGS**

I understand your assertion that the Planning Commission, not the Site Plan Committee, will eventually hear and decide on the approval of the site plan for the proposed Wal-Mart Distribution Center, as authorized by Section 20.68.040(b) of Merced City Code.

However, that is not the whole story. Prior to the referral of the proposed site plan to the Planning Commission for hearing and decision, the Site Plan Committee will need to review and discuss early versions of Wal-Mart's plans and make preliminary recommendations accordingly. In other words, the Site Plan Committee will make preliminary decisions and recommendations enabling Wal-Mart to put its site plan in the position to be heard and decided upon by the Planning Commission. At a bare minimum, the Committee will need to meet in order to officially refer the site plan to the Planning Commission.

That said, I am aware of your additional claim that the Site Plan Committee will not actually meet in order to do some of this initial groundwork. Under the Brown Act, however, a meeting includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate upon any matter which is under the subject matter jurisdiction of the agency (Section 54952.2).

Even in an informal convening is considered to be a "meeting" if matters under the jurisdiction of the agency are discussed. The Brown Act is also clear that it is not only the decision of a legislative body that is subject to these requirements, but also the deliberations of the body that factor into that decision. **Therefore, if the Site Plan Committee intends to meet informally, please note that any such informal meetings are also subject to open meeting requirements.**

**THE SITE PLAN COMMITTEE CANNOT EVADE  
THE REQUIREMENTS OF THE BROWN ACT  
BY SIMPLY TALKING OR E-MAILING INDIVIDUALLY**

The Brown Act also specifically prohibits "serial meetings", which include any use of direct communication, personal intermediaries or technological devices to allow the legislative body (or a majority of its members) to develop a shared agreement as to the action to be taken. This prohibition also applies to conducting Site Plan Committee business back and forth via e-mail.

The Committee therefore must actually convene in order "to hear and consider the comments of interested city departments on" the proposed site plan for the Wal-Mart Distribution Center.

**THERE SEEMS TO BE CONSIDERABLE CONFUSION AMONG CITY STAFF  
REGARDING HOW THE SITE PLAN COMMITTEE ACTUALLY WORKS**

Finally, I was advised by a colleague who recently spoke directly with several members of the Site Plan Committee that there is considerable confusion about current Committee procedures and processes.

Different staff members gave differing accounts regarding the frequency of meetings, how the meetings are run, and how and when meetings are called, to name a few.

Of particular interest were the contrasting accounts regarding the Committee's role in reviewing the proposed site plan for the Wal-Mart Distribution Center. One staff member indicated that the Committee had already elected to forward the proposed Distribution Center site plan to the Planning Commission for approval, while another stated that the Committee had not yet made any such decision.

An obvious prerequisite to compliance with the Brown Act in this case is a clear and consistent understanding within City government about how the Site Plan Committee functions. **I therefore request a copy of any internal policies or procedures that clarify how the Site Plan Committee conducts business** (or will conduct business in the future).

\*\*\*\*\*

**Please confirm that you have received this e-mail, will take the actions requested, and otherwise intend to comply with the relevant provisions of the Brown Act. In particular, I look forward to promptly receiving:**

- notices of and agendas and meeting materials for all future Site Plan Committee meetings;
- copies of all Site Plan Committee minutes and agendas for Site Plan Committee meetings held within the past six months; and
- a copy of any internal policies or procedures that clarify how the Site Plan Committee conducts business.

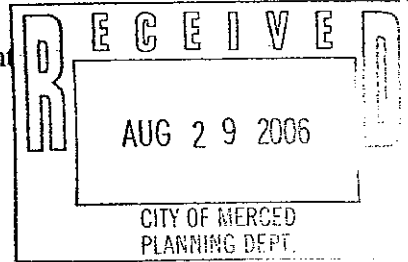
If you have questions or need additional information in order to respond to my questions and requests, please feel free to contact me.

Thank you for your time and assistance.



MEMO

**TO:** Kim Espinoza, City of Merced Planning Department  
**FROM:** Marilynne Pereira  
marilynnep@gmail.com  
505 Mustang Court  
Merced, CA 95340



**DATE:** August 23, 2006

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- a copy of any internal policies or procedures that clarify how the Site Plan Committee conducts business.

If you have questions or need additional information in order to respond to my questions and requests, please feel free to contact me.

Thank you for your time and assistance.

*Marilynne Pereira*



**Espinosa, Kim**

---

**From:** blueeyesmo [blueeyestx53@yahoo.com]  
**Sent:** Wednesday, September 20, 2006 2:29 PM  
**To:** Espinosa, Kim  
**Subject:** wal mart dc info

**Yes my info is  
Barbara Flowers  
603 Kyle  
St. James, Mo. 65559  
Thanks**

One must learn by doing..., for though you think you know it.  
You have no certainty until you try it.

---

How low will we go? Check out Yahoo! Messenger's low [PC-to-Phone call rates](#).

**Espinosa, Kim**

---

**From:** Espinosa, Kim  
**Sent:** Wednesday, September 20, 2006 11:05 AM  
**To:** 'blueeyestx53@yahoo.com'  
**Subject:** FW: Wal Mart issue..sorry for venting I guess..  
**Importance:** High

Barbara,

Thank you for your comments. If you want to be on our mailing list for the Wal-Mart project, I will need a physical mailing address, not just an email address. That way we can keep you informed of upcoming public meetings on the project. If you have any questions, please feel free to give me a call. Thanks!

--Kim

Kim Espinosa, Planning Manager  
 City of Merced Planning & Permitting  
 678 West 18th Street  
 Merced, CA 95340  
 Phone: (209) 385-6858  
 Fax: (209) 725-8775  
 Email: [espinosak@cityofmerced.org](mailto:espinosak@cityofmerced.org)

-----Original Message-----

**From:** Marshall, Jim  
**Sent:** Wednesday, September 20, 2006 10:50 AM  
**To:** Davidson, Dana; Espinosa, Kim  
**Subject:** FW: Wal Mart issue..sorry for venting I guess..  
**Importance:** High

for the record

James G. Marshall, City Manager  
 City of Merced  
[marshallj@cityofmerced.org](mailto:marshallj@cityofmerced.org)  
 209.385.6834

-----Original Message-----

**From:** city, council  
**Sent:** Monday, September 18, 2006 8:33 AM  
**To:** Bill Spriggs (E-mail); Carl Pollard (E-mail 2); Cortez, Joseph; Ellie Wooten (E-mail 2); Ellie Wooten (E-mail); Gabriault, Michele; Jim Sanders (E-mail); Joe Cortez (E-mail); Marshall, Jim; Michele Gabriault-Acosta (E-mail); Osorio, Rick; Pollard, Carl; Reynolds, Nobie; Rick Osorio (E-mail); Sanders, Jim; Spriggs, Bill  
**Cc:** Lesch, Jack; Quintero, Frank  
**Subject:** FW: Wal Mart issue..sorry for venting I guess..  
**Importance:** High

From the web site.

*Nobie*

*Nobie Reynolds*  
*Executive Secretary*  
*City Manager's Office*  
*Email: reynoldsn@cityofmerced.org*  
*Telephone: (209) 385-6834; Fax (209) 723-1780*

-----Original Message-----

**From:** blueeyesmo [mailto:blueeyestx53@yahoo.com]

**Sent:** Saturday, September 16, 2006 4:44 PM

**To:** city, council

**Subject:** Wal Mart issue..sorry for venting I guess..

**Yes put me on your mailing list.. I want to know what is going on in Merced with Wal Mart.. I would like to work there.. and I know for a fact that in 2 yrs property value will increase.. I have seen it happen..Merced will only benefit from Wal Mart..People are so afraid of change..and so believing in the Media...before getting facts from source. Wal Mart DC's do everything they can to hide lights from homes and to deflect sounds from homes.. Taking a truck route so not to bother home owners also.. unless the Town says only to put here and then its the towns fault for the bothering of home owners. Wal Mart adds to community always..BUT, seems the politic and media likes to stir issues.. without the honest FACTS. Wal Mart does not usually build where there will be annoyance to neighborhood houses so it sounds to me that the Town is saying here only.. to make Wal Mart look bad if it bothers anyone.. I know of no town that a DC irritates home owners,air,water,taxes,Wal Mart truck drivers have the #1 safest driving records in the USA..Wal Mart is recycling everything..everything that goes in goes back out to a FEMA issued site. only thing to run off on a rainy day is water its self.. only thing in sewer is sewer waste of a normal house hold. OSHA and other health companys are hard on Wal Mart so Wal Mar does their part to stay clean. Break rooms cant have a toaster for fear of crumbs... on the floor where you work only water is aloud in a bottle with a cap .. not even a water fountain that might encourage rodents...Yes I know no one will look at this e-mail and care because this is the site of people who dont care**

9/20/2006

**about people. If this was any other company other then WAL  
MART there would not even be a thought. Because a company  
knows how to be in the Black with bettering its self...others  
attack...sad world we live in honestly..Like gas prices war and  
gas sky rockets.. still war but elections coming up hummm gas is  
down wonders Y eh...Oh well we will live on some how..even with  
all the issues in the world..I know I am a survivor and always  
finds a way to adjust...I like Merced was hoping to making it my  
home..Only time will tell,I do know if its not the right thing...its  
for the best and Merceds loss. As a City of 72,000 people you  
know yourself you can not please everyone..or always do the right  
thing.. A City is only as good as its support and the people who  
run it.**

**Barbara**

---

One must learn by doing..., for though you think you know it.  
You have no certainty until you try it.

---

All-new Yahoo! Mail - Fire up a more powerful email and get things done faster.

## Espinosa, Kim

---

**From:** Marshall, Jim  
**Sent:** Wednesday, September 20, 2006 10:50 AM  
**To:** Davidson, Dana; Espinosa, Kim  
**Subject:** FW: Wal Mart issue..sorry for venting I guess..  
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for the record

James G. Marshall, City Manager  
City of Merced  
marshallj@cityofmerced.org  
209.385.6834

-----Original Message-----

**From:** city, council  
**Sent:** Monday, September 18, 2006 8:33 AM  
**To:** Bill Spriggs (E-mail); Carl Pollard (E-mail 2); Cortez, Joseph; Ellie Wooten (E-mail 2); Ellie Wooten (E-mail); Gabriault, Michele; Jim Sanders (E-mail); Joe Cortez (E-mail); Marshall, Jim; Michele Gabriault-Acosta (E-mail); Osorio, Rick; Pollard, Carl; Reynolds, Nobie; Rick Osorio (E-mail); Sanders, Jim; Spriggs, Bill  
**Cc:** Lesch, Jack; Quintero, Frank  
**Subject:** FW: Wal Mart issue..sorry for venting I guess..  
**Importance:** High

From the web site.

## *Nobie*

*Nobie Reynolds*  
*Executive Secretary*  
*City Manager's Office*  
*Email: reynoldsn@cityofmerced.org*  
*Telephone: (209) 385-6834; Fax (209) 723-1780*

-----Original Message-----

**From:** blueeyesmo [mailto:blueeyestx53@yahoo.com]  
**Sent:** Saturday, September 16, 2006 4:44 PM  
**To:** city, council  
**Subject:** Wal Mart issue..sorry for venting I guess..

**Yes put me on your mailing list.. I want to know what is going on in Merced with Wal Mart.. I would like to work there.. and I**

9/20/2006

know for a fact that in 2 yrs property value will increase.. I have seen it happen..Merced will only benefit from Wal Mart..People are so afraid of change..and so believing in the Media...before getting facts from source. Wal Mart DC's do everything they can to hide lights from homes and to deflect sounds from homes.. Taking a truck route so not to bother home owners also.. unless the Town says only to put here and then its the towns fault for the bothering of home owners. Wal Mart adds to community always..BUT, seems the politic and media likes to stir issues.. without the honest FACTS. Wal Mart does not usually build where there will be annoyance to neighborhood houses so it sounds to me that the Town is saying here only.. to make Wal Mart look bad if it bothers anyone.. I know of no town that a DC irritates home owners,air,water,taxes,Wal Mart truck drivers have the #1 safest driving records in the USA..Wal Mart is recycling everything..everything that goes in goes back out to a FEMA issued site. only thing to run off on a rainy day is water its self.. only thing in sewer is sewer waste of a normal house hold. OSHA and other health companys are hard on Wal Mart so Wal Mar does their part to stay clean. Break rooms cant have a toaster for fear of crumbs... on the floor where you work only water is aloud in a bottle with a cap .. not even a water fountain that might encourage rodents...Yes I know no one will look at this e-mail and care because this is the site of people who dont care about people. If this was any other company other then WAL MART there would not even be a thought. Because a company knows how to be in the Black with bettering its self...others attack...sad world we live in honestly..Like gas prices war and gas sky rockets.. still war but elections coming up hummm gas is down wonders Y eh...Oh well we will live on some how..even with all the issues in the world..I know I am a survivor and always finds a way to adjust...I like Merced was hoping to making it my home..Only time will tell,I do know if its not the right thing...its for the best and Merceds loss. As a City of 72,000 people you

**know yourself you can not please everyone..or always do the right thing.. A City is only as good as its support and the people who run it.**

**Barbara**

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One must learn by doing..., for though you think you know it.  
You have no certainty until you try it.

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All-new Yahoo! Mail - Fire up a more powerful email and get things done faster.

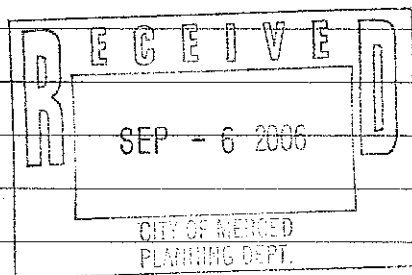
NO  
DIST. center Sept 6, 06

hello. my name is Jennifer  
Sorenson. i recently read  
somewhere about a  
distribution center.


You make me sick.  
we don't need no dist. center  
we already have one  
Wal-mart. one is enough.

so don't build no center.  
and i hope other people  
complain and say no, too.  
so, think about it.

and think about the people  
who have allergies, and  
asthma. you are just going  
to pollute the air, make  
things worse for everybody.  
Do not build no dist. center.  
i am against it.



from,  
Jennifer S.

 Jennifer M. Sorenson  
873 Amador Ct.  
Merced, CA 95340-1436



**Espinosa, Kim**

---

**From:** Davidson, Dana  
**Sent:** Wednesday, September 06, 2006 10:34 AM  
**To:** 'Schuyler Ellis'  
**Cc:** Espinosa, Kim  
**Subject:** RE: Records Request

Ms. Davidson,

Who will be the custodian of records for this request?? Yourself or Ms Espinosa??

I am assuming that whoever it is, is responsible for collecting documents from all departments, staff members, and elected officials, is that correct?

Schuyler

*"Davidson, Dana" <DavidsonD@cityofmerced.org> wrote:*

**here you go!!**

**MEMO**

**Dear Mr. Ellis:**

**Mr. Ellis,**

**I will be the custodian of records and you are correct regarding the corresponding duties.  
Please contact me if you have any additional questions.**

**Dana Davidson  
Records Coordinator/Deputy City Clerk  
City of Merced**

**Ms. Davidson,**

**Who will be the custodian of records for this request?? Yourself or Ms Espinosa??**

**I am assuming that whoever it is, is responsible for collecting documents from all  
departments, staff members, and elected officials, is that correct?**

**Schuyler**

**-----Original Message-----**

**From:** Schuyler Ellis [mailto:schuylerls@yahoo.com]  
**Sent:** Wednesday, September 06, 2006 10:25 AM  
**To:** Davidson, Dana  
**Cc:** Espinosa, Kim  
**Subject:** RE: Records Request

The City Clerk's Office received your public records request memorandum via e-mail requesting a large amount of documentation on the proposed Wal-Mart Distribution Center. Your request is being processed by the city, however it will require substantial staff work to accomplish and should be completed by Wednesday, September 20, 2006. Once the documentation has been compiled, you will be contacted regarding the corresponding cost. The City charges \$.10 per page.

If you have any questions or I can be of further assistance, please call me at (209) 385-6231.

Sincerely,  
Dana J. Davidson  
Records Coordinator/Deputy City Clerk  
City of Merced

-----Original Message-----

From: Schuyler Ellis [mailto:schuylerls@yahoo.com]  
Sent: Tuesday, August 22, 2006 8:53 AM  
To: Espinosa, Kim; Davidson, Dana  
Subject: RE: Records Request

TO:	Dana Davidson, City Clerk Manager City Clerk's Office Department City of Merced 678 West 18th Street Street Merced, California 95340 California 95340	Kim Espinosa, Planning City Planning City of Merced 678 West 18 <sup>th</sup> Merced,
-----	---	---

FROM: Schuyler Ellis  
1344 W. Cass Street  
Tampa, Florida 33606  
SchuylerLS@yahoo.com

DATE: August 21<sup>st</sup>, 2006

RE: Public Records Request

Pursuant to the California Public Records Act (CPRA), Sections 6350-6370 of the Government Code, I am writing to request copies of public records. In particular, I request copies of any and all public records, including but not limited to: forms, applications, reports, analyses, memoranda, correspondence (including e-mails), notes, and plans either received or generated by the all City of Merced Departments (this including any staff members or elected officials of the City of Merced), on or after September 1<sup>st</sup>, 2005, regardless of source, pertaining in any manner to the

*Rest of pages are Mr. Ellis' previous request (saved elsewhere). — [Signature]*

## Espinosa, Kim

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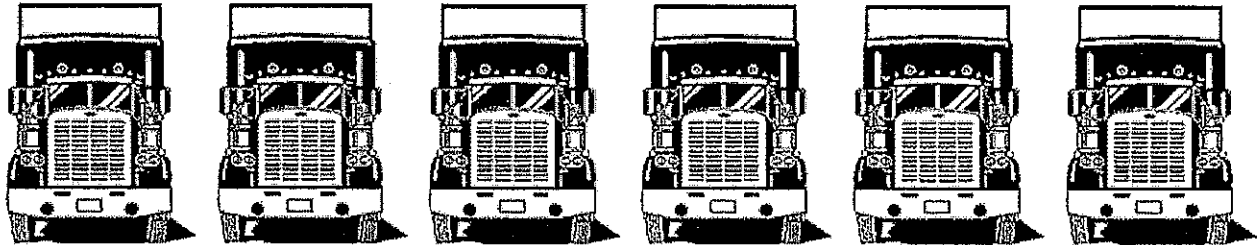
**From:** Lucas, Terri  
**Sent:** Tuesday, September 05, 2006 10:02 AM  
**To:** Davidson, Dana  
**Cc:** Espinosa, Kim  
**Subject:** Walmart Records Request

Hi Dana - I put a stack of documents on your desk regarding the Wal-Mart records request. There are a couple of items that Kim Espinosa needs to get with you on regarding the written response as to why we don't have the information requested.

If you need anything else, please let me know. Happy Monday!!!!

Terri Lucas  
Secretary III  
City of Merced  
Development Services  
678 W 18th Street  
Merced, CA 95340  
(209) 385-6858  
lucast@cityofmerced.org

# Merced has the 5<sup>th</sup> worst ozone pollution in the *nation*.\*



..... about 1 every minute and half ..... **900+ every day** .....

## How will 27,000 additional trucks a month affect our community's health?

Come hear from the Valley's health and air quality experts.  
They're here to answer *your* questions.

GUEST SPEAKER: David Lighthall, Ph.D. Director of the Relational Culture Institute

**When:** Thursday, September 14<sup>th</sup>, 2006  
6:30 – 8:00 pm

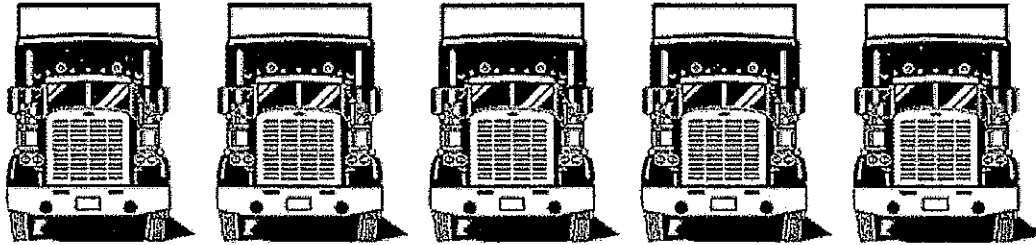
**Where:** Golden Valley High School  
2121 E Childs Ave  
Merced, CA 95340

Received at  
9/15/06  
City Council  
MAG  
JLB

For more information or transportation, call 723-9458 or email us at: [wmat@mercedalliance.org](mailto:wmat@mercedalliance.org)  
[www.mercedalliance.org](http://www.mercedalliance.org)

\*American Lung Association (State of the Air: 2006)

# **Merced tiene la quinta más peor contaminación del ozono en la nación.\***



aproximadamente 1 cada minuto y medio...900+ cada día....

## **...¿Qué va a pasar con la salud de la comunidad con 27,000 camiones adicionales cada mes?**

Venga a escuchar oradores expertos acerca de la calidad de salud y  
aire aquí en el valle.

Estarán aquí para responder a sus preguntas.

**El orador principal: David Lighthall, Ph.D.  
Director del Instituto de Cultura Relacional**

**Cuándo: Jueves, 14 de setiembre, 2006  
6:30-8:00 de la noche**

**Dónde: Golden Valley High School  
2121 E. Childs Ave  
Merced, California 95340**

Para más información, llame 723-9458 or escribe un  
Email a: [wmat@mercedalliance.org](mailto:wmat@mercedalliance.org) Mail to: [wmat@mercedalliance.org](mailto:wmat@mercedalliance.org)

\*información cortesía American Lung Association (Estado del Aire.2006)

**Espinosa, Kim**

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**From:** Espinosa, Kim  
**Sent:** Friday, September 01, 2006 2:34 PM  
**To:** 'newwomen01@aol.com'  
**Subject:** RE: WalMart Mailing list

Norma,

The EIR for the Mercy Medical Center is available for download on the City's website at the link below (the files are too large to email, I'm afraid). Let me know if you have any questions, the Mercy project is scheduled to be heard at the City Council meeting on Tuesday night at 7pm. Let me know if you need anything else. Thanks!

--Kim

[http://www.cityofmerced.org/depts/cd/planning/documents\\_and\\_handouts/default.asp](http://www.cityofmerced.org/depts/cd/planning/documents_and_handouts/default.asp)

Kim Espinosa, Planning Manager  
 City of Merced Planning & Permitting  
 678 West 18th Street  
 Merced, CA 95340  
 Phone: (209) 385-6858  
 Fax: (209) 725-8775  
 Email: [espinosak@cityofmerced.org](mailto:espinosak@cityofmerced.org)

-----Original Message-----

**From:** [newwomen01@aol.com](mailto:newwomen01@aol.com) [<mailto:newwomen01@aol.com>]  
**Sent:** Friday, September 01, 2006 2:25 PM  
**To:** Espinosa, Kim  
**Subject:** Re: WalMart Mailing list

Good Afternoon Kim,

I want to thank you again for sending us the EIR for the Wal-Mart project is going to bring so many jobs to the area. Mike is a truck driver and works for WINCO Foods. He will probably take a job with Wal-Mart in the future.

I am a registered nurse and an administrator and I would like to know if you would be so kinds as to send the Mercy Memorial Hospital Project EIR. Thanks so much. I really appreciate your responsiveness.

Norma Rivera

-----Original Message-----

**From:** [ESPINOSAK@cityofmerced.org](mailto:ESPINOSAK@cityofmerced.org)  
**To:** [NEWWOMEN01@aol.com](mailto:NEWWOMEN01@aol.com)  
**Cc:** [KingB@cityofmerced.org](mailto:KingB@cityofmerced.org); [HamiltonM@cityofmerced.org](mailto:HamiltonM@cityofmerced.org)  
**Sent:** Tue, 22 Aug 2006 11:31 AM  
**Subject:** RE: WalMart Mailing list

Norma & Mike,

We have added you to the Wal-Mart Distribution List. As for your questions, attached is the Notice of Preparation for the Wal-Mart EIR, which contains information on the proposed project. Figure 3-5 on page 3-9 of that document shows a portion of the City's General Plan map for the area around the proposed Wal-Mart (which is also located on the map) which includes your neighborhood. You live on the west side of Alfarata Blvd--directly across the street on the east side of the road is a proposed City Park (dark green color on the map) along with land designated for single-family residential (bright yellow). Also on the east

side of Alfarata to the south of your home is land designated and zoned as Thoroughfare Commercial (pink), which would allow such uses as a shopping center, gas stations, hotels, etc.

Further to the east across Coffee Street and south of Gerard is a section designated as Regional Commercial (orange) along with a section further east designated as "Business Park" (dark pink). The City is currently reviewing a proposed regional shopping center involving over 1.4 million square feet of retail and office development known as "Merced Gateways" that would cover both the orange and the dark pink portions of the site. This project also requires the preparation of an EIR and that process will begin in the next month. Please contact Bill King, Principal Planner at [kingb@cityofmerced.org](mailto:kingb@cityofmerced.org) for more information about that project and to get on the mailing list if you so desire.

There is also a site designated for 296 condominiums at the southeast corner of Coffee and Gerard within the orange colored area, which is also currently under City review for a Conditional Use Permit (#1097), scheduled for public hearing before the Planning Commission on October 4, 2006. The project planner for that project is Mark Hamilton, who can be reached at [hamiltonm@cityofmerced.org](mailto:hamiltonm@cityofmerced.org)

If you want to see the General Plan map for the entire City, please refer to the City's webpage at [www.cityofmerced.org](http://www.cityofmerced.org) under the Development Services Dept--Planning--Merced Vision 2015 General Plan page. You may also refer to the Planning Dept's page for updates on current projects as well as Planning Commission agendas and staff rpts. The City's website is a good source of information on upcoming projects.

If you have any more questions, please feel free to contact me again.  
--Kim

Kim Espinosa, Planning Manager  
City of Merced Planning & Permitting  
678 West 18th Street  
Merced, CA 95340  
Phone: (209) 385-6858  
Fax: (209) 725-8775  
Email: [espinosak@cityofmerced.org](mailto:espinosak@cityofmerced.org)

-----Original Message-----

**From:** Lucas, Terri **On Behalf Of** planningweb  
**Sent:** Tuesday, August 22, 2006 10:04 AM  
**To:** Espinosa, Kim  
**Subject:** FW: WalMart Mailing list

Do you want to answer their questions, or should I pass it along to a Planner? I figured you have a handle on what's going on around the Wal-Mart site.

<![endif]>

I'm not sure how close Gateway Merced and the Steiner shopping center are.

<![endif]>

<![endif]>

-----Original Message-----

**From:** NEWWOMEN01@aol.com [mailto:[NEWWOMEN01@aol.com](mailto:NEWWOMEN01@aol.com)]  
**Sent:** Tuesday, August 22, 2006 8:35 AM  
**To:** planningweb  
**Subject:** Re: WalMart Mailing list

<![endif]>

Hi Terry,

I will be relocating to Merced and I just bought a home at 603 Alfarata Blvd. It has a large field across the street from my home. I was wondering what is scheduled to be built there. I was told that it would be a park. Is that true?

Also, what is the address of the Wal Mart distribution center? Are there plans to build a shopping center near by? Is there a place to refer to that has all the info of what is going up in our community? Thanks

Norma Rivera and Mike Costa  
New residents of Merced

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**Check out AOL.com today.** Breaking news, video search, pictures, email and IM. All on demand. Always Free.



## Espinosa, Kim

---

**From:** Marshall, Jim  
**Sent:** Thursday, August 31, 2006 9:58 AM  
**To:** Espinosa, Kim; Lesch, Jack; Proctor, Deneen; Davidson, Dana  
**Subject:** FW: Totally Opposed to the proposed Walmart Distribution Center  
**Importance:** High

For the record

James G. Marshall, City Manager  
City of Merced  
marshallj@cityofmerced.org  
209.385.6834

-----Original Message-----

**From:** city, council  
**Sent:** Thursday, August 31, 2006 9:42 AM  
**To:** Bill Spriggs (E-mail); Carl Pollard (E-mail 2); Cortez, Joseph; Ellie Wooten (E-mail 2); Ellie Wooten (E-mail); Gabriault, Michele; Jim Sanders (E-mail); Joe Cortez (E-mail); Marshall, Jim; Michele Gabriault-Acosta (E-mail); Osorio, Rick; Pollard, Carl; Reynolds, Nobie; Rick Osorio (E-mail); Sanders, Jim; Spriggs, Bill  
**Subject:** FW: Totally Opposed to the proposed Walmart Distribution Center  
**Importance:** High

From the web site.

*Nobie*

*Nobie Reynolds*  
*Executive Secretary*  
*City Manager's Office*  
*Email: reynoldsn@cityofmerced.org*  
*Telephone: (209) 385-6834; Fax (209) 723-1780*

-----Original Message-----

**From:** JOAQUIN VALENCIA [mailto:valenciaj49@hotmail.com]  
**Sent:** Wednesday, August 30, 2006 3:56 PM  
**To:** city, council; city, manager; Espinosa, Kim; Wooten, Ellie  
**Cc:** Cortez, Joseph; Osorio, Rick; Sanders, Jim; Spriggs, Bill  
**Subject:** Totally Opposed to the proposed Walmart Distribution Center  
**Importance:** High

Dear: City of Merced

I'm writing to let you that I'm totally opposed to the Walmart distribution center and I hope and pray that

8/31/2006

you reject the project. The reasons for my opinion are attached on a word document please take the time to read it. Thank you.

Joaquin

**Espinosa, Kim**

---

**From:** JOAQUIN VALENCIA [valenciaj49@hotmail.com]  
**Sent:** Wednesday, August 30, 2006 3:56 PM  
**To:** city, council; city, manager; Espinosa, Kim; Wooten, Ellie  
**Cc:** Cortez, Joseph; Osorio, Rick; Sanders, Jim; Spriggs, Bill  
**Subject:** Totally Opposed to the proposed Walmart Distribution Center  
**Importance:** High

Dear: City of Merced

I'm writing to let you that I'm totally opposed to the Walmart distribution center and I hope and pray that you reject the project. The reasons for my opinion are attached on a word documment please take the time to read it. Thank you.

Joaquin

Let you know that I'm totally against the proposed Wal-Mart Distribution center because it does more harm than good. First of all, it will increase pollution dramatically due to the number of trucks coming in and out of the facility not to mention the idling of other trucks by the side of the freeway. Second, traffic will be a problem even on the campus parkway because there will be 900 plus trucks per day more on the expressway. Third, noise and disturbance due to the 24 hour operation will increase significantly in the area affecting residents' way of life.

Recently in June nearby residents to the site had the opportunity to hear people who live in places where a distribution center has been built and let me tell you those people look very sad and outrage that a their cities let a distribution center of that size be built near their homes. Please see the link below as to what they said has happen to their lives.

[http://warnwalmart.org/index.php?id=12&tx\\_ttnews\[tt\\_news\]=359&tx\\_ttnews\[backPid\]=24&cHash=e9f00c6d86](http://warnwalmart.org/index.php?id=12&tx_ttnews[tt_news]=359&tx_ttnews[backPid]=24&cHash=e9f00c6d86)

Furthermore, we (the Merced community) have had meetings with the planning engineer Kim Espinosa but for some reason the council has never been present. I hope that the council has not made up their mind about the project therefore not attending the meetings to address the concerns of the citizens of the city of Merced. I have said all along that the city should not put such big projects near residential neighborhoods and schools because of the dangers the increase in traffic will have on the general public. Recently there was a truck in front of Weaver school that killed a small child because the truck did not make the stop, if that is not an indication of what can happen or the increase danger to the public than I don't know what would be. Please don't try to feed me the notion that the trucks will not be using the residential streets because we know that at some point they will. For example, what will happen when there an accident on the campus parkway, which way do you think the trucks and all the traffic will deviate? Of course they will go into Childs, Coffee, and Gerard which are the near streets endangering the Children from Golden Valley high school, Pioneer school, and Weaver school not to mention the residential neighborhood children.

In conclusion, as ask and beg that you guys take into considerations that we are the 6<sup>th</sup> city with the most pollution in the United States and also pretty high up with asthma cases and all this because of air pollution. I ask that before you think about the dollars you think about the lives of residents who make the city what it is, not the businesses. Please do your research, I don't mean your Environmental Impact report but an actual study of other cities that have had a Wal-Mart Distribution Center built and see what the neighborhood was before and after and you'll see it's not worth the price. I understand that you are trying to get jobs to Merced but do you have to do it at the expense of our lives and decrease property values in the process? Thank You and I hope that you reject the project because in the long run you are not the ones that have to live with the project long term we are. In my point of view, you guys can always quit the job and forget about the project but who will get stuck with the distribution center? It will be the residents of Merced. Thank you and have a nice day.

Joaquin Valencia  
438 Azalea CT  
Merced, CA 95340

## Espinosa, Kim

---

**From:** Espinosa, Kim  
**Sent:** Wednesday, August 30, 2006 9:27 AM  
**To:** 'rcruz@ucmerced.edu'; 'kyle@mercednet.com'; 'marilynne@gmail.com'  
**Subject:** Site Plan Committee and the Brown Act

Ms. Cruz, Mr. Stockard, & Ms. Pereira,

I received hard copies of your emails yesterday (August 29, 2006) regarding the Site Plan Committee and the Brown Act. I did NOT receive the original emails dated August 23, however, which I assume was due to the fact that my last name was misspelled. For any future correspondence, please note that my name is spelled "Espinosa" not "Espinoza" and my proper email address is [espinosak@cityofmerced.org](mailto:espinosak@cityofmerced.org). Since your letters raise some legal issues, I have referred them to the City Attorney's office and will await their advice before I respond to any specific issues. Thanks for your patience.

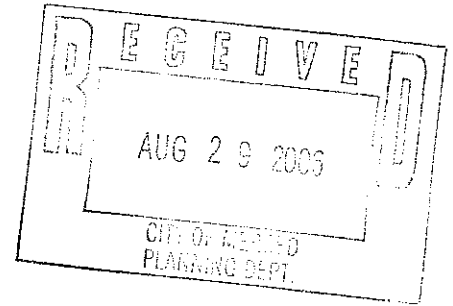
Sincerely,

Kim Espinosa, Planning Manager  
City of Merced Planning & Permitting  
678 West 18th Street  
Merced, CA 95340  
Phone: (209) 385-6858  
Fax: (209) 725-8775  
Email: [espinosak@cityofmerced.org](mailto:espinosak@cityofmerced.org)

8/30/2006

MEMO

**TO:** Kim Espinoza, City of Merced Planning Department  
**FROM:** Rosanna Cruz  
[rcruz@ucmerced.edu](mailto:rcruz@ucmerced.edu)  
1735 Canal St.  
Merced, CA 95340  
**DATE:** August 23, 2006  
**RE:** Site Plan Committee Meetings and the Brown Act



I am writing today to remind you that, pursuant to the Brown Act, Government Code, § 549501 et seq., **all meetings of the Site Plan Committee** (or equivalently, the Site Approval Committee or Site Plan Approval Committee) **are open meetings**. More specifically, I ask that you take note of the following:

**THE BROWN ACT SPECIFICALLY APPLIES  
TO THE SITE PLAN COMMITTEE**

As you know, **the Brown Act applies to all legislative bodies of local agencies**. The City of Merced is obviously a local agency (Section 54951), and the Site Plan Committee, whose membership and responsibilities are specifically defined in Section 20.68.015 of the Merced City Code, is a legislative body in the sense of the Brown Act (Section 54952b). The latter claim is valid because even bodies making executive and quasi-judicial decisions are subject to the provisions of the Act.

**The meetings of the Site Plan Committee are therefore fully subject to open meeting requirements.** In particular, the law requires that:

- Agendas or any other writings distributed to the Committee for discussion or consideration at a meeting must be disclosed upon my request (Section 54957.5).
- Materials provided to the Committee prior to a meeting must, upon request, be made available to me without delay (Section 54957.5a).
- I may request in writing that the Committee agenda or all of the documents comprising the Committee meeting packet be mailed to me for a cost not to exceed the actual cost of providing the service. (Section 54954.1). Upon receipt of my request, the City must mail the requested documents to me at the time the agenda is posted or when the documents are provided to the Committee, whichever occurs first.
- I must be afforded an opportunity to comment prior to or during consideration of each item on the Committee agenda (Section 54954.3a).

**Therefore, effective immediately, I wish to be placed on a list of persons receiving notices of and agendas and meeting materials for all of these meetings.** I prefer to receive information in electronic format at the e-mail address provided above. Otherwise, hard copies may be mailed to the mailing address provided above. If advance payment of a fee is required to offset copying and mailing costs, please provide instructions for doing so, and I will remit promptly.

**I also request copies of all Site Plan Committee minutes and/or agendas for meetings held within the past six months.**

**THE SITE PLAN COMMITTEE CANNOT EVADE  
THE REQUIREMENTS OF THE BROWN ACT  
BY SIMPLY AVOIDING FORMAL MEETINGS**

I understand your assertion that the Planning Commission, not the Site Plan Committee, will eventually hear and decide on the approval of the site plan for the proposed Wal-Mart Distribution Center, as authorized by Section 20.68.040(b) of Merced City Code.

However, that is not the whole story. Prior to the referral of the proposed site plan to the Planning Commission for hearing and decision, the Site Plan Committee will need to review and discuss early versions of Wal-Mart's plans and make preliminary recommendations accordingly. In other words, the Site Plan Committee will make preliminary decisions and recommendations enabling Wal-Mart to put its site plan in the position to be heard and decided upon by the Planning Commission. At a bare minimum, the Committee will need to meet in order to officially refer the site plan to the Planning Commission.

That said, I am aware of your additional claim that the Site Plan Committee will not actually meet in order to do some of this initial groundwork. Under the Brown Act, however, a meeting includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate upon any matter which is under the subject matter jurisdiction of the agency (Section 54952.2).

Even in an informal convening is considered to be a "meeting" if matters under the jurisdiction of the agency are discussed. The Brown Act is also clear that it is not only the decision of a legislative body that is subject to these requirements, but also the deliberations of the body that factor into that decision. **Therefore, if the Site Plan Committee intends to meet informally, please note that any such informal meetings are also subject to open meeting requirements.**

**THE SITE PLAN COMMITTEE CANNOT EVADE  
THE REQUIREMENTS OF THE BROWN ACT  
BY SIMPLY TALKING OR E-MAILING INDIVIDUALLY**

The Brown Act also specifically prohibits "serial meetings", which include any use of direct communication, personal intermediaries or technological devices to allow the legislative body (or a majority of its members) to develop a shared agreement as to the action to be taken. This prohibition also applies to conducting Site Plan Committee business back and forth via e-mail.

The Committee therefore must actually convene in order "to hear and consider the comments of interested city departments on" the proposed site plan for the Wal-Mart Distribution Center.

**THERE SEEMS TO BE CONSIDERABLE CONFUSION AMONG CITY STAFF  
REGARDING HOW THE SITE PLAN COMMITTEE ACTUALLY WORKS**

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An obvious prerequisite to compliance with the Brown Act in this case is a clear and consistent understanding within City government about how the Site Plan Committee functions. **I therefore request a copy of any internal policies or procedures that clarify how the Site Plan Committee conducts business** (or will conduct business in the future).

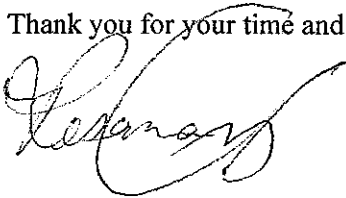
\*\*\*\*\*

**Please confirm that you have received this e-mail, will take the actions requested, and otherwise intend to comply with the relevant provisions of the Brown Act. In particular, I look forward to promptly receiving:**

- notices of and agendas and meeting materials for all future Site Plan Committee meetings;
- copies of all Site Plan Committee minutes and agendas for Site Plan Committee meetings held within the past six months; and
- a copy of any internal policies or procedures that clarify how the Site Plan Committee conducts business.

If you have questions or need additional information in order to respond to my questions and requests, please feel free to contact me.

Thank you for your time and assistance.



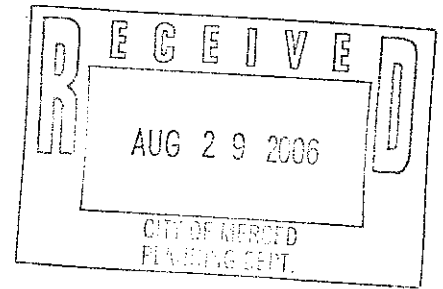


MEMO

**TO:** Kim Espinoza, City of Merced Planning Department  
**FROM:** Kyle Stockard  
[kyle@mercednet.com](mailto:kyle@mercednet.com)  
2499 E. Gerard Av. Sp. 12  
Merced, CA 95340

**DATE:** August 23, 2006

**RE:** Site Plan Committee Meetings and the Brown Act



I am writing today to remind you that, pursuant to the Brown Act, Government Code, § 549501 et seq., **all meetings of the Site Plan Committee** (or equivalently, the Site Approval Committee or Site Plan Approval Committee) **are open meetings**. More specifically, I ask that you take note of the following:

**THE BROWN ACT SPECIFICALLY APPLIES  
TO THE SITE PLAN COMMITTEE**

As you know, **the Brown Act applies to all legislative bodies of local agencies**. The City of Merced is obviously a local agency (Section 54951), and the Site Plan Committee, whose membership and responsibilities are specifically defined in Section 20.68.015 of the Merced City Code, is a legislative body in the sense of the Brown Act (Section 54952b). The latter claim is valid because even bodies making executive and quasi-judicial decisions are subject to the provisions of the Act.

**The meetings of the Site Plan Committee are therefore fully subject to open meeting requirements.** In particular, the law requires that:

- Agendas or any other writings distributed to the Committee for discussion or consideration at a meeting must be disclosed upon my request (Section 54957.5).
- Materials provided to the Committee prior to a meeting must, upon request, be made available to me without delay (Section 54957.5a).
- I may request in writing that the Committee agenda or all of the documents comprising the Committee meeting packet be mailed to me for a cost not to exceed the actual cost of providing the service. (Section 54954.1). Upon receipt of my request, the City must mail the requested documents to me at the time the agenda is posted or when the documents are provided to the Committee, whichever occurs first.
- I must be afforded an opportunity to comment prior to or during consideration of each item on the Committee agenda (Section 54954.3a).

**Therefore, effective immediately, I wish to be placed on a list of persons receiving notices of and agendas and meeting materials for all of these meetings.** I prefer to receive information in electronic format at the e-mail address provided above. Otherwise, hard copies may be mailed to the mailing address provided above. If advance payment of a fee is required to offset copying and mailing costs, please provide instructions for doing so, and I will remit promptly.

**I also request copies of all Site Plan Committee minutes and/or agendas for meetings held within the past six months.**

**THE SITE PLAN COMMITTEE CANNOT EVADE  
THE REQUIREMENTS OF THE BROWN ACT  
BY SIMPLY AVOIDING FORMAL MEETINGS**

I understand your assertion that the Planning Commission, not the Site Plan Committee, will eventually hear and decide on the approval of the site plan for the proposed Wal-Mart Distribution Center, as authorized by Section 20.68.040(b) of Merced City Code.

However, that is not the whole story. Prior to the referral of the proposed site plan to the Planning Commission for hearing and decision, the Site Plan Committee will need to review and discuss early versions of Wal-Mart's plans and make preliminary recommendations accordingly. In other words, the Site Plan Committee will make preliminary decisions and recommendations enabling Wal-Mart to put its site plan in the position to be heard and decided upon by the Planning Commission. At a bare minimum, the Committee will need to meet in order to officially refer the site plan to the Planning Commission.

That said, I am aware of your additional claim that the Site Plan Committee will not actually meet in order to do some of this initial groundwork. Under the Brown Act, however, a meeting includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate upon any matter which is under the subject matter jurisdiction of the agency (Section 54952.2).

Even in an informal convening is considered to be a "meeting" if matters under the jurisdiction of the agency are discussed. The Brown Act is also clear that it is not only the decision of a legislative body that is subject to these requirements, but also the deliberations of the body that factor into that decision. **Therefore, if the Site Plan Committee intends to meet informally, please note that any such informal meetings are also subject to open meeting requirements.**

**THE SITE PLAN COMMITTEE CANNOT EVADE  
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BY SIMPLY TALKING OR E-MAILING INDIVIDUALLY**

The Brown Act also specifically prohibits "serial meetings", which include any use of direct communication, personal intermediaries or technological devices to allow the legislative body (or a majority of its members) to develop a shared agreement as to the action to be taken. This prohibition also applies to conducting Site Plan Committee business back and forth via e-mail.

The Committee therefore must actually convene in order "to hear and consider the comments of interested city departments on" the proposed site plan for the Wal-Mart Distribution Center.

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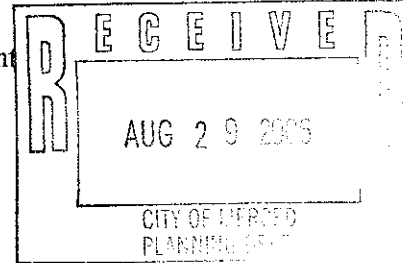
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Thank you for your time and assistance.



MEMO

**TO:** Kim Espinoza, City of Merced Planning Department  
**FROM:** Marilynne Pereira  
marilynneper@gmail.com  
505 Mustang Court  
Merced, CA 95340



**DATE:** August 23, 2006

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If you have questions or need additional information in order to respond to my questions and requests, please feel free to contact me.

Thank you for your time and assistance.

*Marilynne Pereira*

**Espinosa, Kim**

---

**From:** NEWWOMEN01@aol.com  
**Sent:** Sunday, August 27, 2006 11:39 PM  
**To:** Espinosa, Kim  
**Subject:** Re: WalMart Mailing list

Kim,  
Thank you so much for sending us all this great information.

Norma Rivera

8/28/2006

**Espinosa, Kim**

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**From:** Espinosa, Kim  
**Sent:** Tuesday, August 22, 2006 11:31 AM  
**To:** 'NEWWOMEN01@aol.com'  
**Cc:** King, Bill; Hamilton, Mark  
**Subject:** RE: WalMart Mailing list

Norma & Mike,

We have added you to the Wal-Mart Distribution List. As for your questions, attached is the Notice of Preparation for the Wal-Mart EIR, which contains information on the proposed project. Figure 3-5 on page 3-9 of that document shows a portion of the City's General Plan map for the area around the proposed Wal-Mart (which is also located on the map) which includes your neighborhood. You live on the west side of Alfarata Blvd--directly across the street on the east side of the road is a proposed City Park (dark green color on the map) along with land designated for single-family residential (bright yellow). Also on the east side of Alfarata to the south of your home is land designated and zoned as Thoroughfare Commercial (pink), which would allow such uses as a shopping center, gas stations, hotels, etc.

Further to the east across Coffee Street and south of Gerard is a section designated as Regional Commercial (orange) along with a section further east designated as "Business Park" (dark pink). The City is currently reviewing a proposed regional shopping center involving over 1.4 million square feet of retail and office development known as "Merced Gateways" that would cover both the orange and the dark pink portions of the site. This project also requires the preparation of an EIR and that process will begin in the next month. Please contact Bill King, Principal Planner at [kingb@cityofmerced.org](mailto:kingb@cityofmerced.org) for more information about that project and to get on the mailing list if you so desire.

There is also a site designated for 296 condominiums at the southeast corner of Coffee and Gerard within the orange colored area, which is also currently under City review for a Conditional Use Permit (#1097), scheduled for public hearing before the Planning Commission on October 4, 2006. The project planner for that project is Mark Hamilton, who can be reached at [hamiltonm@cityofmerced.org](mailto:hamiltonm@cityofmerced.org)

If you want to see the General Plan map for the entire City, please refer to the City's webpage at [www.cityofmerced.org](http://www.cityofmerced.org) under the Development Services Dept--Planning--Merced Vision 2015 General Plan page. You may also refer to the Planning Dept's page for updates on current projects as well as Planning Commission agendas and staff rpts. The City's website is a good source of information on upcoming projects.

If you have any more questions, please feel free to contact me again.  
--Kim

Kim Espinosa, Planning Manager  
City of Merced Planning & Permitting  
678 West 18th Street  
Merced, CA 95340  
Phone: (209) 385-6858  
Fax: (209) 725-8775  
Email: [espinosak@cityofmerced.org](mailto:espinosak@cityofmerced.org)

-----Original Message-----

**From:** Lucas, Terri **On Behalf Of** planningweb  
**Sent:** Tuesday, August 22, 2006 10:04 AM  
**To:** Espinosa, Kim  
**Subject:** FW: WalMart Mailing list

8/22/2006



Do you want to answer their questions, or should I pass it along to a Planner? I figured you have a handle on what's going on around the Wal-Mart site.

I'm not sure how close Gateway Merced and the Steiner shopping center are.

-----Original Message-----

**From:** NEWWOMEN01@aol.com [mailto:NEWWOMEN01@aol.com]

**Sent:** Tuesday, August 22, 2006 8:35 AM

**To:** planningweb

**Subject:** Re: WalMart Mailing list

Hi Terry,

I will be relocating to Merced and I just bought a home at 603 Alfarata Blvd. It has a large field across the street from my home. I was wondering what is scheduled to be built there. I was told that it would be a park. Is that true?

Also, what is the address of the Wal Mart distribution center? Are there plans to build a shopping center near by? Is there a place to refer to that has all the info of what is going up in our community? Thanks

Norma Rivera and Mike Costa  
New residents of Merced

**Espinosa, Kim**

---

**From:** Schuyler Ellis [schuylerls@yahoo.com]  
**Sent:** Monday, August 21, 2006 12:46 PM  
**To:** Davidson, Dana; Espinosa, Kim  
**Subject:** Records Request

Dear Ms. Davidson and Ms Espinosa,

Below as well as attached are copies of an updated Public Records Request, pursuant to the California Public Records Act (CPRA), Sections 6350-6370 of the Government Code.

As is explicitly stated through specific notations in this request, it is my intention to obtain every single piece of paper generated or received by the City of Merced pertaining to the Wal-Mart Distribution Center Project.

In addition, per the CPRA, it is required that each request be fulfilled in a reasonable amount of time. I understand the ten (10) working days can be considered reasonable, therefore I request that this request be fulfilled by close of business day, September 5th, 2006.

I appreciate your assistance with this matter, and I look forward to receiving EVERY document that EVERY department is maintaining on this project, or an explanation as to why any specific documents are not included or exempt from disclosure.

Sincerely,

Schuyler Ellis

**MEMO**

**TO:** Dana Davidson, City Clerk  
City Clerk's Office  
City of Merced  
678 West 18th Street  
Merced, California 95340

**Kim Espinosa, Planning Manager**  
City Planning Department  
City of Merced  
678 West 18<sup>th</sup> Street  
Merced, California 95340

**FROM:** Schuyler Ellis  
1344 W. Cass Street  
Tampa, Florida 33606  
SchuylerLS@yahoo.com

**DATE:** August 21<sup>st</sup>, 2006

**RE:** Public Records Request

Pursuant to the California Public Records Act (CPRA), Sections 6350-6370 of the Government Code, I am writing to request copies of public records. In particular, I request copies of any and all public records, including but not limited to: forms, applications, reports, analyses, memoranda, correspondence (including e-mails), notes, and plans either received or generated by the all City of Merced Departments (this including any staff members or elected officials of the City of Merced), on or after September 1<sup>st</sup>, 2006, regardless of source, pertaining in any manner to the proposed Wal-Mart Distribution Center. This request encompasses all such records, whether or not they are contained with the official project file for the Distribution

8/22/2006

Center maintained by the Planning Department, in other words this request pertains to all records maintained by **any and all** departments and offices of the City of Merced.

If any of these records exist and are available in electronic format, I request that they provided to me in that format as well, pursuant to Section 6253.9 of the CPRA.

In addition, I request that either the City Clerk, Dana Davidson or Planning Manager, Kim Espinosa, be made the custodian of these records and gather every item from each department and office pertaining to the above referenced project.

Please *exclude* from reproduction the following specific documents from the Planning Department of the City of Merced, which I have previously received from Ms. Espinosa:

Ordinances, Resolutions and Policies:

Ordinance No 1220, Resolution 78-71, LAFCO Resolution 300, Ordinance No. 1999, Development Agreement for Lyons Investment, Resolution 98-70, Resolution 2560, LAFCO Certificate of Completion of Annexation, LAFCO Resolution 99-26, LAFCO Resolution 0565, Ordinance No. 76-80, Administrative Policy A-6: Minor Subdivision Committee Resolution 871;

Applications: ERC 06-11, SP 260, Lot Split Application 05-15

Plans:

Location Map, Site Plan Phase 1 and 2, Landscape Plan (All Dated March 9, 2006)

Reports and Assessments:

Phase One Environmental Site Assessment – April 9, 2004; Environmental Site Assessment Update – December 6, 2005; Geotechnical Feasibility Report – April 12, 2004; Cultural Resource Assessment – April 12, 2004; Biological Resource Assessment – April 2004; Traffic Impact Analysis – June 29, 2005; Fidelity National Title Company of California Preliminary Report – November 17, 2004; Notice of Preparation of E.I.R. – July 7, 2006

E-Mails:

April 10, 2006 Pertaining to the selection of an Environmental Consultant for the EIR; April 5, 2006 Pertaining to the selection of an Environmental Consultant for the EIR; February 6 and March 5, 2006 In response to Ms. Tina Hill; April 5 and April 6, 2006 concerning opposition to the Distribution Center; August 22, 2005 Press Release/Article entitled: Wal-Mart Proposes Merced as Site for New Distribution Center; March 6, 2006 pertaining to misrepresentation of facts by Wal-Mart Officials; April 21, 2006 pertaining to Wal-Mart's increase volume of the diesel tank on-site; January 10, 2006 RE: Merced Fees; January 13, 2006 RE: Merced Fees; January 19<sup>th</sup>, 2006 RE: Voicemail re: questions; February 7, 2006 RE: Development Fee Estimate; February 10, 2006 RE: EIR Process for Distribution Center; February 13, 2006 RE: EIR Process for Distribution Center; February 24, 2006 RE: Merced Submittal; March 16, 2006 Merced DC: language re: PG&E line; April 21, 2006 FW: Merced Reimbursement Agreement; April 24, 2006 RE: FW: Anti-Wal-Mart Group Hiring; May 24, 2006 FW: Hercules votes on Wal-Mart; June 2, 2006, June 5, 2006, June 6, 2006, June 7, 2006, June 8, 2006 RE: Wal-Mart EIR – Project Description/Background materials; June 8, June 9, 2006, and June 10, 2006 RE: Wal-Mart EIR – Project Description Information Needs; June 9, June 12, June 13, and June 14, 2006 RE: Wal-Mart EIR – Project objectives (revised); June 15, 2006 RE: City Revisions to Project Description; June 15, 2006 RE: Steefel comments/questions on Project Description; June 15, 2006 WalMart Distrib Ctr; June 15 and June 16, 2006 RE: Wal mart – Notice of Completion; June 16, 2006 Wal-Mart – comparable facility

Facsimiles:

August 15, 2005 in support of the Distribution Center.

Memorandum:

May 17, 2006, To: Jack Lesch, From: James G. Marshall, RE: Professional Services and Reimbursement

8/22/2006

Agreement for Preparation of and Environmental Impact Report for the Wal-Mart Distribution Center

Letters:

December 15, 2004 from Wal-Mart to the Honorable Hubert Walsh; February 24, 2006 from Kim Espinosa to James Emerson of Carter-Burgess; January 17, 2006 from Carter and Burgess to Kim Espinosa; January 30, 2006 from James Emerson to Kim Espinosa RE: Wal-Mart Regional Distribution Center No. 7073 – Merced California

Flier's:

Wal-Mart and City Secretly Planning Distribution Center; Wal-Mart Distribution Center Information Points

Articles:

"Wal-Mart Goes Directly to Residents", from the Merced Sun-Star dated May 10, 2006; Op-Ed, "Let's add more pollution", from the Merced Sun-Star dated May 6, 2006; Advertisement paid for by Wal-Mart from Merced Sun-Star on May 6, 2006; "Neighbors Oppose Wal-Mart", from the Merced Sun-Star dated May 5, 2006; Op-ed, "Wal-Mart doesn't care", from the Merced Sun-Star dated March 30, 2006; Op-ed, "Critics have muddled Wal-Mart issue", from the Merced Sun-Star dated April 1, 2006; Op-ed, "Sacrifices must be made", from the Merced Sun-Star dated April 1, 2006; Featured Op-ed, "City's Wal-Mart Debate Rages", from the Merced Sun-Star dated March 25, 2006; Op-ed, "Change to meet needs", from the Merced Sun-Star dated March 28, 2006; Op-ed, "It's all about the people", from the Merced Sun-Star dated March 25, 2006; Op-ed, "Where is leadership?" from the Merced Sun-Star dated March 15, 2006; Op-ed, "Intelligent growth", from the Merced Sun-Star dated March 15, 2006; Op-ed, "Outsiders causing woes" from the Merced Sun-Star dated March 11, 2006; Op-ed, "Is any firm good enough?", from the Merced Sun-Star dated March 10, 2006; "Wal-Mart took 4 years to select Merced site", from the Merced County Times dated March 9, 2006; Op-ed, "An attack on freedoms" and "MARG has concerns", from the Merced Sun-Star dated March 9, 2006; Op-ed, "Wal-Mart is opportunity" and "Critics making noise", from the Merced Sun-Star dated March 8, 2006; Op-ed, "Many can benefit" and "Wrong type of growth", from the Merced Sun-Star dated March 7, 2006; Op-ed, "Don't give farm away", from the Merced Sun-Star dated March 7, 2006; "Loose Lips: Academic freedom be damned", from the Merced Sun-Star dated March 7, 2006; Op-ed, "A game of 'give and take'", from the Merced Sun-Star dated March 6, 2006; "Wal-Mart executives detail plan", from the Merced Sun-Star dated March 3, 2006; Op-ed, "Merced can still say 'no'", from the Merced Sun-Star dated March 3, 2006; Op-ed, "Wal-Mart secrets continue", from the Merced Sun-Star dated March 2, 2006; "Wal-Mart execs in town to discuss distribution center issues", from the Merced Sun-Star dated March 1, 2006; Op-ed, "Plain and simple, jobs needed here", from the Merced Sun-Star dated March 1, 2006; "MARG wants to go slow", from the Merced Sun-Star dated February 18, 2006; Op-ed, "Our view: Nonagricultural industries welcome", from the Merced Sun-Star dated February 18, 2006; "Wal-Mart distribution center details emerge", from the Merced Sun-Star dated February 14, 2006; "Forces unite against Wal-Mart", from the Merced Sun-Star dated February 13, 2006; "Wal-Mart hub to locate here", from the Merced Sun-Star dated August 20, 2005

Carter Burgess Development Team List

Agendas for Wal-Mart Distribution Center 7073 Design Site Visit 4 (SV4) – April 25-26, 2006

Site Visit 4 – Sign-In Sheet – April 25, 2006 Merced, California

EIR Proposals for EDAW and Michael Brandman Associates

In order to alleviate some of the burden for the Staff Member put in charge of this request, please **include**, but do not limit the request to, the following specific documents from the appropriate departments, which I have either previously requested but have not received or I am requesting for the first time:

**Agreements:**

8/22/2006

Reimbursement Agreement for the Environmental Impact Report, referenced in an E-Mail on January 13, 2006 and e-mail on April 21, 2006\*

**Reports:**

All reports created by or received by any member of the City of Merced Staff pertaining to the Carter Burgess Meetings of April 25<sup>th</sup> and April 26<sup>th</sup>, 2006.\*

All reports created by or received by any member of the City of Merced Staff pertaining to the scoping meetings held on July 27<sup>th</sup>, 2006

**E-Mails:**

All E-Mails received and originated by any member of City of Merced Staff pertaining to this specific project, **dating back to the origin of this project**. This request includes, but **IS NOT LIMITED TO** Kim Espinosa. This request also excludes the emails listed above, which came only from Kim Espinosa.\* *(Please note that the above date of June 16<sup>th</sup>, 2006 does not apply to this section of the request, as this section is intended to request e-mail from all additional City of Merced Staff members involved with this project. Therefore this section of the request extends back to the initial start date of this project, estimated to be September 1, 2005)*

All E-Mails from February 25<sup>th</sup> to March 15<sup>th</sup> 2006, or a letter explicitly stating that no communication occurred between any staff member of the City of Merced and Wal-Mart representatives during this time period.\*

All E-Mails from March 17<sup>th</sup> to April 20<sup>th</sup> 2006, or a letter explicitly stating that no communication occurred between and staff member of the City of Merced and Wal-Mart representatives during this time period.\*

All E-Mails from April 25<sup>th</sup> to May 23<sup>rd</sup> 2006, or a letter explicitly stating that no communication occurred between and staff member of the City of Merced and Wal-Mart representatives during this time period.\*

**Notes:**

All notes from any City of Merced Staff Member in attendance of Carter Burgess Meeting on April 25<sup>th</sup> and 26<sup>th</sup> 2006. It is my understanding that no staff member was required to take notes at this meeting, however I find it very hard to believe that out of nine (9) City employees in attendance, not one took any notes.\*

All notes submitted to and/or recorded by any City of Merced Staff member from both scoping meeting's held on July 27<sup>th</sup>, 2006.

**Fee Schedules:**

Development Fee Schedule with all details, referenced in e-mail on February 7<sup>th</sup>, 2006.\*

**Additional Information:**

All documents explaining Wal-Mart's objections to City choices for RFP for environmental consultant per e-mail on February 10, 2006 RE: Process for Distribution Center.\*

All documents outlining the timeline for Phase I and Phase II construction for this site, per e-mail dated June 15, 2006.\*

All documents displaying which Wal-Mart Distribution Centers will be visited, how they were chosen, when they will be visited, and how Wal-Mart influenced this decision.

All documents showing that the Wal-Mart team reimbursed the City of Merced for the ten (10) dollars the city covered for the applicant for a Lot Split NOE with the County of Merced, per e-mail on January 10,

2006 RE: Merced Fees\*

All documents outlining the particular sizes used for the Domestic Water Lines, Fire Suppression Water Lines, and the Domestic Sewer Lines.\*

\*Indicates previously requested document that the City failed to provide.

Further, in making this request, I ask that you recall or take note of the following specific requirements of the CPRA:

1. **By law, the definition of public records is extremely broad.** As you know, the pertinent portions of Section 6252 state that:

...(e) "Public records" includes **any** writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics...

(g) "Writing" means **any** handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

2. **By law, the City is required to take all reasonable steps to help me identify and secure copies of the specific records I seek.** Section 6253.1(a) requires that:

[w]hen a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do **all** of the following, to the extent reasonable under the circumstances:

- (1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
- (2) Describe the information technology and physical location in which the records exist.
- (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

3. **By law, upon payment, the City must provide me with copies of all records that are not specifically exempt from disclosure.** Section 6253(b) states that:

Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

4. **By law, the City must retain and release all documents pertaining to the Wal-Mart Distribution Center, except under a very narrow set of conditions which will seldom if ever apply in this case.** Although the pertinent portion of Section 6254 of the CPRA provides that:

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

- (a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, **provided that the public interest in withholding those records clearly outweighs the public interest in disclosure....**

Section 6255 provides that if the City intends to claim that the public interest is best served by withholding information, the City must specifically substantiate the need for such non-disclosure, stating that:

- (a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of

the record.

(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

The fact is, however, the Distribution Center is of critical interest to the community, and the community has both a need and a right to be made aware of all communications between Wal-Mart and City staff. We further assert that, given the significance of this project and its potential impact on the City, it is clearly in the public interest for you to retain and make such documents available as part of this and all future records requests pertaining to this Distribution Center.

According to the California Attorney General's Office, based on a review of the CPRA and relevant case law, in order to withhold a record under the "public interest" exemption, the agency must specifically show how the public's interest in non-disclosure clearly outweighs its interest in disclosure. A preference on the part of the Planning Department of the City of Merced in non-disclosure is of little consequence, and when the two sets of interests are balanced, the courts have determined that the types of records that can be withheld from public view under the public interest exemption are extremely limited.

**Therefore, if you decline to release any records, including those you allege to have not retained, you must indicate the nature of such documents, the specific authority under which you are claiming exemption from disclosure, and explain specifically how the public's interest is best served by the City's refusal to disclose them.**

\*\*\*\*\*

Once I receive the cost estimate from you, I will promptly remit payment so that copying may commence.

Thank you for your time and assistance. If you have questions or need additional information, please do not hesitate to contact me. I look forward to hearing from you.

Sincerely,

Schuyler Ellis

"None but ourselves can free our minds!" - Bob Marley

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Do you Yahoo!?  
Get on board. You're invited to try the new Yahoo! Mail.

## Espinosa, Kim

---

**From:** Marshall, Jim  
**Sent:** Monday, August 14, 2006 8:33 AM  
**To:** Espinosa, Kim; Davidson, Dana  
**Subject:** FW: Do not support Wal-Mart

For the record

James G. Marshall, City Manager  
City of Merced  
marshallj@cityofmerced.org  
209.385.6834

-----Original Message-----

**From:** city, council  
**Sent:** Monday, August 14, 2006 8:31 AM  
**To:** Bill Spriggs (E-mail); Carl Pollard (E-mail 2); Cortez, Joseph; Ellie Wooten (E-mail 2); Ellie Wooten (E-mail); Gabriault, Michele; Jim Sanders (E-mail); Joe Cortez (E-mail); Marshall, Jim; Michele Gabriault-Acosta (E-mail); Osorio, Rick; Pollard, Carl; Reynolds, Nobie; Rick Osorio (E-mail); Sanders, Jim; Spriggs, Bill  
**Subject:** FW: Do not support Wal-Mart

From the web site.

Nobie

Nobie Reynolds  
Executive Secretary  
City Manager's Office  
Email: reynoldsn@cityofmerced.org  
Telephone: (209) 385-6834; Fax (209) 723-1780

-----Original Message-----

**From:** gaiatender@sbcglobal.net [mailto:gaiatender@sbcglobal.net]  
**Sent:** Sunday, August 13, 2006 5:28 PM  
**To:** city, council  
**Subject:** Do not support Wal-Mart

I do NOT support the building of ANY WalMart distribution center in Merced. It would contribute greatly to an already unhealthy environment. WalMart is fined consistently for run-off infractions, water contamination, petroleum storage and air pollution! Their distribution center will generate 55,000 gallons of sewage EACH day and will also have an on-site storage & waste facilities for 28,800 gallons of petroleum products and house hazardous materials in trasnit to WalMart stores. WalMart also DOES NOT have a good reputation for treating their employees fairly...sexual discrimination, lack of benefits, poor wages, immigration violations, even human rights violations...and ultimately affecting the rest of the population by using our taxes and resources to compensate where WalMart is negligent. As a third generation Mercedian, I want my vote/voice to be heard. This is not good for our economy. Use your resources to investigate ways to stimulate our economy without compromising our future. We need sustainable



resources that do not harm our city. YOU are the ones who are ultimately responsible for safe and sustainable building in our community. Think of FUTURE generations...not what lines our pockets TODAY!  
I agree we need more jobs in Merced, but you MUST weigh both the good and bad advantages.

DONNA CLARY  
692 E. 19th Street  
Merced, CA 95340

"Listen to your best voice." Miller Williams

"Realize deeply that the present moment is all you ever have." - Echart Tolle

"The ultimate measure of a man is not where he stands at times of comfort & convenience, but where he stands at times of challenge & controversy." Rev. Martin Luther King, Jr.

**Espinosa, Kim**

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**From:** Marshall Krupp [ecomunitysys@earthlink.net]  
**Sent:** Sunday, August 13, 2006 2:40 PM  
**To:** Espinosa, Kim  
**Cc:** 'Steven Becker'; 'Fore\_Robert'; 'MICHAEL BELLUOMINI (E-mail)'; 'Terry Silva'  
**Subject:** Wal-Mart Regional Distribution Center

Dear Kim;

On Friday, I sent you the responses of the Merced Union High School District and the Weaver Union School District with regards to the Notice of Preparation of a Draft EIR on the Wal-Mart Regional Distribution Center. As a convenience I though I would also e-mail you a Word version of the comments for your use and consideration.

I am pleased that we have had several telephone calls with Mr. Colby Tanner and that I believe we are moving in the direction of an agreement that will lead to a partnership formed between Wal-Mart and the Districts. We will continue to pursue this over the next 30-days and will keep you informed. In the meantime, if you have any questions, please feel free to call me.

Thanks fro your assistance and consideration.

Sincerely,

*Marshall B Krupp*



Marshall B. Krupp, President  
Community Systems Associates, Inc.  
3367 Corte Levanto  
Costa Mesa, California 92626  
714-838-9900 telephone  
714-838-9998 fax  
714-624-4552 cell  
ecomunitysys@earthlink.net



## Community Systems Associates, Inc.

"the leader in facilitating community facilities consensus"

3367 Corte Levanto, Costa Mesa, California 92626

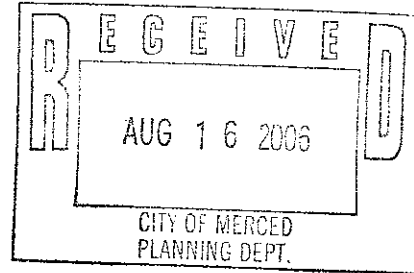
(714) 838-9900 (714) 838-9998 fax

[ecomunitysys@earthlink.net](mailto:ecomunitysys@earthlink.net)

August 11, 2006

Ms. Kim Espinoza, Planning Manager  
Planning and Permitting

**City of Merced**  
678 West 18<sup>th</sup> Street  
Merced, California 95340



Subject: **Comments of the Weaver Union School District**

Notice of Preparation of Draft Environmental Impact Report  
Site Plan  
General Plan Amendment  
Kibby Road Street Abandonment

### **Merced Wal-Mart Regional Distribution Center**

Dear Ms. Espinoza;

This letter is submitted by Community Systems Associates, Inc. on behalf of the Weaver Union School District ("WUSD"), and is presented as the formal position of the District on the project as described herein. Community Systems Associates, Inc. is the retained consultant of the Weaver Union School District and this letter has been authorized to be presented to the City of Merced.

The District is in receipt of the City of Merced ("City") Notice of Preparation of Draft Environmental Impact Report ("Notice") with regards to the proposed Site Plan and General Plan Amendment for the Merced Wal-Mart Regional Distribution Center ("Proposal") consisting of 230-acres and which is intended as a warehouse and distribution center for Wal-Mart Corporation ("Project"). The Project is generally bounded by Childs Avenue on the north, Tower Road on the east, and Gerard Avenue on the south. The Project is approximately two miles east and north of State Route 99.

The Project is located in the following school districts:

Merced Union High School District  
Weaver Union School District

The Project is to accompany the following entitlement applications:

1. General Plan Amendment
2. Site Plan
3. Environmental Impact Report

The Notice provides that the City of Merced will be the Lead Agency and will prepare an environmental impact report for the Project. The City seeks the views of the District as to the scope and content of the environmental information which is germane to the District's statutory responsibilities in connection with the Project. The Notice provides that the responses are to be sent to the City no later than 30-days after receipt of the Notice, but not later than August 11, 2006.

The District has had several telephone conversations with Mr. Colby Tanner, Real Estate Manager, Distribution Centers Wal-Mart Stores, Inc. The District is enthusiastic with the response by Mr. Tanner to investigate and pursue the formation of a public/private partnership that would enhance the educational and facility programs of the District through the implementation of the Project. To this end, the District and Wal-Mart are continuing discussions and are looking at options and alternatives that would lead to an agreement that would serve the interests of all parties. We view these discussions as favorable and trust that as they progress, a relationship will be formed to address the concerns of the District, introduce the Project in the Community as a benefit to the District and schools, and will enable the District to fully support the Project. We look forward to the continuation of these discussions and it is hoped that the District and Wal-Mart will enter into an agreement prior to the completion of the Draft EIR so that the terms of the agreement can be made a part of the Draft EIR.

In the interim of an agreement, the District has a fiduciary responsibility to respond to the Notice.

The District is a responsible and affected agency that will be impacted by the development of the Property by the proposed Project. This letter is intended to be entered into the public record of the City on the Project to address this Proposal, and is further intended to present the District's comments with regards to the impacts and consequences that should be contemplated in the Draft EIR, in order to protect the District's administrative and legal remedies.

It is the District's request that the Notice of Preparation be filed with the Office of Planning and Research and that a State Clearinghouse number be issued. This Project has the potential to impact the resources and assets of the State of California Department of Transportation, the California Air Resources Board, the California Water Quality Control Board, Water Resources Control Board, California Department of Water Resources, California Department of Food and Agriculture, California Environmental Protection Agency, Integrated Waste Management Board, and California Highway Patrol, to name a few.

The City has requested the scope and content of the environmental information which is germane to the District's statutory responsibilities in connection with the Project. The District's response is required to identify significant environmental issues and reasonable alternatives and mitigation measures that the District will need to have explored in the Draft EIR. The following is a response to the Notice in conformance with the applicable provisions of the CEQA Guidelines.

### **Draft EIR Issues**

The District is currently overcrowded. The Draft EIR needs to provide a full disclosure of the impacts of the Project on the District in terms of growth inducing impacts, and direct and indirect impacts on the operations of the District and the conditions of the environment surrounding the Project. The following is a list of the impact areas and areas of concern that in the judgment of the District needs to be addressed in the Draft EIR:

1. The direct, indirect, and cumulative impacts on the increased enrollments, increased required employees, increased school facilities, increased District-wide facilities, increased interim facilities, and increased transportation facilities and services required by the students generated by the growth inducing aspects of the Project, needs to be addressed in the Draft EIR. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
2. The direct, indirect, and cumulative impacts on the circulation and traffic patterns throughout the Community as a result of overall traffic generated by the Project (employee traffic and tractor/trailer traffic), and the impacts of this traffic on the schools and the surrounding areas need to be addressed in the Draft EIR. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
3. The direct, indirect, and cumulative impacts on the rail transportation systems (if any) within the Community and the surrounding areas as a result of distribution of products transported to the Project needs to be addressed in the Draft EIR. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
4. The direct, indirect, and cumulative impacts on the routes and safety of students traveling to schools by vehicles, District busing, walking and using bicycles in conflict with the traffic to and from the Project, need to be addressed in the Draft EIR. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.

5. In order for the District to accommodate the students generated from the growth inducing aspects of the Project, the District will have to modify attendance area boundaries, program double-session schedules, load classrooms with students in excess of District and State standards, and house students in inadequate and inappropriate school facilities, etc., throughout the District. This effect on the overall operation and administration of the District, and the students, employees, and constituents affected by such actions need to be addressed in the Draft EIR. This will have physical, social, financial, and psychological effects on the students, employees, and constituents of the District. These potential impacts need to be addressed in the EIR. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
6. In the event that the growth inducing impacts of the Project are not mitigated, students and employees will experience overcrowding conditions in the schools that are impacted by the Project. This may result in operational and administrative modifications that would be necessary to accommodate the increased overcrowded enrollments. This may have physical, social, financial, and psychological effects on the students, employees, and constituents of the District. These potential impacts need to be addressed in the Draft EIR. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
7. In order to accommodate students generated by the growth inducing impacts of the Project, permanent and interim classrooms and support facilities may need to be installed, constructed, and developed on the school sites. The impacts of these additional facilities on school site utilization, wastewater treatment, water and utility services, parking, traffic and circulation, loss of parking, open space, and field areas, and State site and design compliance needs to be addressed in the Draft EIR. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
8. SB 50 places limitations on the statutory development fees to be paid by the development for the Project. The Draft EIR needs to address the deficiencies in the fees paid versus the revenues required to fund the permanent and interim school facilities, and the District-wide support facilities to accommodate the students generated by the growth inducing impacts of the Project. In the event the SB 50 limitations result in financial deficits that would result in facilities not being fully funded, then the Draft EIR should identify the measures that will be taken to address the unfunded facilities to accommodate the students generated by the growth inducing impacts of the Project. If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the Project as proposed, the effects of the mitigation measure should be discussed.

Mitigation measures need to be offered to reduce the impacts to a less than significant impact.

9. The Draft EIR should evaluate the "growth inducing" impacts of the Project on the Community and the region, including but not limited to the direct and indirect environmental impacts of the growth inducement on schools, public facilities, wastewater treatment, water availability and water table, traffic and circulation, noise, air quality, and land use. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
10. The increased traffic of the Project will have an impact on increased traffic on the surrounding collector and arterial streets, State Highway 99, and the on- and off-ramps. These traffic increases will impact the District's busing and transportation timing and routes. The Draft EIR should address these impacts on the District. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
11. The Draft EIR should identify the significant environmental effects on schools, public facilities, wastewater treatment, water availability and water table, traffic and circulation, noise, air quality, land use which cannot be avoided if the Project is implemented, together with the direct and indirect consequences of the unavoidable environmental effects.
12. The Draft EIR should identify the significant irreversible environmental changes on schools, public facilities, wastewater treatment, water availability and water table, traffic and circulation, noise, air quality, land use, which would be caused by the Project should the Project be implemented.
13. The Draft EIR should address the air quality, noise, and vibration, traffic impacts on surrounding land uses along the routes that the traffic from the Project will use to and from the Project.
14. The Draft EIR should address the impacts and consequences on local street and roads, on- and off-ramps, and State Route 99 as a result of traffic accidents involving the trucks going to and from the Project, and offer alternative detours as a result of such occurrences.
15. The Draft EIR should address the deterioration of local streets, on-and off-ramps, and State Route 99 roadway surfaces as a result of the continued truck vehicle usages over time, and the physical and financial consequences to the Community, the City of Merced, and the State of California.

16. The Draft EIR should address the impacts associated with the nighttime lights and glare that might affect the ambient light of the area and the impacts and consequences of this lighting on the surrounding areas.
17. It is acknowledged that the Project will conduct operations 24 hours per day, seven days per week. The Draft EIR should address all impacts as they may be intensified during the normal non-working hours of the day and on weekends.
18. The Draft EIR should address the impacts of hazardous materials being stored and/or used on the Project site including, but not limited to refrigeration materials, diesel fuel, and other chemicals that are combustible, toxic, or hazardous.
19. The Draft EIR should address how the Project is consistent with the land use map, and the ALL goals, policies, and implementation programs of the City of Merced General Plan and the County of Merced General Plan, including but not limited to schools, public facilities, wastewater treatment, water availability and water table, traffic and circulation, noise, air quality, land use.
20. The Draft EIR should identify the primary truck routes for access/egress to the Project along with alternative routes in the event that the designated routes are inaccessible and unavailable. The Draft EIR should address all of the impact areas that are relevant to the primary routes, including but not limited to traffic, noise, air quality, etc.
21. SB 50 provides:
  - a. Section 65995 (e) "The Legislature finds and declares that the *financing of school facilities and the mitigation of the impacts* of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities are *matters of statewide concern*. For this reason, *the Legislature hereby occupies the subject matter of requirements related to school facilities levied or imposed in connection with, or made a condition of, any land use approval, whether legislative or adjudicative act, or both, and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities, to the exclusion of all other measures, financial or non-financial, on the subjects*. For purposes of this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.
  - b. Section 65995 (h) "The payment or satisfaction of a fee, charge, or other requirement levied or imposed ... are hereby *deemed to be full and complete mitigation of the impacts* of any legislative or adjudicative act, or



both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization ..., on the provision of adequate school facilities.”

- c. Section 65996 (a) “...the following provisions shall be the *exclusive methods of considering and mitigating impacts on school facilities* that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property or any change of governmental organization or reorganization...”
- d. Section 65996 (b) The provisions of this chapter are hereby *deemed to provide full and complete school facilities mitigation* and, notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, a state or local agency *may not deny or refuse to approve* a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization,... on the basis that school facilities are inadequate...”

The Draft EIR needs to identify the deficiencies and inadequacies between the legal provisions of SB 50 and the actual implementation of the provisions with regards to the Project. In addition, the Draft EIR needs to identify any and all impacts that have not been mitigated by the provisions of SB 50.

- 22. The cumulative impacts of the Project on traffic and circulation, noise, schools, public facilities and services, wastewater treatment, water and water table, air quality, and utilities need to be evaluated in the Draft EIR based on the build-out of the City of Merced General Plan and the County of Merced General Plan, the build-out of the land uses within the Sphere of Influence of the City of Merced, and the build-out of the land within the jurisdiction of the public agencies providing service to the Project. Mitigation measures need to be offered to reduce the impacts to a less than significant impact.
- 23. The Draft EIR should identify all federal, State, and local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the Draft EIR by contract or other authorization.
- 24. The Draft EIR should identify the economic or social information relative to the impacts of the Project. The Draft EIR should trace the chain of cause and effect from a proposed decision on a Project through anticipated economic or social

changes resulting from the Project to physical changes caused in turn by the economic or social changes. The economic and social analysis should focus the analysis on the physical changes that will result on the District from the Project. Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a Project are feasible to reduce or avoid the significant effects on the environment identified in the Draft EIR.

25. The Draft EIR should identify the inadequacies contained in the City of Merced General Plan and the consequences of compliance or lack of compliance of the current General Plan with the applicable provisions of Section 65300 et. seq. of the Government Code.

Following the completion of the Draft EIR, the District does hereby request the maximum time permitted by law to review the Draft EIR and offer any comments. We further hereby request that a copy of the Draft EIR be forwarded to the following for review:

Mr. Steven Becker, Superintendent  
**Weaver Union School District**  
3076 East Childs Avenue  
Merced, California 95340

Mr. Marshall B. Krupp  
**Community Systems Associates, Inc.**  
3367 Corte Levanto  
Costa Mesa, California 92626

The District looks for to a favorable relationship with Wal-Mart and anticipates that this letter will further the discussion between Wal-Mart and the District as the Project progresses and a partnership is reached between the Parties.  
Thank you for your assistance and consideration.

Sincerely,

Community Systems Associates, Inc.

*Marshall B. Krupp*

Mr. Marshall B. Krupp  
President

Ms. Kim Espinoza, Planning Manager  
Planning and Permitting  
**City of Merced**  
August 11, 2006  
Page 9

Cc: Mr. Steven Becker, Superintendent  
**Weaver Union School District**  
3076 East Childs Avenue  
Merced, California 95340